

CHAPTER 91

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 12-033

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also REPRESENTATIVE(S) Massey, Court, Fields, Fischer, Kefalas, Kerr A., Kerr J., Labuda, Nikkel, Peniston, Ramirez, Schafer S., Scott, Singer, Solano, Summers, Todd, Vigil, Wilson, Young.

AN ACT

CONCERNING ADDING NEAR FATALITIES TO THE RESPONSIBILITIES OF THE DEPARTMENT OF HUMAN SERVICES CHILD FATALITY REVIEW TEAM.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 26-1-139 as follows:

26-1-139. Child fatality and near fatality prevention - legislative declaration - process - department of human services child fatality review team - reporting - rules. (1) The general assembly hereby finds and declares that:

(a) It is of the utmost importance and a community responsibility to mitigate the INCIDENTS OF EGREGIOUS ABUSE OR NEGLECT, NEAR DEATHS, OR deaths of children in the state due to abuse or neglect. Professionals from disparate disciplines share responsibilities for the safety and well-being of children as well as expertise that can promote that safety and well-being. Multidisciplinary reviews of the INCIDENTS OF EGREGIOUS ABUSE OR NEGLECT, NEAR DEATHS, OR deaths of children due to abuse or neglect can lead to a better understanding of the causes of such tragedies and, more importantly, methods of mitigating future INCIDENTS OF EGREGIOUS ABUSE OR NEGLECT, NEAR DEATHS, OR deaths.

(b) THERE IS A NEED FOR AGENCY TRANSPARENCY AND ACCOUNTABILITY TO THE PUBLIC REGARDING AN INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, A NEAR FATALITY, OR A CHILD FATALITY THAT INVOLVES A SUSPICION OF ABUSE OR NEGLECT WHEN THE CHILD OR FAMILY HAS HAD PREVIOUS INVOLVEMENT WITH THE STATE OR COUNTY THAT WAS DIRECTLY RELATED TO THE INCIDENT.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(b)~~ (c) There is a need for a multidisciplinary team to conduct in-depth case reviews after ~~a~~ AN INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, A NEAR FATALITY, OR A child fatality that involves a suspicion of abuse or neglect and ~~where~~ WHEN the child or family has had previous involvement, that was directly related to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality, with a county department within two years prior to the ~~fatality~~ INCIDENT. The multidisciplinary review would complement that of the review conducted by the Colorado state child fatality prevention review team in the department of public health and environment pursuant to article 20.5 of title 25, C.R.S. The goal of the multidisciplinary review shall not be to affix blame, but rather to improve understanding of why the INCIDENTS OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITIES, OR fatalities occur and develop recommendations for mitigation of future INCIDENTS OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITIES, OR fatalities.

~~(c)~~ (d) It is the intent of the general assembly to codify the department of human services child fatality review team as well as modify certain aspects of its processes to promote an understanding of the causes of each child's death OR NEAR DEATH INCIDENT due to abuse or neglect, identify systemic deficiencies in the delivery of services and supports to children and families, and recommend changes to help mitigate future INCIDENTS OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITIES, OR child deaths.

(e) IT IS FURTHER THE INTENT OF THE GENERAL ASSEMBLY TO COMPLY WITH THE FEDERAL "CHILD ABUSE PREVENTION AND TREATMENT ACT", 42 U.S.C. SEC. 5101 ET SEQ., WHICH REQUIRES STATES TO ALLOW FOR PUBLIC DISCLOSURE OF THE FINDINGS OR INFORMATION ABOUT A CASE OF CHILD ABUSE OR NEGLECT THAT RESULTED IN A CHILD FATALITY OR NEAR FATALITY.

(2) As used in this section, unless the context otherwise requires:

(a) "INCIDENT OF EGREGIOUS ABUSE OR NEGLECT" MEANS AN INCIDENT OF SUSPECTED ABUSE OR NEGLECT INVOLVING SIGNIFICANT VIOLENCE, TORTURE, USE OF CRUEL RESTRAINTS, OR OTHER SIMILAR, AGGRAVATED CIRCUMSTANCES THAT MAY BE FURTHER DEFINED IN RULES PROMULGATED BY THE STATE DEPARTMENT PURSUANT TO THIS SECTION.

(b) "NEAR FATALITY" MEANS A CASE IN WHICH A PHYSICIAN DETERMINES THAT A CHILD IS IN SERIOUS, CRITICAL, OR LIFE-THREATENING CONDITION AS THE RESULT OF SICKNESS OR INJURY CAUSED BY SUSPECTED ABUSE, NEGLECT, OR MALTREATMENT.

~~(a)~~ (c) "Previous involvement" means a situation in which the county department has received a referral, responded to a report, opened an assessment, provided services, or opened a case in the Colorado TRAILS system; except that the following situations shall not be considered to be "previous involvement":

(I) The situation did not involve abuse or neglect;

(II) The situation occurred when the parent was seventeen years of age or younger and before he or she was the parent of the deceased child; or

(III) The situation occurred with a different family composition and a different alleged perpetrator.

~~(b)~~ (d) "Suspicious fatality OR NEAR FATALITY" means a fatality OR NEAR FATALITY that is more likely than not to have been caused by abuse or neglect.

~~(c)~~ (e) "Team" means the department of human services child fatality review team established in rules promulgated pursuant to section 26-1-111 and codified pursuant to subsection (3) of this section.

(3) There is hereby established in the state department the department of human services child fatality review team. The team shall have the following objectives:

(a) To assess the records of each case in which a suspicious INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR child fatality occurred and the child or family had previous involvement with a county department that was directly related to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality within two years prior to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality;

(b) To understand the causes of the reviewed INCIDENTS OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITIES, OR child fatalities;

(c) To identify any gaps or deficiencies that may exist in the delivery of services to children and their families by public agencies that are designed to mitigate future child abuse, neglect, or death; and

(d) To make recommendations for changes to laws, rules, and policies that will support the safe and healthy development of Colorado's children.

(4) The team shall have the following duties:

(a) To review the circumstances around the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR child fatality;

(b) To review the services provided to the child, the child's family, and the perpetrator by the county department for any county with which the family has had previous involvement that was directly related to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality in the two years prior to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality;

(c) To review records and interview individuals, as deemed necessary and not otherwise prohibited by law, involved with or having knowledge of the facts of the ~~case or~~ INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality, including but not limited to all other state and local agencies having previous involvement with the child or family that was directly related to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality within two years prior to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality;

(d) To review the county department's compliance with statutes, regulations, and relevant policies and procedures that are directly related to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality;

(e) To identify strengths and best practices of service delivery to the child and the child's family;

(f) To identify factors that may have contributed to conditions leading to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality, including, but not limited to, lack of or unsafe housing, family and social supports, educational life, physical health, emotional and psychological health, and other safety, crisis, and cultural or ethnic issues;

(g) To review supports and services provided to siblings, family members, and agency staff after the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality;

(h) To identify the quality and sufficiency of coordination between state and local agencies;

(i) To develop and distribute the following reports, the content of which shall be determined by rules promulgated by the state department pursuant to subsection (7) of this section:

(I) On or before April 30, 2013, and each April 30 thereafter, an annual child fatality AND NEAR FATALITY review report, absent confidential information, summarizing the ~~child fatality~~ reviews REQUIRED BY SUBSECTION (5) OF THIS SECTION conducted by the team during the previous year. The team shall post the annual child fatality AND NEAR FATALITY review report on the state department's web site and distribute it to the Colorado state child fatality prevention review team established in the department of public health and environment pursuant to section 25-20.5-406, C.R.S., the governor, the health and human services committee of the senate, and the health and environment committee of the house of representatives, or any successor committees. The annual child fatality AND NEAR FATALITY review report shall be prepared within existing resources.

(II) The final confidential, case-specific ~~child fatality~~ review report required pursuant to subsection (5) of this section FOR EACH CHILD FATALITY, NEAR FATALITY, OR INCIDENT OF EGREGIOUS ABUSE OR NEGLECT. The final confidential, case-specific ~~child fatality~~ review report shall be submitted to the Colorado state child fatality prevention review team established in the department of public health and environment pursuant to section 25-20.5-406, C.R.S.

(III) A case-specific executive summary, absent confidential information, of each INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR child fatality reviewed. The team shall post the case-specific executive summary on the state department's web site.

(5)(a) Each county department shall report to the state department any suspicious INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality of a child within twenty-four hours of the INCIDENT OF EGREGIOUS ABUSE OR

NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality. If the county department has had previous involvement that was directly related to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR child fatality within two years prior to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality, the county department shall provide the state department with all relevant reports and documentation regarding its previous involvement with the child within sixty calendar days after the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality. The state department may grant, at its discretion, an extension to a county department for delays outside of the county department's control regarding the receipt of all relevant reports and information critical to an effective fatality review, including but not limited to the final autopsy and law enforcement reports, until such documents can be made available for review by the team.

(b) WITHIN THREE BUSINESS DAYS AFTER RECEIVING THE INFORMATION PROVIDED UNDER PARAGRAPH (a) OF THIS SUBSECTION (5), THE DEPARTMENT SHALL DISCLOSE TO THE PUBLIC THAT INFORMATION HAS BEEN RECEIVED, WHETHER THE DEPARTMENT IS CONDUCTING A REVIEW OF THE INCIDENT, WHETHER THE CHILD WAS IN HIS OR HER OWN HOME OR IN FOSTER CARE, AS DEFINED IN SECTION 19-1-103 (51.3), C.R.S., AND THE CHILD'S GENDER AND AGE. THE DEPARTMENT MAY DISCLOSE THE SCOPE OF THE REVIEW.

~~(b)~~ (c) The fatality review shall be completed and the TEAM SHALL COMPLETE ITS REVIEW OF EACH INCIDENT OF EGREGIOUS ABUSE OR NEGLECT, NEAR FATALITY, OR FATALITY, draft a confidential, case-specific child fatality review report prepared and submitted SUBMIT THE DRAFT REPORT to any county department with previous involvement within one hundred twenty calendar days after all necessary information is available to initiate review THIRTY CALENDAR DAYS AFTER THE REVIEW TEAM MEETING. Any county department with previous involvement shall have thirty calendar days after the completion of the draft confidential, case-specific child fatality review report to review the draft confidential, case-specific child fatality review report and provide a written response to be included in the final confidential, case-specific child fatality review report. A confidential, case-specific child fatality review report shall be finalized and submitted pursuant to paragraph ~~(d)~~ (e) of this subsection (5) no more than thirty calendar days after the county department's response is received by the team or upon confirmation in writing from the county department that a written response will not be provided.

~~(c)~~ (d) The proceedings, records, opinions, and deliberations of the department of human services child fatality review team shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil action in any manner that would directly or indirectly identify specific persons or cases reviewed by the state department or county department. Nothing in this paragraph ~~(c)~~ (d) shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the department of human services child fatality review team.

~~(d)~~ (e) The final confidential, case-specific child fatality review report shall be provided to the executive director, the director for any county or community agency referenced in the report, the county commissioners of any county department with previous involvement, the legislative members of the team appointed pursuant to

paragraph (f) of subsection (6) of this section, and the department of public health and environment.

~~(e)~~ (f) The state department shall post on its web site, WITHIN SEVEN BUSINESS DAYS AFTER THE REPORT'S FINALIZATION, a case-specific executive summary of the final confidential, case-specific ~~child fatality~~ review report, absent confidential information AS DESCRIBED IN PARAGRAPH (i) OF THIS SUBSECTION (5), of each INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR child fatality reviewed pursuant to this section.

(g) THE CASE-SPECIFIC EXECUTIVE SUMMARY FOR A CHILD WHO WAS IN HIS OR HER OWN HOME AT THE TIME OF THE INCIDENT SHALL INCLUDE:

(I) THE AGE AND GENDER OF THE CHILD AND A DESCRIPTION OF THE CHILD'S FAMILY;

(II) A STATEMENT OF WHETHER ANY CHILD WELFARE SERVICES, AS DEFINED IN SECTION 26-5-101 (3), WERE BEING PROVIDED TO THE CHILD, ANY MEMBER OF THE CHILD'S FAMILY, OR THE PERSON SUSPECTED OF THE ABUSE OR NEGLECT;

(III) THE DATE OF THE LAST CONTACT BETWEEN THE AGENCY PROVIDING ANY CHILD WELFARE SERVICE AND THE CHILD, THE CHILD'S FAMILY, OR THE PERSON SUSPECTED OF THE ABUSE OR NEGLECT; AND

(IV) ANY OTHER INFORMATION REQUIRED BY RULES PROMULGATED BY THE STATE DEPARTMENT PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(h) THE CASE-SPECIFIC EXECUTIVE SUMMARY FOR A CHILD WHO WAS IN FOSTER CARE, AS DEFINED IN SECTION 19-1-103 (51.3), C.R.S., AT THE TIME OF THE INCIDENT SHALL INCLUDE:

(I) THE AGE, GENDER, AND RACE OR ETHNICITY OF THE CHILD;

(II) A DESCRIPTION OF THE FOSTER CARE PLACEMENT;

(III) THE LICENSING HISTORY OF THE FOSTER CARE PLACEMENT; AND

(IV) ANY OTHER INFORMATION REQUIRED BY RULES PROMULGATED BY THE STATE DEPARTMENT PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(i) THE CASE-SPECIFIC EXECUTIVE SUMMARY OR OTHER RELEASE OR DISCLOSURE OF INFORMATION PURSUANT TO THIS SECTION SHALL NOT INCLUDE:

(I) ANY INFORMATION THAT WOULD REVEAL THE IDENTITY OF THE CHILD WHO IS THE SUBJECT OF THE EXECUTIVE SUMMARY, ANY MEMBER OF THE CHILD'S FAMILY, ANY MEMBER OF THE CHILD'S HOUSEHOLD WHO IS A CHILD, OR ANY CAREGIVER OF THE CHILD;

(II) ANY INFORMATION THAT WOULD REVEAL THE IDENTITY OF THE PERSON SUSPECTED OF THE ABUSE OR NEGLECT OR ANY EMPLOYEE OF ANY AGENCY THAT PROVIDED CHILD WELFARE SERVICES, AS DEFINED IN SECTION 26-5-101 (3), TO THE

CHILD OR THAT PARTICIPATED IN THE INVESTIGATION OF THE INCIDENT OF FATALITY, NEAR FATALITY, OR EGREGIOUS ABUSE OR NEGLECT;

(III) ANY INFORMATION THAT WOULD REVEAL THE IDENTITY OF A REPORTER OR OF ANY OTHER PERSON WHO PROVIDES INFORMATION RELATING TO THE INCIDENT OF FATALITY, NEAR FATALITY, OR EGREGIOUS ABUSE OR NEGLECT;

(IV) ANY INFORMATION WHICH, IF DISCLOSED, WOULD NOT BE IN THE BEST INTERESTS OF THE CHILD WHO IS THE SUBJECT OF THE REPORT, ANY MEMBER OF THE CHILD'S FAMILY, ANY MEMBER OF THE CHILD'S HOUSEHOLD WHO IS A CHILD, OR ANY CAREGIVER OF THE CHILD, AS DETERMINED BY THE STATE DEPARTMENT IN CONSULTATION WITH THE COUNTY THAT REPORTED THE INCIDENT OF FATALITY, NEAR FATALITY, OR EGREGIOUS ABUSE OR NEGLECT AND THE DISTRICT ATTORNEY OF THE COUNTY IN WHICH THE INCIDENT OCCURRED, AND AFTER BALANCING THE INTERESTS OF THE CHILD, FAMILY, HOUSEHOLD MEMBER, OR CAREGIVER IN AVOIDING THE STIGMA THAT MIGHT RESULT FROM DISCLOSURE AGAINST THE INTEREST OF THE PUBLIC IN OBTAINING THE INFORMATION.

(V) ANY INFORMATION FOR WHICH DISCLOSURE IS NOT AUTHORIZED BY STATE LAW OR RULE OR FEDERAL LAW OR REGULATION.

(j) THE STATE DEPARTMENT MAY NOT RELEASE THE CASE-SPECIFIC EXECUTIVE SUMMARY IF THE STATE DEPARTMENT, IN CONSULTATION WITH THE COUNTY, DETERMINES THAT MAKING THE EXECUTIVE SUMMARY AVAILABLE WOULD JEOPARDIZE ANY OF THE FOLLOWING:

(I) ANY ONGOING CRIMINAL INVESTIGATION OR PROSECUTION OR A DEFENDANT'S RIGHT TO A FAIR TRIAL; OR

(II) ANY ONGOING OR FUTURE CIVIL INVESTIGATION OR PROCEEDING OR THE FAIRNESS OF SUCH PROCEEDING.

(k) If at any point in the review process it is determined that the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY, OR fatality is not the result of abuse or neglect, the review shall cease.

(l) THE STATE DEPARTMENT OR ANY COUNTY DEPARTMENT MAY RELEASE TO THE PUBLIC ANY INFORMATION AT ANY TIME TO CORRECT ANY INACCURATE INFORMATION REPORTED IN THE NEWS MEDIA, SO LONG AS THE INFORMATION RELEASED BY THE STATE DEPARTMENT OR COUNTY DEPARTMENT IS NOT EXPLICITLY IN CONFLICT WITH FEDERAL LAW.

(6) The team ~~shall consist~~ CONSISTS of up to twenty members, appointed on or before September 30, 2011, as follows:

(a) Three members from the state department, appointed by the executive director;

(b) Two members from the department of public health and environment, appointed by the executive director of said department;

(c) Three members representing county departments, appointed by a statewide organization representing county commissioners;

(d) At least eight additional multidisciplinary members, to be appointed by the members described in paragraphs (a) to (c) of this subsection (6), including but not limited to representatives from the office of the child protection ombudsman and from the fields of child protection, physical medicine, mental health, education, law enforcement, district attorneys, child advocacy, and any others as deemed appropriate;

(e) For the purposes of participating in a specific case review, additional members may be appointed at the discretion of the members described in paragraphs (a) to (c) of this subsection (6) to represent agencies involved with the child or the child's family in the twelve months prior to the INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, A NEAR FATALITY, OR fatality; and

(f) One member from the health and environment committee of the house of representatives or any successor committee, to be appointed by the speaker of the house of representatives, and one member from the health and human services committee of the senate or any successor committee, to be appointed by the president of the senate. The members appointed pursuant to this paragraph (f) ~~shall~~ ~~be~~ ARE nonvoting members and ~~shall~~ ARE not ~~be~~ required to be present at any meeting of the team.

(7) The state department shall promulgate additional rules, as necessary, for the implementation of this section, including but not limited to the confidentiality of information IN INCIDENTS OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITIES, OR CHILD FATALITIES.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 12, 2012