

4.12.2024 Family Services Division Testimony

The Senate Committee on Government Operations requested additional information from DCF during testimony on Tuesday, April 9, 2024. The Committee asked for more information about what is included in case records, examples of scenarios, and DCF's recommendations on this matter.

Contents of FSD Child & Family Records

Our records are referred to as "child and family records," and are organized by family. They include information about the parent(s), child, siblings, blended households, stepparents, unmarried partners, other family members, and/or substitute care providers (including kin or community foster parents). Our records are a blend of paper/printed files and electronic information. The size and scope of records is often dependent on the length the case is open, recurrence of DCF involvement over years, and the number of children in the family. Records can range from 1-5+ folders/volumes. These records, organized by family, would need to be redacted—and certain pages/documents removed—to provide a requestor with records that only pertain to that requestor. Including legal review, this process is most often likely to take anywhere from 20-120 hours depending on the case.

We hesitate on defining records too narrowly which would not be inclusive of historic records and their contents (for example, the records for the survivors of St. Joseph's Orphanage). Currently and in recent history, records are typically divided into eight sections:

Section 1: Contacts & Case Notes

- Handwritten contact notes
- Electronic case notes (printed at periodic intervals)
- Child & Family Support (CFS) contractor contact notes
- Electronic email or text message communication

Section 2: Incident-Related Documents

- Face sheet containing key demographic information
- Case transfer or closure summaries
- Staff safety incident forms
- Child safety intervention (CSI) forms
- Runaway/missing notifications

Section 3: Legal Forms and Court Letters

- Custody orders
- Probation certificates
- Court reports (disposition report, permanency report, etc.)
- Affidavits



- Child support orders
- Federal parent locator information
- Results of paternity testing
- Notices of hearings

Section 4: Placement, Eligibility, Finance, and Referrals

- Placement history sheet
- Placement checklists
- Notices regarding placement changes
- Interstate Compact on the Placement of Children (ICPC) packets/forms
- Title IV-E, Medicaid, and other financial documents
- Referrals for services
- Protective services childcare authorizations and referrals

Section 5: Case Planning

- Case plans
- Notice of case plan reviews
- Case review tracking documentation
- Voluntary service agreements
- Family safety and family-centered meeting documentation
- Contracts/agreements with parents
- Family finding information and searches; genograms
- Youth Assessment and Screening Instrument (YASI)

Section 6: Treatment Information

- Vital records
- Photographs
- Treatment/health meeting documentation and correspondence
- Medical records
- Assessments and evaluations
- Treatment plans
- Intake and discharge documentation

Section 7: Education and Family Time (Parent/Child Contact or Visitation)

- Educational records
- Act 264 documents
- Visitation contracts and correspondence
- Visit supervision notes (from contractors)

Section 8: Correspondence/Miscellaneous/Other

- Letters and memos
- Returned mail
- Fax cover sheets/confirmations
- Obituaries
- Sheriff Transport Orders
- Travel letters
- Parenting class documentation or other relevant certificates
- Receipts for approved expenses on behalf of child or family

DCF has a practice, implemented within the last several years, of storing protected health and substance use information in a separate folder that is still connected to the “child and family record.” This information would otherwise be found in section 6 described above. Contents include:

- HIV testing for adults and children
- Parent medical records
- Parent urinalysis requests and results
- Parent substance use assessments
- Parent substance use treatment progress notes from providers
- Parent mental health evaluations
- Youth urinalysis requests and results
- Youth substance use assessments

Scenarios & Examples

While this is not an exhaustive list of examples because we cannot possibly predict every scenario, these are the case complexities we are most likely to encounter related to disclosing records.

Case Plans & Siblings

Case plans are typically differentiated by individual child, but there have been times in the past when DCF has written case plans inclusive of multiple children. When there is a combined case plan, or even when siblings share a placement but have separate case plans, there may be details about a sibling’s health, education, mental health, or substance use disorder in the requestor’s case plan. In this example, the information about the sibling(s) would need to be redacted to protect their privacy and comply with confidentiality laws.

Peer-to-Peer or Sibling-to-Sibling Perpetrated Abuse

In instances of sexual abuse perpetrated by one youth against another, records can become entangled, especially if the two youths are related or living together. It would be important to ensure that details of either child’s treatment be kept private. DCF advocates for the privacy of the victims to be protected if the perpetrator is requesting their records. It would be important to maintain the privacy of the juvenile perpetrator’s treatment records as well. Over-disclosing information about either person in this scenario could result in significant harm to the other person mentioned in the record and violate their privacy.

Delinquency & Youthful Offender

As outlined in the section above, similar concerns and considerations apply to delinquency and youthful offender cases. Records in these cases may identify victims, co-defendants, and witnesses whose privacy DCF seeks to protect.

Domestic Violence (DV) & Divorced or Separated Parents

It is important to consider domestic violence cases and the many ways this information could be documented within a child and family record. Generally, our records should not contain information about the safety plans of parent victims of domestic violence. However, we also know human error can occur or this information could be buried, for instance, in an email thread that is in the record. In an ideal process, there could be opportunity for the voice of the victim parent, who would likely want their adult child to have their information and history, but may also be reasonably fearful of retaliation from a DV perpetrating current or former partner. A possible strategy could be an allowance to inform the victim parent that a record disclosure is being made so they can seek safety strategies. Further, DCF would not want to undermine efforts of the [Safe at Home Address Confidentiality Program](#) by not making necessary redactions in our records.

DCF acknowledges that from the perspective of the youth accessing their record, reading information related to a parent perpetrating DV behaviors may offer an opportunity to see identified harmful behaviors observed by an unbiased professional, as well as the impact to the victim parent, which may include substance use, mental health needs, loss of housing, etc. if this could be summarized for them. We recognize this could have great value in understanding their experience and history.

Human Trafficking & Exploitation

Cases involving human trafficking can sometimes be associated with gang involvement, and disclosure of records in these cases pose significant risks to the safety of victims, witnesses, and DCF workers mentioned in the records. DCF may have an open case with victims of trafficking, those who have recruited their peers for sexual exploitation, and young people who have perpetrated trafficking. DCF needs the ability to redact information in these cases, and if this is not done in a trauma-informed and thoughtful way, disclosure could compromise the safety of other people and the integrity of future investigations or prosecutions.

Applicability of CAPTA

The Child Abuse Prevention and Treatment Act (CAPTA) provides grants to states to improve their child protective services systems, and H.644 concerns the disclosure of child abuse and neglect records. CAPTA specifically permits states to disclose confidential records to the individuals who are the subject of the report of abuse or neglect. 42 U.S.C. § 5106a(b)(2)(B)(viii)(I). Nevertheless, the U.S. Children’s Bureau, which administers grants under CAPTA, has made clear that this provision of the law does not make disclosure permissible when the information is protected by other laws. See Admin. for Children and Families, Children's Bureau, Child Welfare Policy Manual, § 8.4E, Question 6 (2020), https://acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=56. DCF needs to do additional work to determine which records may be provided to a former youth in care and when.

Applicability of Title IV-E of the Social Security Act

Funding for eligible foster children and adoptees comes from Title IV-E of the Social Security Act. This law makes records of assistance under Title IV-E confidential pursuant to 42 U.S.C. § 671(a)(8), which imposes different confidentiality restrictions than CAPTA. Notably, Title IV-E does not specifically permit records to be disclosed to the subjects of the records, and as noted above, the Children’s Bureau, which also administers funds under Title IV-E, recognizes that records containing information under Title IV-E and CAPTA remain confidential under the Social Security Act, despite the more permissible language in CAPTA. Thus, the Social Security Act requires DCF to remove Title IV-E information from its records before disclosing them under H.644.

Applicability of HIPAA

AHS is a “covered entity” under HIPAA. Consequently, AHS has organized itself such that all departments in AHS are subject to HIPAA regulations even if they do not engage in any health plan or provider activities. Because AHS, in its entirety, is a covered entity, when an individual shares information with an FSD worker that relates to the individual’s past/present/future health, that information falls under HIPAA’s definition of “health information.” Health information means *any* information that “is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse [i.e. a covered entity]; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.” 45 CFR § 160.103.

Since DCF’s child and family records are organized by family, not by child, some records will contain protected health information about multiple people. Therefore, the health information about other family members will have to be removed or redacted before records are provided to a requestor under H.644.

DCF's Recommendations

We are respectfully offering an additional proposal for language to be considered in H.644 for 33 V.S.A. § 4921:

(XX) Upon request, the Department shall provide access to, or copies of, Department records or information created under this subchapter to a person 18 years of age or older who is:

- (1) the subject of the records or information requested;
- (2) a person formerly in the custody of the Department or formerly in the conditional custody of a parent or relative through a CHINS proceeding; and
- (3) not alleged to have abused or neglected a child in the records or information requested.

If the above language is not an option, then DCF is concerned that perpetrators of abuse will obtain these sensitive records and use them in a way to harass their victims or violate their privacy. DCF is concerned that current subsection (g) does not provide a sufficient deterrent, and we ask the Committee to consider other means of preventing perpetrators from gaining access to this confidential information. We urge you to make this as clear as possible for our work and implementation, as prior testimony has illustrated that what remains unclear will be litigated.

As stated in prior testimony, DCF would like to work with VSARA and the Judiciary to develop an inventory of records and mechanisms to establish who the subject of a particular record is. On first review, we imagine the following list, or something similar, could be disclosed to individuals:

Copy of any vital records

Case plans

Placement history

Any medical/psychological/educational records of the subject

A brief summary of relevant information about the individual from documents which may include records of multiple individuals (i.e. a summary of notes, reports, correspondence regarding multiple family members, or visitation notes and plans)

A list like this would enable DCF and VSARA to partner for the most expedient release of records to individuals who we know are eagerly awaiting such records.