

## Overdose Fatality Review Teams: Child Services Records

# How can we obtain child services records after a person dies?

### Response

The only way an OFR team can acquire records directly from the state department of children's services is through state statute requiring that the records be provided to the OFR team upon request. Alternatively, OFR teams may wish to interview the family or friends of the decedent for any information or reports they can provide regarding the decedent's potential involvement with children's services.

### Additional Discussion

The federal Child Abuse Prevention and Treatment Act (CAPTA) authorizes federal grants to states for child abuse or neglect prevention and treatment programs.<sup>1</sup> In order for a state to be eligible to receive a grant, the state plan specifying how grant funds will be used must provide for "methods to preserve the confidentiality of all records" gathered and maintained by a state's department of children's services.<sup>2</sup> Under this CAPTA provision, a state may only share these records with the following:<sup>3</sup>

- Individuals who are the subject of the report;
- Federal, state, or local governmental entities, or any agent of such entities, that have a need for such information in order to carry out their responsibilities under law to protect children from abuse and neglect;
- Child abuse citizen review panels;
- Child fatality review panels;
- 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;
- Other entities or classes of individuals statutorily authorized by the state to receive such information pursuant to a legitimate state purpose; and
- Public disclosure of the findings or information about the case of child abuse or neglect, which resulted in a child fatality or near-fatality.

Unlike other types of records sought by an OFR team, federal law does not allow an OFR team to request child services records using written consent from a personal representative or next of kin. However, federal law does not prevent the team from asking family members or friends for any information or written reports to which they have access.

#### PRACTICE TIP

OFR teams are limited to family and friends' firsthand knowledge about involvement with child services, absent express state statute authorizing disclosure.

<sup>1</sup> 42 U.S.C.A. §§ 5101 to 5116i (West 2021).

<sup>2</sup> 42 U.S.C.A. § 5106a(b)(2)(B)(viii) (West 2021).

<sup>3</sup> 42 U.S.C.A. § 5106a(b)(2)(B)(viii) – (x) (West 2021).