

***Testimony Submitted by First Star and the Children’s Advocacy Institute to the Subcommittee on Children and Families (Committee on Health, Education, Labor and Pensions/HELP), U.S. Senate, regarding the reauthorization of the Child Abuse Prevention and Treatment Act; June 26, 2008***

First Star and the Children’s Advocacy Institute press for amendments to the public disclosure requirement contained in the Child Abuse Prevention and Treatment Act (CAPTA) that will provide states more clarity regarding the proper balance between confidentiality and disclosure in cases of child abuse death and near death. The U.S. Department of Health and Human Services’ Child Welfare Policy Manual (the Manual), which directs States as to the proper implementation of CAPTA, interprets the public disclosure mandates broadly. However, as was revealed in a recent and widely-publicized report, ***State Secrecy and Child Deaths in the U.S.***, many States currently fail to re-shift the balance between confidentiality and public disclosure when a child dies or nearly dies from maltreatment.<sup>1</sup> Access to the facts regarding these tragic incidents enables the public to hold child welfare systems accountable and to drive systemic reform where warranted. Many States’ narrow reading of CAPTA frustrates the statute’s purpose and ignores the guidance provided by the Manual.

In its current form, CAPTA’s public disclosure mandate is overly vague. The following amendments to CAPTA will help bring State policies in line with the Manual and ensure more predictable, consistent, and enforceable disclosure of this critical information:

- **Clarify that States are required to release both cases of death *and near death*;**
- **Clarify that public disclosure of such cases is *mandatory*;**
- **Further clarify that States cannot grant themselves *discretion through restrictive conditions and limitations*; and**
- **Add language to direct the scope and nature of the information authorized for release**

**1. Clarify that States are required to release both cases of death *and near death*.**

CAPTA explicitly requires a State to adopt “provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality *or near fatality*.” However, many States, such as, Colorado, Massachusetts, New Mexico, Tennessee, Texas, Utah and Vermont, do not provide anywhere in their public disclosure policy for the release of information on near deaths.

This is a blatant violation of an express CAPTA condition. Language must be added to CAPTA to better guide and inform States that the release of findings and information is also required for *near deaths*.

**2. Clarify that public disclosure of such cases is *mandatory*.**

Section 2.1A.1, Question 1 of the Manual addresses CAPTA confidentiality requirements generally.<sup>2</sup> This Section specifically distinguishes between situations in which a State “*may*” share confidential child abuse and neglect reports and records and those situations in which a State “*must*” provide certain otherwise confidential child abuse and neglect information. The Manual indicates that

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<sup>1</sup> *State Secrecy and Child Deaths in the U.S.: An evaluation of public disclosure practices about child abuse or neglect fatalities or near fatalities, with state rankings*, a joint report of the Children’s Advocacy Institute and First Star (April 29, 2008)

<sup>2</sup> U.S. Dept. of Health & Human Services, Administration for 4 Children & Families, “Child Welfare Policy Manual,” section 2.1A.1, available at [http://www.acf.hhs.gov/j2ee/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=67](http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=67).

a State “*must*” release the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality. Yet, States such as Alabama, Alaska, Arkansas, Kentucky, Louisiana, Maine, Maryland, Missouri, Montana, Nebraska, New Jersey, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Wisconsin, and Wyoming use permissive language in their public disclosure policies.

In accordance with the Manual, CAPTA must clarify that a State is required to use mandatory language when constructing its public disclosure policy.

### **3. Further clarify that States cannot grant themselves *discretion through restrictive conditions and limitations*.**

Currently, the exceptions, limitations and conditions that States may impose on disclosure of information often makes the intended information inaccessible and therefore ineffective in carrying out CAPTA’s legislative intent. Section 2.1A.4, Question #4 of the Manual poses the question: “Does a State have the option of disclosing information on these child fatalities and near fatalities, for example, when full disclosure may be contrary to the best interests of the child, the child’s siblings, or other children in the household?” The answer indicates that a “State does *not* have discretion in whether to allow the public access to the child fatality or near fatality information; rather, the public has the discretion as to whether to access the information. In other words, the State is not required to provide the information to the public unless requested, but may not withhold the facts about a case unless doing so would jeopardize a criminal investigation.”<sup>3</sup>

In spite of this, the public disclosure policies of States such as, Maine, Maryland, South Dakota, and Wisconsin presently include a provision which allows them to withhold information if the release is determined to be contrary to the best interests of the child who is the subject of the report, the child’s siblings or any other child residing in the same dwelling as the child who is the subject of the report. As the Child Welfare Policy Manual makes clear, ***States are expressly prohibited from exercising this type of discretion.***

Additionally, some States, such as Minnesota and North Carolina, will not release information about a child fatality or near fatality unless the perpetrator is criminally charged. Disclosure simply cannot be dependent on a district attorney’s decision to prosecute. Criminal proceedings are not relevant to the importance of disclosure and furthermore these restrictions serve no public benefit. Making disclosure contingent on criminal prosecution represents a gross misinterpretation of CAPTA language.

To avoid such violations of the legislative intent of CAPTA and to align State policies with the guidance provided by the Manual, language must be added to CAPTA that expressly prohibits any discretionary withholding of information by a State.<sup>4</sup>

### **4. Add language to indicate exactly what type information is authorized for release.**

Section 2.1A.4, Question 2 of the Manual addresses whether States have the option to disclose “*either* the findings of the case, *or* information which may be general in nature and address such things as practice issues rather than provide case-specific information.” The answer states that “the intent of this provision was to assure that the public is informed about cases of child abuse or neglect which

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<sup>3</sup> U.S. Dept. of Health & Human Services, Administration for 4 Children & Families, “Child Welfare Policy Manual,” section 2.1A.4, available at [http://www.acf.hhs.gov/j2ee/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=68](http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=68).

<sup>4</sup> Unless disclosure is likely to jeopardize a criminal investigation.

result in the death or near death of a child” and that a “State must provide for the disclosure of the *available facts*.”<sup>5</sup>

However, many States violate this directive. For example, Delaware authorizes only the release of “system wide recommendations” and provides that the facts and circumstances of each death or near death shall be confidential. Additionally, Georgia limits its disclosure to whether there is an ongoing or completed investigation of the child’s death and whether child abuse was confirmed or unconfirmed. Many States argue that they cannot provide facts about the case because it would violate their mandate for confidentiality. However, it is not the identifying information that is needed for proper public discourse, but rather the facts and circumstances of the case.

In order to avoid such violations of the legislative intent of CAPTA, the public disclosure mandate should clarify exactly what type of information the public is entitled to receive upon request. CAPTA should be amended to read that the public is explicitly entitled to receive information “including, but not limited to, the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports made to and investigations conducted by the child welfare agency regarding the child and/or the child’s family, and the results of any such investigations; and information describing any services provided or actions taken by the child welfare agency on behalf of the child and/or the child’s family, before and after the fatality or near fatality.”<sup>6</sup>

*First Star is a 501(c)(3) established in 1999 to strengthen the rights and improve the lives of America’s abused and neglected children through education, public policy, legislative reform, and litigation.*

*The Children’s Advocacy Institute was founded in 1989 as part of the Center for Public Interest Law at the University of San Diego (USD) School of Law. CAI’s mission is to improve the health, safety, development, and well-being of children. CAI advocates in the legislature to make the law, in the courts to interpret the law, before administrative agencies to implement the law, and before the public to promote the status of children in our society. CAI strives to educate policymakers about the needs of children—about their needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury. CAI’s goal is to ensure that children’s interests are represented effectively whenever and wherever government makes policy and budget decisions that will impact them.*

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<sup>5</sup> U.S. Dept. of Health & Human Services, Administration for 4 Children & Families, “Child Welfare Policy Manual,” section 2.1A.4, available at [http://www.acf.hhs.gov/j2ee/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=68](http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=68)(emphasis added).

<sup>6</sup> *State Secrecy and Child Deaths in the U.S.: An evaluation of public disclosure practices about child abuse or neglect fatalities or near fatalities, with state rankings*, a joint report of the Children’s Advocacy Institute and First Star (April 29, 2008)