

*This curriculum was developed by the Central Child Welfare Training Academy at CSU, Fresno. It may be used on its own or as a supplement to the material in the Standardized Core topic Fundamental Issues in Public Child Welfare.*

## **CONFIDENTIALITY**



Confidentiality can be greatly impacted by CWS/CMS because of accessibility. Counties decide individually who will be given access to the system, thus counties face an ethical dilemma regarding access. It behooves workers to know who, in their county, has access to CWS/CMS data, and to be conscientious about where they store confidential information.

Adapted from, *Legal Issues & Skills in Child Welfare*, by Roger Coffman, JD, Deputy County Counsel, Tulare County, with permission of the author.

The Adoption Assistance and Child Welfare Act (Public Law 96-272) restricts the disclosure of information concerning individuals and families receiving services under this act. States receiving funds under this act are required to protect the confidentiality of persons receiving assistance, services, or money under this act. Information may only be disclosed in special circumstances related to administration of the federal/state programs, criminal/civil court proceedings, or audit of federal/state programs.

In California, CWS records are made confidential under two statutes, Welfare and Institutions Code Section 10850 and Welfare and Institutions Code section 827.

Under §10850, all CWS records are confidential. This includes the petition, court reports, medical reports, narratives, and statements from witnesses. The records are confidential whether or not a court case is ever filed. Social workers should not release confidential information to third parties, to law enforcement personnel, or to other governmental agencies.

There are exceptions to the confidentiality provided by §10850.

1. Observations of social workers are not considered confidential communications and are not privileged. Thus, a social worker may testify in cases other than CWS cases about bruises he or she saw on a child or to observations of the condition of a home.
2. Information may be released for purposes directly connected with the administration of the child protective services program. A social worker may

release information to another child protection agency where that agency has a current case on persons who previously received services in this county.

3. Information may be released upon an order of the court. Normally the social worker will receive a subpoena requesting the social worker testify or produce records. A court may order the information to be revealed if it finds that the interest of justice override the need for confidentiality. This may occur in either a criminal or a civil case.
4. CWS may release the name, address, telephone number, birth date, social security number, and physical description of a recipient of services to a law enforcement agency upon the written request of the head of the agency, or to an employee of the agency designated in writing to receive such information, when a felony warrant has been issued for the arrest of the person.
5. Once a petition is filed, all information that is covered by the California Rules of Court 1341 relating to discovery is available to the parents and their attorney and the child and his or her attorney. This includes the statements of any possible witnesses, whether tape recorded, or in written form as a declaration or in the case narrative, all medical reports, copies of pictures, etc. The only information that is generally **not discoverable** is:
  - the identity of a confidential reporting party;
  - material that is privileged under attorney client privilege, including notes of conversations with county counsel
  - notes or memoranda reflecting a social worker's opinions or theories regarding a case, such as a memo to a supervisor
  - county counsel giving to the worker opinion on how the case should be handled.



**Local rules of court may also have rules relating to discovery in juvenile court cases. CHECK WITH YOUR AGENCY OR COUNTY COUNSEL TO DETERMINE HOW LOCAL RULES OF COURT APPLY TO DISCOVERY.**

6. CWS must make certain information available to a law enforcement agency when it receives a report of suspected abuse or neglect. Under Penal Code section 11166, a social worker who is making a report to law enforcement of suspected abuse or neglect should provide law enforcement with a factual summary of the allegations of the complaint, but should not identify any particular person as the reporting party.
  - Information that is in the possession of law enforcement is normally available to the defendant in a criminal proceeding. Thus any disclosure beyond what is required under the Penal Code may result in that

information being made available to a person not a party to the juvenile action.

Section § 827 of the W&I Code provides for the confidentiality of juvenile court records. The section appears to apply to all records filed with the court, including the petition, court reports and medical reports. It does not appear to apply to case narratives or to oral testimony of a social worker, which are, however, privileged under §10850. **However, always consult with your agency or local county counsel to determine what parts of the CWS file are considered part of the juvenile court record.**

In addition to §10850 and §827 the identity of reporting parties is confidential under Penal Code section 11167. The names of reporting parties should only be released to counsel for the minor child, counsel for CPS, to the district attorney when the D.A. is prosecuting an alleged child abuse case, to a licensing agency when the abuse is reasonably suspected to have occurred in out-of-home care, or upon a court order.

In normal circumstances the name of the reporting party is not made available to the parents or the parents' attorney. If a person who happens to be a reporting party is to be called as a witness, the person's name must be released under discovery rules.

## **CONFIDENTIALITY AND MULT-DISCIPLINARY TEAMS**

Special provisions are made in the Welfare and Institutions Codes 18986.40 and 18986.46 that allow for sharing of information in multidisciplinary teams working on CWS cases. (The complete text of the codes can be found in the Appendix in this section.) Specifically, the code allows for sharing of information with members of other disciplines to **jointly** provide two or more of the following services to children or their families, or both:

- (1) Educational services for children at risk of dropping out, or who need additional educational services to be successful academically.
- (2) Health Care.
- (3) All mental health diagnostic and treatment services, including medication.
- (4) Substance abuse prevention and treatment.
- (5) Child abuse prevention and treatment.
- (6) Nutrition services.
- (7) Child care and development services.
- (8) Juvenile justice services.
- (9) Child Welfare services
- (10) Early intervention and prevention services.
- (11) Crisis intervention services, as defined in subdivision (c).

*-California Juvenile Laws and Rules defines “crisis intervention services” to mean early support and psychological assistance, to be continued as necessary, to children who have been victims of, or whose lives have been affected by, a violent crime or a cataclysmic incident, such as a natural disaster, or who have been involved in school, neighborhood, or family based critical incidents likely to cause profound psychological effects if not addressed immediately and thoroughly.*

- (12) Any other service which will enhance the health, development, and well-being of children and their families.

*-This may include CalWorks and employment and eligibility programs in counties involved with programs such as Family to Family, Calworks/Child Welfare Partnership, and other community-based programs.*

All members of multidisciplinary teams must be trained on the confidentiality protocols established. In addition, all members of the services team who receive information or records on children and families served by the program, shall be under the same privacy and confidential obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records.



**CHECK WITH YOUR AGENCY SUPERVISOR OR COUNTY COUNSEL TO DETERMINE THE PROTOCOLS ESTABLISHED AND HOW YOUR AGENCY APPLIES CONFIDENTIALITY IN MULTIDISCIPLINARY TEAMS.**