

Administration and Oversight of the Unaccompanied Alien Children Program

**OMB Information Collection Request
0970 - 0547**

Attachment A - Summary of Public Comments and ORR Responses

OCTOBER 2020

Submitted By:
Office of Refugee Resettlement
Administration for Children and Families
U.S. Department of Health and Human Services

Serious Incident Reports (SIR)

1. Commenters are concerned that SIRs may have negative consequences for unaccompanied alien children (UAC), such as inappropriate placement in a restrictive setting, complicating or delaying release from Office of Refugee Resettlement (ORR) custody or transfer to a long-term foster care program, or being used against them in a legal proceeding.

ORR Response: The purpose of significant incident reporting is to ensure that a broad range of issues involving UAC are elevated to ORR, and to ensure that all incidents and responses to such incidents are documented and resolved in a way that protects the interests of children in ORR care. Incident reporting of this nature is standard practice in child welfare systems. The information contained in an SIR may prompt a reassessment of service provision, placement, or readiness for release, but these decisions are not made solely on the basis of the SIR. ORR takes into account all available information to make holistic decisions regarding the care of children in its custody that are always made in the best interest of the child in mind.

2. Commenters are concerned that staff who complete SIRs receive limited training on the use of the forms, may lack expertise to complete certain sections of the form (regarding the child's mental or physical health), or may lack an understanding of how the form may be used against the child in legal proceedings far in the future.

ORR Response: ORR provides SIR completion training to care provider staff and is working towards the creation of a more robust training system in conjunction with the launch of its new database, UAC Path, in early 2021. SIRs are not medical records and are not used as such, nor are staff documenting incidents in the SIR making medical diagnoses. SIRs are a vehicle used to ensure all relevant parties are aware of the incident, and to document responses and outcomes.

3. Commenters believe that the checkbox format of the SIR forms is insufficient to fully report on significant incidents and that the lack of space to provide detail and context make SIR forms a tool that may be taken out of context and used in negative way. Commenters also believe that the incident information section is insufficient to address the services provided to the child during or after the incident. Commenters recommend that a section for staff response and intervention be added to the SIR form, and that the child's clinician is required to be involved in the follow up process after the incident.

ORR Response: The checkboxes in SIR forms are used to categorize the type of incident being reported and are not a full description of the incident. Categorizing SIRs in this manner allows readers to immediately identify the type of incident reported and allows ORR to track and analyze SIRs. The SIR form provides a description of incident textbox where the incident is described in detail and, thus, context is provided to the checkbox categories selected. The form already provides textboxes to record staff response and intervention, as well as follow-up and/or resolution. Any services, including clinical services, provided to the child during or after the incident are recorded in these areas.

4. Commenters note that the forms are completed and become part of the child's record without any participation by the child, the child's attorney (if they have one), the independent Child Advocate (if they have one), and the local ORR-funded legal services provider. Commenters recommend that in every case, ORR provide the form to the child, the child's attorney, the child advocate, and the ORR-funded legal services provider, so that they can identify problems, object to content, propose changes, or submit missing or contextualizing information. Commenters also recommend that any time ORR sends the form to DHS or another agency, it should notify the child, child's attorney, child advocate, and ORR-funded legal services provider. Finally, commenters recommend that the form be modified to document how and when the form is provided to others.

ORR Response: The SIR is a tool used to document serious incidents, ensure they are elevated to the appropriate parties, and document intervention, response, and outcome. The information available at the time the SIR is created may be limited because the incident and/or interventions and response may be

ongoing. All new information, including missing or contextualizing information and actions taken since the initial SIR was filed, is documented in SIR Addendums. SIRs and Addendums are not legal documents and should not be treated as such. ORR regularly provides attorneys of record, child advocates, and ORR-funded legal service providers with updates on the child's case, including the occurrence of any serious incidents. Child advocates are provided copies of SIRs and there is a mechanism in place through which attorneys of records and legal services providers may request documents from the child's case file, including SIRs. ORR Policy Guide Section 5.8.5 clearly outlines when an SIR is sent to the Department of Homeland Security (DHS). In addition, the SIR form already includes notification tables that document who was notified of the incident.

5. Commenters recommend that the biographical information portion of the SIR forms be amended to remove reference to the child's country of origin and that the options for the gender field be expanded to be inclusive of all children in ORR care.

ORR Response: Many of the forms completed in ORR's database, including SIRs, contain a standardized biographical information section at the top of the form. This information is important to accurately identify the child and often provides important additional context. ORR plans to keep the child's country of origin as a field in this standardize biographical information section. However, ORR will be expanding the options available for the gender field to be inclusive of all children in ORR care when it launches its new case management system, UAC Path.

6. Commenters recommend that for incidents of abuse or neglect in ORR care, the form include additional information about the offending adult, whether the adult was removed from the facility, whether the incident was reported to state licensing officials, whether law enforcement was contacted, and whether the child victim was referred to legal counsel and/or provided access to independent (non-ORR) therapeutic counseling and/or supportive services.

ORR Response: SIR forms already include sections that indicate whether an incident was reported to state licensing, child protective services (CPS), and/or local law enforcement, when the report was made, the reason why a report was made, whether the agency receiving the report opened an investigation, a case/confirmation number, results/findings of the investigation, and an area to upload all documents associated with the investigation. SIR forms also contain two fields called "staff response and intervention" and "follow-up and/or resolution" where any and all actions taken are documented, including referrals to legal counsel and provision of independent therapeutic counseling and/or supportive services. Information regarding alleged offending adults is captured in the "incident information", "staff response and intervention", and "follow-up and/or resolution" fields. ORR will explore adding more specific fields to capture information related to incidents of abuse or neglect in ORR care.

7. Commenters are concerned that background information about past abuse or neglect in home country or on the journey is often collected at a time when the child is still in crisis, has unaddressed trauma, or lacks an interpreter in their best language and that the child may or may not be in a position to convey past experiences with accuracy. Commenters recommended that information about abuse, neglect, or abandonment in home country or on the journey be removed entirely from this form and reported on a separate form. Commenters also recommended that the category title be rewritten as "past abuse/neglect in custody of other government agencies," or something similar, to account for abuse and neglect outside of ORR, but while children were in the custody of other government agencies and that there be a space in which the individual completing the form must report when and where the information was reported to other law enforcement agencies and oversight bodies.

ORR Response: Past abuse or neglect includes incidents taking place in home country, on the journey, while in the custody of other government agencies, in the U.S. interior, and at a previous ORR care provider placement. It is important for ORR to be able to quickly elevate incidents of past abuse or neglect, regardless of where they occurred. This is standard information that must be reported according

to child welfare safety laws. ORR must be in position to identify children who are or potentially are victims of past abuse in order to better provide for their care.

8. For incidents categorized as “major behavioral incidents that threaten safety,” commenters recommend that:

- a. The form include the length of time the child has spent in ORR custody to provide further context to the reported incident because spending long period of time in government custody can lead to detention fatigue and corresponding incidents of “acting out.”

ORR Response: SIRs already contain fields for LOS (length of stay) and length of care (LOC) which denote the length of time the child has been in custody at their current placements and the overall length of time the child has been in ORR custody, respectively.

- b. The category of “Verbal aggression” be removed as it is too vague of a term to be accurately documented on the form and in most cases verbal aggression does not pose any sort of safety risk to ORR and facility staff or other children on its own.

ORR Response: ORR concurs that in most cases verbal aggression does not pose a safety risk to others. However, verbal aggression can be an indicator of significant behavioral or mental health issues. It is important that indicators like these be elevated to ORR and care provider staff quickly so that appropriate actions may be taken to ensure the well-being and safety of the child, such as tailored or increased counseling sessions.

- c. Only a qualified mental health professional be able to report on certain categories of “major behavioral incidents that threaten safety” and that mental health incidents, including suicide attempts and suicidal ideation, have their own section on the form.

ORR Response: SIRs may be used to elevate incidents related to mental health to ensure that swift intervention and response is taken to ensure the safety of the child and that all actions taken are documented. SIRs are not used evaluate a child’s mental health or provide diagnoses. All mental health evaluations, diagnoses, interventions, or progress notes are documented by a clinical or mental health professional and kept in the child’s health records.

- d. The category of possession/use of weapon be more clearly defined as it may be inappropriate to report incidents of children being in possession of an item that could be used as a weapon, such as a pen or cleaning supplies, without any evidence that the children were motivated to use the item as a weapon, which could have significant impact on their placement within ORR and their immigration case.

ORR Response: Should possession of an item that is not clearly a weapon but could be used as such be reported on an SIR out of an abundance of caution for the safety of the child and others, any additional information related to motivations and circumstances that would provide additional context would be documented in an Addendum. ORR takes into account all available information to make holistic decisions on what type of placement is in the best interest of the child.

- e. The form distinguishes between incidents during which children were found to have drugs or alcohol in their possession upon intake and those in which drugs or alcohol are found within a facility. Commenters believe that there are very few situations in which drugs and alcohol make it into a facility without some sort of staff involvement and that this type of incident should be treated as a staff issue, rather than as a child behavioral incident.

ORR Response: It is important that all incidents where a child is found to be in possession of drugs or alcohol be elevated to staff via an SIR so that intervention and response can happen quickly and the incident be appropriately documented. All known information related to the incident would be documented in the SIR or an Addendum, including any staff involvement.

9. Commenters recommend that ORR remove reference to run away incident that took place in the child's home country because in many cases, the child's decision to run away is both appropriate and protective. Commenters believe that inclusion of attempts to run away in the child's home country may negatively impact a child's placement options and their ability to seek legal relief when those incidents are, in fact, evidence of the child's need and eligibility for protection. In addition, commenters recommend that the form exclude incidents that did not involve an actual runaway because the actions of the child may be taken out of context and labeled as attempts or intentions to run away, even when the child did not leave or intend to leave the premises. For example, even if a child simply expresses a desire to be elsewhere, outside of the facility, it could be construed as the intention to run away if the opportunity arose.

ORR Response: An SIR would only include information about a child running away from home in their home country if it was in relation to another SIR category, such as abuse or neglect. The category of "Runaway" is only used when a child attempts or successfully absconds from an ORR care provider facility. ORR has renamed this category "Unauthorized Absence."

10. Commenters recommend that incidents categorized as "Incidents Involving Law Enforcement" include information about who called law enforcement, which law enforcement agency was called, and what steps were taken to address or de-escalate the situation before law enforcement was called. Commenters also recommend that the form distinguish between situations in which the child is the victim in the incident.

ORR Response: All SIRs include a section in which to document information about reports made to law enforcement. SIRs capture whether the incident was reported to law enforcement, date and time of the report, the name and badge number of the officer receiving the report, whether the incident was investigated and date notified of investigation, the case/confirmation number, a text box to provide an explanation/details, the results/findings of any investigations, and a place to upload any related documents. This category includes contact the child may have had with law enforcement before coming into ORR custody and while in ORR custody. The majority of incidents reported under this category are not the result of a behavioral issue that required de-escalation (e.g., a previous arrest, child is interviewed as a material witness). However, should a behavioral incident result in a call to law enforcement, all actions taken to address or de-escalate the situation would be captured in the "Staff Response and Intervention" or "Follow-Up and/or Resolution" fields of the SIR.

11. Commenters believe that the category "Criminal History" is vaguely and prejudicially defined and serves DHS enforcement rather than child welfare interests. Commenters note that the form does not require the reporting individual to request and fully understand documentation of legal proceedings, arrest history, or other documents underlying the criminal or delinquency charges. In addition, commenters are concerned about possible inclusion of juvenile charges or convictions on the SIR forms because disclosure of juvenile delinquency records may violate state laws governing the confidentiality of juvenile records.

ORR Response: ORR attempts to corroborate and understand any disclosure of the child's criminal history made by the child, their family, or their sponsor to ensure that the child is placed in the least restrictive setting that meets their individual needs, the child receives appropriate services, and that ORR is able to make a well-informed release decision. ORR abides by all state laws governing the confidentiality of juvenile records.

12. Commenters note that pregnancy is differentiated from every other medical event by its inclusion in the forms and that other medical events and health conditions are not subject to reporting requirements. Commenters recommend that ORR reconsider its association of pregnancy-related matters with SIR protocols.

ORR Response: Medical and mental health emergencies are reported via emergency SIRs and this practice will continue.

13. Commenters recommend that the reporting category of separation from a parent/legal guardian be expanded to include when a child is separated from another family member or unrelated adult acting as the primary caregiver, as well as from a sibling, cousin, or other family member. Commenters also recommend that the form include fields to track a child's separation from parents or other family members as a result of the Migrant Protection Protocols (MPP) and a child's separation from a parent or other family members as a result of other border closures, such as the March 20, 2020 closure of the border based on a Center for Disease Control Order.

ORR Response: Separation from any family member, including a parent/legal guardian, another family member, or unrelated adult acting as the primary caregiver is documented in the child assessments conducted upon admission to an ORR care provider program so that appropriate services may be rendered to the child (e.g., reunification, facilitating communication, counseling). ORR also reports separation from a parent/legal guardian for any reason via an SIR in order to facilitate mandated reporting of such separations. Likewise, ORR will be adding a category to the SIR to facilitate tracking and reporting of children previously enrolled in the Migrant Protection Protocols (MPP) program when it launches its new case management system, UAC Path. ORR does not have a similar need to track and report on other types of family separation and will continue to document that information in the child assessments only.

Authorization for Release of Records

1. Commenters have concerns regarding the accessibility of the form and recommend that it be made available in multiple languages, that a guide or language services be provided along with the form to explain it to those who may be illiterate or have trouble understanding the form, and that it be handwritten submissions be accepted.

ORR Response: ORR notes that this form is rarely completed by former UACs, sponsors, or the parents/legal guardians of UAC on their own. The vast majority of individuals who complete and submit this form are attorneys of record or legal service providers for UAC. These parties are proficient in English, able to explain the form to their minor client and/or their client's parents in language that they understand, and have the resources and skills to complete the form electronically. Nevertheless, ORR concurs that it can take additional steps to make the form more accessible. ORR will translate the form into Spanish in the first quarter of 2021 and consider translating it in to other frequently-used languages among the UAC population. ORR has and will continue to accept handwritten submissions of the form, although typed submissions are still strongly preferred to prevent potential delays in processing a request due to unclear handwriting.

2. Commenters are concerned that the processing time for file requests fails to account for detained children's urgent need to evaluate their legal eligibility and recommended that additional factors, such as the fact that the child is detained or expecting a Flores bond hearing, be considered for urgent processing.

ORR Response: The form already accounts for this need by allowing requesters to ask for expedited processing. The most common reasons for requesting expedited processing are listed in Section C. This includes a category of "UAC has a court or administrative hearing scheduled within 30 days" under which Flores bond hearing would fall. There is also an option of "Other" to capture reasons a request may be urgent that are not already listed.

3. Commenters are concerned that a without clarifying the limits and oversight of decision-making for processing requests for tender-age children and children with disabilities, such broad discretion may lead ORR to violate constitutional due process protections for unaccompanied children. For example, ORR may summarily deny a request from a child's legal service provider, counsel, or sponsor but approve a request from DHS or the Executive Office for Immigration Review (EOIR). Commenters recommend that that ORR specify what definition it uses to evaluate if a child has a developmental disability and clarify its decision-making process.

ORR Response: By law, ORR has the authority to make any decision regarding the well-being of a child in its custody. See 6 U.S.C. § 279. ORR puts forth a conscientious, good-faith effort when exercising its authority to ensure that all decisions are in the best interest of the child, which includes adjudication of records requests. ORR evaluates each records request with the safety and well-being of the child as the primary factor in decision-making and does not issue summary denials. For tender-age children and where the requesting party indicates that a child 14 years or older has a developmental disability, ORR consults with the local Federal Field Specialist to make an individual determination as to whether releasing the requested records would be in the child’s best interest.

4. Commenters are concerned that the inclusion of “Representative of a Federal/State government agency” as a category of requesting parties and “Conducting an Investigation...” as a reason to request records opens the door for many agencies, including local law enforcement agencies, to access children’s ORR files without the authorization of the child and/or legal guardian or other critical safeguards for purposes not specifically defined or authorized in ORR policy. Commenters recommend that the category of government agency be removed or narrowed in scope and that ORR define and limit the scope of investigatory requests. Commenters also recommend that ORR revise the form and its instructions to require a court-issued subpoena or order as supporting documentation for any records request from a law enforcement agency absent an authorizing signature from the unaccompanied child or their legal guardian.

ORR Response: ORR has always cooperated with investigations performed by other government agencies, which includes state licensing agencies, child protective services, local law enforcement, the National Center for Missing and Exploited Children, and other federal agencies. However, ORR does not provide these agencies with unmitigated access to children’s records. As noted in the form, ORR limits that categories of documents it will provide to government agencies without authorization from the child or the child’s parent/legal guardian. In the first quarter of 2021, ORR will revise the form to require that requests from government agencies be accompanied by either 1) a court-issued subpoena or order or 2) a statement on the agency’s official letterhead verifying the requesting party’s affiliation and which specifies the scope of their investigation and includes a case reference number. In addition, ORR will not release any records that are clearly outside of the scope of the agency’s investigation absent a court-issued subpoena or order.

5. Commenters believe that by allowing for the inclusion of state records under the category of Legal Information, therefore permitting government agencies to obtain these records without an authorizing signature from the unaccompanied child (or the parent or legal guardian in cases of children under 14 or those with a diagnosed developmental disability), ORR exposes itself to violations of state records confidentiality laws. Commenters note that while some state laws allow for release of certain records to specific agencies performing duties related to the subject matter (such as child abuse investigations), numerous state laws prohibit the release of juvenile or child protective service records to be released to any government agency, which would include Immigration and Customs Enforcement (ICE), EOIR, and others.

ORR Response: ORR complies with confidentiality requirements and limits the disclosure of certain records, as appropriate.

6. Commenters noted a few typographical errors in the form.

ORR Response: ORR will correct all typographical errors in the first quarter of 2021.

UAC Satisfaction Survey

1. ORR received several comments asking how the survey will be used, what confidentiality protections will be in place, if the survey will be used at secure, staff secure, and residential treatment facilities, and

recommending that ORR reconsider use of the survey in favor of comprehensive and independent evaluation and monitoring to achieve its programmatic improvement goals.

ORR Response: ORR will no longer be implementing this survey and is removing it from this information collection request.

Notice to UAC for Flores Visits

1. Commenters noted that the Spanish translation of the form is confusing, unclear, and inconsistent with the English version of the form.

ORR Response: In the first quarter of 2021, ORR will re-translate the form to ensure that the Spanish version is clear and consistent with the English version.