

**U.S. Virgin Islands Codified Laws
DRAFT ANALYSIS**

**Statutes Regarding Confidentiality and Information Sharing of
Juvenile & Abuse and Neglect Records**

Delinquency and Persons in Need of Supervision Matters	
<p>§2527. Juvenile law enforcement records</p> <p>Who may inspect</p> <p>Criminal penalties</p>	<p>(a) Records and files concerning a child shall be kept separate from records and files of arrest of adults. Records of a child shall not be open to the public without an order of the Family Division of the court, unless the child has been transferred to the Criminal Division.</p> <p>(b) Inspection of law enforcement records and files is permitted without court order by: the Family Division of the court; the representatives of the public or private entity providing supervision or having legal custody of the child; legal counsel for the child; Attorney General or his designee; a court in which the child has been convicted of a criminal offense or delinquent act for the purpose of pre-sentence report or proceedings; law enforcement officers of other jurisdictions discharging of their current official duties, and local law enforcement officials.</p> <p>(c) Unauthorized disclosure shall result in a fine of not more than five hundred dollars (\$500) or imprisonment for not more than one year, or both.</p>
<p>§2528. Youth Services Administration records</p> <p>Court consent required for release</p> <p>Who may inspect</p>	<p>(a) Youth Services Administration records and files shall only be open to inspection to persons having a justifiable interest but only by consent of the Family Division of the court. All information and records obtained and prepared by an employee of the Youth Services Administration shall not be disclosed to anyone other than the Family Division of the court or others permitted under this section unless otherwise ordered by the judge. Persons or agencies permitted access without consent of the Family Division are representatives of a public or private entity providing supervision or having legal custody of the child or in preparing an official report to the child; legal counsel for the child.</p>

Criminal penalties	(b) Unauthorized disclosure shall result in a fine of not more than five hundred dollars (\$500) or imprisonment for not more than one year or both.
<p>§2529. Social and legal records; forms; inspection</p> <p>Court shall keep records and file them separately</p> <p>Who may inspect</p> <p>Criminal penalties</p>	<p>(a) The court shall make and keep records of all cases brought before it. The court shall devise and print all forms required for social, medical, psychological, and legal records, for such persons as may be required.</p> <p>(b) The court's official records shall be filed separate from other files of the court and shall only be released to the Family Division of the court or others permitted under this section unless otherwise ordered by the judge. Persons or agencies permitted access without consent of the court are the representatives of a public or private entity providing supervision or having legal custody of the child or in preparing an official report to the child; legal counsel for the child; the Attorney General or his designee representing the territory; and a court for the purpose of a pre-sentence report or other proceedings for which the child has been convicted of a criminal or delinquent act.</p> <p>(c) All other court records, papers, orders, and decrees filed with a case shall be open to inspection only by those persons and agencies designated in subsection (b).</p> <p>(d) Unauthorized disclosure shall result in a fine of not more than five hundred dollars (\$500) or imprisonment for not more than one year or both.</p>
<p>§2530. Juvenile fingerprints; photographs</p> <p>V.I.P.D.</p> <p>Y.S.A.</p>	<p>(a) A child taken into custody for an act which would be a felony if committed by an adult shall have their fingerprints and photographs taken. If such act is a misdemeanor if committed by an adult, fingerprints and photographs may be taken. If a child is under the age of 14, prior permission from a judge is required.</p> <p>(b) Any child who is committed to an institution operated by Youth Services Administration may be fingerprinted and photographed without order of the court. As with other records maintained by the Youth Services Administration, fingerprints and photographs shall be kept confidential.</p>

Destruction of records	<p>nullification of the sealing order.</p> <p>(e) If the child is found not to be delinquent, the court or the person who has been the subject of a complaint filed may motion the court to order the expungement of all legal and social records of the court, Youth Services Administration, and of any other agency pertaining to a case.</p>
§2531a. Juvenile names published	<p>The Family Division of the Superior Court and the Virgin Islands Police Department shall release the names of minors fourteen years or older, and their parents, whenever the minor has been ruled delinquent for committing an act which would be a felony if committed by an adult.</p>
Abuse and Neglect Matters	
§2532. Purpose of subchapter	<p>The public policy of the territory is to protect children whose health and welfare may be affected by abuse and neglect; to strengthen the family and home and provide a safe and nurturing environment for children when necessary. For these purposes, it is a requirement to report and investigate any instance of child abuse, and provide services when needed by the child and the family.</p>
<p>§2533. Persons mandated to report suspected abuse, sexual abuse, and neglect</p> <p>Who must report</p> <p>Obligation to report</p> <p>Who may report</p>	<p>(a) When any social service worker, peace or law enforcement officer, school or hospital personnel or any other medical or mental health professional engaged in the examination, care or treatment of persons, has reasonable cause to suspect that a child has been subjected to abuse, sexual abuse or neglect, he shall immediately report it in accordance with the provisions of this subchapter.</p> <p>(b) Those required to report under this subchapter must immediately notify his designated agent or the person in charge of the institution, school facility or agency, who shall then also become responsible to report. Nothing in this subchapter requires any institution, school, or agency to make more than one report and does not prevent individuals from reporting on their own behalf.</p> <p>(c) In addition to those persons and officials specifically required to report suspected child abuse, sexual abuse, and neglect any other person who has observed or has reasonable cause to suspect that a child has been subjected to abuse or neglect may make a report.</p>

<p>§2534. Reporting procedures</p> <p>To Whom to report child abuse</p> <p>What should be included in report</p>	<p>(a) Reports of child abuse, sexual abuse or neglect shall be made immediately by telephone or otherwise directly to the Department of Social Welfare or to the V.I.P.D. who shall relay such reports immediately. At the Department of Social Welfare's request, an oral report shall be followed by a written report within 48 hours.</p> <p>(b) However possible, such reports shall include the names and addresses of the child and his parents or other persons responsible for his care; the child's age and sex; the cause and extent of the child's injuries, sexual abuse or neglect to the child or any other child in the same home. The name and address of the person responsible for the child's injuries, sexual abuse or neglect and family composition shall also be included. Additionally, the source of the report, including the name, address, and occupation of the person shall be included. Also, any action taken by the reporting source, including any and all other information that could assist in an investigation shall be detailed, including any X-rays or color photographs or filing for temporary custody.</p>
<p>§2535. Color photographs and X-rays</p> <p>Where to send photographs</p>	<p>Color photographs, if the areas of trauma visible on a child may be taken by or for any person required to report cases of child abuse, and if medically indicated, radiological examinations of the child shall be performed. Any photographs or X-rays of the child shall be sent to the Department of Social Welfare immediately, which shall make reimbursements for the reasonable cost of the photographs or X-rays.</p>
<p>§2536. Child protective services</p> <p>D.S.W.</p> <p>D.S.W.'s investigation</p>	<p>(a) The Department of Social Welfare shall receive all reports of alleged child abuse, sexual abuse or neglect within 24 hours of notification of an alleged case and initiate a thorough investigation of the report. Arrangements for emergency temporary care and protection of victims of alleged child abuse, sexual abuse or neglect shall be provided.</p> <p>(b) The Department of Social Welfare's investigation shall include an evaluation and determination of the child named in the report and any other children in the same home and the risk to those children if they remain in the home. A report on the description, and cause of any condition detailed in the original report along with the name, age, and condition of any other children living in the same home shall be included.</p>

<p>D.S.W.'s evaluation</p> <p>V.I.P.D.</p> <p>V.I.P.D. can investigate D.S.W.</p>	<p>(c) The Department of Social Welfare shall offer rehabilitative services to the child or to the family upon completion of the investigation.</p> <p>(d) Upon the granting of a petition by the Superior Court, the Department of Social Welfare shall be responsible for providing, or coordinating the proper and timely provision of services to abused children and their families, including those children in its care.</p> <p>(e) Within 90 days of receiving the initial report of child abuse or neglect, the Department of Social Welfare shall prepare a progress report, which includes a determination that the report is founded or unfounded; whether an offered plan for rehabilitative treatment and services was accepted or refused, and the present status of the case. A report indicating the final disposition shall be prepared within seven days of the termination of a case.</p> <p>(f) The V.I.P.D. shall, at the request of the Department of Social Welfare, or on its own, investigate reports of alleged child abuse, sexual abuse or neglect, and shall convey the results of such investigation to the Department of Social Welfare and, where a petition or complaint has been filed, to the Superior Court. The V.I.P.D. shall investigate any claim that the report of child abuse or neglect involves the acts or omissions of the Department of Social Welfare. Results of such claims shall be conveyed to the Department of Law, which shall take appropriate action.</p>
<p>§2537. Immunity from liability</p>	<p>Any person, official, or institution performing a duty permitted or required by this subchapter in good faith shall be immune from any civil or criminal liability.</p>
<p>§2538. Abrogation of privileged communications</p>	<p>With the exception of communications between attorney and client, privileged communications between married couples and between any professional person and his patient or client, is abrogated in situations involving alleged child abuse, sexual abuse, or neglect. Excluding those of attorney and client, such privileged communications shall not constitute grounds for failure to report as required or permitted by this subchapter, or to give or accept evidence in any judicial proceedings relating to child abuse, sexual abuse or neglect.</p>
<p>§2539. Failure to report</p> <p>Criminal penalties</p>	<p>Any person, official, or institution required to perform a duty involving a case of alleged child abuse, sexual abuse or neglect and knowingly fails to do so, shall be guilty of a misdemeanor and fined not more than \$500 or imprisoned for not more than one year, or both.</p>

<p>§2540. Confidentiality of records</p> <p>Criminal penalties</p> <p>Who may inspect</p>	<p>(a) All records concerning reports of child abuse, sexual abuse or neglect made to the Government of the Virgin Islands shall be confidential, except as specifically provided by this subchapter. Any person who willfully allows, or assists in the release of information contained in such records to persons or agencies not permitted to have access, shall be guilty of a misdemeanor and fined not more than \$500 or imprisoned for not more than one year, or both.</p> <p>(b) No person, official or agency shall have access to such records unless for the purpose of acting in accordance with this subchapter. Persons permitted access include the Department of Social Welfare and its legal representative; the V.I.P.D., when investigating a report of known or suspected child abuse, sexual abuse, or neglect; any physician, who has in his presence a child they reasonably suspect may have been abused or neglected; any law enforcement officer, or social worker of the Department of Social Welfare who have in their presence a child they suspect may have been abused or neglected and need information in the report to determine whether to place the child in emergency temporary custody; any person responsible for the child's welfare or any agency with legal responsibility to care for, or supervise a child who is the subject of a record; any person who is the subject of a report and his legal representative, and if such a person is a child, access is granted to any person legally appointed or responsible for the child's welfare. A court may grant limited in-camera inspection access to records upon finding that such access is needed for the resolution of an issue before it, unless the court concludes that public disclosure of the information contained therein is necessary; any person appointed to a case under a Court Appointed Special Advocates (CASA) Program to represent the a child as a guardian ad litem; a person given access to the names and other identifying information concerning the subjects of the report shall not disclose or make public such identifying information.</p>
<p>§504. Child Neglect</p> <p>Criminal penalties</p>	<p>Any person responsible for the safety or welfare of a child, including a stepparent, guardian, teacher, or babysitter, who knowingly or carelessly allows a child to suffer any injury, physical or otherwise, or deprives a child from basic human necessities shall be fined no less than \$500, or imprisoned for no more than 15 years, or both.</p>
<p>§505. Child Abuse</p>	<p>Any person who knowingly or carelessly causes any injury to a child, physical or otherwise, or places a child in a situation where there is a likelihood of injury or deprivation of basic</p>

Criminal penalties	necessities of life, shall be fined no less than \$500, or imprisoned for not more than 20 years, or both.
§506. Aggravated child abuse and neglect	An act of aggravated child abuse or neglect is characterized when a child suffers serious physical, mental, or emotional injury or when the child dies from abuse or neglect. A person convicted of aggravated child abuse or neglect shall be imprisoned for no less than 5 years but no more than 30 years.
Criminal penalties	
Health information	
45 CFR 164.502 (a) (Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191)	Summary: <u>Covered entities, which include health care providers and health plans, may not use or disclose protected health information except as HIPAA permits or requires.</u> HIPAA regulations distinguish three circumstances in which disclosure is allowed: by patient authorization, by allowing the individual the opportunity to agree or object to disclosure when dealing with “directory information,” and in certain circumstances without patient authorization. Patient authorization can be from the subject of the records or the individual’s personal representative. Generally, the parent or guardian will be the personal representative of a child. However, when the parent is not considered the personal representative, HIPAA defers to State law to determine the rights of parents regarding the protected health information of their child (45 CFR 164.502 (g)). Therefore, if the court authorizes someone else to make treatment decisions for the child, which can happen in dependency cases, this person is the personal representative and can give consent to the disclosure of records.
45 CFR 164.512 (e) Disclosures for judicial and administrative proceedings	(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of

this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:

(1) No objections were filed; or

(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or

(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

	<p>(v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:</p> <p>(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and (B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.</p> <p>(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.</p> <p>(2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.</p>
<p>45 CFR 164.512 (f) Disclosures for law enforcement purposes</p>	<p>A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.</p> <p>(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information: (i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or (ii) In compliance with and as limited by the relevant requirements of:</p> <p>(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial</p>

officer;

(B) A grand jury subpoena; or

(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

(1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address;

(B) Date and place of birth;

(C) Social security number;

(D) ABO blood type and rh factor;

(E) Type of injury;

(F) Date and time of treatment;

(G) Date and time of death, if applicable; and

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(i) The individual agrees to the disclosure; or

(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith

constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) Permitted disclosure: Reporting crime in emergencies. (i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

- (A) The commission and nature of a crime;
- (B) The location of such crime or of the victim(s) of such crime; and
- (C) The identity, description, and location of the perpetrator of such crime.

(iii) If a covered health care provider believes that the medical emergency described in paragraph (f) (6) (i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f) (6) (i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.