

LEGAL ISSUES: Enabling Legislation

In 1986 a bill was passed by the U.S. Senate and Congress that gave states permission to form multi-disciplinary child death review teams. California State Senator, Richard Palanco was responsible for legislation that gave California permission to form child death review teams in each county. He was also responsible for introducing an amendment that formed a California State Team.

Well-designed state and local legislation can positively impact the creation and operation of a Child Death Review Team (CDRT). State legislation may delineate authority through the Department of Justice, Public Health, Social Services or some other state-level organization. Some legislation may only permit the establishment of a team. More definitive legislation might mandate both statewide and local teams. Local teams review child deaths or all coroner child deaths. State involvement can assure the team of continued existence through political support and funding, and can enable the use of a statewide protocol for child fatality investigation, cross-jurisdictional information sharing, definitions of key terms, data collection and recommendations in an annual report. A minimum or core team membership may also be delineated, and therefore ensured, through legislation. Members from additional agencies can be added as appropriate. State and/or county directives may encourage the sharing of information between agencies. Subpoena power may be given to the team as a final resort to overcome any resistance to sharing records. The legislation may also provide for the non-disclosure of information provided in a review, through the use of a Confidentiality Statement.

Twelve years after publication, state legislative reforms are still needed, as outlined in ABA publications “Child Fatality Legislation in the U.S.” and “Child Fatality Legislation: Sample Legislation and commentary” (1991).

Funding

Funding is always an issue, and the lack of it causes many teams to operate only through the good graces of local agencies and their members. Legislated sustainable funding can help to ensure the continuation and evolution of the team. With member turnover a reality, continuity of meeting location, equipment, consultants and support staff can provide a solid base for team growth. Training, another helpful but costly issue, could be provided for, or even mandated, through legislation. This helps ensure that CDRT members are informed of the latest research in different types of death, interviewing techniques, investigative topics, etc. The networking and experience sharing that takes place in training settings is also very valuable. Important findings or trends that are discovered by the team also need to be shared. Whether this sharing is just to professionals, legislators, or state agencies, or whether it involves releasing information to the general public through news releases or public service announcements, there is a cost involved. Legislated funding can alleviate concern over this issue. Having the resources to put together and distribute a public service announcement, for instance, can give the members of the CDRT a feeling of accomplishment and productivity, thus reinforcing the commitment of the members.

Membership

Team membership should reflect the racial, ethnic and cultural makeup of the community served. Team composition should include, at a minimum, representatives from Law Enforcement, Coroner/Medical Examiner, Prosecutor, Health, Public Health, and Social Services. Additional agencies to consider include Mental Health, Child Advocacy, Education, Emergency Medicine/First Responders, and others. Some counties may want to include a tribal or military representative, if relevant. Health and others from the private sector may be added.

Case Review Process

The Case Review Process must first consider the criteria for a case to be reviewed. Depending on the number of cases generated by these criteria, the frequency of team meetings can be set. In counties where child deaths are too numerous to review, teams may need to screen cases using their selected criteria. That screening process should be defined, logical and should be reviewed by the Team. Failure to define and implement a logical intake makes intervention and prevention arbitrary.

Authority/Impact

The authority and impact that a team has may also be helped by legislation. Something as basic as where the CFR Team is housed can have important political and budgetary implications. Teams may be mandated to evaluate proposed new legislation, or they may participate in the development and implementation of prevention and intervention programs.

Data Collection and Sharing

Data collection and dissemination is important to gauge the effectiveness of implemented programs, identify important trends, and provide a foundation for new funding or continued funding. Standardized data collection may be ideal, but lacking this, each team should collect a minimum data set. This data can be used for an annual report, to identify missing data, missing cases or to provide training to other agencies and professionals. Existing rules and regulations regarding privacy and confidentiality may complicate data sharing. Additionally, each agency that participates on the team may have their own, unique data sharing rules. Legislation also needs to facilitate the free flow of information among Team participants.

CDR Legislation Checklist

The following CDR Legislation Checklist can be used to evaluate current or planned CDR program legislation.

- **Purpose** – In developing the purpose of the team it will be important to consider whether establishment of teams will be mandated or permitted by the legislation enacted.
 - ❑ Prevention
 - ❑ Identification of fatalities resulting from abuse and neglect
 - ❑ Improvements in agencies' function
 - ❑ Education of Public and of Professionals Working with Children
 - ❑ Other
- **Funding** – This is one of the most difficult issues in developing or expanding teams. One issue to consider is funding through the Children's Justice Act, which is administered by the U.S. Department of Justice. Such funds are often used to establish or support child death review teams.
 - ❑ State
 - ❑ Local
 - ❑ Private
 - ❑ Staffing and support resources for CFR
- **Membership**—Teams should consider racial, ethnic and cultural representation, which will reflect the community in which the team or teams operate.
 - ❑ Composition --specialties represented may include:
 - Coroner/Medical Examiner (consider training and background when selecting one and/or the other)
 - Law Enforcement
 - Public Health/Injury Prevention
 - Mental Health
 - Social Services
 - Child Advocacy (non-governmental)
 - Public Education
 - Child Health (e.g. pediatrician)
 - Criminal Justice
 - Tribal Representative or Military Representative if relevant
 - Emergency Medicine/First Responders
 - ❑ Appointed/designated
 - ❑ Role related to public office (e.g. state's attorney)
 - ❑ Mandated (e.g. professions or groups that must be represented)
 - ❑ Training provided to members (local or state)
 - ❑ Compensation (reimbursement, per diem)
 - ❑ Structure (i.e. Is there a hierarchy, voting, etc.)
 - ❑ Term of service
- **Case Review Process** – Specificity with respect to the process of case review will vary from state to state. Below are some of the factors to consider as components of the case review process.

Whether these elements should or need to be statutorily mandated will need to be considered and will depend upon the existing or desired process in the state or locality.

- Frequency of meetings (quarterly, monthly, ad hoc, other)
 - “Trigger mechanism” (criteria for review, referral source, age of child, cause of death, jurisdiction)
 - Autopsy requirements
 - Protocol development
 - Standard definitions
 - Mandatory or permissive case review
 - Level of activity -- state, regional, and/or local
 - Evaluation of team function
 - Criteria for Scene Investigation/Preservation
- **Authority/Impact** – Teams can serve various functions and the legislation that enables team development may also be helpful in spelling out what authority the teams, through the review process may have.
 - Legislative (evaluation of laws, recommendations, enactments)
 - Public health (including development and implementation of preventive programs)
 - Contribution to epidemiological research/data
 - Individual case influence
 - Where is CFR housed – This is an important political and budgetary consideration.
 - Evaluation of agency function
 - **Data Collection and Dissemination** – In order to conduct a comprehensive review, teams need access to records and reports that may be relevant to the fatality. This becomes increasingly important with respect to intrastate coordination among the local teams.
 - What is collected? (data from other agencies, law enforcement reports, medical records, interviews)
 - Dissemination of data (annual report, frequency of reporting, media outlets, public forums)
 - Database
 - Standardized reporting forms
 - Training to agencies and/or professionals (not other CFR teams)
 - Missing data (process for follow-up)
 - **Data Sharing** -- Legislation needs to contemplate facilitating access to a range of information particularly between border states and within and between agencies while still maintaining and abiding by existing rules and regulations addressing privacy and confidentiality. Additionally, to enhance and encourage the free flow of information among team participants; issues such as immunity, subpoenaability of members or records and discoverability of team documents should be addressed in legislation as well as the issue of confidentiality of team deliberations and discussions.
 - Uniformity, coordination and sharing of data (intra-agency, interagency, among state, regional and local teams, regional/interstate)
 - Legislative requirements and prohibitions (punitive measures for confidentiality violations)
 - Privacy and confidentiality (identifiers; open/closed meetings)
 - Immunity