

AN ACT

Codification  
District of  
Columbia  
Official Code

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Prevention of Child Abuse and Neglect Act of 1977 to provide the Mayor, his designee, and the Director of Child and Family Services Agency with the authority to release findings and information regarding a child fatality or near fatality unless such disclosure would likely endanger the life, or physical or emotional well-being of a child, to provide for immunity to the District of Columbia and individuals charged with making disclosure, and to permit civil actions in the Superior Court of the District of Columbia to compel disclosure.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Amendment Act of 2001".

Sec. 2. The Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.01 *et seq.*), is amended as follows:

- (a) Section 306(c) (D.C. Official Code § 4-1303.06(c)) is repealed.
- (b) A new Title IIIA is added to read as follows:

Amend  
§ 4-1303.06

"TITLE IIIA

"PUBLIC DISCLOSURE OF FINDINGS AND INFORMATION  
IN CASES OF CHILD FATALITY OR NEAR FATALITY

New Part C-i,  
Chapter 13,  
Title 4

"Sec. 331. Definitions.

New  
§ 4-1303.31

"(a) For the purposes of this title, the term:

"(1)(A) "Agency" shall have the same meaning provided in section 3(3) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502(3)), except that the term "agency" shall include:

"(i) The Social Services Division of the Superior Court of the District of Columbia; and

"(ii) The Child and Family Services Agency, whether under the administrative control of the Mayor or the court-appointed receiver.

"(B) The term "agency" does not include the executive branch of the

federal government, its agencies, officials, and employees, or the Child Fatality Review Committee.

"(2) "Child fatality" means:

"(A) The death of a child as a result of child abuse, neglect, or maltreatment, as certified by a physician, or the Chief Medical Examiner of the jurisdiction in which the child died or where the autopsy was performed; or

"(B) The death of a child where the Chief Medical Examiner cannot rule out child abuse, neglect, or maltreatment as contributing to the cause of death.

"(3) "Disclosing official" means:

"(A) The Mayor or such other official or officials of the District as the Mayor may from time to time designate in writing to perform the functions under this section; and

"(B) The Director of the Child and Family Services Agency.

"(4) "District" means the District of Columbia.

"(5) "Findings and information related to a child fatality or near fatality" means:

"(A) All public records in the possession of any officer or agency of the District that pertain to a child fatality or near fatality, or that are compiled, received, or created in the course of any investigation, assessment, or review conducted in connection with a child fatality or near fatality; and

"(B) A written summary that includes, to the extent possible, all of the following information pertaining to a child fatality or near fatality:

"(i) The name of the child, except that the name of the child shall not be disclosed in a case of a near fatality unless the name has otherwise previously been disclosed;

"(ii) The name of the parent or other person legally responsible for the child, except that the name of the parent or other person legally responsible for the child shall not be disclosed in a case of a near fatality unless the name has otherwise previously been disclosed;

"(iii) Confirmation of the receipt of all reports, accepted or not accepted, by an agency of the District for investigation or assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations or assessments were conducted; the results of the investigations or assessments; a description of the conduct of the most recent investigation or assessment and the services rendered; and a statement of the basis for the agency's determination;

"(iv) The basis for any finding of either abuse or neglect, including the results of any review of a community child protection team or any public agency;

"(v) Identification of child protective or other services provided to or any actions taken by any agency regarding the child, including the dates, outcomes, and results of any services provided and any actions taken;

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"(vi) Any actions taken by any agency in response to reports or allegations of abuse or neglect of the child, including the dates, outcomes, and results of any actions taken; and

"(vii) Other pertinent information concerning the circumstances of any abuse or neglect of the child and the investigation of such abuse or neglect.

"(6) "Near fatality" means a child in serious or critical medical condition as a result of child abuse, neglect, or maltreatment, as certified by a physician.

"(7) "Personal or private information" means information about an individual's personal relationships, sexual preference or conduct, economic or financial needs or status, physical or mental health, substance use or abuse, work or school records, religious beliefs, or political opinions, unless such personal or private information is related to the cause of the child fatality or near fatality.

"(8) "Public record" shall have the same meaning provided in section 3(18) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502(18)).

"Sec. 332. Disclosure of findings and information.

New  
§ 4-1303.32

"(a)(1) Notwithstanding any other provision of law, a disclosing official shall upon written request by any person, and may upon his or her own initiative, disclose to the public the findings and information related to a child fatality or near fatality, except as provided in paragraph (2) of this subsection.

"(2) Paragraph (1) of this subsection shall not apply to the disclosure of any portion of the findings or information if disclosure of that portion would likely:

"(A) Endanger the life, physical safety, or physical or emotional well-being of the child who is the subject of the findings and information or a child who is a sibling of such child or has shared the same household as such child;

"(B) Endanger the life or physical safety of any person;

"(C) Interfere with an ongoing law enforcement investigation or proceeding pertaining to the child fatality or near fatality;

"(D) Deprive a person of a right to a fair trial or an impartial adjudication;

"(E) Disclose the identity of any person who reported suspected abuse, neglect, or maltreatment to the Metropolitan Police Department or the Child and Family Services Agency, or the identity of any confidential law enforcement source in a criminal proceeding pertaining to the child fatality or near fatality;

"(F) Disclose the identity of a birth parent of a child, if the child has been adopted and there has been no contact between the child and the birth parent immediately prior to the fatality or near fatality; or

"(G) Disclose personal or private information.

"(3) Any reasonably segregable portion of a public record shall be provided to

any person requesting such record after deletion of those portions which may be withheld from disclosure under paragraph (2) of this subsection.

"(b)(1) The disclosing official shall either make the requested findings or information related to a child fatality or near fatality accessible to the person making the request or send the person a letter of denial explaining the disclosing official's determination to withhold all or any portion of the requested findings or information within 10 days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the request by the disclosing official. A letter of denial shall contain at least the following:

"(A) The specific reasons and legal authority for the denial or decision to withhold;

"(B) Notification to the requestor of any right to appeal; and

"(C) A description of the documents withheld by the disclosing official.

"(2) In unusual circumstances, the time limit provided in paragraph (1) of this subsection may be extended by written notice to the person making the request setting forth the reasons for extension and expected date for determination. The extension shall not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, "unusual circumstances" are limited to:

"(A) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

"(B) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

"(3) Except as provided in paragraph (2) of this subsection, any failure on the part of the disclosing official to comply with a request under this section within the time provision of paragraph (1) of this subsection shall be deemed a denial of the request, and the person making the request shall be considered to have exhausted his or her administrative remedies with respect to that request.

"Sec. 333. Civil action to compel disclosure.

"(a) Any person who has submitted a request to the disclosing official to release findings and information under section 332, and whose request has been denied in whole or in part, may bring a civil action in the Superior Court of the District of Columbia ("Superior Court") to compel the disclosing official to release the findings and information as requested.

"(b) A suit filed under this section shall be set for hearing by the Superior Court at the earliest practicable time and shall be given all possible expedited treatment.

"(c) In any suit filed under this section, the Superior Court may order the production of any findings or information improperly withheld from the person seeking disclosure.

"(d) The burden is on the disclosing official to sustain his or her action. The court shall determine the matter de novo, and may examine the contents of the requested findings and

New  
§ 4-1303.33

information in camera to determine whether the findings and information, or any part thereof, shall be withheld under section 332(a)(2).

"(e) If a person seeking the right to inspect or to receive a copy of findings and information prevails in whole or in part in a civil action filed under this section, he or she may be awarded reasonable attorney fees and other costs of litigation.

"Sec. 334. Immunity.

New  
§ 4-1303.34

"The District, the disclosing official, and any agencies, committees, officials, officers, employees, or attorneys of the District authorized by the disclosing official to assist the disclosing official with his or her responsibilities and duties under this title shall have full immunity from any civil or criminal liability relating to a decision made in good faith to disclose findings and information related to a child fatality or near fatality under this title.

"Sec. 335. Freedom of Information Act requests.

New  
§ 4-1303.35

"Nothing in this title shall limit or restrict any right of access or disclosure that any person may have under Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531 through 2-539) ("Freedom of Information Act"). Section 306 shall not provide a basis for denying any request under the Freedom of Information Act for any public record pertaining to a child fatality or near fatality.

"Sec. 336. Rules.

New  
§ 4-1303.36

"The Mayor shall, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), issue rules to implement the provisions of this title. The rules issued pursuant to this section shall be transmitted to the Council within 30 days of the effective date of the Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Amendment Act of 2001, passed on 2nd reading on November 6, 2001 (Enrolled version of Bill 14-181), for a 45-day period of Council review (excluding days of Council recess). If the Council does not approve or disapprove the rules by resolution within the 45-day review period, the rules shall be deemed approved."

Sec. 3. Fiscal impact statement.

The Council finds there is no fiscal impact.

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

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December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia