

1404 - LEGAL BASIS

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I. LEGAL BASIS

Protective services for children known or alleged to be abused, neglected or dependent are mandated by State law. Protective services must be available to children in each county of the State 24 hours a day, seven days a week. The county Director of Social Services is responsible for provision of these services.

The Social Security Act of 1935, which included provisions for services " . . . for the protection and care of homeless, dependent and neglected children" . . . placed the responsibility of providing child protective services with public welfare agencies. Subsequent amendments have reinforced and provided for the expansion of protective services as a vital area of responsibility for the public welfare agencies.

In 1980, Public Law 96-272, the Adoption Assistance and Child Welfare Act, was passed by the Federal government to assure permanent homes for children and to strengthen the capability of families to care for their own children. The law mandated that intervention (*case*) plans be formulated for all children in care. It promoted provision of services to prevent the removal of children from their families, and required that when removal was necessary, placement be required to be in the "least restrictive, most homelike" environment possible. It also mandated prompt reunification when children have been removed from their families. The Adoption Assistance and Child Welfare Act was the foundation of child welfare practice until the implementation of the Adoption and Safe Families Act of 1997 (Public Law 105-89.) The Adoption and Safe Families Act (ASFA) further clarified the focus on the safety and protection of the child while emphasizing timely permanence for children.

In 2001 another major shift was felt, when North Carolina's General Assembly passed Session Law 2001-424, Senate Bill 1005, "Appropriations Act of the General Assembly". The legislation required the Department of Health and Human Services, Division of Social Services to develop a plan working with the local Departments of Social Services, to implement an alternative response system of child protection in no fewer than two and no more than ten demonstration counties in the state. The law became effective July 1, 2001 and enabled the implementation of an alternative response system in which local Departments of Social Services were authorized to utilize family assessment tools and family-centered principles when responding to selected reports of suspected child neglect. The law also mandated that the Department of Health and Human Services develop data collection processes that would enable the General Assembly to assess the impact of the demonstration project on issues including child safety, timeliness of response, timeliness of service, coordination of local human services, cost-effectiveness and any other related issues.

During the 2004 session of the 2003 General Assembly, the House of Representatives convened the House Interim Committee on Child Abuse and Neglect, Foster Care, and Adoption. Its members were charged to conduct a study of child abuse and neglect in North Carolina, and determine how they might be better protected. The Committee was required to report the results of its study to the House of Representatives on or before April 15, 2004. The issues considered by the Committee were:

- The efficacy, structure and operation of the child protective services system as compared to similar systems in other jurisdictions.
- High social worker turnover rates and their causes and effects on child protective services.
- Improving the sharing of information between county Departments of Social Services and between county Departments of Social Services and other governmental agencies.
- Improving computer systems to process and track child protective services cases.
- The ability of the child protective services system to access the criminal records of individuals who are being investigated for child abuse or neglect.
- The statutes relating to the protection of children and child guardianship, including specifically Subchapter 1 of Chapter 7B of the General Statutes.
- The coordination of efforts between and among governmental agencies in investigating abuse, neglect, and dependency and child deaths.
- Improving risk assessment by and training of social services workers.
- The work, findings, and recommendations of the House Select Committee on Domestic Violence

In its report, the Committee strongly supported the MRS and recognized the need for additional funding to fully implement its family-centered reform. The Committee recommended that the Appropriations Committees of the General Assembly make funds available to create new, additional CPS social worker positions to reduce caseloads and lead Child and Family Team Meetings, provide for continued program evaluation, and assistance in support roles as needed.

II. NORTH CAROLINA STATUTES

In 1997, North Carolina enacted HB 896 in anticipation of changes expected in the Adoption and Safe Families Act. This legislation:

- Broadened grounds for termination of parental rights in cases of parental failure to make progress, parental incapacity due to chronic substance abuse.
- Further defined reasonable efforts and defined "safe home"
- Revised the neglect definition and HB 153 revised the definition of dependent juvenile
- Established new court hearings to assure timely reviews;

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- Required court inquiry into the whereabouts of missing parents at each non-secure custody hearing, as well as inquiry into efforts to locate the parents;
- Prioritized placements with suitable relatives for children who needed alternative living arrangements;
- Waived review hearings if child was in stable living situation with a relative or other kin in which guardianship was assigned;
- Required that all children living in the home of an alleged victim child be considered also as alleged victims;
- Required judicial inquiry regarding the status of other children remaining in the home when a child had been removed;
- Defined rights and responsibilities of guardians of the person assigned in juvenile court; and
- Authorized state Division of Social Services to directly intervene and take control in county DSS's that were not providing adequate protective services to children in the county.

In 1998, the N. C. General Assembly revised the North Carolina Juvenile Code.

- Laws pertaining to abused, neglected, or dependent children were separated from laws pertaining to undisciplined and delinquent youth.
- The organization of the chapter follows the logical progression of a case.
- The new laws were placed in a new statutory section of the Juvenile Code, 7B.

In 1998, North Carolina enacted HB 1720, which brought our state into compliance with the Adoption and Safe Families Act (ASFA). This legislation:

- Revised the definition of neglect language that was inadvertently removed in the last legislative session regarding situations of children who live in the same home as a child who was subjected to abuse or neglect, or **who died as a result of abuse or neglect;**
- Strengthened the agency's authority to determine the safety of other children living in the home of a child who **is suspected to have died as a result of maltreatment;**
- Further defined reasonable efforts to include the use of permanency planning services to develop a permanent plan for the juvenile when reunification is not the goal;
- Re-emphasized placements with suitable relatives for children who are removed from their parents/caretakers; Established timeframes for court hearings; and
- Revised grounds for terminations of parental rights.

In 1999, North Carolina enacted HB 262. This Legislation:

- Revised the definition of caretaker to include any employee of or volunteer in a division, institution, or school operated by DHHS. This change was a result of DHHS Directive 61.

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- Clarified that all children in a non-residential setting must be considered as alleged victims;
- Clarified that in an institutional setting, all children named as victims must be subjects of the investigation, but other children in the institutional setting should be considered as victims only after an assessment of the circumstances warrant the inclusion of those children in an investigation;
- Enhanced the powers of the State Child Fatality Review Team;
- Required the County DSS to pay at a minimum the monthly, graduated foster care maintenance and adoption assistance rates established by the General Assembly; and
- Authorized North Carolina to enter into an Interstate Compact regarding medical assistance for children who receive adoption assistance.

In 2000, two bills were passed that impacted the provision of Children's Services.

The legislation:

- Expedited the **Termination of Parental Rights** process; and
- Made guardianship more of a permanent option for children in foster care.

In 2001, North Carolina enacted HB 375 and other Legislation was passed that impacted the provision of Children's Services.

The legislation:

- Expanded the representation of the Guardian Ad Litem;
- Established timeframes for signed court orders;
- Changed timeframes for Voluntary Placement Agreements (VPA's);
- Expanded court authority over parents;
- Expanded the authority of the director in visitation plans;
- Revised adoption laws;
- Decriminalized abandonment of infants under certain circumstances and modified procedures involving abandonment of juveniles;
- Changed the timeframes for responding to all child protective services reports of abandonment which falls under the neglect statute from 72 hours for initiation to immediately initiating a **CPS assessment**; and
- Requires law enforcement to assist in abandonment cases to determine if the child abandoned has been reported as a missing child.

Also in 2001, Session Law 2001-424, Senate Bill 1005, "Appropriations Act of the General Assembly" was passed and became effective July 1, 2001 allowing the development of the Family Assessment response. This law led to the development of a new response to working with families throughout the Child Welfare system. This legislation stated that in no fewer than two and no more than ten demonstration

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counties, selected reports of suspected child neglect can be approached in a new way.

In 2002, Session Law 2002-126, Senate Bill 1115, "Modification to Appropriations Act of the General Assembly" was passed and became effective July 1, 2002. This modification expanded use of the Family Assessment response in dependency cases.

In 2003, Session Law 2003-284, House Bill 397, "2003 Budget Act" was passed and became effective July 1, 2003. This legislation allowed for expansion of the MRS pilot to 42 more counties. Additionally this legislation legally mandated the use of Family-Centered Practice in Child Welfare. This bill also required a report of the initial evaluation of the MRS as well as recommendations for statewide implementation.

Also in 2003, Senate Bill 421, 2003-2004 Session Law, "Act to Amend Child Welfare Laws" was passed and became effective July 4, 2003. This legislation amended N.C.G.S. 7B to specify that the director or director's designee may not enter a private residence for CPS Assessment purposes without specific criteria being met. Those criteria are as follows:

- The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.
- The permission of the alleged victim child's parent or person responsible (ADULT) for the juvenile's care.
- The accompaniment of a law enforcement officer who has legal authority to enter the residence.
- An order from a court of competent jurisdiction.

Also amended in this legislation was [N.C.G.S. 131D-10.6A\(b\)](#) to specify that each child welfare social worker must receive training on family-centered practice and state and federal law regarding the basic rights of individuals

Most recently, in 2005, Session Law 2005-55, HB 277 was passed and became effective October 1, 2005. This legislation achieves the following changes:

- Defines both Family Assessment Response and Investigative Assessment Response.
- States that each county of the state shall use either the Family Assessment or Investigative Assessment response in response to reports of abuse, neglect and dependency.
- Leaves the assignment of the response to the county DSS Director
- Removes the requirement to make a home visit in child care related CPS assessments

During the 2005 Legislative Session, Session Law 2005-399 (HB 661) was passed. This law authorizes the Department of Health and Human Services to establish a list of individuals responsible for the abuse or serious neglect of a juvenile, to define serious neglect, and to establish a process for expunction from that list.

This policy outlines procedures regarding the review of substantiation decisions and requests for expunction from the Responsible Individuals List. Assessments that were conducted as Family Assessments are not eligible for the Expunction process as no perpetrator is identified. Section 1427 of this manual outlines the process for making a request for expunction.

III. COMMON LAW TRADITION

Society recognizes parents and other caretakers are primarily responsible for ensuring that children receive food, shelter, clothing; adequate medical care; education; supervision; and moral and social guidance in keeping with the needs of the child. Parents or other caretakers determine child rearing methods, as long as they provide minimally sufficient care in a safe environment.

When a caretaker clearly fails to provide at least minimally sufficient care, the rights of parents over their children may be limited through the authority vested in the state. The limitation of parental rights occurs when it is necessary to ensure the child's protection from serious harm. One responsibility of child protective services is to recommend to the court to what extent parental rights need to be limited. This determination is frequently complicated by personal, cultural, and societal values that can strongly influence these recommendations. The child protective service worker has the responsibility of remaining objective when recommending court intervention, recognizing any value conflicts that may influence his or her judgment.

IV. LEGAL AUTHORITY

A. Legal Authority and Role of the County Director of Social Services (N.C.G.S. § 7B-302)

County directors of social services are responsible for ensuring that child protective services are provided for all children who are abused, neglected, or dependent. The director and staff should have a clear understanding of the legal authority for providing services to voluntary and involuntary clients.

North Carolina law and administrative rule require the county director of social services to be responsible for:

- 1.) Receiving reports of abuse, neglect, and dependency;

- 2.) Making a prompt and thorough CPS assessment, using either the family Assessment response, or the Investigative Assessment response in order to ascertain the facts of the case, the extent of the injury or condition resulting from abuse, neglect, or dependency, and the risk of harm to the child, in order to determine whether protective services should be provided and/or a petition should be filed;
- 3.) Deciding whether or not immediate removal of the child or children is necessary for their safety and protection;
- 4.) Providing or arranging for protective services if immediate removal is not necessary; and
- 5.) Signing a petition seeking to invoke the jurisdiction of the court for the protection of the child or children in accordance with N.C.G.S. § 7B-403 if the parent or other caretaker refuses to accept the protective services provided or arranged by the Director.
- 6.) Reporting to the District Attorney and local Law Enforcement if there is evidence of child abuse or whenever a child has been physically harmed in violation of any criminal statute by any person other than the child's parent, guardian, custodian or caretaker.

B. Legal Authority and Role of Guardian ad Litem [GAL] (N.C.G.S. § 7B-601 and 7B-602)

In all petitions of abuse or neglect, the judge appoints a guardian ad litem to represent the child until permanence is achieved or until the judge relieves the GAL. In dependency cases, the appointment of a guardian ad litem is optional. N.C.G.S. § 7b-602(b) and (c) states that a Guardian ad Litem will be appointed to the parent for the following reasons:

- A parent who is under the age of 18 years and who is not married or otherwise emancipated. The appointment of a guardian ad litem under this subsection shall not affect the minor parent's entitlement to a guardian ad litem pursuant to N.C.G.S. § 7B-601 in the event that the minor parent is the subject of a separate juvenile petition.
- On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17, if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.

The duties of the guardian ad litem are to:

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- Conduct an investigation to determine the facts, the needs of the child, and available resources within the family and community to meet those needs;
- Facilitate, when appropriate, the settlement of disputed issues;
- Offer evidence and examine witnesses at adjudicatory hearings;
- Explore options with the judge at the dispositional hearing;
- Conduct follow up investigations to insure that the court orders are being followed;
- Report to the court when needs of the juvenile are not being met; and
- Protect and promote the best interest of the child until formally relieved of responsibility by the court.

The appointed guardian ad litem has standing to represent the juvenile before the court, whether or not he or she is trained as an attorney. In this capacity, the guardian ad litem is responsible for:

- Performing necessary and appropriate legal services on the child's behalf;
- Presenting relevant facts to the judge at the adjudicatory hearing; and
- Appealing, when advisable, an adjudication or order of disposition to the Court of Appeals.

The guardian ad litem has the authority to access any information or reports that may, in the guardian ad litem's opinion, be relevant to the case. No privilege, except the attorney/client privilege, may be invoked to prevent the guardian ad litem and the court from obtaining such information. The attorney/client privilege allows an attorney to withhold any information obtained from their client relative to the abuse, neglect, or dependency case. The guardian ad litem is subject to the provisions of confidentiality and shall not make disclosure of information to anyone except by order of the judge, or unless otherwise provided by law in Chapter 7B of the General Statutes. ([N.C.G.S. § 7B-601](#)).

The guardian ad litem may rely heavily on information obtained from the Department of Social Services. In order to promote the best interests of the child, the social worker will need to work closely with the guardian ad litem and any attorney employed by the guardian ad litem or appointed by the court.

C. Legal Authority and Role of District Attorney's Office ([N.C.G.S. § 7B-306](#) and [7B-307](#))

The district attorney has the responsibility to review the director's determination that a petition should not be filed within twenty (20) days after the person making the report is notified. This review is made only upon request of the reporter. The review shall include conferences with the person making the report, the CPS social worker, the juvenile, if practicable, and other persons known to have pertinent information about the juvenile or the juvenile's family. At the conclusion

of this conference, the district attorney may affirm the decision made by the director, may request the appropriate local law enforcement agency to investigate the allegations, or may direct the director to file a petition.

Whenever evidence of abuse is found, DSS must immediately make a verbal and a written report of their findings and submit it to the district attorney's office where it will be determined if criminal prosecution is appropriate.

District Attorney's Role in Expunction Process

The responsible individual has **30 calendar days** from receiving the Director's notice of refusal to expunge, or from the date that the Director's notice of refusal was due, to request in writing that the District Attorney, of the prosecutorial district in which the abuse or serious neglect report arose, review the Director's refusal to expunge. The Director shall provide the District Attorney or his designee all of the information the Director used in reviewing the case decision. Within **30 calendar days** of the responsible individual's request, the District Attorney or his designee shall make a determination of agreement or disagreement with the Director's decision. See [Section 1427](#) of this manual for more detail on how to proceed after the District Attorney has made his determination.

D. Legal Authority and Role of Law Enforcement ([N.C.G.S. § 7B-307](#) and [7B-500](#)).

Law enforcement officers are required by law to report suspected child abuse, neglect, and dependency cases to the county Department of Social Services. Likewise, if the DSS finds evidence that a juvenile may have been abused as defined by [N.C.G.S. § 7B-101](#), or that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian or caretaker, the director shall make an immediate oral and subsequent written report to the district attorney or the district attorney's designee and to the appropriate law enforcement agency within 48 hours after receipt of the information.

Within forty-eight (48) hours after receipt of the child abuse report, the local law enforcement agency is responsible for initiating and coordinating a criminal investigation with the protective services CPS assessment being conducted by the county Department of Social Services. If the perpetrator is not a parent, guardian or caretaker, local law enforcement shall initiate a criminal investigation immediately or within 48 hours. Upon completion of the criminal investigation, the district attorney determines whether criminal prosecution is appropriate and may request the Director or Director's designee to appear before a magistrate.

Law enforcement also has been given the authority in the statutes to take children into temporary custody without a court order if there are reasonable

grounds to believe that the child is abused, neglected, or dependent, and that he or she would be injured or could not be taken into custody if it were first necessary to obtain a court order. In such situations, the county director should take appropriate action to initiate a CPS assessment [N.C.G.S. § 7B-500].

With the passage of the Infant Homicide Prevention Act, law enforcement will be required to assist county departments of social services with their investigation of abandoned children by inquiring through the NC Center for Missing Persons and other resources to determine if these children have been reported as a missing person.

E. Special Authority and Role of Medical Professionals in Abuse Cases (N.C.G.S. § 7B-308).

All medical professionals are required by law to report suspected child abuse, neglect, or dependency to the county Department of Social Services. The doctor/patient privilege does not relieve medical professionals of this duty to report.

Medical professionals are authorized to hold a suspected victim of child abuse in a medical facility for up to twelve hours for treatment. The special authority of medical professionals in abuse cases is intended as an addition to the customary method of reporting suspected child abuse. Nothing described in the emergency process precludes a physician or administrator from following the usual procedures of reporting suspected abuse directly to the county Department of Social Services and the county department from responding to the report in the usual fashion.

Any physician or administrator of a medical facility may obtain authorization from the chief district court judge or his designee to retain physical custody of a child suspected of being abused. The physician or administrator obtains authorization by contacting the judge or his designee by phone, or in person, and by certifying that, on the basis of his medical evaluation, the child is in need of medical treatment to cure or alleviate physical distress, or to prevent the juvenile from being abused, but the parent, guardian, custodian, or caretaker cannot be reached or has refused consent for treatment.

The certification must:

- Be in writing,
- Be signed by the examining physician, and
- Include the time and date authority was given by the judge or his designee to hold the child.

A copy of the certification should be:

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- Given to the child's parent or caretaker,
- Attached to the child's medical records, and
- Attached to the child's legal records.

Custody is retained in the medical facility for a maximum of twelve hours from the time of authorization. The physician, administrator, or designee must notify the county director of social services in the county where the facility is located immediately after authorization is obtained.

The county director must treat this notification as a report of suspected abuse, neglect, or dependency and immediately begin a **CPS** assessment. A juvenile petition alleging abuse, neglect, or dependency and seeking non-secure custody must be filed by the county director during this twelve hour period if the assessment reveals all of the following conditions are met:

- The examining physician believes the child needs medical treatment to cure or alleviate physical distress or to prevent the child from suffering serious physical injury, and
- The examining physician believes the child should remain in the custody of the facility for twelve hours for the medical treatment identified above in (1), but,
- The child's parent or caretaker cannot be reached or refuses to allow treatment within the facility.

If a petition for non-secure custody is filed and custody is granted, a hearing is held within seven calendar days to determine the need for continued custody. Even though all three conditions may not be met, the county director may find that circumstances require a petition for non-secure custody either during the initial twelve hours or later. The county department will conduct the **CPS** assessment and provide services regardless of the decision concerning a petition. The county director and examining physician together may request voluntary dismissal of the petition.

If a child is hospitalized in one county but resides in another, the court may transfer custody to the Department of Social Services in the county where the child resides. The **CPS** assessment and the provision of services to the family should be coordinated with the county of residence.

If the court determines that the medical treatment provided was necessary and appropriate, the costs may be charged to the parents, guardian, custodian or caretaker or, if the parents are unable to pay, to the county of residence in accordance with [N.C.G.S. § 7B-903](#) and [N.C.G.S. §7B-500](#)).

F. Roles and Responsibilities of Multidisciplinary Teams

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- 1.) Community Child Protection Teams (10 Page 12 of 14Page 12 of 14Page 12 of 14NCAC 70A.0201 [and N.C.G.S. § 7B-1406](#) and [7B-1411](#)):

The Community Child Protection Team is an interdisciplinary group of community representatives who have the responsibility for reviewing selected cases of abuse, neglect, and dependency, which have been reported to and/or substantiated **or found to be In Need of Services** by the county Department of Social Services. These reviews include child fatalities that resulted from confirmed or suspected abuse or neglect when there was a previous report or CPS intervention within the previous twelve months. Cases also are selected for review from other categories.

The purposes of these case reviews are to:

- (a.) Identify gaps and deficiencies in community resources, which have impact on the incidence of abuse, neglect, or dependency;
- (b) Advocate for system improvements and needed resources where gaps and deficiencies exist in the child protection system;
- (c.) Promote collaboration between agencies in the creation or improvement of resources for children as a result of their review of selected cases; and
- (d.) To inform the county commissioners about actions needed to prevent or ameliorate child abuse, neglect, or dependency.

Note: The CCPT's serves as the Citizens Review Panels which are required under the federal Child Abuse Prevention and Treatment Act. This act requires review of active cases.

More information on the Community Child Protection teams may be found in Section [1434](#).

- 2.) Child Fatality Prevention Team ([N.C.G.S. § 7B-1406](#) [b])

If the Community Child Protection Team determines that it will not review additional child fatalities, a separate Child Fatality Prevention Team shall be established in order to conduct those reviews. Each Child Fatality Prevention Team shall:

- (a) Review the records of all cases of additional child fatalities;
- (b) Submit a report to the board of county commissioners making recommendations and advocating for system improvements or needed resources where gaps and deficiencies exist; and

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(c) Report their findings to the team Coordinator. Findings shall include a listing of problems identified with recommendations for improvement; changes resulting from the team's recommendations; information on each death reviewed; and any additional information requested by the team coordinator.

Most counties combine the function of the two teams. The Child Fatality Prevention Team requires a somewhat broader membership than does the Community Child Protection Team. When the teams are combined, the additional members join for the additional child fatality reviews.

3.) North Carolina Child Fatality Task Force ([N.C.G.S. §7B-1402](#))

The Child Fatality Task Force is a 35 member multidisciplinary study commission established by legislature whose purpose is to study the causes of child deaths in North Carolina, and to recommend changes to law, rule, or policy that could improve the safety and well-being of children in the State. This team and its subcommittees serves as an advisory to the General Assembly and are active in planning for services, recommending changes in statutes, and approaching the issue of child protection from a preventative mode. The Task Force is also responsible for developing a system of multidisciplinary review of child deaths.

4.) North Carolina Child Fatality Prevention Team ([N.C.G.S. §7B-1404](#) through [N.C.G.S. §7B-1405](#)):

The Child Fatality Prevention Team (formerly the Child Fatality Review Team) is established by statute. It is composed of professionals including eleven members, of whom nine members are ex officio and two are appointed. The ex officio members, other than the Chief Medical Examiner, may designate a representative from their departments, division, or offices to represent them on the State Team. These team members or representatives include: the Chief Medical Examiner; Attorney General; the Director of the Division of Social Services; the Director of the Division of the State Bureau of Investigations; the Director of the Division of Maternal and Child Health; the Superintendent of the Department of Public Instruction; the Director of the Division of Mental Health; Developmental Disabilities and Substance Abuse Services; the Director of the Administrative Office of the Courts; a pediatrician appointed to the Task Force, a public member appointed by the Governor; and the Team Coordinator.

The State Team, the local teams, and the Task Force shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of the law. Meetings are not subject to the Open Meetings laws, although teams are encouraged to have public information meetings. All otherwise confidential

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information and records acquired by the team are confidential and are not subject to discovery or introduction into evidence in any proceedings.

For information on the State Child Fatality Review protocol, refer to [Children's Services Manual Volume 1, Chapter VIII, Section 1432.](#)