

41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (8) and (9), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other

person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with

developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

(i) the attorney general;

(ii) a county attorney or deputy county attorney of the county in which the

alleged abuse or neglect occurred;

(iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or

(iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

(i) the death of the child as a result of child abuse or neglect;

(ii) a sexual offense, as defined in 46-23-502, against the child;

(iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(5) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(6) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(7) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(8) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(9) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (8) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject

of the proceeding.

(10) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(11) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979; amd. Sec. 1, Ch. 287, L. 1987; amd. Sec. 39, Ch. 609, L. 1987; amd. Sec. 1, Ch. 110, L. 1989; amd. Sec. 2, Ch. 126, L. 1989; amd. Sec. 2, Ch. 510, L. 1991; amd. Sec. 5, Ch. 655, L. 1991; amd. Sec. 15, Ch. 610, L. 1993; amd. Sec. 10, Ch. 458, L. 1995; amd. Sec. 164, Ch. 546, L. 1995; amd. Sec. 4, Ch. 564, L. 1995; amd. Sec. 7, Ch. 514, L. 1997; amd. Sec. 5, Ch. 550, L. 1997; amd. Sec. 6, Ch. 566, L. 1999; amd. Sec. 2, Ch. 281, L. 2001; amd. Sec. 6, Ch. 311, L. 2001; amd. Sec. 1, Ch. 570, L. 2001; amd. Sec. 45, Ch. 571, L. 2001; amd. Sec. 5, Ch. 504, L. 2003; amd. Sec. 2, Ch. 349, L. 2005; amd. Sec. 29, Ch. 449, L. 2005; amd. Sec. 4, Ch. 166, L. 2007; amd. Sec. 60, Ch. 2, L. 2009; amd. Sec. 2, Ch. 61, L. 2013; amd. Sec. 1, Ch. 332, L. 2013; amd. Sec. 8, Ch. 333, L. 2013; amd. Sec. 2, Ch. 337, L. 2013; amd. Sec. 5, Ch. 364, L. 2013; amd. Sec. 8, Ch. 354, L. 2015.



Title 37 Juveniles
Chapter 5 Department of Children's Services
Part 1 General Provisions

Tenn. Code Ann. § 37-5-124 (2015)

37-5-124. Disclosure of the death or near fatality of persons in the custody of the department of children's services.

(a) The commissioner of children's services shall provide a report of the fatality or near fatality of:

(1) Any child in the custody of the department;

(2) Any child who is the subject of an ongoing investigation by child protective services or has been the subject of an investigation by child protective services within the forty-five (45) days immediately preceding the child's fatality or near fatality; or

(3) Any child whose fatality or near fatality resulted in an investigation of the safety and well-being of another child in the home;

within ten (10) business days of the fatality or near fatality of such child to the members of the senate and house of representatives representing the child.

(b) The legislators representing the child shall be determined by the home address of the child. If the child was not a resident of Tennessee prior to being placed in the custody of the department, the legislators representing the child shall be determined by the address of the residence or facility in which the child was located at the time of the child's fatality or near fatality.

(c) For the purposes of this section, "near fatality" shall have the same meaning as in § 37-5-107.

Title 37 Juveniles
Chapter 5 Department of Children's Services
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Tenn. Code Ann. § 37-5-107 (2015)

37-5-107. Confidentiality of records.

(a) All applications, certificates, records, reports and all legal documents, petitions and records made or information received pursuant to this title that directly or indirectly identify a child or family receiving services from the department or that identify the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be kept confidential and shall not be disclosed, except as provided by this section and §§ 37-1-131, 37-1-409, 37-1-612 and 49-6-3051.

(b) The department may use or release information in the following circumstances:

(1) The department may utilize any information it has or may acquire to provide services to the child; and

(2) The department may release records to a person or entity that may be providing system or program evaluation.

(c) The department shall release information in the following circumstances:

(1) Upon request, the department shall release records to any child abuse review teams or child fatality review teams that are created or authorized by state law to review the activities of the department or to evaluate or investigate the cause of injury to or death of a child;

(2) Records to any law enforcement agency, grand jury or court upon presentation of an appropriate court order;

(3) Upon written request, records to any federal, state or local government 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 in compliance with 42 U.S.C. § 5106a(b)(2)(B)(ix);

(4) (A) To provide for the public disclosure of information about any case that results in a child fatality or near fatality in compliance with 42 U.S.C. § 5106a(b)(2)(B)(x). For purposes of this subdivision (c)(4)(A), "near fatality" means a child had a serious or critical medical condition resulting from child abuse or child sexual abuse, as reported by a physician who has examined the child subsequent to the abuse;

(B) When the department investigates a child fatality for abuse or neglect, the department shall release the following information, to the extent known, within five (5) business days of the fatality:

(i) The child's age;

(ii) The child's gender; and

(iii) Whether the department has had history with the child.

(C) Following the closure of an investigation for a child abuse or neglect fatality, the department shall release the final disposition of the case, whether the case meets criteria for a child death review and the full case file. The case file may be redacted to comply with the confidentiality requirements of this section.

(D) Following the department's final classification of a child abuse or neglect near fatality, the department shall release the full case file. The case file may be redacted to comply with the confidentiality requirements of this section.

(5) Records to any person or entity that provides system or program evaluation at the request of the department;

(6) To the commission on children and youth any and all records requested by the commission that the commission believes necessary to perform its duties and responsibilities pursuant to § 37-3-103, particularly for the purpose of evaluating the delivery of services to children and their families served by the department; and

(7) Upon written request, records to any person who is the subject of a report made to the department, or to the person's parent or legal guardian if the person is a minor and the parent or legal guardian is not the alleged perpetrator of or in any way responsible for the child abuse, child neglect or child sexual abuse against the child whose records are being requested. A person provided access to records pursuant to this subdivision (c)(7) shall maintain the confidentiality of the records except to the extent necessary for proper supervision, care or treatment of the subject of the report.

(d) Pursuant to subdivision (c)(3), the department shall disclose records and information to any member of the general assembly to enable the member to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether the laws of this state need to be changed to enhance such protection; provided, that the procedures set out in subdivisions (d)(1)-(3) and any other procedures required by law are followed.

(1) If a member of the general assembly receives a written inquiry regarding whether the laws of this state that protect children from abuse and neglect are being complied with or whether the laws of this state need to be changed to enhance protection of children, the member of the general assembly may submit a written request to the department, requesting review of the records and information relating to the inquiry. The member's request shall state the name of the child whose case file is to be reviewed and any other information that will assist the department in locating the information.

(2) The member shall sign a form, before reviewing the records and information, that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information. All records and information being reviewed by any member shall remain in the department's possession.

(3) After reviewing the records and information, if the member requests additional information, the department shall discuss the circumstances related to the records and information being disclosed.

(e) (1) Any person or entity, including the commission on children and youth, that is provided access to records under this section shall be required to maintain the records in accordance with state and federal laws and regulations regarding confidentiality.

(2) It is an offense for any person who has received or has been provided access to confidential information pursuant to this section to knowingly disclose or knowingly cause to be disclosed the information to any person or entity not otherwise provided access to the records by law.

(3) A violation of this subsection (e) is a Class B misdemeanor.

(f) Upon placement of a child in the custody of the department of children's services, all state, county and local agencies shall, notwithstanding any state laws or regulations to the contrary, grant access to any and all records in their possession that relate to the child for use by the department of children's services to determine a child's condition, needs, treatment or any other area of management; provided, however, that release of health care information must be consistent with the laws and policies of the departments of health, mental health and substance abuse services, and intellectual and developmental disabilities. The department of children's services shall comply with federal statutes and regulations concerning confidentiality of records. Any records that are confidential by law upon the enactment of this legislation shall be maintained as confidential by the department of children's services.

(g) Except as otherwise provided pursuant to 20 U.S.C. § 1232g(b)(1), prior to the release of student records, the local education agency must give written notice to the student and parent as required by 20 U.S.C. § 1232g(b)(1), and must provide the parent with a copy of all records released.

(h) Release of drug and alcohol records must comply with federal and state laws and regulations regarding the release of these records.

(i) Except as provided for in subsection (c)(2), nothing in this section shall ever be construed to permit or require the department to release or disclose the identification of the person making a report of harm in accordance with § 37-1-403.

(j) The department, in consultation with the commission on children and youth, shall adopt rules and regulations that may be necessary to establish administrative and due process procedures for the disclosure of records and other information pursuant to this section.