

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on a temporary basis, the Prevention of Child Abuse and Neglect Act of 1977 to provide the Mayor and 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 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 Temporary Amendment Act of 2000".

Sec. 2. The Prevention of Child Abuse and Neglect Act of 1977 is amended as follows:

(a) Section 306(c) is repealed.

(b) A new section 308 is added to read as follows:

“Sec. 308. Public disclosure of findings and information in cases of child fatality or near fatality.

“(a) For the purposes of this section, the term:

“(1)(A) "Agency" shall have the same meaning prescribed in section 3(3) of the District of Columbia Administrative Procedure Act 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.

“(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 the Child Fatality Review Committee, 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;

"(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.

"(C) The term "findings and information" shall not include criminal investigation records until each case involving the child fatality or near fatality is disposed of by way of a sentence, a verdict of not guilty, or a finding of not guilty by reason of insanity, or the United States Attorney certifies in writing to the disclosing official that the investigation has been concluded or has been suspended for an indefinite time, and that an imminent criminal prosecution is not contemplated.

"(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 directly related to the cause of the child fatality or near fatality.

"(8) "Public record" shall have the same meaning prescribed in section 3(18) of the District of Columbia Administrative Procedure Act.

"(b)(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:

"(A) For 6 months following a child fatality or near fatality if the United States Attorney certifies in writing to the disclosing official that there is an ongoing criminal investigation or prosecution pertaining to the child fatality or near fatality. If the United States Attorney certifies in writing to the disclosing official that the investigation or prosecution of the child fatality or near fatality is still ongoing at the end of this 6-month period, the period shall be extended for an additional 6 months. The issuance of a statement by the United States Attorney that an investigation has been concluded or has been suspended for an indefinite time, and that an imminent criminal prosecution is not contemplated, shall terminate the waiting period at any time;

"(B) To the disclosure of any portion of the findings or information if disclosure of that portion would likely:

"(i) 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;

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

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

"(iv) Deprive a person of a right to a fair trial or an impartial

adjudication;

"(v) 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;

"(vi) 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

"(vii) Disclose personal or private information; and

"(C) To records or information submitted to the Child Fatality Review Committee by non-governmental entities.

"(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.

"(c)(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 30 days 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; and

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

"(2) The disclosing official shall make good faith efforts to notify persons whose names and records are requested before releasing the findings and information. The disclosing official shall notify the United States Attorney at least 10 days before the disclosing official releases the findings and information.

"(3) 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.

"(d)(1) Any person who has submitted a request to the disclosing official to release findings and information under this section, and whose request has been denied in whole or in part, may bring a civil action in the Superior Court for the District of Columbia ("Superior Court") to compel the disclosing official to release the findings and information as requested.

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

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

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"(4) 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 information in camera to determine whether the findings and information, or any part thereof, shall be withheld under subsection (b)(2) of this section.

"(e) 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 section 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 section.

"(f) Nothing in this section shall limit or restrict any right of access or disclosure that any title II of the District of Columbia Administrative Procedure Act ("Freedom of Information Act"). Section 306 of the Prevention of Child Abuse and Neglect Act of 1977 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.

"(g) The Mayor shall, pursuant to title I of the District of Columbia Administrative Procedure Act issue rules to implement the provisions of this section. The rules issued pursuant to this subsection 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 Emergency Amendment Act of 2000, for a 45-day period of Council review (not including days of Council recess). If the Council does not approve or disapprove the rules 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. (a) 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), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), 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. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia