

Office of Children, Youth and Families  
Division of Child Welfare Services  
December 6, 2013  
Responses to JBC Questions from Robin Smart 12-3-13

- **What is the department's position on the rights of the child and/or family to refuse consent to photograph "private" areas of a victim's body?**
- **What is the department's position on the interpretation of current statute as found in Section 19-3-306 C.R.S.?**

**Response:**

The Department cannot take a position regarding legal rights. As an executive branch agency, the Department must execute the laws not interpret them, courts interpret the laws. 19-3-306 allows certain professionals (nurses, medical examiners, social workers, psychologists, law enforcement) to take or have someone take color photographs of areas of trauma, including x-rays. The statute specifically allows the collection of this type of evidence, and it is critical in documenting injuries on a child. In order to take photographs the professional must "reasonably believe" the child has been abused or neglected. The photographs must be sent to the county and local law enforcement under the statute. There is no limitation on the taking of the photographs because the purpose is to document injuries, regardless of where the injuries may be. The injuries are the focus of the photographs and any limitation on the taking of photographs could compromise the ability to collect evidence of child abuse.

- **What type of training do social workers receive on how to appropriately handle a situation that involves photography of evidence of any type of abuse? Of evidence of abuse in "private" areas? Is there ongoing training in this area?**

**Response:**

Yes, the collection of evidence is a part of new worker training for caseworkers. Workers are trained to collect photographic evidence of physical abuse whenever it is encountered whether it is in "private areas" or areas not covered by clothing. There are also in-service, in-depth trainings on forensic interviewing for new workers or seasoned workers. Workers are trained that the goal in collecting evidence is to document the injuries.

- **What current child welfare rules have been developed and implemented regarding photography of "private" areas of a victim's body?**
- **What current child welfare rules have been developed and implemented regarding photography of evidence of abuse on other parts of a victim's body?**

**Response:**

While there aren't specific rules about photographing injuries, the Department requires counties to conduct a face to face interview or observe the child, and to determine the extent of the maltreatment to the child. These rules are at 7.202.52.

- **What oversight does the State Department of Human Services provide to counties concerning obtaining photographic evidence of abuse?**

**Response:**

Training provided to workers on interviewing and photographing victims provides the framework for activity that needs to occur. The Department provides oversight to counties in the discharge of their child protection duties primarily through the Administrative Review Division's review of specific referrals and assessments completed by the county. The Department has not developed specific oversight procedures regarding obtaining photographic evidence of abuse. The county department is statutorily charged with coordinating investigations, and in those situations where there is a possibility of criminal child abuse, the department may coordinate collection of evidence with law enforcement. For child protection purposes, the evidence may be necessary for a dependency and neglect filing, which is civil. Pictures are necessary to document external physical injuries

- **What regulations are in place that ensure accountability in the appropriate process of obtaining, photographing, and storing of evidence?**

**Response:**

Identifying information from reports of child abuse or neglect are confidential, C.R.S. §19-1-307(1)(a). The Colorado Department of Human Services (CDHS) is mandated by the Federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. (HIPAA) to protect the privacy and security of our patients' individually identifiable health information.

**7.000.72 [7.000.72] Confidentiality [Rev. eff. 2/6/04], 12 CCR 2509-1**

A. County departments shall treat all information as confidential according to applicable statutes, including, but not limited to, the following:

1. Names and addresses of applicants, current or past recipients, and services provided.
2. Information related to the social and economic conditions or circumstances concerning any individual including wage or income information or correspondence obtained from any source including state or federal agencies.
3. Agency evaluation of information about any individual.
4. Medical, psychological, or social evaluation including diagnosis or past history of disease, or disability of any kind.

B. County departments shall apply these rules to requests for information from such groups or individuals as legislators, governmental authority, the courts, or law enforcement officials, as from any other source. Whenever there is a question about the legality of releasing information to persons seeking information from the county department, the requestor shall be advised to request the court to require the county department to produce the desired records or information within the custody or control of the county department.

C. The county department shall obtain written permission from the individual or family for the release of information, unless such release is otherwise authorized by law or unless the referring agency has already done so.

D. In a criminal or civil proceeding in which the county case record is subpoenaed or any county representative is ordered to testify concerning a current or former applicant or recipient, the court shall be advised through proper channels of the statutory provisions, policies, or rules and regulations concerning disclosure of information. Confidential information shall not be released in a judicial proceeding unless so ordered by the court.

E. All confidential information about social services shall be sorted and processed so that there are safeguards to insure that no unauthorized personnel can acquire or retrieve the information.

F. Confidentiality of the reporting party in an abuse or neglect referral shall be protected.

G. Confidential information, such as the identity of the reporting party, shall not be released in a judicial proceeding unless so ordered by the court.

H. The release or use of information concerning individuals applying for or receiving social services, or who received services, shall be restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of the state and county departments.

I. The county department shall define in writing and submit to the state a process by which clients may obtain access to their case records. The following elements shall be included in the written client access to records process:

1. Designated source (individual and position) within the department who will handle client requests for records access.
2. Directions for maintaining a record of the requests.
3. Time frames for responding to requests. ...

R. Any person who willfully permits or who encourages the release of data or information related to child abuse or neglect contained in the State Department's automated database to persons not permitted access to such information, commits a Class 1 misdemeanor and shall be punished as provided in Section 18-1.3-501, C.R.S.

Additionally, §26-1-114, C.R.S. also requires the confidentiality of information obtained by the counties in conducting child welfare duties.

- **What current child welfare rules have been developed and implemented regarding follow-up steps in the investigation of alleged child abuse when photography of evidence of abuse is unable to be obtained?**

**Response:**

If access to the child cannot be obtained, the court may order an interview, examination, and investigation pursuant to 19-3-308(3), C.R.S. The county department is responsible for the coordination of all investigations of all reports of intra-familial abuse or neglect. §19-3-308(4), C.R.S.

- **What specific legal rights do children and parents have to refuse a warrantless search of themselves or their children's persons by social workers without due process and a court-issued warrant?**

**Response:**

This issue is being addressed in active litigation in federal court case number 13-cv-01287 – MSK – MJW. The Department cannot comment on an issue actively being decided by the court.

- **What is the legal threshold for arresting parents or detaining children without parent's permission without a court-ordered arrest or protective orders?**

**Response:**

Arrests can only be made by law enforcement and require probable cause. Taking children into custody for their protection and without the parent's permission can only occur through law enforcement or through a court order. Following are two excerpts from statute:

**19-3-401 Taking children into custody**

(1) A child may be taken into temporary custody by a law enforcement officer without order of the court: (a) When the child is abandoned, lost, or seriously endangered in such child's surroundings or seriously endangers others and immediate removal appears to be necessary for such child's protection or the protection of others;

**19-3-405. Temporary protective custody**

(1) In addition to other powers granted to the court for the protection of children, the court may issue verbal or written temporary protective custody orders or emergency protection orders, or both. Each judicial district shall be responsible for making available a person appointed by the judge of the juvenile court, who may be the judge, a magistrate, or any other

officer of the court, to be available by telephone at all times to act with the authorization and authority of the court to issue such orders.

(2) (a) Temporary protective custody orders may be requested by the county department of social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child he or she reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the circumstances or conditions of the child are such that continuing the child's place of residence or in the care and custody of the person responsible for the child's care and custody would present a danger to that child's life or health in the reasonably foreseeable future.

(b) Emergency protection orders may be requested by the county department of social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child the physician reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the child is able to remain safely in the child's place of residence or in the care and custody of the person responsible for the child's care and custody only if certain emergency protection orders are entered. An emergency protection order may include but is not limited to:

- (I) Restraining a person from threatening, molesting, or injuring the child;
- (II) Restraining a person from interfering with the supervision of the child; or
- (III) Restraining a person from having contact with the child or the child's residence.

(3) The county department of social services shall be notified of such action immediately by the court-appointed official in order that child protection proceedings may be initiated.

(4) In any case, such temporary protective custody or emergency protection shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays.

- **What penalties might be applied if photographs of minors are taken and distributed outside of authorized channels, or released publically, for example on websites?**

**Response:**

It is a crime to violate the confidentiality of child abuse information. Any person who violates the confidentiality of dependency and neglect records and information is guilty of a class 2 petty offense and may be fined up to \$300, §19-1-307(1)(c), C.R.S. Any person who improperly releases or willfully permits or encourages the release of data or information contained in the records and reports of child abuse or neglect to persons not permitted access to such information commits a class 1 misdemeanor and shall be punished pursuant to §18-1.3-501, C.R.S. (6 months in prison or \$500 fine or both).