

Child Welfare Policy Manual

Questions & Answers

2.1A.3 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Open courts

1. Question: Would there be a conflict with the Child Abuse Prevention and Treatment Act (CAPTA) confidentiality requirements if a State chooses to open proceedings relating to child abuse and neglect to the public?

Answer: No. The 2003 amendments to CAPTA specifically give States the flexibility to determine State policies with respect to open courts, so long as such policies ensure the safety and well-being of the child, parents and families (last paragraph of section 106(b)(2)). There may be other Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 3/22/06
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2); Titles IV-E and IV-B of the Social Security Act

2. Question: Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under CAPTA. Do the confidentiality provisions in CAPTA restrict the information that can be discussed in open court?

(Deleted 04/17/2006)

3. Question: How widely should the "open courts" provision in the last paragraph of section 106(b)(2) of the Child Abuse Prevention and Treatment Act (CAPTA) be applied considering the "open courts" provision in title IV-E of the Social Security Act?

Answer: The "open courts" provision in CAPTA applies to court proceedings that determine whether child abuse and neglect has occurred. However, section 471(c) of the Social Security Act permits States to provide the public with access to court proceedings that determine child abuse and neglect, or other court hearings held pursuant to titles IV-B or IV-

E. In doing so, States must at a minimum, ensure the safety and well-being of the child, parents and family. Since this later-enacted law allows open courts in a broader range of court proceedings, a State may allow open courts in any of the proceedings authorized by section 471(c) of the Act and not be considered out of compliance with CAPTA.

Finally, States also should ensure that they are complying with any other relevant State or Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services Office for Civil Rights or the State Attorney General's Office.

- **Source/Date:** 10/24/2006
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) § section 106(b)(2); Social Security Act § section 471(c)