

Confidentiality Update

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Introduction

What's New in the Handbook?

Current Issues and Questions

Future Issues?

What's New in the Handbook?

Local District Policy

Foster Care Practice Guide for Caseworkers and Supervisors

- Electronic records
- Paper records
- Portable and mobile devices
- Social Media
- Training for Caseworkers
 - OCFS
 - OTDA

Federal Statute for CPS Confidentiality Requirements

42 USC §5106a(b)(2)(B) requires that each State plan for CPS include:

- (viii) ...reports and records made and maintained... shall only be made available to--
 - (I) individuals who are the subject of the report;
 - (II) Federal, State, or local government entities, or any agent of such entities, as described in clause (ix);
 - (III) child abuse citizen review panels;
 - (IV) child fatality review panels;
 - (V) a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and
 - (VI) other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;
- (ix) provisions to require a State to disclose confidential information to 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 child abuse and neglect;
- (x) provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality;

Release of CPS Information When There is Evidence of Welfare Fraud

SSL §145 requires that any social services official who becomes aware of welfare fraud is required to report to law enforcement.

Even though SSL 422(4)(A) does not contain an exception for that disclosure, CPS can disclose.

In these situations, CPS should be disclosing only information that is directly related to the welfare fraud- it is not *carte blanche* to give out any and all CPS information.

Unfounded CPS Referrals

SSL §422(5)

Who can receive (except for law enforcement) ?

When admissible?

- Caselaw

- ✓ *Lym v Lyi*

- ✓ *D.M. v J.E.M.*

- ✓ *J.A.K. v V.M.*

- ✓ *Humberstone v Wheaton*

- ✓ *M. of Michael Y.*

When can law enforcement receive?

Release of Source of Referral Information

SSL §422(4)(A):

Nothing in this section shall be construed to permit any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected child abuse or maltreatment to the statewide central register or the agency, institution, organization, program or other entity where such persons are employed or the agency, institution, organization or program with which they are associated without such persons' written permission except to persons, officials, and agencies enumerated in subparagraphs (e), (f), (h), (j), (l), (m) and (v) of this paragraph.

The exceptions here are (e) a court; (f) a grand jury; (h); a *bona fide* research project; (j) the Justice Center; (l) law enforcement; (m) New York City Department of Investigation; and (v) the State and New York City Comptrollers.

SSL §422(7):

At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the central register; provided, however, that the commissioner is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation or the agency, institution, organization, program or other entity where such person is employed or with which he is associated, which he reasonably finds will be detrimental to the safety or interests of such person.

“1034” reports

Are they a referral to the SCR?

Is the report and any records confidential?

Who may have access?

Foster Care Records- Criminal History Checks

18 NYCRR 443.8(h) Confidentiality.

- Any criminal history record information provided by the Division of Criminal Justice Services or the Federal Bureau of Investigation, and any summary of the criminal history record provided by the Office of Children and Family Services to an authorized agency pursuant to this section, is confidential and is not available for public inspection.
- Exception- an authorized agency may disclose in any administrative or judicial proceeding relating to the denial or revocation of a foster parent's certification or approval or the foster child's removal from the home.
- If there is a pending court case, the authorized agency which received the criminal history record summary from the Office of Children and Family Services must provide a copy of such summary to the Family Court or Surrogate's Court.

Preventive Services Records

- SSL §409-a(7)- bona fide research project
- SSL §409-a(9)- audit purposes
- 18 NYCRR 423.7- other confidentiality of preventive services information

Disclosure of Public Assistance Records to Law Enforcement

- Investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of public assistance programs.
- Other law enforcement uses, including apprehending “fleeing felons.”
 - ✓ Some inconsistency between types of benefits and between Federal law and regulations and New York State law.

“Fleeing Felons”

SSL §136(5)- disclosure of the current address of any recipient of family assistance, or safety net... If such recipient is fleeing to avoid prosecution, custody or confinement after conviction, under the laws of the place from which the recipient is fleeing, for a crime or an attempt to commit a crime which is a felony under the laws of the place from which the recipient is fleeing, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of that state, or is violating a condition of probation or parole imposed under a federal or state law **or has information that is necessary for the officer to conduct his or her official duties.**

“Fleeing Felons”

45 CFR §205.50 (Safeguarding information for the financial assistance programs)

(a) State plan requirements. A State plan for financial assistance under title IV–A of the Social Security Act, must provide that:

(v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that:

(A) The recipient is a fugitive felon (as defined by the State);

(B) The location or apprehension of such felon is within the law officer's official duties; and

(C) The request is made in the proper exercise of those duties.

“Fleeing Felons”- SNAP- Federal Regulation

7 USC 2020(e) (Requisites of State plan of operation)

(8) safeguards which prohibit the use or disclosure of information obtained from applicant households, except that--

(A) the safeguards shall permit--

(C) notwithstanding any other provision of law, all information obtained under this chapter from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this chapter or any regulation issued under this chapter;

(E) notwithstanding any other provision of law, the address, social security number, and, if available, photograph of any member of a household shall be made available, on request, to any Federal, State, or local law enforcement officer if the officer furnishes the State agency with the name of the member and notifies the agency that--

(i) the member--

(I) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law; or

(II) has information that is necessary for the officer to conduct an official duty related to subclause (I);

(ii) locating or apprehending the member is an official duty; and

(iii) the request is being made in the proper exercise of an official duty

“Fleeing Felons”- SNAP- NYS Regulation

18 NYCRR 387.2(j): the local district must:

(j) restrict the use or disclosure of information obtained from applicant households to persons directly connected with the administration and enforcement of the food stamp program, other Federal assistance programs, and federally assisted State programs providing assistance on a means-tested basis to low-income households. Notwithstanding any other provision of law, the address, social security number, and if available, photograph of any member of a household must be made available, on request, to any Federal, State, or local law enforcement officer if the officer furnishes the social services district with the name of the member and notifies the social services district that:

(1) the member:

- (i) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or an attempt to commit a crime, that, under the law of the place the member is fleeing, is a felony or, in the case of the State of New Jersey, a high misdemeanor;
- (ii) is violating a condition or probation or parole imposed under Federal or State law; or
- (iii) has information that is necessary for the officer to conduct an official duty related to subparagraph (i) of this paragraph;

(2) locating or apprehending the member is an official duty; and

(3) the request is being made in the proper exercise of an official duty;

“Fleeing Felons”- SNAP Source Book

No mention of “fleeing felons.”

Disclosure to Federal Agencies

- Federal Trade Commission- 15 USC §49
- Consumer Product Safety Commission- 15 USC §2076

Questions

Intra-DSS Information Sharing

- Housing to CPS
- CPS to foster care

Questions

CPS to law enforcement

- False reporting
- Information from a previous unfounded report

Questions

CPS to

- Indian tribe
- To a criminal defendant in a re-sentencing case

Questions

Temporary Assistance

- Spousal support
- Sex offender
- County legislature/supervisors

Questions

Universal Consents

Questions

“First Amendment” Audits

Make the Road by Walking, Inc. v. Turner, 378 F.3d 133, (2d Cir. 2002)

Future Issues?

Pending Federal APS Regulations

Pending OPWDD Regulations for Supported Decision Making

Questions?

Thank You!

Attorneys- remember to sign out for your CLE credit!