BALANCING THE RIGHT TO PRIVACY AND THE RIGHT OF ACCESS: ACCESS TO CHILD-ABUSE RECORDS IN THE 50 STATES

By

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A THESIS PRESENTED TO THE GRADUATE SCHOOL
OF THE UNIVERSITY OF FLORIDA IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS IN MASS COMMUNICATION

UNIVERSITY OF FLORIDA

2003

ACKNOWLEDGMENTS

I would like to thank my mother for her constant love, support, and encouragement. She provided me with a strong role model; and always said I could do anything I put my mind to. I owe much of my success and character to her.

I would also like to thank my husband David for his love, patience, and humor. He supported me when I needed him to; and left me alone when I needed him to do that.

I would like to thank Dr. Linda M. Perry, my thesis committee chair, mentor, and friend. She sparked my interest in the Constitution and is a constant source of inspiration and guidance.

Finally, I would like to thank Dr. Bill F. Chamberlin and Dean John Wright, my thesis committee members. Dr. Chamberlin has given me unending encouragement and direction. He has acted as committee member, mentor, and friend. I would like to thank Dean Wright for his smiles, support, and comforting nature.

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KEY TO ABBREVIATIONS

GS General statements of confidentiality

CW Child-welfare agencies

CT Courts

GJ Grand juries

IA Investigating or service-providing authority

HC Health-care providers

PC Person placing child in custody

AA Authorized agencies

AC Accused

CG Child/guardian ad litem

SO State/local official

RS Researchers

AD Adoption administrations

AT Attorneys

CA Child advocacy centers

ME Coroners/medical examiners

CD Court-determined

DD Director-determined

FP Federal programs

RB Foster-care review boards

LE Law enforcement and corrections departments

EM Licensing/employment agencies

RP Mandatory or Adult Reporters

MP News Media and/or the Public

MS Miscellaneous

OS Other states

PR Parents

SR State registries

TG Tribal governments

Abstract of Thesis Presented to the Graduate School
of the University of Florida in Partial Fulfillment of the
Requirements for the Degree of Master of Arts in Mass Communication

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December 2003

Chair: M. Linda Perry
Major Department: Journalism and Communications

This thesis is a comprehensive study of the confidentiality laws that pertain to child-abuse records at the federal level and in the 50 states and the District of Columbia. With recent tragedies in the child-welfare systems in Florida, Illinois, and New Jersey, critics of those systems have called for openness and public access to these records in an effort to create greater accountability in the child-welfare system. The purpose of my study was to assess the current level of confidentiality required for those records throughout the nation; and to compare and contrast the states to one another and to the federal regulation. My study examined the statutes of all 50 states and the District of Columbia, the federal Child Abuse Prevention and Treatment Act; and the federal regulation issued by the U.S. Department of Health and Human Services regarding the confidentiality of child-abuse records.

To receive federal funding from the U.S. Department of Health and Human Services, each state must statutorily guarantee the confidentiality of child-abuse records.

However, while the Department of Health and Human Services offers guidelines in the Code of Federal Regulations as to whom the states may grant access to these records, the Department also allows for state discretion in deciding who may access the records. Therefore, the major difference in the states' confidentiality procedures is the number of parties granted access; and which parties are granted access.

This thesis compared the states and the federal regulation based on categories of parties granted access to child-abuse records. The analysis showed that Florida and New Jersey (two states profiled in the national news as a result of tragedies in the child-welfare systems) were the two most open states, allowing access to the most categories of parties. Therefore, while the right of access to government-held information is fundamental to American democracy, it is unclear whether the confidentiality law is the root of the problem of child-welfare system breakdowns.

CHAPTER 1
A SYSTEM OF FAILURES

Introduction

In April 2002, the Florida Department of Children and Families (DCF) was notified that a child in the foster-care system was missing. Rilya Wilson had last been seen in January 2001, more than a year before DCF learned she was missing.[1] According to her grandmother, with whom she was residing, Rilya was taken by someone claiming to be a DCF caseworker.[2] The Rilya Wilson case prompted an investigation of the child-welfare system in Florida, which resulted in the identification of more than 500 children missing in the system.[3]

At the same time as this investigation, Florida Governor Jeb Bush ordered another inquiry into DCF records as a result of news reports that "one in three children in state care was prescribed psychotropic drugs."[4] The second inquiry revealed that most of DCF child-abuse and -neglect[5] records (hereinafter child-abuse records) were incomplete, were

[1] *DCF chief says progress made in finding kids*, GAINESVILLE SUN, Sept. 13, 2002. Rilya Wilson was still missing at the time of this writing.

[2] *Supra* note 1.

[3] *Id.*

[4] *Foster care case files incomplete*, The GAINESVILLE SUN, July 1, 2002. Psychotropic drugs are drugs that "act on the mind," Merriam-Webster's Collegiate Dictionary.

[5] Child abuse is defined as "Intentional or neglectful physical or emotional harm inflicted on a child, including sexual molestation; esp., a parent's or caregiver's act or failure to act that results in a child's exploitation, serious physical or emotional injury, sexual abuse, or death," A HANDBOOK OF FAMILY LAW TERMS 5 (Bryan A. Garner ed, Black's Law Dictionary Series, 2001). Child neglect is defined as "The failure of a person responsible for a minor to care for the minor's emotional or physical needs," *Id.* at 402.

incorrectly filed, and did not include the physical locations of the children.[6] The investigation also determined that some DCF foster-care workers falsified many of the reports generated by mandatory foster home visits.[7]

Bush's administration has taken actions to improve the child-welfare system and better protect children. These actions include implementing privatization of the child-welfare system. According to an evaluation of privatization efforts in the state of Florida, "one of Florida's responses to ensuring the safety and well being of children in its child-welfare system is Community-Based Care (CBC)."[8] This privatization effort places not-for-profit organizations as lead agencies in a Community Alliance, a group of organizations that serve the needs of children and families in the Alliances community (which can include several counties). The DCF hopes that this effort will have significant positive effects on the services provided to children and families in need.[9]

The CBC is a proposed systemic solution. However, Bush also took several actions in response to the specific problem of the missing children, including Rilya

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[6] *Supra* note 4.

[7] *Id.*

[8] ROBERT I. PAULSON ET AL., EVALUATION OF THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES COMMUNITY-BASED CARE INITIATIVE IX (2003), *available at* http://www5.myflorida.com/cf_web/myflorida2/healthhuman/publications/docs/cbc_report_091503.pdf. The Florida DCF contracted with the University of South Florida Louis de la Parte Florida Mental Health Institute (FMHI) to evaluate the four counties that were participating in CBC during the 2000-2001 fiscal year. Those counties were Sarasota, Manatee, Pinellas, and Pasco counties. The DCF continued the contract with FMHI in 2002-03, and expanded the evaluation to include all the counties that had implemented CBC during the 2001-2002 fiscal year. *Id.*

[9] FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, COMMUNITY-BASED CARE: COMMUNITIES BUILDING BETTER LIVES FOR FAMILIES (2000), *available at* http://www5.myflorida.com/cf_web/myflorida2/healthhuman/cbc/aboutcbc.html.

Wilson. Bush ordered monthly visits by DCF to every child in state custody.[10] He also created a "Blue Ribbon Panel" of four individuals to make recommendations to improve the child-welfare system.[11] Perhaps Bush's strongest action was to order DCF to request permission from the Second Judicial Circuit court to release heretofore confidential information on the missing children (and any children who may become missing) to aid in the search.[12] The DCF has been statutorily prohibited from releasing child-abuse case-file information (particularly names and other personally identifiable information) to the press or public. The court allowed DCF to release the information on the children currently identified as missing, but required DCF to file additional petitions on other children only after they were identified as missing.[13]

While the request to release the confidential information was an attempt to expedite the search for the missing children,[14] this action could lead to all child-abuse records being presumptively open to the public in the future, especially in a state that historically has led the fight for the right of access to government-held information.[15]

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[10] *State failed to visit 1,841 children in June*, THE GAINESVILLE SUN (July 07, 2002) *available at* www.sunone.com/archives.

[11] The Governor's Blue Ribbon Panel on Child Protection, The Governor's Office, (Dec. 5, 2002), *available at* http://www.myflorida.com/myflorida/government/otherinfo/blueribbon.html.

[12] *Bush OKs relaxing DCF privacy restrictions*, THE GAINESVILLE SUN (Aug. 30, 2002) *available at* www.sunone.com/archives.

[13] *Circuit Court of the Second Judicial Circuit in and for Leon County, Order Allowing Disclosure of certain records relating to abused and neglected children*, Case # 02-2090 (Sept. 13, 2002). *See also* Introduction and Petition for disclosure of confidential records, 02CA2090.

[14] *Id.*

[15] *See generally* Marion Brechner Citizen's Access Project (Dec. 5, 2002) *available at* http://www.citizenaccess.org.

Similar problems with child-welfare services have also arisen in other states. Most notably, New Jersey has been in the national spotlight as much as Florida. In April 2003, more than a dozen New Jersey child-welfare records were made public in response to a court action brought by the *New York Times*.[16] The files, which concerned 17 children, were turned over to Children's Rights, Inc., as confidential discovery information after that organization brought suit against the New Jersey Department of Youth and Family Services (DYFS), alleging a "systemic failure"[17] of the foster-care system. *The Times* argued that "it is [the *Times'*] hope that informing the public would place DYFS under public scrutiny and thereby encourage or facilitate an overhaul of the child-welfare system to improve the lives of the state's most vulnerable children."[18] A federal district court judge ordered that these records could not be kept confidential, but should be a matter of public record. For the *Times* "to thoroughly investigate and report comprehensively to the public," Judge John H. Hughes said in his order, "it is imperative that the Interveners obtain as much relevant information as possible."[19]

Included in the released documents were social workers' notes made during family visitations, medical records, interoffice emails and memos, and interviews with siblings of a child who had died as a result of abuse.[20] The interoffice communication was particularly strong support for public access to child-abuse records. One e-mail

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[16] Richard Lezin Jones and Leslie Kaufman, *New Jersey Shows Failures of Child-welfare system,* N.Y. Times (April 15, 2003), *available at* www.nytimes.com.

[17] Charlie and Nadine H. v. Christine Todd Whitman, 213 F.R.D. 240, 243 (D.N.J. 2003).

[18] *Id.*

[19] *Id.* at 248.

[20] *Id.*

released as part of these records included an admission to consistent errors and showed severe resignation, if not apathy by a child-welfare worker.[21]

Illinois also was in the national spotlight after concerns were raised there about children in foster care. In January 2003, police found six children, former wards of the state who had been returned to their parents, locked in a basement without heat, food, or toilet.[22] The next day, in a separate incident, police found another child, a 3-year-old boy, in Cook County "chained by the neck to a bed in a foster home," along with cocaine, cannabis, and unregistered firearms in the home.[23]

In response to these reports, Patrick T. Murphy, the public guardian for Cook County, said, "the problems were endemic to child-welfare systems nationwide."[24] Murphy's suggestions for improving the system included distributing the responsibilities of investigation, foster-care placement, and adoption to different agencies; reducing the number of children allowed in one foster-care home; and loosening the confidentiality laws in order to increase accountability.

Other states also struggle with the need for accountability and the importance of maintaining the privacy of families and children. In the last three years, officials in Arizona, California, Georgia, Iowa, and Michigan have suggested loosening the

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[21] *Id.* The e-mail, which referred to a recently discovered error in the computer system, read, "Have those corrections made, do your own, or do nothing. I've accepted that most of what we put on SIS is wrong, and I'll get over it." *Id.*

[22] *Id.*

[23] Jodi Wilgoren, *"Illinois Miracle" Disputed After Child-Abuse Cases*, N.Y. TIMES (Jan. 28, 2003), *available at* www.nytimes.com.

[24] *Id.*

confidentiality restrictions on child-abuse records.[25] These cries for more access to child-abuse records come close on the heels of high-profile cases with extensive press coverage in states such as Florida, Illinois, and New Jersey.

However, releasing information from child-abuse case reports could be an invasion of the children and families' privacy. There must be a balance between the public's right to access this information in order to hold these agencies accountable, and maintaining confidentiality in order to preserve the children's and families' right to privacy. This thesis will explore the balance the federal and state governments currently strike between these competing rights.

Thesis Overview

This chapter provided an introduction to the issues surrounding the confidentiality of child-abuse records. Chapter 2 explores the principles at the foundation of the individual's right to privacy and the public's right of access to government-held information in the context of American democracy. Chapter 3 discusses the relevant literature and offers the research questions that this thesis poses. Chapter 4 outlines the methodology used to answer these questions. Chapter 5 discusses the federal laws and regulations that address the confidentiality of child-abuse records. Chapter 6 analyzes the state statutes that regulate the confidentiality of those records. Chapter 7 offers conclusions from the analysis, recommendations for policies relevant to child welfare, and suggestions for further research.

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[25] See generally Lisa Cassidy, *Iowa Lawmakers Consider Easing Child-Abuse Confidentiality Laws*, Iowa State Daily via University Wire, Feb. 25, 2000; Stan Darden, *Georgia Child Aid Reaction is Mixed*, CHATANOOGA TIMES, Feb. 14, 2000; Ann McGlynn, *Some States Open Records in Abuse Deaths*, DES MOINES REGISTER, Feb. 8, 2000; Lynn M. Krupnik, *Legislative Review: Child Protective Services; Record Confidentiality*, 27 ARIZ. ST. L.J. 375; William Wesley Patton, *Pandora's Box: Opening Child Protection Cases to the Press and Public*, 27 W. ST. U.L. REV. 181 (1999 / 2000).

CHAPTER 2
DEMOCRATIC THEORY AND INDIVIDUAL RIGHTS

The right to privacy and the right of access to government-held information may be considered natural rights essential to a democracy as envisioned by the founders of the United States. Libertarian philosophers heavily influenced the founders and, thus, American democracy. The evidence of such influence can be found in the Declaration of Independence. Thomas Jefferson and James Madison, among other founders, drew heavily on the concept of natural rights articulated by Thomas Hobbes and John Locke.

In the *Elements of Law*, Hobbes wrote, "… [I]t is not against reason that a man doth all he can to preserve his own body and limbs, both from death and pain. And that which is not against reason, men call RIGHT. …"[1] Hobbes further defined natural rights as "the Liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature, that is to say, his own Life; and consequently of doing any thing, which in his own Judgment, Reason, he shall conceive to be the aptest means thereunto."[2] Hobbes said that this natural right is derived from man's natural impulse to survive.

Hobbes posited that if every man were left to independently exercise his own rights, the free exercise of these rights would infringe on others' rights and war would ensue. In order to have peace, men must enter into a social contract, promising to lay

[1] THOMAS HOBBES, ELEMENTS OF LAW 55 (1640) (emphasis in original).

[2] THOMAS HOBBES, LEVIATHAN 189 (C.B. MacPherson ed., Penguin Books 1985) (1651).

down certain rights and to transfer those rights to a sovereign, whose duty it is to ensure the "safety of the people." But safety is not meant as "a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe."[3]

John Locke built on Hobbes' concept of natural rights and the social contract by asserting that men are born into a "*State of Perfect Freedom* to order their Actions, and dispose of their Possessions, and Persons as they think fit…"[4] Locke said these rights exist in the "*State of Nature*," but when another moves to take one's powers, men are in a "*State of War."* In order to avoid a state of war, Locke said, men may choose to leave the state of nature for *Society*.

However, Locke did not believe that men gave up all rights when entering into society. He said that the "*Liberty of Man, in Society*, is to be under no other Legislative Power, but that established, by consent, in the Common-wealth, nor under the Dominion of any Will, or Restraint of any Law, but what the Legislative shall enact, according to the Trust put in it."[5] Locke names Life and Property as defining this liberty or freedom of man under government.[6]

Locke also posited that everyone, exercising his or her natural right to join a society, then becomes obligated to every other member of that society by agreeing that

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[3] *Id.* at 376.

[4] JOHN LOCKE, THE SECOND TREATISE OF GOVERNMENT 269 (Peter Laslett ed., 2003) (1698).

[5] *Id.* at 283-284.

[6] *Id.* Ch. IV-V.

majority opinion will rule.[7] Men that are free in nature, according to Locke, agree to this in an effort to preserve their "Lives, Liberties, and Estates."[8]

The effects of these two philosophers on the founders are evident in the Declaration of Independence and the Constitution. In the Declaration of Independence Thomas Jefferson wrote,[9] "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[10] The preamble of the Constitution echoes the social contract theory set forth by Hobbes and Locke, "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Madison, a primary author of the Constitution and the Bill of Rights,[11] was instrumental in the introduction of the Ninth and Tenth Amendments, which make clear that certain rights are not transferred to the government, but are retained by the people.[12]

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[7] *Id.* at 332.

[8] *Id.* at 350.

[9] While Thomas Jefferson was the primary author of the Declaration of Independence, the document was the product of a committee formed by the Continental Congress. The Committee included John Adams and Benjamin Franklin, Roger Sherman, and Robert Livingston. George Anastaplo, *Abraham Lincoln and the American Regime: Explorations*, 35 VAL. U.L. REV. 39, 71 (citing 4 JOURNALS OF CONTINENTAL CONGRESS: 1774-1789 229, 431 (Worthington Chauncey Ford ed., 1906).

[10] DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

[11] *See* e.g., David A. Straus, *Commentary: The Irrelevance Of Constitutional Amendments* 114 HARV. L. REV. 1457, 1473 (2001); Edward Hartnett, *A "Uniform And Entire" Constitution; Or, What If Madison had Won?*, 15 CONST. COMMENTARY 251 (1998).

[12] U.S. CONST. amends. IX-X.

The theories of natural rights, liberty, and self-government are the foundations of American democracy and individual rights. This concept was reaffirmed by the U.S. Supreme Court in a landmark privacy case in 2003: "Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct."[13] In his opinion for the Court, Justice Anthony Kennedy was articulating the principle that at the seat of a democracy is the sovereign individual—the idea that all participants in a system of popular sovereignty are autonomous. Popular sovereignty in the United States is a system in which the government derives "its just powers from the consent of the governed."[14] The framers guaranteed our popular sovereignty by instituting a republican democracy with a system of elections for choosing government representatives and officials.[15]

Each citizen, by electing their representatives, becomes an active participant in the government. To be an effective participant in democracy, an individual must be free to think and believe according to his or her conscience and then to vote in whichever way he or she chooses. This autonomous participant is the sovereign individual.

Because the sovereign individual is integral to popular sovereignty, individual rights must be guaranteed. Among these rights are those specifically enumerated in the

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[13] Lawrence *et al.* v. Texas, No. 02-102 (2003) Lexis page 8, ___ U.S. ___ (2003).

[14] DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

[15] The members of the House of Representatives are chosen "by the people" every two years, U.S. CONST. art. I, § 2, cl. 1; the Senate is composed of two representatives from each state who are elected by the people of the respective states every six years, U.S. CONST. art. I, § 3, cl. 1 and U.S. CONST. amend. XVII; the executive power of the government, being invested in the president, is selected indirectly by the people through an electoral college every four years, U.S. CONST. art. II, § 1. The elected president nominates and, with the "advice and consent of the senate," appoints Supreme Court justices and other federal judges, U.S. CONST. art II, § 2, para. 2.

Bill of Rights, such as the freedom of speech and of the press, the freedom of religion, the freedom to peacefully assemble, the right to bear arms, and the right to be safe from unwarranted government intrusion.[16] Madison recognized that including a list of specific individual rights could endanger the rights not specifically mentioned. He attempted to preempt this with the inclusion of the Ninth Amendment, which states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[17] In his presentation of this amendment, Madison said,

> It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution [the Ninth Amendment]. [18]

So, in addition to those rights specifically enumerated in the Constitution, other rights, such as privacy and the right of association, are implied by the Constitution and have been recognized by the Supreme Court. Sometimes when the Court has failed to recognize certain rights, they have been conferred by legislative fiat, such as the right of access to government-held information.

Individual rights often collide, such as the right of privacy and the right of access to government information, particularly when the government information contains personal facts about individuals. For example, the families and children that are investigated and cared for by the state welfare agencies that investigate child-abuse

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[16] U.S. CONST. amends. I-X.

[17] U.S. CONST. amend. IX.

[18] I ANNALS OF CONGRESS 439 (Gales and Seaton ed. 1834).

reports in the 50 states have a natural right to privacy further guaranteed by the confidentiality provisions in child-protection statutes, but self-governing citizens of the states have a right of access to information held by those governmental bodies.

The following sections will discuss more fully the right to privacy and the right of access to government information and how these rights can be in direct competition in a constitutional democracy.

The Right to Privacy

While the right to privacy is not explicitly mentioned in the Constitution, the Court recognized a constitutional right of privacy in 1965.[19] In *Griswold v. Connecticut*, the Court acknowledged there are some rights guaranteed by the Constitution that are not specifically mentioned. These rights are "peripheral" to those enumerated, but without them, "the specific rights would be less secure."[20] Using this principle, the *Griswold* Court anchored the right to privacy in the "penumbras" of the Bill of Rights.[21]

Justice William O. Douglas, writing for the Court, said that the First Amendment has been held to guarantee a right of association, a form of privacy.[22] The Third Amendment, by prohibiting the government's quartering troops in private homes, secures another "facet" of privacy.[23] The Fourth Amendment also guarantees a form of privacy

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[19] Griswold et al. v. Connecticut, 381 U.S. 479 (1965). Prior to the *Griswold* decision the Court had begun to carve out the area of decisional privacy but had not articulated it as such. In *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Court applied the First Amendment to a parent's right to choose his or her child's education. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Court said the government could not prohibit the study of the German language in private school.

[20] 381 U.S. at 482.

[21] *Id.* at 484.

[22] *Id.* at 483 (citing NAACP v. Alabama, 357 U.S. 449).

[23] 381 U.S. at 483.

by guarding against unreasonable searches and seizures and by guaranteeing the "right of the people to be secure in their persons, houses, papers, and effects." The Fifth Amendment's prohibition against self-incrimination also creates a zone of privacy. Finally, the Court noted that the Ninth Amendment guarantees that the enumerating of individual rights by the first eight amendments in no way denies or transfers to the government other individual rights held by the people.[24] This infers that there are indeed other rights not specifically mentioned, such as the right to privacy.

In a concurring opinion, Justice Goldberg discussed further the principle behind the Ninth Amendment. Goldberg asserted that "the Ninth Amendment shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments and an intent that the list of rights included there not be deemed exhaustive."[25] Goldberg further asserted that judges do not hold the sole opinion when deciding which rights are fundamental, but rather judges must look to the "traditions and [collective] conscience of our people" to see what is "ranked as fundamental."[26]

Following *Griswold* the Court expanded the reach of the right to privacy. The Court held the decision between a woman and her doctor is a fundamental right under the

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[24] The Ninth Amendment reads, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. CONST. amend. IX.

[25] 381 U.S. at 492 (Goldberg, J., concurring, citing James Madison, I Annals of Congress 439).

[26] 381 U.S. 479, 493 (Goldberg, J., concurring, quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105). The Court has recognized the importance of public consensus in other areas as well. *See* Atkins v. Virginia, 536 U.S. 304, 312 (2002) (discussing the Eighth Amendment prohibition of cruel and unusual punishment in relation to the executions of the mentally retarded, the Court said, "The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.").

Fourteenth Amendment's concept of personal liberty.[27] In *Moore v. City of East Cleveland*,[28] the Court protected family privacy and extended the right beyond the nuclear family to the extended family when it held that a state could not decide what relatives could reside together. In *Whalen v. Roe,* a New York regulation requiring a filing system for all prescriptions of controlled substances was challenged on the grounds that it violated patients' right to personal privacy. The Court agreed that there is indeed a right to personal privacy; however, the Court found that the compilation of these records did not infringe upon that right because the law allowed for only limited disclosures.[29]

Since *Griswold*, the right of privacy has been recognized not only by the Court, but also by Congress. Congress passed the Privacy Act of 1974, which protects an individual's right to privacy by regulating the maintenance and distribution of personal information collected by the federal government in computer databases.[30] The Freedom of Information Act, a federal law guaranteeing citizens access to government-held information, contains several exemptions, including any "personnel and medical files and

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[27] Roe v. Wade, 410 U.S. 113 (1973). The Fourteenth Amendment reads, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws, U.S. CONST. amend. XIV sec. 1.

[28] 431 U.S. 494 (1977). The case challenged a city housing ordinance that limited occupancy of a dwelling unit to members of a single family but defined family in such a way that a grandparent and grandchild could not live together. *Id.*

[29] 429 U.S. 589 (1977).

[30] 5 U.S.C. § 552a (2003).

similar files[,] the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."[31]

The Right of Access to Government-held Information

Just as privacy is a fundamental right necessary to a democratic society, so is the right of access to government-held information. Popular sovereignty is based on the idea that the governed choose their representatives, participate in policy decisions, and hold their representatives accountable. To meet these responsibilities, the citizenry needs to be well informed, and the right of access to government-held information secures the ability of citizens to be well informed.

Madison believed access to information was essential to democracy:

> A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.[32]

Justice Stevens reiterated Madison's beliefs when he argued for constitutional protection for the right of access. "Without some protection for the acquisition of information about the operation of public institutions … by the public at large, the process of self-governance contemplated by the Framers would be stripped of its substance."[33]

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[31] Freedom of Information Act, 5 USCS 552(b)(6)(2003).

[32] *James Madison Letter to W.T. Barry*, August 4, 1822, IX THE WRITINGS OF JAMES MADISON 103 (G. Hunt ed. 1910).

[33] Houchins, Sheriff of the County of Alemeda, California v. KQED, INC., ET AL., 438 U.S. 1, 31 (1978) (Stevens dissenting). This case involved reporters' access to government information. *Id.* Justice Burger, joined by Justices White an dRehnquist, announced the opinion of the court; Justice Stewart filed a concurring opinion; Justice Stevens, joined by Justices Brennan and Powell, filed a dissenting opinion; Justices Marshall and Blackmun did not participate in the consideration or decision of the case. *Id.*

This fundamental right of access to information concerning the workings of the government has limited guarantees in the Constitution as currently recognized by the Supreme Court. The legislative and executive branches are required to periodically report activities and spending.[34] In addition to these requirements, the Constitution, through its Sixth Amendment, guarantees defendants the right to a public trial,[35] and the Supreme Court has identified a First Amendment right of access to the courts and court records. In *Richmond Newspapers, Inc. v. Virginia*, the Court held that the First Amendment requires criminal trials be open to the public in order to prevent corruption, or the appearance of corruption, in the court system.[36] The Court later held that the right of access to the courts extended to voir dire[37] and preliminary hearings.[38]

While there are no other direct references in the Constitution to guarantee the public access to information held by other branches of government, the First Amendment[39] has been recognized by the Supreme Court as protecting other key rights necessary for self-government. For example, the First Amendment protects the rights of free speech and free press, particularly when they relate to public affairs. Justice William

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[34] See U.S. CONST. art. I, § 5; Congress is required to "keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy," and the roll call will be published at the urging of at least one-fifth of the members present. *Id.* at para. 3. The president "shall from time to time give to the Congress Information of the State of the Union." *Id.* at art. II, § 3.

[35] U.S. CONST. amend. VI.

[36] 448 US 555 (1980).

[37] Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I), 464 U.S. 501 (1984).

[38] Press-Enterprise Co. v. Superior Court (Press-Enterprise II), 478 U.S. 1, 11 (1986).

[39] U.S. CONST. amend. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." *Id.*

J. Brennan said free expression is "more than self-expression; it is the essence of self-government."[40]

One right essential to self-government that the Supreme Court has identified as existing within the First Amendment is the individual's right to receive information. The guaranteed rights of free speech and press protect the rights to distribute information and therefore "necessarily" protect the right to receive it.[41] In *Board of Education v. Pico*, Justice Brennan, in a plurality opinion,[42] wrote that a school board could not dictate the removal of certain books from school libraries because "the right to receive ideas is a necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom,"[43] thereby associating effective self-government and the right to receive information.

Although the Court has recognized this right to receive information, it has not recognized a right of access to government-held information. However, in 1966, Congress officially recognized this right by passing the Freedom of Information Act.[44] The Supreme Court has said the purpose of this legislation is "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny."[45] The

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[40] Garrison v. Louisiana, 379 U.S. 64, 74-75. (1964).

[41] *Martin v. Struthers*, 319 U.S. 141, 143 (1943). *See also*, Lamont *v.* Postmaster General, 381 U.S. 301, 308 (1965) (Brennan, J., concurring); Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976); First National Bank of Boston v. Belloti, 435 U.S. 765 (1978).

[42] 457 U.S. 853 (1982). Justice Brennan announced the opinion of the Court; Justices Marshall and Stevens joined his opinion; Justice Blackmun filed a concurring opinion. *Id.*

[43] *Id.* at 867 [emphasis by original].

[44] 5 U.S.C. 552 (2003).

[45] Department of Air Force v. Rose, 425 U.S. 352, 360 (1976) (quoting Michael T. Rose et al. v. Department of the Airforce, 495 F. 2d, 263 (1974) (2d Cir.)).

FOIA requires that records held by federal agencies[46] and not specifically exempt must be provided promptly upon request.[47]

In addition, all 50 states now have a statutory right of access to information held by their government agencies. Several of the states have tied the right of access to the fundamental principles of American government. For example, Illinois legislators wrote in the preamble to their access laws that the right of access to government information is "necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest."[48]

Competing Rights

Many times, individual rights come into conflict with one another. The right to access government-held information and the right to privacy can be in stiff competition, particularly when the government-held information pertains to individuals. Congress

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[46] 5 U.S.C. § 551(1). An agency is defined as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency." However, this does not include:

(A) the Congress;
(B) the courts of the United States;
(C) the governments of the territories or possessions of the United States;
(D) the government of the District of Columbia;
or except as to the requirements of section 552 of this title--
(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
(F) courts martial and military commissions;
(G) military authority exercised in the field in time of war or in occupied territory; or
(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41 [41 USCS §§ 101 et seq.]; subchapter II of chapter 471 of title 49 [49 USCS §§ 47151 et seq.]; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix. *Id.*

[47] 5 U.S.C. §552(a)(3).

[48] 5 Ill. Comp. Stat. 140/1 (2003).

recognized this conflict and enacted exemptions to the Freedom of Information Act[49] in order to keep certain information out of the public domain. For example, information gathered from "medical and personnel files and similar files" and law enforcement compilations are exempted when release of such records would be "a clearly unwarranted invasion of personal privacy."[50]

These conflicts require the courts to balance the public's right to receive information against the individual's right to privacy.[51] In *United States Department of*

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[49] 5 U.S.C. § 552(b). This subsection reads:
(b) This section does not apply to matters that are--
(1)
(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
(2) related solely to the internal personnel rules and practices of an agency;
(3) specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
(9) geological or geophysical information and data, including maps, concerning wells.

[50] *Id.* at (6)-(7).

[51] Department of Air Force v. Rose, 425 U.S. 352, 372 (1976).

Justice v. Reporters Committee for Freedom of the Press,[52] a CBS news correspondent and the Reporters Committee for Freedom of the Press requested a federal rap sheet from the Department of Justice under the FOIA.[53] The Court, citing the Privacy Act of 1974,[54] held that public disclosure of a federal rap sheet was an unwarranted invasion of privacy because it did not further the public's knowledge of the workings of the government.

This conflict exists not only at the federal level, but also at the state level. Even as states statutorily guarantee the right of access, states also statutorily guarantee that certain records remain confidential in order to protect individuals' right to privacy.[55] For example, child-protection records receive confidential status in every state. These records are kept confidential in an effort to protect child-abuse victims and to encourage citizens to report suspected child abuse without fear of retribution or media attention.[56]

As incidences of child-abuse tragedies increase and gain media attention nationwide, citizens and the media have begun to challenge these confidentiality restrictions by asserting their right of access to information held by government entities.

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[52] 489 U.S. 749 (1989). The Court issued a similar decision in *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487(1994), holding that the Department of Defense was not required to disclose home addresses of employees because that information would not reveal anything about the activities of the Department.

[53] 489 U.S. 757.

[54] *Id.* at 766.

[55] Every state statutorily guarantees the confidentiality of child-abuse and –neglect records. Some states have also included privacy provisions in their constitutions. *See, e.g.*, Alaska Const. art. I, section 22; Ariz. Const. art. II, section 8; Cal. Const. art. 1, section 1; Fla. Const. art. I, sections 12, 23; Haw. Const. art. 1, section 6; Ill. Const. art. I, section 6; La. Const. art. I, section 5; Mont. Const. art. II, section 10; N.Y. Const. art. I, section 12; S.C. Const. art. I, section 10; Wash. Const. art. I, section 7.

[56] A Maryland appellate court, discussing the Maryland statute that guarantees the confidentiality of child-abuse records, articulated this effort: "The premise for the statute is to encourage reports of child neglect, concomitantly discourage incidents thereof, and simultaneously provide protection to those least able to protect themselves."

Those who want to loosen these restrictions believe that in doing so, public scrutiny of the state-run child-protection agencies will hold these agencies to a higher standard, resulting in fewer children “falling between the cracks” of the system.

This chapter has discussed the theory of individual rights and the specific, and often competing, individual rights of privacy and of access to government-held information. The next chapter reviews the literature discussing access to child-abuse records and related proceedings.

CHAPTER 3
LITERATURE REVIEW

Many articles in the popular press have discussed the child-welfare systems in various states, particularly when a tragedy has occurred.[1] However, there are few legal or scholarly articles that discuss the confidentiality of child-abuse proceedings and records.[2] The articles that do focus on this topic focus on one state, usually following a proposed change to the state's confidentiality statute. No books were found that discuss record confidentiality in child-abuse and -neglect proceedings. An on-line database, operated by the National Clearinghouse on Child Abuse and Neglect Information, offers the full text of statutes regarding all aspects of child-abuse and -neglect procedures, including confidentiality of records.

In a law review article, Heidi S. Schellhas, a juvenile court judge and previous legal counsel for guardians ad litem, discussed a Minnesota pilot program that opened

[1] See generally Lisa Cassidy, *Iowa Lawmakers Consider Easing Child-Abuse Confidentiality Laws*, Iowa State Daily via University Wire, Feb. 25, 2000; Stan Darden, *Georgia Child Aid Reaction is Mixed*, CHATANOOGA TIMES, Feb. 14, 2000; Ann McGlynn, *Some States Open Records in Abuse Deaths*, DES MOINES REGISTER, Feb. 8, 2000; Lynn M. Krupnik, *Legislative Review: Child Protective Services; Record Confidentiality*, 27 ARIZ. ST. L.J. 375; William Wesley Patton, *Pandora's Box: Opening Child Protection Cases to the Press and Public*, 27 W. ST. U.L. REV. 181 (1999 / 2000).

[2] *See generally*, Lynn M. Krupnik, Child Protective Services: Record Confidentiality, 27 ARIZ. ST. L.J. 375 (1995); William Wesley Patton, *Pandora's Box: Opening Child Protection Cases to the Press and Public*, 27 W. ST. U.L. REV. 181 (2000); Heidi S. Schellhas, Contributors *Open Child Protection Proceedings in Minnesota*, 26 WM. MITCHELL L. REV. 631 (2000); Chris A. Schutz, *Review of Selected 1997 California Legislation: Child Welfare: Lance's Law: Expanding Who May Look at Child Abuse Reports*, 29 MCGEORGE L. REV. 623, Spring 1998.

some child-protection hearings to the public in an effort to increase accountability.[3] A Foster Care and Adoption Task Force created by the Minnesota Supreme Court implemented the pilot study. The majority of the task force favored opening the proceedings because the presumptively "closed system concealed abuses and insufficient funding within the system."[4] However, the minority was concerned that opening the proceedings would cause the children to "suffer 'emotional harm and embarrassment' from media exposure of family secrets."[5] The pilot study designated limited jurisdictions in which juvenile court cases would be presumptively open during the study timeline. The National Center for State Courts was chosen to evaluate the study. It did this by reviewing case files, observing hearings, and interviewing participants, which included guardians ad litem, court administrators, judges, county attorneys, public defenders, and social workers.

Schellhas reported that participants in the study found very few difficulties in opening the proceedings but instead expressed concern at the low attendance at proceedings.[6] Schellhas asserted that keeping the proceedings open benefits both the system and the children the system is meant to protect. [7] She argued that the children benefit from the moral support provided by the presence of extended family and friends.[8]

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[3] Schellhas, *supra* note 80. This article was published before the end of the project's data collection and analysis phases. *Id.*

[4] *Id.* at 658.

[5] *Id.*

[6] *Id.* at 665.

[7] *Id.* at 666-670.

[8] *Id.* at 666.

She asserted that an audience in court proceedings makes it less likely for parents to falsely deny an allegation of drug abuse or child abuse when they know someone in the audience can refute it, or for witnesses to otherwise perjure themselves.[9] Finally, Schellhas argued that allowing the public to view the proceedings creates a higher level of public scrutiny of both the child-welfare agencies and the juvenile courts.[10]

Chris A. Schutz, in a law review article, documented the changes in child-abuse-record legislation in California following a child fatality that received national attention.[11] The changes entailed an expansion of the persons authorized to access child-abuse and neglect reports. Schutz reports that the parties added to the list were child-placement agencies, child-death review teams, Board of Prison Terms,[12] and anyone whose name appears in a report. Under each of these categories, Schutz describes the parties, their rights of access before the new law, and benefits and disadvantages of providing these parties access. Schutz concludes that while the legislature has, by way of increasing accountability, made the record system more accurate, the expansion of the number of persons authorized to access the records increases the likelihood that information will be leaked, possibly causing harm to persons who may have been falsely accused.[13]

In response to another legislative proposal in California, law professor William Wesley Patton, in his law review article, discussed the ramifications of opening child-

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[9] *Id.* at 667.

[10] *Id.* at 668-670.

[11] Schutz, *supra* note 1.

[12] The Board of Prison Terms pursues parole violations.

[13] *Id.* at 640.

protection hearings and records.[14] Patton asserted that a statute opening the hearings would add costs and time to the proceedings, because inevitably the children's counsel would move for the hearing to be closed in order to protect the child.[15] The courts are likely to respond by appointing psychologists to assess the child's state of mind, which would add both time and expense to court costs.[16] Patton further asserted that opening these hearings would damage the children more than help them. He argued that while the press contends it wants access so "the public can learn of the deplorable conditions and bring political pressure to change the system and assure more protection for children[,] … the bottom line for many publishers today is profit, not public education or governmental accountability."[17]

Patton also discussed the disadvantages to the child-abuse victims in releasing child-abuse records. He asserted that by releasing the names of prior child-abuse victims, those children would be "retraumatized" and any counseling the child had undergone could be undermined.[18] Patton also pointed out that if the names of these prior victims were made public, there could be damaging effects in adulthood because many agencies use such information to determine whether to issue a license to work with children, become adoptive or foster parents, or establish a custodial relationship.[19] As a result,

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[14] Patton, *supra* note 1.

[15] *Id.* at 184.

[16] *Id.*

[17] *Id.* at 187.

[18] *Id.* at 209.

[19] *Id.* at 208.

child-abuse victims could be unfairly denied a job based on personal information disclosed without their consent.

Lynn M. Krupnik, in a law review article, examined an act passed by the Arizona Legislature in 1994 that provided the courts with a test for determining whether to release confidential information included in child-abuse records.[20] Krupnik found that this test depends on the subjectivity of the judges and only improves the process by "directing courts to 'favor'" confidentiality over releasing the information.[21] In addition to providing this test, the new statute more fully defined who is entitled to receive confidential child-abuse and -neglect information.[22] Krupnik asserted that the act increased the legislature's access to confidential information while limiting the public's access. Krupnik argued that the increase in confidentiality "probably best serves" the children and other individuals in need of state protection.[23]

An on-line database operated by the National Clearinghouse on Child Abuse and Neglect Information allows users of the Web site to view full text of state statutes regulating disclosure of child-abuse records and reports.[24] In addition, the database displays broad categories of who may and may not access these records.

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[20] *See*. Krupnik, *supra* note 80.

[21] *Id.* at 387.

[22] *Id.* at 379.

[23] *Id.* at 384.

[24] Disclosure of Confidential Records, *Statutes-at-a-glance 2002*, National Clearinghouse on Child Abuse and Neglect Information, *available at* http://www.calib.com/nccanch/statutes/confide.cfm. Many of the statute citations, at the time of this writing, are more than a year old. This was not the source of statutes for this thesis. For a complete description of the method used, *see infra* p. 29.

These articles discussed the confidentiality of child-abuse records in relation to a specific state law or proposal. The National Clearinghouse database provides statutory citations and text, but does not offer comparisons or a discussion of the parties authorized to access child-abuse records. Nothing found in the literature compares the states to one another or to the federal regulation. Nor does any existing literature discuss the current state of the confidentiality laws in relation to calls for more openness after high-profile child-abuse tragedies. Also, nothing found in the literature offered nationwide recommendations for the confidentiality of child-abuse and –neglect records.

I discuss child-abuse records in the context of the federal law that requires state legislatures to guarantee by statute the confidentiality of these records. Specifically, I address the following questions:

- What is the state of the current federal law that regulates disclosure of child-abuse records?
- What is the effect, if any, of the federal law on the laws of the 50 states?
- What are the current laws of the 50 states in regard to confidentiality of child-abuse records?
- How do the 50 states compare to each other and to the federal law based on the parties authorized to access child-abuse records?

CHAPTER 4
METHODOLOGY AND DEFINITIONS

Methodology

To assess the level of confidentiality afforded to child-abuse records nationwide, the controlling federal laws (the Child Abuse Prevention and Treatment Act and the corresponding federal regulation) and all 50 states' relevant statutes will be analyzed for the number of parties specifically given access to these records. The federal laws will be used as a benchmark for the state statutes in this analysis, because they make federal funding contingent on states' statutorily providing for the confidentiality of child-abuse records, and because the federal laws provide guidelines for the states. The state statutes will be compared and contrasted to each other and the federal regulation based on the number categories of parties each state has permitted to access these records. Definitions of the categories used are provided later in this chapter.

In order to find the relevant statutes, a state-by-state legislative search in LexisNexis Law was conducted using the following search terms: "'child abuse' AND 'records'"; "confidential records"; "child abuse reports"; and "child abuse." In some states when relevant statutes did not appear in the search results, the states' legislative tables of contents were searched for statutes relevant to child-protection records. The statutes were then further scrutinized for references to the confidentiality of child-abuse records.

Categories and Definitions

The following is a list of categories used in the analysis of the state statutes. The categories consist of the parties permitted access to child-abuse records by the federal regulation, state statute, or both. Many categories are self-defining; however, for those categories that are not, a definition has been provided.

- **Accused**—the suspected perpetrator of child abuse and/or neglect.
- **Adoption administration**—agencies that certify prospective adoptive parents.
- **Attorneys**—attorney of all parties involved in the child-abuse investigation, including the agencies' attorneys, state prosecutors, the child's parents' attorneys, and, if the alleged perpetrator is not a parent, the perpetrator's attorney.
- **Authorized agencies**—agencies that "diagnose, care for, treat, or supervise a child who is the subject of a report;"[1] this was interpreted to include education facilities and mental-health facilities.
- **Child advocacy centers**—agencies that advocate on behalf of children whom are suspected to have suffered abuse. Services may include assistance to state agencies in investigations, counseling, court advocacy, and training of child-welfare investigators. These agencies are usually non-profit organizations, recognized or certified by some state or local government agency and may receive funding from the state to continue their services.
- **Child-welfare agency**—the state agency authorized to receive and investigate reports of suspected abuse.
- **Child/guardian ad litem**—the child that is the subject of the abuse report, or his/her guardian ad litem, a "guardian, [usually] a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party."[2]
- **Coroners or medical examiners**
- **Courts**—this includes judges and all court officials in their official capacity.

[1] 45 C.F.R. 1340.14(i)(2)(vii) (2003).

[2] A HANDBOOK OF FAMILY LAW TERMS 279 (Bryan A. Garner ed, Black's Law Dictionary Series, 2001).

- **Court determined**—any additional parties that the court declares have the right to access the child abuse reports; this could include the media and general public.

- **Director of the department**—release of the records is at the discretion of the director of the child welfare department or agency.

- **Federal programs**—the administration of federal programs or federally assisted programs that provide assistance on basis of need.

- **Foster-care review boards**—teams developed for the purpose of auditing the child-welfare agency; this included child fatality review boards and citizen review panels.

- **Grand juries**—a body of people that decides whether to issue indictments.[3]

- **Health-care providers**—includes general practitioners, dentists, psychiatrists, and psychologists.

- **Investigating or service-providing authority**

- **Law enforcement and corrections**—includes police departments, sheriff departments, parole and probation boards, intake and assessment workers, and the department of juvenile justice.

- **Licensing/employment agents**—agencies responsible for the licensing of child-care facilities and child protection service facilities; agencies or other state-authorized persons responsible for hiring or employing persons who will work with or care for children.

- **Mandatory or adult reporters**—those persons required by law to report suspected incidences of child abuse or neglect; other adults that report suspected abuse or neglect.

- **Miscellaneous**—administrative hearings, county, department of revenue, minister, parties in termination proceedings (any parties involved in dependency or parental termination proceedings), state facilities involved, health-plan payors, victims' compensation boards, developmental disabilities assistance, and public employees relations commission.

- **News media and/or the public**

- **Other states**—child-welfare agencies or licensing agencies in other states when acting in a professional capacity.

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[3] BLACK'S LAW DICTIONARY 706 (7th ed. 2003).

- **Parents**—natural parents of the child who is the subject of the report; foster and/or adoptive parents (current or prospective foster or adoptive parents).

- **Persons placing child in custody**—any person authorized to place a child in protective custody.

- **Researchers**—any entity "engaged in a bonafide research or evaluation project."[4]

- **State registries**—central registries that are used to collect and maintain data on child abuse and neglect reports.

- **State officials**—any government official acting in his/her professional capacity; includes local, state, and federal representatives (mayors, commissioners, state senators and legislators, federal congressmen and women, and any agency director or supervisor).

- **Tribal governments**—representatives of native american tribes.

This chapter defined the methodology and categories to be used in the following analysis. The Child Abuse Prevention and Treatment Act and its corresponding federal regulation are discussed in Chapter 5. The analysis and comparison of the 50 state statutes are reported in Chapter 6.

[4] 45 C.F.R. 1340.14 (i)(2)(xi). While each state that specifically grants access to researcher may place different restriction on this access, this serves as a general definition applicable to all states.

CHAPTER 5
FEDERAL LAWS

It was not until the mid-nineteenth century that child abuse came into the national spotlight as parents were criminally prosecuted for beating their children.[1] In 1874, the case of Mary Ellen hit the front pages of the *New York Times*. It was Mary Ellen's case that prompted private institutions to intervene in incidents of child abuse.

The government did not begin to actively protect children until the 1960s, after Dr. Henry Kempke published *Battered Child Syndrome* in 1962. Kempke, a pediatrician, identified certain injuries in children that could only result from abuse. Armed with this new knowledge, the states enacted legislation that required certain persons to report child-abuse incidents. By 1967, every state had such legislation.[2]

In 1974 Congress passed the Child Abuse Prevention and Treatment Act (CAPTA)[3] in an effort to create a "focused Federal effort to deal with the problem [of child abuse]."[4] This legislation created what is now known as the Department of Health and Human Services, which would fund state initiatives that followed the new federal

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[1] Susan Vivian Mangold, *Challenging the Parent-Child-State Triangle in Public Family Law: The Importance of Private Providers in the Dependency System*, 47 Buffalo L. Rev. 1397, 1424 (1999).

[2] *Id.* at 1429.

[3] Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified at 5 U.S.C. 8902 (1976)) (amended by 42 U.S.C. 5106a (1996)).

[4] *See* Child Abuse Prevention Act, 1973: Hearings on S. 1191 Before the Subcomm. on Children and Youth of the Senate Comm. on Labor and Public Welfare, 93d Cong. 2 (1973) (letter of Walter Mondale to Hon. Harrison A. Williams).

directives.[5] These directives involved state child-protective agencies' mandatory reporting, investigating, and keeping confidential records on these investigations. There were few states that, before 1974, met the standards demanded by CAPTA.

After the death of a New York boy named Adam Mann, whom child welfare officials knew had long suffered abuse, Congress in 1992 amended the CAPTA to loosen the confidentiality requirements so that records could be released to multidisciplinary fatality-review teams. Congress said that these teams would increase the level of accountability in child-welfare agencies.[6]

Currently, the Act makes federal funding for child-welfare programs contingent on the states' meeting several requirements. One of those requirements is the filing of annual reports with the secretary of the U.S. Department of Health and Human Services. These annual reports must include aggregate information about the state agency's activities such as the number of children reported to have been abused or neglected, the number of those reports that were substantiated, and the number of case workers responsible for all intake and assessment of the reports.[7] CAPTA further requires that the

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[5] Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4, 4(b)(2)(E) (1974).

[6] *See* Amendment of Child Abuse Prevention and Treatment Act (42 USCS §§ 5101 et seq.); congressional findings. Act Nov. 4, 1992, P.L. 102-586, § 9(a), 106 Stat. 5036 (2003).

[7] 42 U.S.C. 5106a(d) (2003). "Each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:
(1) The number of children who were reported to the State during the year as abused or neglected.
(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were--
(A) substantiated;
(B) unsubstantiated; or
(C) determined to be false.
(3) Of the number of children described in paragraph (2)--
(A) the number that did not receive services during the year under the State program funded under this section or an equivalent State program;
(B) the number that received services during the year under the State program funded under this section

secretary of Health and Human Services prepare a report based on all of the states' annual reports and present it to Congress and the National Clearinghouse on Child Abuse and Neglect Information.[8]

Another requirement CAPTA places on states receiving federal funding is providing methods to "preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians." The Act, providing general guidelines, allows for access to records by

> …[I]ndividuals who are the subject of the report; federal, state, or local government entities, or any agent of such entities; child abuse citizen review panels; child fatality review panels; a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and other entities or classes of

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or an equivalent State program; and

(C) the number that were removed from their families during the year by disposition of the case.

(4) The number of families that received preventive services from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7) The number of child protective services workers responsible for the intake and screening of reports filed in the previous year.

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made.

(10) The number of child protective services workers responsible for intake, assessment, and investigation of child abuse and neglect reports relative to the number of reports investigated in the previous year.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse and neglect, including the death of the child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

(13) The annual report containing the summary of the activities of the citizen review panels of the State required by subsection (c)(6).

(14) The number of children under the care of the State child protection system who are transferred into the custody of the State juvenile justice system. " *Id.*

[8] *Id.* at (e).

> individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose.[9]

The corresponding federal regulation, issued by the U.S. Department of Health and Human Services, provides states with more specific guidance.[10] This regulation requires that the states, along with meeting other requirements, must "provide by statute" that all child-abuse records are confidential and "that their unauthorized disclosure is a criminal offense."[11] The regulation does provide that certain parties, at the discretion of the state, may access child-abuse records or reports.[12] This federal regulation also allows the states discretion to allow for disclosure of information in child-abuse records to additional persons, "for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specific categories of child related activities or employment."[13]

The parties included in the federal regulation to whom agencies may disclose child-abuse records are agencies receiving and investigating child-abuse reports, a court, a grand jury, an agency investigating a report, a person legally able to place a child in protective custody, a physician suspecting abuse, an agency authorized to "diagnose, care for, treat, or supervise a child who is the subject of a report,"[14] a subject of a report, a

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[9] Child Abuse Prevention And Treatment And Adoption Reform General Program, 42 U.S.C. 5106a(b)(2)(A)(viii) (2003).

[10] *See* Child Abuse and Neglect Prevention and Treatment, 45 C.F.R. 1340.14 (2003).

[11] *Id.* at (i)(1).

[12] *Id.* at (i)(2) (2003).

[13] *Id.* at (3).

[14] 45 C.F.R. 1340.14 (i)(2)(vii) (2003).

child named in the report, a government official responsible for overseeing the child protective services, and persons involved in bonafide research.[15]

These parties included in the federal regulation form the baseline for the comparison and analysis of the 50 states' statutes in the following chapter.

[15] *Id.* at (i)(2)(i)-(xi).

CHAPTER 6
COMPARATIVE GUIDE TO THE 50 STATES

All 50 states have a statutory provision safeguarding the confidentiality of child-abuse records and reports, meeting the requirements for funding set by the CAPTA[1] and the federal regulation.[2] Each state differs, however, on the number of parties, and which parties, are allowed to access those records. Most states specifically name the parties to whom these records may be released, but some states merely have a general statement of confidentiality, leaving disclosure to the discretion of the courts or the child-welfare agency officials.

This chapter will compare the states' statutes through a discussion of the categories of parties named by each of the states. This analysis will begin with the categories defined in the federal regulation and continue with categories of parties that states have added under the discretion allowed by the federal regulation and Act.

General Statements of Confidentiality

Eight states do not include a specific list of parties having access to child-abuse records, but rather have general statement providing confidentiality for such records. For example, Virginia simply states that the information contained in the central registry

[1] CAPTA, 42 U.S.C. 5106a (2003).

[2] 45 C.F.R. 1340.14(i)(2).

"shall not be open to inspection by the public."[3] The other states that have only a general statement of law are Alaska, Delaware, Hawaii, Idaho, Louisiana, New York, and Ohio.[4]

Parties Defined in Federal Regulation

The following parties are identified in the federal regulation as parties that may have access to child-abuse and -neglect records if provided for by the states. These parties are child-welfare agencies, courts, grand juries, investigating or service-providing agencies, health-care providers, placement agencies, authorized agencies, the child or the child's guardian ad litem, state or local officials, and persons engaging in bona fide research. This section will discuss these parties and the states that provide access to them.

Child-Welfare Agencies

This category of parties, as defined in the federal regulation, includes the agency or organization "legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect."[5] Thirty-seven states[6] and the District of Columbia specifically identify the agency or employees of the agency as authorized to access child-abuse records. Other states' legislatures may not have found it necessary to specify this party because the agency would be the origin of the reports and so would necessarily have access to them.

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[3] Va. Code Ann. § 63.2-1515 (2003).

[4] Alaska Stat. § 47.17.040 (2003); 29 Del. C. § 9017 (2003); HRS § 350-1.4 (2003); Idaho Code § 16-1623 (2003). La. Ch.C. Art. 616 (2003); 18 NYCRR § 465.1; ORC Ann. 5153.17 (2002).

[5] 45 C.F.R. 1340.14(i)(2)(i).

[6] The states that grant access to child-welfare agencies are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

Courts

The federal regulation states generally that courts shall have access under terms set forth by the individual states.[7] Thirty-one states[8] specifically mention the courts or court officials as parties to whom disclosure of child-abuse records may be made. For example, South Carolina specifies that "family courts conducting procedures" relevant to child abuse and neglect may access child-abuse records. [9]

Grand Juries

Grand juries are one of the parties authorized by the federal regulation. Only 17 states[10] make this identification, and many impose further requirements on grand juries. For example, New Hampshire requires that a grand jury must determine that access to the records "is necessary in the conduct of its official business."[11] Similarly, West Virginia requires grand juries to find that access to the records "is necessary for the determination of an issue" before it.[12]

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[7] *Id.* at (2)(ii).

[8] The states that grant access to courts are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Mississippi, Montana, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Wisconsin, and Wyoming.

[9] S.C. Code Ann. § 20-7-690(B)(10) (2003).

[10] The states that grant access to grand juries are Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Indiana, Maine, Michigan, Nevada, New Hampshire, New Jersey, South Carolina, Tennessee, West Virginia, Wisconsin, and Wyoming.

[11] RSA 170-G:8-a II(a)(7) (2002).

[12] W. Va. Code § 49-7-1(c)(5) (2003).

Health-Care Providers

Thirty-one states[13] and the District of Columbia allow physicians, dentists, nurses, or other hospital or medical personnel to access child-abuse records. The federal regulation and most state statutes specify that the physician must have before him or her a child he or she suspects has been abused or neglected. While the federal regulation mentions only physicians, some states have recognized other medical professionals. For example, New Jersey specifies, in addition to physicians, authorized members of the staff of "duly designated regional child abuse diagnostic and treatment centers"[14] and a "hospital director or his designate."[15]

The state of Florida is even more broad in its access, allowing the child-welfare agency (Florida Department of Children and Families) to release any information necessary for "professional persons" to diagnose and treat a child-abuse victim or perpetrator.[16]

Investigating or Service-Providing Authority

Twenty-eight states[17] allow access to investigating or service-providing agencies. For example, Montana's authorized parties include federal agencies, military enclaves,

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[13] The states that grant access to health-care providers are Alabama, Arizona, California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Wisconsin, and Wyoming.

[14] N.J. Stat. § 9:6-8.10a(b)(3) (2003).

[15] *Id.* at (b)(4).

[16] Fla. Stat. § 39.202(3) (2003).

[17] The states that grant access to investigating or service-providing agencies are Alabama, Arizona Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont, West Virginia, Wisconsin, and Wyoming.

and Indian tribal organizations that are "legally authorized" to investigate reports of abuse.[18] Montana also provides access for state advocacy programs[19] and interdisciplinary teams that formulate and monitor treatment plans for children and families.[20] California provides access to child-abuse records to interdisciplinary teams called "hospital scan teams," whose purpose is to identify child abuse or neglect.[21] These teams consist of health-care professionals, child-protective services employees, and law enforcement representatives.

Person Placing Children in Custody

The federal statute allows for a person who is legally authorized to place a child in protective custody to access child-abuse records. Ten states[22] also grant access to this party. The federal statute and most of the ten states place prerequisites on this party's access to the records. One prerequisite placed on persons authorized to place a child in custody is that the individual must have before him/her a child who the individual "reasonably" believes has been abused or neglected.[23] Another prerequisite is that the individual must need the records to provide care for the child.

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[18] Mont. Code Anno. § 41-3-205(3)(a) (2002).

[19] *Id.* at (3)(f).

[20] *Id.* at (3)(k).

[21] Cal Pen Code § 11167.5(a)(7) (2003).

[22] The states that allow access to persons placing a child in protective custody are California, Connecticut, Illinois, Indiana, Michigan, Nevada, New Jersey, North Dakota, Rhode Island, and Wyoming.

[23] 45 C.F.R. 1340.14(i)(2)(vi); Conn. Gen. Stat. § 17a-28(g)(3) (2001); Burns Ind. Code Ann. § 31-33-18-2(5) (2002); MCLS § 722.627(1)(d) (2002); NRS § 432B.290(1)(b) (2003); N.J. Stat. § 9:6-8.10a(b)(4) (2003); N.D. Cent. Code § 50-25.1-11(2) (2003); Wyo. Stat. § 14-3-214(b)(iv)(2003).

Illinois specifies only that the physician, a person authorized to place a child in protective custody, must need the records in order to determine whether to place the child in protective custody.[24] In contrast, California does not place any prerequisites for access to records on "personnel from an agency responsible for making a placement of a child."[25]

Rhode Island allows disclosure to "individuals or public or private agencies for the purposes of temporary or permanent placement of the person" at the discretion of the director of the child-welfare agency.[26]

Authorized Agencies

The federal regulation provides access to records to "an agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect."[27] These agencies are interpreted here to include educational and mental-health facilities. Twenty-five states recognize this category.[28]

For example, New Mexico allows school personnel to access records, but only when the records concern the child's "social or educational needs."[29] Similarly, Arizona

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[24] 325 ILCS 5/11.1(5) (2003).

[25] Cal Pen § 11167.5(b)(10) (2003).

[26] R.I. Gen. Laws § 42-72-8(b)(2) (2002).

[27] 45 C.F.R. 1340.14(i)(2)(vii).

[28] The states that grant access to authorized agencies are Arizona, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, and Utah.

[29] N.M. Stat. Ann.§ 32A-4-33(B)(11) (2003).

provides that the "department of education or a particular school district" may access child-abuse records in order to "provide services to a particular child."[30] New Hampshire also allows for educators to access records; however, the requisite conditions are stricter. New Hampshire specifically recognizes the "superintendent of schools for the school district in which the child named in the case record is then, or will, according to the child's case plan, be attending school."[31] Stricter still, New Hampshire allows this access only if the information is necessary to provide services to the child, and the release of such information will not harm the child.[32]

Subjects of the Report

The federal regulation allows the states to grant access to the suspected perpetrator of the abuse and to the victim. Specifically, the regulation allows a "person about whom a report has been made" to access the child-abuse records. The federal regulation also allows for a child named in the report, or his/her guardian ad litem to access the reports. The federal regulation requires that the name of the person who reported the abuse or suspected abuse may not be released. It also allows the department disclosing the information to redact any other names of or identifying information about persons it believes may be endangered by the release.[33]

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[30] A.R.S § 8-807(C)(7) (2002).

[31] RSA 170-G:8-a(II)(b)(3) (2002).

[32] *Id.* at (II)(b).

[33] 45 C.F.R. 1340.14(i)(2)(viii).

Sixteen states and the District of Columbia specifically allow the accused to have access to the reports or records. Thirty-four states and the District of Columbia allow the child or the child's guardian ad litem or other legal representative to access the reports.

Some of these states place certain restrictions on the access by the accused and the child. For example, New Jersey, in giving access to the accused, places several restrictions on the access. First, the report of child abuse or neglect must have been found to be substantiated; that is, upon investigation, the investigating agency found evidence of abuse. Second, the accused must be appealing the substantiated finding or action taken by the department. Third, the division of child-protective services or a judge must determine that disclosure of the information is necessary for the alleged abuser's defense.[34]

South Carolina places restrictions on access to records by a child who is the subject of a report. To access the record the child must be at least 14 years of age, and the department may withhold information that it determines could cause harm to the child's emotional well-being.[35]

Table 1 provides a complete list of states granting access to the accused and/or the child and the child's guardian ad litem.

State and Local Officials

The federal regulation allows for access to "an appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions."[36]

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[34] N.J. Stat. § 9:6-8.10a(b)(12) (2003).

[35] S.C. Code Ann. § 20-7-690(B)(6) (2002).

[36] 45 C.F.R. 1340.14(i)(2)(x).

Table 1. Subjects of Report

States	Accused	Child/ Guardian	States	Accused	Child/ Guardian
Alabama		Y	New Jersey	Y	Y
Arizona	Y	Y	New Mexico		Y
Arkansas	Y	Y	North Carolina		Y
Colorado		Y	North Dakota	Y	Y
District of Columbia	Y	Y	Oklahoma		Y
Florida	Y	Y	Oregon		Y
Illinois		Y	Pennsylvania	Y	Y
Indiana	Y	Y	Rhode Island		Y
Iowa	Y	Y	South Carolina	Y	Y
Kansas		Y	South Dakota		Y
Kentucky	Y	Y	Tennessee		Y
Maine	Y	Y	Texas		Y
Massachusetts		Y	Utah	Y	Y
Michigan	Y	Y	Washington		Y
Missouri	Y	Y	West Virginia		Y
Montana	Y	Y	Wisconsin		Y
Nevada	Y	Y	Wyoming		Y
New Hampshire		Y	**Totals**	17	35

Twenty-one states[37] allow access to records for some sort of government official acting in his or her official duties. For example, Oklahoma gives access to several parties in this category. In Oklahoma the governor and any person that the governor designates in writing may access the records. Similarly, the speaker of the House of Representatives and the president pro tempore of the Senate may, in writing, give permission to access the records to any member of the legislature. In addition to these parties, any federal official of the U.S. Department of Health and Human Services may also access the records.[38]

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[37] The states that grant access to state and local officials are Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Montana, Nevada, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, and West Virginia.

[38] 10 Okl. St. § 7005-1.4(A)(18)-(21) (2002).

West Virginia allows for a much broader interpretation of the provision. This state allows for access to records by "federal, state or local government entities, or any agent of such entities" when acting in an official capacity to protect children from abuse or neglect.[39]

Researchers

The federal regulation and 22 states[40] specifically allow persons involved in research to access child-abuse records. The federal regulation specifies only that the party must be conducting a "bonafide research or evaluation project." However, the federal regulation also limits researchers' access to information identifying individuals, allowing such access only if the information is essential to the research or evaluation, and permission or approval is given by the child, or his or her representative, or the appropriate state official.[41]

Iowa follows the federal regulation almost verbatim, but specifies that the researchers will have access only to "founded" child-abuse records; that is, records generated in cases in which the investigating agency has found supporting evidence of abuse or neglect. Additionally, Iowa does not require a state official to permit access, but does require the permission of the child, or the child's guardian or guardian ad litem, and of the accused.[42]

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[39] W. Va. Code § 49-7-1(c)(1) (2003).

[40] The states that grant access to researchers are Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Illinois, Iowa, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, North Dakota, Oklahoma, South Carolina, Tennessee, Utah, and Wisconsin.

[41] 45 C.F.R. 1340.14(i)(2)(xi).

[42] Iowa Code § 235A.15(2)(e)(1) (2002).

Oklahoma restricts researchers even more. The person or agency conducting the research must be employed or contracted by the state and authorized by the Oklahoma Department of Health and Human Services. Additionally, the person or agency conducting the research must ensure that

> all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in the documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed.[43]

Florida also requires researchers to be authorized by the child-protection agency. Florida further requires these researchers to enter into a "privacy and security agreement" and "comply with all laws and rules" governing the use of child-abuse records. The researcher will treat any identifying information as confidential, "not [to] be released in any form."[44]

The above 11 categories are all categories of parties granted access to child-abuse records by the federal regulation and several states. The following section will discuss those categories of parties granted access only by state legislation.

Parties Beyond Federal Regulation

In addition to the categories specified by the federal regulation as discussed above, 42 states add various categories of parties. This section discusses these additional categories in alphabetical order.

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[43] 10 Okl. St. § 7005-1.4(A)(15).

[44] Fla. Stat. 39.202(2)(i) (2002).

Adoption Administrations

This category consists of any agency or individuals that administer adoption proceedings, including permanent placement of a child and screening and certifying prospective adoptive parents. Eight states[45] and the District of Columbia recognize adoption-administration agencies as parties that may access child-abuse records.

For example, South Dakota grants access to "a person eligible to submit an adoptive home study report" in order to screen applicants.[46] In Oklahoma, anyone authorized to "receive any paper, record, book or other information pursuant to the Oklahoma Adoption Code pertaining to a child who is the subject of an adoption proceeding" is permitted to access child-abuse records.[47] In Iowa, any agency employee or licensed child-placing agency responsible for adoptive placements and any certified adoption investigator may access child-abuse records.[48]

Attorneys

This category includes attorneys representing the agency, the accused, or any other parties involved in the child-abuse proceedings, such as termination-of-parental-rights hearings. Twenty-two[49] states specifically allow certain attorneys to access child-abuse records. In Georgia, the district attorneys or assistant district attorneys may access

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[45] The states that grant access to adoption administrations are Arizona, Arkansas, Colorado, Florida, Iowa, Michigan, Oklahoma, and South Dakota.

[46] S.D. Codified Laws § 26-8A-13(10) (2003).

[47] 10 Okl. St. § 7005-1.4(A)(22).

[48] Iowa Code § 235A.15(2)(e)(15).

[49] The states that allow certain attorneys to access child-abuse and –neglect records are Alabama, Florida, Georgia, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, and Utah.

records in connection with their official duties.[50] The attorney general for the state of Georgia may also access such records through a written request.[51] In Alabama, an attorney defending the child or the child's parents or guardians may access records when involved in a court proceeding relating to the abuse or neglect of the child.[52] Similarly, Oregon allows access to records for attorneys of record for the child or the child's parents or guardians "in any juvenile court proceeding."[53]

Child-Advocacy Centers

Four states allow child-advocacy centers and employees of such centers to access child-abuse records. Wisconsin allows these centers, in as much as they are recognized by the county board, department or child-protection agency, to access child-abuse records "to the extent necessary to perform the services" for which they are recognized.[54] Kentucky[55] and Tennessee[56] have similar provisions stating that employees or other designates of child-advocacy centers may access child-abuse records. However, these states do not restrict access to "the necessary extent" as Wisconsin does.

Finally, Georgia specifies that for a child-advocacy center to access child-abuse records, it must be "certified by the Child Abuse Protocol Committee" or similar accreditation organization. The advocacy center must be operated for the purpose of

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[50] O.C.G.A. § 49-5-41(a)(4) (2002).

[51] *Id.* at (9).

[52] Code of Ala. § 26-14-8(c)(8) (2003).

[53] ORS § 419B.035(1)(c) (2001).

[54] Wis. Stat. § 48.981(7)(5) (2003).

[55] KRS § 620.050(5)(g) (2002).

[56] Tenn. Code Ann. § 37-1-612(b)(1) (2002).

investigating known or suspected cases of abuse or neglect and treating a child or family suffering from abuse or neglect. Further, the Georgia law requires that the center must have been created through "intracommunity compacts" between the center and law enforcement or child-protection agencies, district attorneys' offices, and other like institutions. If an advocacy center does access records, the Georgia statute requires that the center be bound to the confidentiality provisions and subject to penalties for disclosing the confidential information.[57]

Coroners and Medical Examiners

Ten states[58] specifically allow medical examiners or coroners to access child-abuse records.

Michigan allows coroners and medical examiners access to child-abuse records when they are carrying out their official duties.[59] California states simply that coroners and medical examiners are permitted access to child-abuse records when they are "conducting a postmortem examination of a child."[60] Georgia[61] and Indiana[62] specify that the coroner or medical examiner must be investigating a reported or known case of child

[57] O.C.G.A. § 49-5-41(a)(7.1) (2003).

[58] The states that grant access to coroners and medical examiners are California, Georgia, Illinois, Indiana, Kansas, Michigan, Minnesota, Montana, South Carolina, and West Virginia.

[59] MCLS § 722.627(2)(p) (2002).

[60] Cal Pen Code § 11167.5(b)(8) (2003).

[61] O.C.G.A. § 49-5-41(a)(8) (2002).

[62] Burns Ind. Code Ann. § 31-33-18-2(3) (2002).

abuse. Illinois allows access only to coroners and medical examiners that are responsible for child-abuse investigations or background checks.[63]

Kansas,[64] Montana,[65] and South Carolina[66] allow coroners or medical examiners access to the records to the extent necessary to determine the cause of death of a child. Wisconsin has a similar provision, but also specifies pathologists and other physicians as parties that may access child-abuse records when "investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances."[67]

Minnesota allows medical examiners or coroners access to child-abuse records for the purpose of "identifying or locating relatives or friends of a deceased person."[68]

Court-Determined Parties

Seventeen[69] states allow additional parties access to child-abuse records by a court order. Most states' legislatures limit the courts' discretion in granting access in some way. For example, Nevada allows that a court may determine that public disclosure is "necessary for the determination of the issue before [the court]" only after an in-camera

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[63] 325 ILCS 5/11.1(13) (2003).

[64] K.S.A. § 38-1507(d)(6) (2001).

[65] Mont. Code Anno. § 41-3-205(3)(l) (2002).

[66] S.C. Code Ann. § 20-7-690(B)(8) (2002).

[67] Wis. Stat. § 48.981(7)(15m) (2002).

[68] Minn. Stat. § 13.46 subd. 2(12) (2002).

[69] The states that grant access to court-determined parties are Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Jersey, North Carolina, Oregon, South Carolina, and West Virginia.

inspection of the records. [70]

Kansas recognizes that a court may disclose information relevant to a report of suspected abuse, but limits this to cases that have resulted in a child fatality or near fatality. The legislature further directs the court to "give due consideration to the privacy of the child, if living, or the child's siblings, parents or guardians."[71]

North Carolina, while giving the court more discretion in the matter of disclosure, uses the court to protect the confidentiality of child-abuse records. Only a few parties—the child, the guardian ad litem, the department of social services, and the child's parent, guardian, or custodian, or those parties' attorneys—may access the records without a court order.[72] The North Carolina statute mandates, "The records shall be withheld from public inspection and … may be examined only by order of the court."[73]

Director-determined parties

Three states leave disclosure up to a person with administrative responsibilities in the child-protection agency. Ohio, while granting access to the child-welfare agency and the director of the agency, requires all other persons to acquire written permission of the executive secretary [of the agency].[74]

> Oregon allows the Department of Human Services to release records to
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> any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is

[70] NRS § 432B.290(1)(e) (2003).

[71] K.S.A. § 38-1507(h) (2001).

[72] N.C. Gen. Stat. § 7B-2901(a)(1)-(4) (2002).

[73] *Id.* at (a).

[74] ORC Ann. 5153.17 (2002).

> necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the assistant director gives prior approval.[75]

Rhode Island permits records to be disclosed when "the director determines that there is a risk of physical injury by the person to himself or herself or others and that disclosure of the record is necessary to reduce that risk."[76]

Federal Programs

Three states allow child-abuse records to be released for the purpose of administering federal funds or federally funded programs. Pennsylvania provides that federal auditors may access records if the information is required for federal funds to be distributed to the state agencies, but the auditors may not remove any reports containing identifiable information from the child-welfare agency.[77] Minnesota simply states that access to records is provided in order to "administer federal funds or programs."[78] Arkansas similarly states that disclosure is allowable for "the administration of any federal or federally assisted program which provides assistance, in cash or in kind, or services directly to individuals on the basis of need."[79]

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[75] ORS § 419B.035(2) (2001).

[76] R.I. Gen. Laws § 42-72-8(b)(3) (2002).

[77] 23 Pa. C.S. § 6340(a)(8) (2003).

[78] Minn. Stat. § 13.46 subd. 2(6) (2002).

[79] A.C.A. § 12-12-506(a)(2)(v) (2002).

Foster-Care Review Boards

Twenty-six states[80] recognize foster-care review boards, and other similar teams, as parties eligible to access child-abuse records. These teams act as auditors of the child-welfare system. They can include child-fatality review teams and citizen-review panels. The federal Child Abuse Prevention and Treatment Act states that the function of foster-care review boards are to examine policies, procedures and practices of the child-welfare agencies in order to evaluate the effectiveness of the child-protection services. This includes examining specific cases and investigating the deaths of children who could be reasonably suspected of having suffered from child abuse or neglect.[81]

Most of the 26 states granting such access simply specify these panels as parties eligible to access records. However some states restrict these panels' access to information. For example, Nebraska specifies that the State Foster-Care Review Board may access the records when they "relate to a child in a foster care placement" and the records will not include the name or identity of any person making a report of suspected child abuse or neglect.[82]

Law Enforcement and Corrections

This category includes all traditional law-enforcement agencies (police departments and sheriff departments), juvenile-justice employees, and corrections departments (parole boards and probation boards). Thirty-three states and the District of

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[80] The states that grant access to foster-care review boards are Alabama, Arizona Arkansas, California, Colorado, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, West Virginia, and Wisconsin.

[81] CAPTA, *supra* note 1.

[82] R.R.S. Neb. § 28-726(6) (2002).

Columbia allow for access to at least one of these parties. Thirty states and the District of Columbia grant access to law-enforcement officials, six states grant Department of Corrections officials access, and six states grant juvenile-justice officials access.

Only Oklahoma provides access to all three of the identified parties in this category: employees of juvenile bureaus[83] and the Office of Juvenile Affairs,[84] employees of the law-enforcement agency during the investigation of suspected or known child abuse and/or neglect,[85] and employees of any state or federal corrections or law enforcement agency.[86]

Table 2 provides a complete breakdown of which states provide access to each of the parties identified in this category.

Licensing/Employment Agencies

Seventeen states[87] allow access to records by agencies that are responsible for licensing or certifying the agencies that provide services to children and to agencies and organizations that are responsible for employing persons who work with or care for children.

For example, New Jersey provides access to any "person or entity" required to consider child-abuse and neglect allegations when screening potential employees who

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[83] 10 Okl. St. § 7005-1.4(A)(5) (2002).

[84] *Id.* at (8).

[85] *Id.* at (6).

[86] *Id.* at (23).

[87] The states that grant access to licensing and/or employment agencies are California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Montana, Nebraska, New Jersey, Oregon, South Carolina, Utah, Vermont, and Wisconsin.

will provide services to children.[88] Vermont similarly allows disclosure to any person authorized to hire someone on behalf of a child-welfare agency if that person will be providing "care, custody, treatment, or supervision of children, the elderly, vulnerable adults, or persons with disabilities." The statute considers volunteers as employees for the purposes of access.[89]

Table 2. Law Enforcement and Corrections

States	Law	Corrections	Juvenile	States	Law	Corrections	Juvenile
Alabama	1			Nebraska	1		
Arizona	1			Nevada	1	1	
California	1			New Jersey	1		
Colorado	1			New Mexico	1		
Florida	1		1	Oklahoma	1	1	1
Georgia	1			Oregon	1		
Illinois	1			Pennsylvania	1		
Indiana	1			Rhode Island		1	
Iowa	1			South Carolina	1		
Kansas	1		1	South Dakota	1		
Kentucky	1			Tennessee	1	1	
Maine			1	Texas	1		
Maryland	1			Utah	1		
Minnesota	1			West Virginia	1		
Mississippi	1			Wisconsin	1	1	
Missouri	1		1	Wyoming	1		
Montana		1	1	**Totals**	30	6	6

News Media and the Public

Two states recognize the news media and/or the public as parties with limited access to child-abuse records. Montana provides access to the "news media … if

[88] N.J. Stat. § 9:6-8.10a(b)(13) (2003).

[89] 33 V.S.A. § 4919(d)(3)-(e) (2002).

disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department."[90] South Carolina's law allows the director of the child-welfare department to disclose information to the public if it is "limited to discussion of the department's activities in handling the case" and any other information that has been "placed in the public domain."[91] Information is characterized as in the public domain when a party named in the report—the child, the child's parents, or the accused—has discussed the case with the media.[92]

Other States

Twelve states[93] allow disclosure of child-abuse records to agencies and officials of other states that are investigating suspected child abuse or neglect. For example, New Mexico allows "any state government social service agency in any state" to access child-abuse records. Some states are a little stricter. For example, Alabama specifies that any government entity — federal, state, or local — may access the records if it has a need for the information in order to "carry out their responsibilities under law to protect children from abuse and neglect."

Parents and Substitute Parents

This category includes the natural parents, current foster and adoptive parents, and prospective foster and adoptive parents of the child named in the report. Twenty-one

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[90] Mont. Code Anno. § 41-3-205(2)(p) (2002).

[91] S.C. Code Ann. § 20-7-690(G) (2002).

[92] *Id.*

[93] The states that grant access to other state agencies and officials are Alabama, Florida, Georgia, Illinois, Iowa, Kansas, Oklahoma, Pennsylvania, Rhode Island, South Carolina, and Wisconsin.

states and the District of Columbia recognize natural parents' right to access child-abuse records regarding their child. Fifteen states recognize foster and adoptive parents' right to access the records.

Texas specifically mentions parents, adoptive parents, and prospective adoptive parents, but does not mention foster parents as parties having access to the records. Additionally, when releasing records to the adoptive parents, the department may edit the records in order to protect confidential identities. However, Texas makes access to the records by contingent on the department's redacting only the name of the person who reported the suspected abuse.[94]

Wyoming uses a very general term, "a person responsible for the welfare of the child,"[95] that is interpreted here to incorporate all parties identified in this category.

Table 3 lists states granting access to the parents and/or foster parents or adoptive parents.

Persons Reporting

Every state requires certain persons in their official capacities to report suspected cases of child abuse and neglect, and all citizens are encouraged to report any suspicious incidents or patterns of incidents. Seven states[96] allow these persons to have limited access to child-abuse records. For example, Georgia allows any adult who has made a

[94] Tex. Fam. Code §§ 261.201(d)-(g) (2002).

[95] Wyo. Stat. § 14-3-214(b)(v) (2003).

[96] The states that grant access to persons making a report are Georgia, Iowa, Mississippi, Nevada, New Jersey, North Dakota, and Pennsylvania.

report to request notification of the status and outcome of the investigation by the department.[97]

Table 3. Parents

States	Parents	Foster/adoptive parents
Arizona		Y
Arkansas		Y
District of Columbia	Y	
Florida	Y	
Indiana	Y	
Iowa	Y	
Kansas	Y	Y
Kentucky	Y	
Maine	Y	Y
Massachusetts	Y	
Michigan		Y
Montana	Y	Y
Nebraska	Y	Y
Nevada	Y	
New Hampshire	Y	
New Jersey	Y	
New Mexico		Y
North Carolina	Y	
Oklahoma	Y	Y
Pennsylvania		Y
South Carolina	Y	Y
South Dakota		Y
Texas	Y	Y
Utah	Y	
West Virginia	Y	
Wisconsin	Y	Y
Wyoming	Y	Y
Totals	21	15

[97] O.C.G.A. § 49-5-41(a)(5) (2002).

State Registries

South Dakota, Iowa, and Colorado specifically allow child-abuse records to be disclosed to central registries or to databases that contain information on child-abuse records. While Colorado and South Dakota simply allow the registry to access this information, Iowa restricts the usage to employees carrying out their official duties.[98]

Tribal Governments

Eight states[99] allow in some way for tribal governments to access child-abuse records. For example, Arizona allows "agencies of a tribal government" to access the records for "official purposes" with the provision that the tribal government shall keep the information confidential.[100] Maine allows a "representative designated to provide child welfare services by the tribe of an Indian child" to access the records.[101]

Miscellaneous

There are several categories of parties that are each provided access by only one state. Some states provide access to more than one of these categories; therefore, this section will be discussed by state.

Arizona has a provision that allows a party in a dependency or termination-of-parental-rights proceeding, or that party's attorney, to access the child-abuse records. The provision allows the department of child services to withhold any information regarding

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[98] C.R.S. § 19-1-307(2)(g) (2002); Iowa Code § 235A.15(2)(e)(2) (2002); S.D. Codified Laws § 26-8A-13(6) (2003).

[99] The states that grant access to tribal governments are Arizona, Kansas, Maine, Montana, New Mexico, Oklahoma, South Dakota, and Wisconsin.

[100] A.R.S. § 8-807(C)(11) (2002).

[101] 22 M.R.S. § 4008(2)(I) (2001).

the location of spouses or children, the identity of the person who reported the abuse, the identity of anyone providing information, or the identity of anyone whom the department determines that disclosure would endanger.[102]

The District of Columbia grants access to "the Corporation Counsel of the District of Columbia or his or her agent for the purpose of fulfilling his or her official duties concerning cases of an allegedly abused or neglected child."[103]

Florida allows four parties not recognized by other states to access records. The first party is the state Division of Administrative Hearings when the records are used for any challenges to the rules and policies of the child-welfare agency.[104] The second party is the Public Employees Relations Commission when the records are needed as evidence during disputes between public employees and their employers.[105] The provision allows that the records may be released only after redaction of information identifying any person other than the employee.[106] The third party is the employees or agents of the Florida Department of Revenue in order to assist in child-support enforcement.[107] Finally, Florida grants access to health-plan payors as long as the information is used only for "insurance reimbursement purposes."[108]

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[102] A.R.S. § 8-807(D) (2002).

[103] D.C. Code Ann. § 4-1302.03 (2001).

[104] Fla. Stat. 39.202(2)(j) (2002).

[105] *Id.* at (2)(m). *See* Fla. Stat. § 447.201(3) (2002) for a full definition and purpose statement of the Commission.

[106] Fla. Stat. 39.202(2)(m).

[107] *Id.* at (2)(n).

[108] *Id.* at (5).

Mississippi grants access to the Mississippi Employment Security Commission for the purpose of enrolling the child into the Job Corps Training Program.[109] Additionally, Mississippi grants access to ministers that made a report of suspected child abuse and "has a continuing professional relationship with the child and a need for such information in order to protect or treat the child."[110]

New Hampshire has a general access provision that allows "the relevant county" to access child-abuse records. [111] No definition could be found for the term, county. However, included in the duties of the department is to "[e]ncourage cities, towns and counties to develop and maintain prevention programs, court diversion programs and alternative dispositions for juveniles other than placements outside of the home."[112] Counties, cities, and towns that develop such programs are awarded funds from the state agency responsible for child welfare.[113]

New Jersey allows access to a Victims of Crime Compensation Board that provides services to a victim of child abuse or neglect.[114]

Table 4 lists the states that include parties categorized under Miscellaneous and the number of parties under this category that each state adds.

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[109] Miss. Code Ann. § 43-21-261(1)(f) (2002).

[110] *Id.* at (6).

[111] RSA § 170-G:8-a(8) (2002).

[112] RSA § 170-G:4 XVI (2002).

[113] *Id.*

[114] N.J. Stat. § 9:6-8.10a(b)(11) (2003).

Table 4. Miscellaneous

States	Number of parties granted access
Arizona	1
D.C.	1
Florida	4
Mississippi	2
New Hampshire	1
New Jersey	1

Conclusion and Analysis

This chapter first discussed states that have only a general statement of confidentiality and do not name specific parties that may access child-abuse records. Then, the categories of parties granted access by the federal regulation and several states were discussed. Finally, this chapter discussed categories of parties granted access only by the states. Table 5 provides a complete listing of the categories of parties identified in the federal regulation and the states granting access to these categories. Table 6 provides a complete listing of the categories of parties granted access to the records only by the states.

Eight states have only a general statement of confidentiality—Ohio and New York specifically mention within the general statement the parties determined by the director of the child-welfare agency and the child-welfare agency, respectively. Including the 11 categories of parties granted access by the federal regulation and those categories of parties granted access by only the states, Florida grants access to the most categories of parties, 21, including the four categorized under Miscellaneous. New Jersey is close behind, granting access to 19 categories of parties. South Carolina and Montana grant access to 18 categories of parties. Vermont grants access to only two categories of parties and Maryland grants access to only three categories of parties. Table 7 lists all 50

states and D.C. in the order of the number of the total categories of parties granted access by the states.

The average number of categories of parties granted access by the states is 9.4. The most frequent number of categories of parties granted access is 15, with five states granting access to 15 categories. The median number of categories is 10. The range of parties granted access to child-abuse records is 0-21.

This chapter presented the research findings and an analysis. The next chapter will offer a discussion of these findings and some policy recommendations regarding the confidentiality of child-abuse and records.

Table 5. Federal Categories of Parties

States	GS	CW	CT	GJ	IA	HC	PC	AA	AC	CG	SO	RS
Federal Regulation		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Alabama		Y	Y	Y	Y	Y				Y	Y	Y
Alaska	Y											
Arizona		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y
Arkansas		Y	Y	Y	Y				Y	Y	Y	Y
California		Y	Y		Y	Y	Y					
Colorado		Y	Y		Y	Y		Y		Y	Y	Y
Connecticut		Y	Y		Y	Y	Y	Y				Y
Delaware	Y											
District of Columbia		Y				Y			Y	Y		
Florida		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y
Georgia		Y	Y	Y	Y						Y	
Hawaii	Y											
Idaho	Y											
Illinois		Y	Y	Y	Y	Y	Y	Y		Y		Y
Indiana		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Iowa		Y	Y		Y	Y		Y	Y	Y	Y	Y
Kansas		Y	Y		Y	Y		Y		Y	Y	
Kentucky		Y	Y		Y	Y			Y	Y	Y	
Louisiana	Y											
Maine		Y	Y	Y		Y		Y	Y	Y	Y	Y
Maryland		Y			Y							
Massachusetts		Y								Y		

Table 5. Continued

STATES	GS	CW	CT	GJ	IA	HC	PC	AA	AC	CG	SO	RS
Michigan		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Minnesota		Y										
Mississippi			Y			Y		Y				Y
Missouri		Y			Y	Y			Y	Y		Y
Montana		Y	Y		Y	Y		Y	Y	Y	Y	Y
Nebraska						Y		Y				Y
Nevada		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
New Hampshire		Y		Y				Y		Y		
New Jersey		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
New Mexico		Y	Y			Y		Y		Y		
New York	Y	Y										
North Carolina		Y								Y		
North Dakota		Y	Y		Y	Y	Y		Y	Y	Y	Y
Ohio	Y											
Oklahoma		Y	Y		Y	Y		Y		Y	Y	Y
Oregon						Y				Y		
Pennsylvania		Y	Y		Y	Y		Y	Y	Y	Y	
Rhode Island			Y			Y	Y	Y		Y		
South Carolina		Y	Y	Y	Y			Y	Y	Y	Y	Y
South Dakota		Y	Y		Y	Y		Y		Y	Y	
Tennessee		Y	Y	Y		Y		Y		Y		Y
Texas		Y				Y		Y		Y		
Utah		Y	Y			Y		Y	Y	Y		Y
Vermont					Y							
Virginia	Y											
Washington		Y								Y		
West Virginia				Y	Y					Y	Y	
Wisconsin		Y	Y	Y	Y	Y				Y		Y
Wyoming		Y	Y	Y	Y	Y	Y			Y		
Totals	8	38	30	17	28	32	10	25	17	35	21	22

Note: The following is a key to abbreviations used in this table: GS- General Statements, CW- Child-Welfare Agencies, CT- Courts, GJ- Grand Juries, IA- Investigating or Service-Providing Authority, HC- Health-Care Providers, PC- Person Placing Child in Custody, AA- Authorized Agencies, AC- Accused, CG- Child/Guardian Ad Litem, SO- State/Local Official, RS- Researchers.

Table 6. State Categories of Parties

States	AD	AT	CA	ME	CD	DD	FP	RB	LE	EM	RP	MP	MS	OS	PR	SR	TG
Alabama		Y						Y	Y					Y			
Alaska																	
Arizona	Y							Y	Y				Y				Y
Arkansas	Y						Y	Y									
California				Y				Y	Y	Y							
Colorado	Y				Y			Y	Y	Y						Y	
Connecticut																	
Delaware																	
District of Columbia	Y	Y							Y				Y		Y		
Florida	Y	Y			Y				Y	Y			4[i]	Y	Y		
Georgia		Y	Y	Y	Y				Y	Y	Y			Y			
Hawaii																	
Idaho																	
Illinois				Y				Y	Y	Y				Y			
Indiana				Y	Y			Y	Y						Y		
Iowa	Y							Y	Y	Y	Y			Y	Y	Y	
Kansas				Y	Y			Y	Y	Y				Y	Y		Y
Kentucky			Y		Y				Y						Y		
Louisiana																	
Maine					Y				Y	Y					Y		Y
Maryland									Y								
Massachusetts					Y			Y							Y		
Michigan	Y			Y				Y		Y							
Minnesota		Y		Y	Y		Y		Y								
Mississippi					Y				Y		Y		2[ii]				
Missouri								Y	Y								
Montana		Y		Y	Y			Y	Y	Y		Y			Y		Y
Nebraska		Y						Y	Y	Y					Y		
Nevada		Y			Y			Y	Y		Y				Y		
New Hampshire													Y		Y		
New Jersey		Y			Y			Y	Y	Y	Y		Y		Y		
New Mexico		Y						Y	Y					Y			Y
New York																	
North Carolina					Y										Y		
North Dakota											Y						
Ohio						Y											
Oklahoma	Y	Y						Y	Y					Y	Y		Y
Oregon		Y			Y	Y		Y	Y	Y							
Pennsylvania		Y					Y	Y	Y		Y			Y			

Table 6. Continued

States	AD	AT	CA	ME	CD	DD	FP	RB	LE	EM	RP	MP	MS	OS	PR	SR	TG
Rhode Island		Y				Y		Y	Y					Y			
South Carolina		Y		Y	Y			Y	Y	Y		Y		Y	Y		
South Dakota	Y	Y							Y							Y	Y
Tennessee		Y	Y						Y								
Texas		Y							Y						Y		
Utah		Y							Y	Y					Y		
Vermont										Y							
Virginia																	
Washington		Y													Y		
West Virginia		Y			Y			Y	Y						Y		
Wisconsin		Y	Y	Y				Y	Y	Y				Y	Y		Y
Wyoming		Y							Y						Y		
Totals	9	23	4	10	17	3	3	24	34	17	7	2	6	12	22	3	8

Note: This is a key for the abbreviations used in the table above. AD-Adoption Administration, AT-Attorneys, CA-Child Advocacy Centers, ME-Coroners/Medical Examiners, CD-Court Determined, DD-Director-Determined, FP-Federal Programs, RB-Foster-Care Review Boards, LE-Law Enforcement and Corrections Departments, EM-Licensing/Employment Agencies, RP-Mandatory or Adult Reporters, MP- News Media and/or Public, MS-Miscellaneous, OS-Other States, PR-Parents, SR-State Registries, TG-Tribal Governments.

[i] Florida grants access to four parties categorized here as Miscellaneous.

[ii] Mississippi grants access to two parties categorized as Miscellaneous.

Table 7. Total Categories of Parties

States	Total Categories	States	Total Categories
Florida	21	Rhode Island	10
New Jersey	20	Tennessee	10
Montana	18	Wyoming	10
South Carolina	18	California	9
Iowa	17	West Virginia	9
Nevada	17	Mississippi	8
Arizona	16	Missouri	8
Wisconsin	16	Nebraska	8
Indiana	15	Oregon	8
Kansas	15	Connecticut	7
Michigan	15	New Hampshire	7
Oklahoma	15	Texas	7
Colorado	14	Minnesota	6
Illinois	14	Massachusetts	5
Maine	14	North Carolina	4
Pennsylvania	14	Washington	4
Georgia	13	Maryland	3
Alabama	12	Vermont	2
South Dakota	12	New York	1
Arkansas	11	Ohio	1
Kentucky	11	Alaska	0
Utah	11	Delaware	0
District of Columbia	10	Hawaii	0
Mississippi	10	Idaho	0
New Mexico	10	Louisiana	0
North Dakota	10	Virginia	0
		Average	9.4

Note: These totals include the parties categorized as Miscellaneous.

CHAPTER 7
DISCUSSION AND CONCLUSIONS

The previous chapter discussed the 50 state statutes by the parties that are permitted to access child-abuse records. This chapter will offer a discussion of the current status of the confidentiality of those records. Then, some conclusions and policy recommendations will be offered.

Eight states have only general statements of confidentiality. These states do not mention any parties specifically. All of the remaining 42 states and the District of Columbia grant access to additional categories of parties.

Florida and New Jersey grant access to more categories of parties than any other state, granting access to 21 and 20 categories respectively.[1] Montana and South Carolina are the next most open states, granting access to 18 categories of parties. Tragedies in the child-welfare systems of Florida and New Jersey have been used as examples in the campaign for more access to child-abuse and records. However, these states already provide more access than any other state and still are plagued with tragic child deaths and near fatalities in the child-welfare system. Confidentiality, then, would not appear to be the root of the problem in Florida and New Jersey, however the number of parties statutorily granted access to child-abuse records may not be representative of the amount of information reaching those parties.

[1] *See supra* text p. 63.

In New Jersey, allowing the public to access child-abuse records, in the specific instance of the *New York Times* case, revealed employee frustration and apathy with the child-welfare system.[2] And, while the child-welfare agency representatives claimed the records released were not a representative sample of agency records, the records do make a strong case for public disclosure. If the public were aware of systemic problems such as employee frustration and resignation, then citizens could demand more accountability of the workers and of the legislators that control funding and the number of case workers on staff.

However, in Florida it was access to the records by a committee bound by confidentiality and the committee-published report, that brought to light errors in record keeping and other deficiencies. Access to government information is essential to holding government agencies accountable to the public, but the children's and the families' right to privacy, essential to autonomy and self-government, must also be considered. Perhaps access to these records by independent citizen review panels is the best check on the state that still protects this right. The panels would review case files periodically and publish reports to the public using aggregate data on the workings of the child-welfare agencies. Private information would then be then released to as few persons as possible to protect the child's fundamental right to privacy while still maintaining an open government.

[2] *See supra* text pp. 3-4.

Other states that have had a general call for more public access to child-abuse records are Arizona, California, Georgia, Illinois, Iowa, and Michigan.[3] Iowa grants access to 17 categories of parties. Arizona and Michigan grant access to 15 categories of parties. Illinois grants access to 14 categories and Iowa grants access to 13 categories. California grants access to nine categories, fewer than the average, 9.4, the median, 10, and the mode, 15. Thus, of the eight states in which critics of the child-welfare systems have called for loosening confidentiality requirements, seven already grant access to more parties than the national mean, median or mode.

Regardless of the number of categories of parties granted access, it is obvious from the analysis that no two states offer the same level of confidentiality to abused children. Therefore, the privacy rights of abused or neglected children are less protected in some states than in others. If the federal government offered a list of parties that the states must allow to access child-abuse records, and prohibited access by all other parties, unless determined necessary for the protection of the child by a court, children across the nation would be afforded an equal protection of confidentiality. That is to say, the federal government must go further than the current offering of *guidelines* and instead *mandate* that the states conform to a federal standard of confidentiality. It is not clear from the current research what those standards should be.

[3] *See supra* text p. 1.

The information contained in child-abuse records is compiled into aggregate reports annually.[4] This information—this includes the number of child abuse reports made and investigated, the outcomes of those investigations, and the number of children in protective custody[5]—along with reports of citizen review panel investigations, is usually sufficient to hold accountable to the public the government agencies responsible for child welfare. However, these reports need to be made more visible to the public. Currently, these reports are available on-line at many of the official Web sites[6] and through the Child Welfare League of America's Web site. However, the news media should take more responsibility to publish the results of the reports, and the Web site addresses at which the entire reports can be found, even in times when child-abuse tragedies are not in the news.

If the public and the news media continue to show interest in the child-welfare system only after a high-profile tragedy has occurred, the system cannot improve. The Community-Based Care program, the privatization effort currently being implemented in Florida, may help to accomplish this as it will allow for greater community involvement and for more funding opportunities, thus allowing for higher visibility in the community. The local interest and the expenditure of so much time and energy may make citizens more diligent in

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[4] *See supra* text pp. 33-34.

[5] *Id.*

[6] *See* e.g. Florida at http://www.myflorida.com; New Jersey at http://www.state.nj.us; and Rhode Island at http://www.dcyf.state.ri.us.

maintaining a working child-welfare system rather than just fixing it when it breaks.

However, there are other risks with this system. First, the information gathered by these organizations may not be as accessible as the information gathered by the states because these are private organizations, not bound by state access laws. Currently, Florida DCF reports that these organizations will be held to the same confidentiality requirements as the state agency, however it is an area that needs to be closely monitored. Another major danger with the privatization of child welfare is the lack of a safety net. The Florida DCF, according to an agency official, has already heard some reports that Alliances are concerned about procuring the amount of money needed to service all of the children and families in need of care. When the state is providing these services, they are always provided, if not as efficiently or effectively as possible, but independent organizations are free to pull out of the program if there is not enough money. If this situation were to occur, the state would have to find additional funds and repopulate the child-welfare workforce. The transition could be devastating to the child-welfare system and the children in need of protection.

The public and the news media need to continually focus on the state of the child-welfare system, as it serves a vital function. Citizens must demand that the government provide adequate funding and other resources to the child-welfare system. And the government must heed those calls.

Researchers must also continue to bring this subject into the public eye. While this thesis explored the laws governing access to child-abuse and -neglect

records, there is still a need for further research. Some questions include: What is the correlation, if any, between confidentiality and tragedies or failures in the child-welfare system? What is the correlation between the number of parties statutorily granted access and the amount of information released by the departments? When confidentiality is challenged in the courts, how do the courts decide the issue? How does Community-Based Care, or other privatization efforts in the child-welfare system affect accountability? If a national standard for confidentiality were implemented, which parties should be granted access and how would the standards be effectively enforced?

Answering these questions, and others, is the only way to protect children, the most vulnerable of citizens. Their safety must come first. However, policy makers and legislators cannot forget that these children *are* citizens and deserve the same protections as adults, including the right to privacy. In the effort to improve the child-welfare system, confidentiality must continue to be evaluated and considered a high priority.

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BIOGRAPHICAL SKETCH

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The next fall, Courtney enrolled at the University of Florida. In August 2002, Courtney graduated with high honors with a Bachelor of Science degree in public relations. Courtney continued at the University of Florida to receive a Master of Arts in Mass Communication, with a specialty in media law, in December 2003.