

**Department of Public Welfare Pennsylvania Code
Title 55. Public Welfare Chapter 3490.
Child Protective Services**

CONFIDENTIALITY

§ 3490.91. Persons to whom child abuse information shall be made available.

(a) Reports, report summaries and other accompanying information obtained under the CPSL and this chapter in the possession of the Department and a county agency are confidential. Except for the subject of a report, persons who receive information under this section shall be advised that they are subject to the confidentiality provisions of the CPSL and this chapter, that they are required to insure the confidentiality and security of the information and that they are liable for civil and criminal penalties for releasing information to persons who are not permitted access to this information. This material shall only be released under the CPSL and this chapter and be made available only to the following:

(1) An authorized official of a county agency or of an agency of another state that performs protective services analogous to those services performed by county agencies or the Department in the course of the official's duties, multidisciplinary team members assigned to the case and authorized persons providing services by referral or under section 6364 if CPSL (relating to purchasing services of other agencies). The name of the person who made the report or cooperated in the investigation may be released to county agencies in this Commonwealth and out-of-state agencies providing protective services provided they have a legitimate need to know this information to protect the child and the person requesting the information can assure the confidentiality of the identity of the persons who made the report or cooperated in the investigation.

(2) A physician examining or treating a child or the director of a hospital or medical facility treating a child, if the physician or the director of a hospital or medical facility suspects the child of being an abused child.

(3) A guardian ad litem and court designated advocate for the child.

(4) An authorized official or agent of the Department including the following:

(i) The Secretary.

(ii) Deputy Secretaries of the Department and designated staff, in cases involving alleged or actual abuse of children in facilities or programs under their jurisdiction.

(iii) ChildLine staff

(iv) Authorized officials or agents of the Department who are conducting a performance audit as authorized under section 6343 of the CPSL (relating to investigating performance of county agency) and this chapter.

(5) A court of competent jurisdiction under a court order or a court of common pleas upon written request from a judge in connection with any matter involving custody of a child.

(i) When the Department receives a written request under this paragraph, ChildLine will send to the court copies of the Report of Suspected Child Abuse (CY-

47); the ChildLine Report of Suspected Child Abuse and Neglect For ChildLine Use Only (CY-47C); the Child Protective Service Investigation Report (CY-48); and the Child Protective Service Supplemental Report (CY-49) on file at ChildLine involving the subject child, the child's siblings and their parents.

(ii) If the court requests specific files or information that is not on file at ChildLine, ChildLine will notify the county agency administrator to provide the information directly to the court.

(6) A standing committee of the General Assembly, under section 6384 of the CPSL (relating to legislative oversight).

(7) The Attorney General.

(8) Federal auditors, if required for Federal financial participation in funding of agencies, but Federal auditors may not remove identifiable reports or copies of them from the Department or county agencies.

(9) Law enforcement officials of any jurisdiction inside or outside of this Commonwealth if the information is relevant in the course of investigating cases of:

(i) Homicide, sexual abuse or exploitation, or serious bodily injury perpetrated by persons whether or not related to the victim.

(ii) Suspected child abuse perpetrated by persons who are not family members.

(iii) Repeated physical injury to a child under circumstances which indicate that the child's health or welfare is harmed or threatened.

(iv) A missing child report.

(10) Law enforcement officials who shall immediately receive reports of suspected child abuse from the county agency, when the initial report or initial review by the county agency gives evidence that the alleged child abuse is one of the following:

(i) Homicide, sexual abuse or exploitation, or serious bodily injury perpetrated by persons whether or not related to the child.

(ii) Child abuse perpetrated by persons who are not family members.

(11) Designated county officials in reviewing the competence of the county agency or its employees under the CPSL and this chapter. Officials under this paragraph are limited to the following:

(i) The board of commissioners in counties other than counties of the first class.

(ii) The mayor of a city of the first class under the act of April 21, 1949 (P.L. 665, No. 155), known as the First Class City Home Rule Act.

(iii) An individual serving as a county chief executive as designated by a county home rule charter or optional plan form of government under the act of April 13, 1972 (P.L. 184, No. 62), known as the Home Rule Charter and Optional Plans Law.

(12) A subject of the report upon written request.

(13) A person, agency or institution, upon written consent of all subjects of the report may receive a copy of the reports on file with the county agency and ChildLine.

(14) Individuals authorized by the Department to conduct studies of data, if the study does not contain the name or other information by which the subjects of reports may be identified.

(15) Required reporters of suspected child abuse whose access to information is limited to the following:

(i) The final status of the report following the investigation, whether it be indicated, founded or unfounded.

(ii) Services provided or arranged by the county agency to protect the child from further child abuse. This information may be released to the required reporter at any time after the report of suspected child abuse has been made.

(16) A prospective adoptive parent, approved by an adoption agency when considering adopting an abused child in the custody of a county agency. The adoption agency and the county agency having custody of the child shall determine the scope and detail of information which shall be provided so that the prospective parent may make an informed decision to adopt.

(17) Members of a local or State child fatality review team authorized under sections 6340(a)(4) and 6343(b) of the CPSL (relating to release of information in confidential reports; and investigating performance of county agency), formally organized for the purpose of assisting in the investigation of child death or the development and promotion of strategies to prevent child death. The information shall be provided only through staff of the county agency or Department who are members of the team.

(b) Prospective child care service employee applicants, prospective adoptive and foster parents, prospective administrators and prospective operators of child care services, and any person seeking voluntary certification may request and receive information concerning whether there exists on file in the Statewide Central Register indicated or founded reports of child abuse naming the person as perpetrator of child abuse under section 6344 of the CPSL (relating to information relating to prospective child-care personnel).

(c) Information on file at the Statewide Central Register as a result of a request to amend or expunge a founded or indicated report of child abuse under §§ 3490.105 and 3490.105a (relating to request by the subject of a founded or indicated report for expunction or amendment of an abuse report when the report was received by ChildLine prior to July 1, 1995; and request by a perpetrator to amend or expunge an indicted report of child abuse received by ChildLine after June 30, 1995) may only be released to the Secretary or Secretary's designees in the course of their official duties and the Attorney General when conducting an audit under section 6345 of the CPSL (relating to audits by Attorney General).

(d) A person, including a law enforcement official, who willfully breaches the confidentiality or security of information that the person received under this subsection, in addition to other civil or criminal penalties provided by law, shall be denied access to any confidential child abuse information in the future.

§ 3490.92. Requests by and referrals to law enforcement officials.

(a) Requests for child abuse information by law enforcement officials under § 3490.91(a)(9) (relating to persons to whom child abuse information shall be made available) shall be made with the following requirements:

(1) Requests shall be in writing and signed by the law enforcement official.

(2) Requests shall indicate that the child abuse information is needed by the law enforcement official in the course of investigating a case of the following:

(i) Homicide, sexual abuse or exploitation, or serious bodily injury, perpetrated by persons whether or not related to the victim.

(ii) Child abuse perpetrated by persons who are not family members.

(jjj) Repeated physical injury to a child under circumstances that indicate that a child's health or welfare is harmed or threatened.

(iv) A missing child report.

(3) The information shall include the names of the persons who made the report and who cooperated in the investigation when requested by the law enforcement official.

(b) Referrals to law enforcement officials required by § 3490.91(a)(10) shall be made with the following requirements:

(1) Referrals shall be made by the county agency to the district attorney or other appropriate law enforcement official.

(2) Referrals shall be made if the initial report to or initial review by the county agency gives evidence that the alleged abuse perpetrated by persons whether or not related to the child is one of the following:

(i) Homicide.

(ii) Sexual abuse or exploitation.

(iii) Serious bodily injury.

(3) Referrals shall be made if the initial report to or initial review by the county agency gives evidence that the alleged child abuse is child abuse perpetrated by persons who are not family members.

(4) If during the course of investigating a report of suspected child abuse, the county agency obtains evidence which indicates the referral to law enforcement officials is appropriate, the county agency shall immediately refer the report to the law enforcement official.

(5) The county agency may not refer to law enforcement officials reports of suspected child abuse which do not meet the requirements of paragraphs (2) and (3).

(6) Reports shall be made verbally under policies and procedures developed in conjunction with the district attorney and other law enforcement officials.

(7) Reports shall be made in writing on the next work day when the report is made verbally or within 24 hours of when the county agency determines that the report meets the criteria for making a report to law enforcement officials. Written reports shall be made on forms developed by the Department.

(8) The county agency shall release the names of the person who made the report or cooperated in the investigation to law enforcement officials upon request.

(c) If the complaint of suspected abuse is determined to be one which cannot be investigated by the county agency because the person accused of the abuse is not a perpetrator, but does suggest the need for investigation, the county agency shall immediately transmit the information to the appropriate authorities.

(d) The county agency may not provide information to a law enforcement official under this section, unless the law enforcement official is known to or has exhibited proper identification to the county agency.

(e) Law enforcement officials shall treat all reporting sources and persons who cooperated in the investigation as confidential informants.

§ 3490.93. Requests by designated county officials.

Requests for child abuse information by designated county officials under § 3490.91(a)(11) (relating to persons to whom child abuse information shall be made available) shall be made under the following requirements:

(1) Requests shall be made in writing and addressed to the county administrator.

(2) Requests shall be signed by:

(i) A majority of the county commissioners.

(ii) The mayor of a city of the first class.

(iii) The county chief executive.

(3) Requests shall indicate that the information is needed by the designated county officials as part of an investigation of the competence of a county agency or county agency employee.

(4) Requests shall identify the specific files needed.

(5) The county agency shall provide the requested information and inform the designated county officials that the information may not be released to anyone except those permitted access to this information under § 3490.91 and that they are subject to § 3490.102 (relating to criminal liability for breach of confidentiality).

§ 3490.94. Release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation.

(a) Except for the release of the identity of the persons who made a report of suspected child abuse or cooperated in the investigation under § 3490.91(a)(9) and (10) and 3490.92(a)(3) (relating to persons to whom child abuse information shall be made available; and requests by and referrals to law enforcement officials), the release of data that would identify the person who

made a report of suspected child abuse or person who cooperated in a subsequent investigation is prohibited, unless the Secretary finds that the release will not be detrimental to the safety of the person.

(b) Prior to releasing information under subsection (a) to anyone other than a law enforcement official under subsection (a), the Secretary will notify the person whose identity would be released that the person has 30-calendar days to advise the Secretary why this anticipated release would be detrimental to the person's safety.

§ 3490.95. Release of information to required reporters.

The release of information by the county agency to required reporters under § 3490.91(a)(15) (relating to persons to whom child abuse information shall be made available) is subject to the following:

- (1) The information released by the county agency shall concern the same child who was the subject of the report made by the required reporter.
- (2) The required reporter shall request the information, either verbally or in writing.
- (3) Before releasing the allowable information, the county agency shall verify the identity of the required reporter in one of the following ways:
 - (i) The county agency shall be able to recognize the voice of the required reporter when the request is made verbally by telephone.
 - (ii) If the county agency is not familiar with the required reporter and does not recognize the reporter's voice the county agency may verify the request of the required reporter by returning the telephone call to the reporter's place of employment.
 - (iii) If the county agency is unable to verify a telephone request for information from a required reporter under subparagraphs (i) and (ii), the county agency shall obtain a written request for information from the required reporter.
- (4) The county agency shall release the information under § 3490.91(a)(15) when requested by a required reporter.
- (5) The county agency may release the information under § 3490.91(a)(15), either verbally or in writing, to the required reporter whether or not a request for information was received.
- (6) The county agency shall inform the required reporter of the reporter's obligation to protect the confidentiality of information released as required under sections 6339 and 6340 of the CPSL (relating to confidentiality of reports; and release of information in confidential reports).
- (7) The county agency shall make an entry of the request made by the required reporter and the response given in the case record.

GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES

§ 3490.101. Sanctions.

A staff member of the Department or county agency who willfully violates the CPSL and this chapter is subject to disciplinary action, including dismissal.

§ 3490.102. Criminal liability for breach of confidentiality.

A person who willfully releases or permits the release of data or information contained in the pending complaint file, the Statewide Central Register or the county agency records, to persons or agencies not permitted by this chapter to receive this information shall be guilty of a misdemeanor of the third degree. In addition, the person shall be denied access in the future to information that the person would otherwise be entitled to receive under the CPSL and this chapter.

§ 3490.103. Nonabuse reports received by the county agency or other public agency from ChildLine.

Public agencies, including county agencies, shall evaluate those referrals from ChildLine made under section 6334 of the CPSL (relating to disposition of complaints received) which have not been identified as reports of suspected child abuse. If, after the evaluation, the agency has reason to suspect that child abuse occurred, the agency shall make a report of suspected abuse to ChildLine.

§ 3490.104. Release of information to a subject of a report.

(a) Upon written request to a county agency or ChildLine, a subject of a report may receive at any time a copy of the reports filed with the county agency and ChildLine. The identity of the person who made the report or a person who cooperated in a subsequent investigation may be released only under § 3490.94 (relating to release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation).

(b) Upon written request, a defendant in a criminal proceeding is entitled to the child abuse information in the possession of a county agency in accordance with applicable law. The information is limited to the county agency record from the date the report was made to the date the county agency determined the status of the report. The county agency shall send the requested information to the defendant and the district attorney. The information that is released to the defendant and the district attorney may not contain the identity of the persons who made the report or cooperated in the investigation.

§ 3490.105. Request by the subject of a founded or indicated report for expunction or amendment of an abuse report, when the report was received by ChildLine prior to July 1, 1995.

(a) A subject of an indicated or founded report may request in writing that the Secretary amend or expunge the report on the grounds that it is inaccurate or being maintained in a manner inconsistent with the CPSL and this chapter.

(b) The Secretary will decide whether to grant or deny a request made under subsection (a) within 30 days from the date the request is received. The Secretary will notify subjects of the report and the appropriate county agency of the decision by first-class mail.

§ 3490.105a. Request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995.

(a) A perpetrator of an indicated report of child abuse may request the Secretary to amend or expunge the report on the grounds that is in inaccurate or is being maintained in a manner inconsistent with the CPSL and this chapter. The request shall be in writing and postmarked within 45-calendar days of the mailing date of the letter from ChildLine under §§ 3490.40 and 3490.40a (relating to notifications regarding indicated reports; and notifications regarding founded reports).

(b) The Secretary will decide within 30-calendar days whether or not to grant the request. The Secretary will notify the perpetrator, the county agency and other subjects in writing as follows:

- (1) Except the subject child, all other subjects of the report when the decision is to grant the request.
- (2) Only the perpetrator when the decision is to deny the request.
- (c) The notification from the Secretary will be sent by first-class mail.