



# Confidentiality in Juvenile Delinquency Proceedings

Janet Mason

Introduction	2
The Juvenile Court System	4
Public Access to Juvenile Court Proceedings	6
Confidentiality of Juvenile Records	7
Juvenile Court Records	7
Recordings of Juvenile Hearings	11
Law Enforcement Records	12
Fingerprints and Photographs	13
Department of Juvenile Justice and Delinquency Prevention Records	15
Social Services Records	16
Electronic Records	16
Confidentiality of Information about Juveniles	17
Agencies Authorized to Share Information	17
Information Provided to Schools	18
Information about Juveniles Who Escape	20
Information Relating to Child Abuse, Neglect, or Dependency	20
Use of the Juvenile's Record in Court Proceedings	21
Pretrial Uses in Criminal Cases	21
Impeachment of a Witness in a Juvenile Proceeding	22
Impeachment of a Witness in Other Proceedings	22
Substantive Evidence in Criminal Cases	23
Aggravating Factor or Circumstance at Sentencing	24
Publicity about Juveniles	24
Community Awareness	27
Conclusion	27

---

Janet Mason is a School of Government faculty member who specializes in juvenile law.

This bulletin updates an earlier version of "Confidentiality in Juvenile Delinquency Proceedings," published in October 2004 as *Special Series* No. 19.

## Introduction

Juveniles who violate criminal laws are not charged with crimes; they are alleged to be “delinquent.” Juvenile suspects are not arrested; they are “taken into custody.” They are not served with warrants; they and their parents are served with “juvenile petitions and summonses.” If a court finds that a juvenile violated a criminal law, the result is an “adjudication of delinquency” in a civil case, not a criminal conviction. After an adjudication of delinquency, a juvenile is not “sentenced.” Instead, from a broad range of “dispositional alternatives,” the judge designs a plan—a disposition—to

- protect the public;
- emphasize the accountability and responsibility of the juvenile and the juvenile’s parents; and
- provide appropriate consequences, treatment, training, and rehabilitation for the juvenile.<sup>1</sup>

It is not uncommon for the media, the public, and even those who work in the juvenile justice system to use terminology from the adult criminal system to describe proceedings involving juvenile offenders. Some consider this usage harmless, think the more familiar criminal terms will be easier for juveniles to understand, or hope they will impress upon juveniles the seriousness of the proceedings.<sup>2</sup> Others stress the importance of adhering to the special vocabulary of juvenile law, because it reflects the fundamental differences between the purposes, procedures, and outcomes of juvenile proceedings and those of the criminal justice system.<sup>3</sup>

One such difference is the extent to which information about juveniles, records of juvenile proceedings, and sometimes the proceedings themselves are shielded from public view. For many years, keeping juvenile court hearings and records confidential was considered a natural and necessary component of a juvenile justice system that focused on rehabilitation, not punishment, and that sought to avoid stigmatizing young people for indiscreet youthful behavior. Juveniles whose conduct would be criminal if engaged in by an adult could go through court proceedings in almost complete secrecy. Before and into the 1960s, juvenile court hearings were informal and might even have been held in closed chambers. Statutory prohibitions against or restrictions on public hearings in juvenile cases were common.<sup>4</sup>

Recent decades have seen a move toward more openness in juvenile court proceedings.<sup>5</sup> Published proceedings of a 1996 national conference on juvenile justice records noted that “more

1. See N.C. GEN. STAT. (hereinafter G.S.) § 7B-2500.

2. See, e.g., Eugene H. Czajkoski, *Why Confidentiality in Juvenile Justice?* 33 JUV. & FAM. CT. J. 49–50 (1982) (characterizing such phrasing as “terminological manipulation” that does little to spare young people the stigma of being involved in the juvenile justice system).

3. The Kansas Supreme Court, holding that juveniles have a constitutional right to jury trials in delinquency proceedings, noted that during the time since the court had held otherwise twenty-four years earlier, the state legislature had “significantly changed the language” of the Kansas Juvenile Offender Code. Those changes included “the replacement of nonpunitive terminology with criminal terminology similar to the adult criminal code.” *In re L.M.*, 286 Kan. 460, 465–66, 186 P.3d 164, 168 (2008).

4. In the seminal case recognizing juveniles’ due process rights in delinquency proceedings, the United States Supreme Court described the juvenile’s hearing in the Arizona trial court as the appearance of the juvenile, his brother, and two probation officers before the judge in chambers. No complainant was present, no witnesses were sworn, and no record of the proceeding was made. *In re Gault*, 387 U.S. 1, 5 (1967).

5. See, e.g., THOMAS A. JACOBS, *CHILDREN AND THE LAW: RIGHTS AND OBLIGATIONS* § 8:49 (1995 & Cum. Supp. 2010) (“The trend in confidentiality of records law seems to be toward more disclosure

and more State and local jurisdictions are . . . opening access to juvenile records and juvenile criminal proceedings that for decades have been protected by strict confidentiality laws compatible with the rehabilitative mission of juvenile justice.”<sup>6</sup> Reactions to these relatively rapid changes, the report stated, ranged from warnings of “a fundamental shift that threatens to undermine the foundations of the juvenile justice system” to the view that these changes were necessary “to stem the tide of juvenile crime.”<sup>7</sup> Throughout the 1990s, as many states re-examined their juvenile justice systems and laws, confidentiality of juvenile court proceedings and records received extensive attention.<sup>8</sup>

Changes in North Carolina law reflect the trend toward more openness in juvenile proceedings. They also reflect ambivalence about just *how* open matters involving juvenile offenders should be. The Governor’s Commission on Juvenile Crime and Justice, whose work led to the complete rewriting of the North Carolina Juvenile Code<sup>9</sup> in 1998, addressed several issues relating to the openness of juvenile court hearings, fingerprinting and photographing juveniles, and access to juvenile records.<sup>10</sup> Neither that commission nor any other group, though, has undertaken a comprehensive assessment of issues relating to confidentiality in matters pertaining to

---

of juvenile records.”); NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, *WHERE WE STAND: AN ACTION PLAN FOR DEALING WITH VIOLENT JUVENILE CRIME* (Mar. 1, 1994) (recommending that juvenile court be open to the public for fact-finding hearings involving violent crimes and transfers of juveniles’ cases to adult criminal court); Kent Markus, Keynote Address at the U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics, National Conference on Juvenile Justice Records: Appropriate Criminal and Noncriminal Justice Uses (hereinafter, *National Conference*), 3–7 (May 1997) available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/NCJJR.PDF> (“Right and left, State legislatures are amending their laws, not only to permit greater access to juvenile records, but also greater access to juvenile [delinquency] proceedings overall.”).

6. “Introduction,” *National Conference*, vii.

7. *Id.* The Honorable Leonard P. Edwards has described the tensions between openness and confidentiality in juvenile cases and the arguments for each approach. See Judge Leonard P. Edwards, *Confidentiality and the Juvenile and Family Courts*, 55 JUV. & FAM. CT J. 1, 1–24 (Winter 2004), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1755-6988.2004.tb00093.x/pdf>.

8. See, e.g., Emily Bazelon, *Public Access to Juvenile and Family Court: Should the Courtroom Doors Be Open or Closed?* 18 YALE L. & POL’Y REV. 155 (1999); Shannon F. McLatchey, *Media Access to Juvenile Records: In Search of a Solution*, 16 GA. ST. U. L. REV. 337 (1999); Kara E. Nelson, Comment, *The Release of Juvenile Records Under Wisconsin’s Juvenile Justice Code: A New System of False Promises*, 81 MARQ. L. REV. 1101 (1998); Arthur R. Blum, Comment, *Disclosing the Identities of Juvenile Felons: Introducing Accountability to Juvenile Justice*, 27 LOY. U. CHI. L.J. 349 (1996); Kathleen M. Laubenstein, Comment, *Media Access to Juvenile Justice: Should Freedom of the Press Be Limited to Promote Rehabilitation of Youthful Offenders?* 68 TEMP. L. REV. 1897 (1995); Hon. Gordon A. Martin Jr., *Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 393 (1995); Susan S. Greenebaum, Note, *Conditional Access to Juvenile Court Proceedings: A Prior Restraint or a Viable Solution?* 44 WASH. U. J. URB. & CONTEMP. L. 135 (1993).

9. The North Carolina Juvenile Code (G.S. Ch. 7B) is the body of law that specifies procedures for juvenile cases. In addition to procedures relating to delinquent juveniles, the Code addresses procedures concerning juveniles who are alleged to be abused, neglected, dependent, or undisciplined. This bulletin addresses the subject of confidentiality only in relation to juveniles involved in delinquency proceedings, although many of the issues and Juvenile Code provisions relating to juveniles involved in other types of juvenile proceedings are the same or similar.

10. GOVERNOR’S COMM’N ON JUVENILE CRIME & JUSTICE, FINAL REPORT (Mar. 10, 1998).

juveniles in this state.<sup>11</sup> In most instances, it is fairly easy to identify the laws and rules that apply to particular questions about confidentiality and the juvenile courts. It is difficult, however, to discern a consistent rationale underlying those policies.

The remainder of this bulletin will explain North Carolina law relating to

1. access to juvenile court hearings in delinquency cases,
2. access to records and information about young people who are involved in juvenile delinquency proceedings, and
3. permissible uses of records and information about young people who are involved in juvenile delinquency proceedings.

### The Juvenile Court System

When separate juvenile court procedures for children were first established in the late nineteenth and early twentieth centuries, they were informal proceedings that emphasized helping, protecting, and rehabilitating children, not punishing them.<sup>12</sup> In the second half of the twentieth century, the procedures in juvenile court began to look more like those in adult criminal court. The U.S. Supreme Court has held, as a matter of constitutional law, that juveniles who are alleged to be delinquent are entitled to most of the same legal safeguards available to adult criminal defendants.<sup>13</sup> At the same time, appellate courts continue to affirm that the philosophy underlying the juvenile court system justifies treating juveniles differently from adults, even when this results in subjecting a juvenile to consequences that are harsher than those that would apply to an adult who committed the same offense.<sup>14</sup>

---

11. For excellent discussions of the concept of confidentiality, both in general and as it relates to social services, see John L. Saxon, *Confidentiality and Social Services (Part I): What Is Confidentiality?* SOC. SERVS. L. BULL. No. 30 (Feb. 2001); *Confidentiality and Social Services (Part II): Where Do Confidentiality Rules Come From?*, *id.*, No. 31 (May 2001); *Confidentiality and Social Services (Part III): A Process for Analyzing Issues Involving Confidentiality*, *id.*, No. 35 (Apr. 2002); *Confidentiality and Social Services (Part IV): An Annotated Index of Federal and State Confidentiality Laws*, *id.*, No. 37 (Oct. 2002) (Institute of Government, University of North Carolina at Chapel Hill). For ordering information, call (919) 966-4119 or go to <http://shopping.netsuite.com/s.nl/c.433425/sc.7/category.64/f>.

12. See, e.g., SAMUEL M. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM § 1:2, 2–4 (2d ed. 2010); 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN § 21:1, 363–67 (rev. 2d ed. 2005 & Cum. Supp. 2009–2010).

13. See *Kent v. United States*, 383 U.S. 541 (1966) (holding that before transfer to adult court a juvenile was entitled to a hearing, access to information considered by the court, and a statement of reasons for the transfer); *In re Gault*, 387 U.S. 1 (1967) (holding that as a matter of due process a juvenile in a delinquency proceeding had a right to receive notice, to be represented by counsel, to confront and cross-examine witnesses, and to exercise the privilege against self-incrimination); *In re Winship*, 397 U.S. 358 (1970) (requiring that allegations of delinquency be proved beyond a reasonable doubt). The protections afforded juveniles are not exactly the same as those granted to adult defendants, in part because juvenile proceedings are civil, not criminal, actions in which procedural rights derive from a juvenile's right to due process. Under North Carolina law, juveniles who are alleged to be delinquent, unlike adults who are charged with crimes, are not entitled to trial by jury, do not have a right to be released on bond when they are held in detention, and may not waive their right to be represented by counsel. G.S. 7B-2405.

14. See, e.g., *In re D.L.H.*, 364 N.C. 214, 217, 694 S.E.2d 753, 755 (2010) (holding that the juvenile was not entitled to “credit for time served” for time spent in pre-disposition detention, and stating that “the

The North Carolina General Assembly's intent to maintain the juvenile-adult distinctions is clear. The purposes stated in the North Carolina Juvenile Code include the following:

1. To protect the public from acts of delinquency.
2. To deter delinquency and crime by providing dispositions that emphasize both the juvenile's accountability and appropriate rehabilitative services.
3. To provide an effective system to screen and evaluate complaints about delinquent conduct and, where public safety can be ensured, to divert juveniles to community-based resources.
4. To provide uniform procedures that are fair and equitable.<sup>15</sup>

When the applicable procedures result in an adjudication of delinquency, the overarching goal is to develop for each juvenile a disposition that provides appropriate consequences, treatment, training, and rehabilitation to help the juvenile become "a nonoffending, responsible, and productive member of the community."<sup>16</sup>

North Carolina has long been in a small minority of states that limits the application of special juvenile procedures to young people who commit offenses before they reach the age of sixteen. Most states specify either eighteen or seventeen as the age under which a child is subject to the jurisdiction of the juvenile court for criminal conduct.<sup>17</sup> In 2009, the General Assembly established the Youth Accountability Planning Task Force in the Department of Juvenile Justice and Delinquency Prevention to study expansion of the juvenile justice system to include sixteen- and seventeen-year-olds who commit crimes or infractions and to develop an implementation plan for raising the age to qualify for juvenile status.<sup>18</sup> Currently in this state sixteen- and seventeen-year-olds, although legally minors and subject to parental control,<sup>19</sup> are prosecuted and sentenced as adults when they commit criminal offenses.<sup>20</sup> In addition, cases of juveniles who are alleged to be delinquent for felony offenses committed when they were age thirteen,

---

nature and purposes of juvenile proceedings remain distinct from those of criminal prosecutions."); *In re Allison*, 143 N.C. App. 586, 547 S.E.2d 169 (2001) (holding that the statutory requirement that every delinquent juvenile committed to training school remain there for a minimum of six months did not violate the juvenile's right to equal protection, even though the maximum sentence an adult could receive for the same offense was 120 days.).

15. G.S. 7B-1500.

16. G.S. 7B-2500.

17. Only one other state—New York—has a jurisdictional age of sixteen for purposes of delinquency, although a number of other states exclude from juvenile court cases involving specified offenses. See Davis, *Rights of Juveniles*, cited in full *supra* n.12, App. B ("Chart of Selected State Statutes"). See also Tamar R. Birckhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, N.C. L. Rev. 86.6 (2008), available at [http://works.bepress.com/tamar\\_birckhead/2](http://works.bepress.com/tamar_birckhead/2).

18. S.L. 2009-451, sec. 18.9. Information about the work of the task force and its final report are available at [www.ncdjjdp.org/youthAccountabilityTaskForce/taskForce.html](http://www.ncdjjdp.org/youthAccountabilityTaskForce/taskForce.html). Two bills introduced in the 2011 session of the General Assembly proposed amending the definition of *delinquent juvenile* to raise the maximum age from sixteen to eighteen in six-month increments over a four-year period. The text and bill histories of House Bill 632 and Senate Bill 506 are available at [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=H632](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=H632) and [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=S506](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=S506), respectively.

19. Any juvenile who is under the age of eighteen and is not married, emancipated, or in the armed forces is "subject to the supervision and control of the juvenile's parents." G.S. 7B-3400, -3402.

20. G.S. 7B-1604(a).

fourteen, or fifteen may be transferred to superior court for trial as if they were adults.<sup>21</sup> When a juvenile is tried as an adult in criminal court, the trial and other court proceedings and the court records are open to the public. When a young person's case is handled in juvenile court, public access to the court proceedings may be restricted, and access to records and information about the juvenile's case is always restricted.

### Public Access to Juvenile Court Proceedings

Juvenile court proceedings consist of two primary stages: the *adjudicatory*, or fact-finding, hearing and the *dispositional* hearing. At the adjudicatory hearing, a district court judge hears evidence to determine whether the juvenile in fact committed the offense alleged. If the judge finds beyond a reasonable doubt that the juvenile committed the offense, a dispositional hearing follows. At this hearing the judge first determines which dispositional alternatives are available, based on the seriousness of the offense and the juvenile's record of prior adjudications.<sup>22</sup> Then the court determines a dispositional plan that best serves the purposes outlined above. In keeping with the philosophy of juvenile court, the range of options for dispositional plans and the bases on which the judge chooses among them differ markedly from sentences imposed in criminal court and the factors that underlie them. The dispositional hearing may involve substantial evidence regarding the juvenile's emotional, psychological, educational, medical, and other needs; information about the family's background, strengths, and weaknesses; and an assessment of the juvenile's risk of reoffending.

All court hearings in delinquency cases are presumed to be open to the public.<sup>23</sup> If the juvenile requests that a hearing in his or her case remain open, the court may not close the hearing. If the juvenile does not request an open hearing, the court may close an entire hearing or part of a hearing, but only after finding that there is good cause to do so based on the circumstances of the particular case. In evaluating whether there is good cause to close a hearing, the court must, at minimum, consider the following factors:

1. the nature of the allegations against the juvenile;
2. the juvenile's age and maturity;
3. the benefit to the juvenile of confidentiality;
4. the benefit to the public of an open hearing; and
5. the extent to which an open hearing will compromise the confidentiality of the juvenile's file.<sup>24</sup>

21. The judge in the juvenile proceeding *must* transfer the case to superior court if the judge finds probable cause to believe the juvenile committed first-degree murder. After finding probable cause for any other felony the judge has discretion, after considering a number of specified factors, to decide whether to transfer the case. G.S. 7B-2203. If convicted in a case that is transferred to superior court, the juvenile must be prosecuted as an adult for any offense he or she is alleged to have committed after the conviction. G.S. 7B-1604(b).

22. Dispositional options, which are set out in G.S. 7B-2502 and -2506, include, among other things, probation, restitution, treatment, a fine, placement in foster care or a wilderness camp program, intermittent confinement in a detention facility, commitment to a youth development center, or some combination of these or other options.

23. G.S. 7B-2402.

24. *Id.*

Thus, while a juvenile has a right to demand an open hearing, a juvenile or a prosecutor who wants a hearing to be closed must convince the court that good cause exists to close it, based on the statutory factors listed above.<sup>25</sup> If the court does close a hearing or part of a hearing, it still may allow any victim, member of a victim's family, law enforcement officer, witness, or other person directly involved in the hearing to be present in the courtroom.<sup>26</sup> If the court does not close a hearing, then anyone may attend—a high school civics class, Girl Scouts working toward a "Law and Order" badge, people waiting for their cases to be heard in other courtrooms, or any other person interested in attending.

## Confidentiality of Juvenile Records

Courts, law enforcement agencies, and other public agencies maintain a variety of records regarding juveniles who become involved in the juvenile justice system. The North Carolina Juvenile Code restricts access to many of these records.

### Juvenile Court Records

The Juvenile Code directs each clerk of superior court to maintain a complete record of all juvenile cases filed in a given county.<sup>27</sup> Rules of Recordkeeping issued by the state Administrative Office of the Courts direct clerks to "establish and maintain one case record for each juvenile who is the subject of one or more" of ten types of juvenile actions listed in the Rule.<sup>28</sup> This official juvenile court record contains all papers filed in any juvenile proceeding in that county in which the juvenile is a party—petitions, summonses, court orders, motions, predisposition reports, etc.<sup>29</sup> It also includes any electronic or mechanical recording of court hearings in cases involving the juvenile.<sup>30</sup>

---

25. See *In re K.T.L.*, 177 N.C. App. 365, 629 S.E.2d 152 (2006) (holding that the trial court did not abuse its discretion when it denied motions by the State and the juvenile to close hearings in a case in which the juvenile was charged with involuntary manslaughter, after noting that the trial court conducted a thorough hearing, heard arguments from both parties, and considered the statutory factors).

26. G.S. 7B-2402. North Carolina law protects the juvenile's right to a public hearing. It does not acknowledge or create a public right of access to juvenile court proceedings. In *Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449, 515 S.E.2d 675 (1999), the North Carolina Supreme Court held that "the open courts provision of Article I, Section 18 of the North Carolina Constitution guarantees a *qualified* constitutional right on the part of the public to attend civil court proceedings." That right, the court said, is subject to "reasonable limitations imposed in the interest of the fair administration of justice or for other compelling public purposes." *Id.* at 476, 515 S.E.2d at 693. See also James C. Drennan, Privacy and the Courts, 67 *Popular Gov't* 25–32 (Spring 2002), available at <http://sogpubs.unc.edu/electronicversions/pg/pgspr02/article4.pdf>.

27. Without always distinguishing carefully, the Juvenile Code uses the term "record" to refer not only to documents maintained by the clerk, but also to specific facts that are documented in a record, such as a juvenile's record of an adjudication for burglary. Similarly, the Code sometimes blurs the lines between access to a record and permissible uses of information from the record. See "Use of the Juvenile's Record in Court Proceedings," *infra*.

28. See Rule 12.1, Rules of Recordkeeping, North Carolina Administrative Office of the Courts. The Rule provides for five categories of subfolders, categorized according to the type of action(s) involved. The types of proceedings in which the juvenile court has jurisdiction are listed in G.S. 7B-200(a), -1600(a), -1601(a), and -1603.

29. G.S. 7B-3000(a).

30. *Id.*

If the court has directed the clerk to seal any part or parts of the record, the clerk may not allow anyone to see those parts without a court order specifically authorizing access.<sup>31</sup> Without a court order, only the following people may see and obtain copies of all written parts of a juvenile's court record that are not sealed:

1. the juvenile;
2. the juvenile's attorney;
3. the juvenile's parent, guardian, or custodian, or an authorized representative of that individual;
4. juvenile court counselors; and
5. the prosecutor.<sup>32</sup>

Certain others may obtain parts of the juvenile court record or information from it without a court order, but these individuals do not have access to and cannot obtain copies of the entire record. Examples of persons with a limited right of access include:

- **Magistrates and law enforcement officers.** The prosecutor, who has access to the entire record, has discretion to share information from a juvenile's record with magistrates and law enforcement officers who are sworn in North Carolina. However, the prosecutor may not allow a magistrate or law enforcement officer to photocopy any part of the juvenile's record.<sup>33</sup>
- **Adult probation officers.** An individual probation officer who is supervising an adult<sup>34</sup> who has a juvenile record may not personally access that probationer's juvenile record in the clerk's office. However, a probation officer may obtain records of the adult probationer's delinquency adjudications when
  1. the person is on probation for an offense that he or she committed before age twenty-five and
  2. the delinquency adjudications were based on felony offenses.<sup>35</sup>

Although no court order is required for access to these delinquency adjudications, the probation officer may not obtain these records directly from the court clerk. Instead, each judicial district manager in the Division of Community Corrections in the state Department of Correction is required to designate a staff person in each county to obtain the records from the clerk, upon the request of the probation officer assigned to supervise the person whose records are being sought.<sup>36</sup> The designated staff person then transfers the juvenile records to the appropriate probation officer. The purpose of allowing a probation officer to obtain this information is to assist him or her in assessing the risks associated

---

31. See G.S. 7B-3000(c).

32. G.S. 7B-3000(b).

33. *Id.* See also "Pretrial Uses in Criminal Cases," *infra*.

34. These provisions also apply when a probation officer is supervising a sixteen- or seventeen-year-old probationer or a younger juvenile whose case was transferred to superior court.

35. G.S. 7B-3000(e1).

36. *Id.* The judicial district manager is required to inform the clerk in each county, in writing, of the identity of the designated staff person in the county. See also G.S. 15A-1341(e) ("The probation officer assigned to a defendant may examine and obtain copies of the defendant's juvenile record in a manner consistent with G.S. 7B-3000(b) and (e1).").



with supervising the probationer. Copies of any juvenile records must be withheld from public inspection and cannot be made part of any public record in a criminal case. The copies must be destroyed within 30 days after the end of the person's period of supervised probation. In addition, any other information in Division of Community Corrections records relating to a person's juvenile record must remain confidential until destroyed according to the record retention schedule for the division.<sup>37</sup>

The statutory provision stating that only certain persons may access a juvenile's court record without a court order implies that others may access the record *with* a court order. Requests for orders allowing someone to access or obtain copies of a juvenile's record ordinarily would be made to a district court judge in the district where the record is located,<sup>38</sup> although in some circumstances a superior court judge also may order disclosure of a juvenile court record.<sup>39</sup> These requests might come from law enforcement officers or magistrates, lawyers or court officials in other states, federal probation officials, parties in civil actions, school officials, media representatives, or others.

The Juvenile Code does not specify a procedure for seeking a court order for access to or information from a juvenile's record. The legislature could prescribe such a procedure, but thus far has not done so.<sup>40</sup> The Code is also silent with respect to criteria, standards, or limitations that apply when a court is considering a request for such an order. The North Carolina Court of Appeals has described the statute restricting access to juvenile records as “[a]t most, . . . provid[ing] a mechanism for individuals to obtain juvenile records upon a showing of need.”<sup>41</sup> Determining the appropriate procedure, including notice and hearing requirements; defining and assessing need; and deciding the scope of any disclosure apparently are tasks left to the discretion of the district court judge.

In the absence of a statutory procedure for requesting an order allowing access to a juvenile record, several approaches are possible.

- Least likely to be considered appropriate is an *ex parte* request for the juvenile record made directly to a district court judge. This form of request, if in writing, might be appropriate if the need for the information is obvious and no one can be identified who might be adversely affected by the disclosure. For example, a chief district court judge might authorize a university researcher to examine certain juvenile records, conditioned on written assurances that he or she would not copy or disclose any case-specific information.

---

37. G.S. 7B-3000(e1).

38. The Juvenile Code defines “court” as “[t]he district court division of the General Court of Justice” and “judge” as “any district court judge,” unless the context clearly requires a different interpretation. G.S. 7B-1501(4), (15).

39. See text at notes 46 and 47, *infra*.

40. In 2001 the General Assembly enacted G.S. 1-72.1, which allows a person who is not a party to a civil proceeding to file a motion in the action for the limited purpose of asserting a right of access to the proceeding or to a related court record, without intervening in or becoming a party to the proceeding for any other purpose. The section, however, provides explicitly that it does not apply to juvenile proceedings or juvenile court records.

41. *In re M.E.B.*, 153 N.C. App. 278, 282, 569 S.E.2d 683, 686 (2002) (holding that a probation condition requiring a juvenile to wear a sign saying “I am a juvenile criminal” violated the Juvenile Code’s confidentiality requirements and stating that the statute does not authorize the court “to place juvenile records in a public display case on the courthouse steps.” *Id.*).

- If the record request involves a juvenile matter in which the court continues to exercise jurisdiction, the person requesting information might file a motion that seeks
  1. permission to intervene for the limited purpose of seeking access to the juvenile record,
  2. a hearing at which he or she could present evidence of a “need” for the disclosure, and
  3. an order authorizing access to the record or to specific information in it.

The motion and notice in such circumstances would be served on the juvenile and the State. This approach often is not practical or feasible if the court has terminated jurisdiction in the case or if someone is trying to determine whether a person even has a juvenile record.

- A chief district court judge might either develop local rules or issue an administrative order setting out a procedure for requesting access to a juvenile’s file.<sup>42</sup> Either approach should take into account the need in most cases to ensure that the juvenile (or former juvenile) is given notice and a chance to be heard on the question of disclosure.
- A person seeking access to a juvenile record might file an independent action for that purpose. A district attorney seeking confidential information from a mental health agency took this approach when a statute authorized the court to “compel disclosure” of certain privileged information but set out no procedure for asking the court to do that when no criminal or civil action had been initiated.<sup>43</sup> The trial court dismissed the proceeding for lack of jurisdiction. The court of appeals reversed, however, stating that while the legislature’s intent regarding the trial court’s authority was clear, “[u]nfortunately, the legislature failed to specify the procedural steps for implementation.”<sup>44</sup> In such instances, the court said, the trial court must exercise its inherent or implied powers to effectuate the legislature’s intent. The court of appeals found the district attorney’s approach to be a “practicable and workable” means of bringing the matter before the court.<sup>45</sup>

In many cases, before resorting to any of these procedures, the person seeking access to a juvenile’s record should attempt to obtain the juvenile’s consent through his or her attorney, from the former juvenile directly if he or she has reached age eighteen, or by having the attorney or former juvenile make the request for access. An attorney representing the juvenile in a later

---

42. This type of administrative order should not be confused with an order entered by a chief district court judge pursuant to title 28, chapter 01A, section .0301(j) of the North Carolina Administrative Code, an information-sharing rule issued pursuant to G.S. 7B-3100, which applies to local agencies’ records, not court records.

43. *In re Albemarle Mental Health Ctr.*, 42 N.C. App. 292, 256 S.E.2d 818 (1979).

44. *Id.* at 298, 256 S.E.2d at 822.

45. *Id.* See also *In re Superior Court Order Dated April 8, 1983*, 315 N.C. 378, 338 S.E.2d 307 (1986) (holding that the superior court had inherent authority to consider the district attorney’s petition for an order requiring a bank to disclose confidential information but that the State had not made the minimum showing necessary for entry of such an order); *In re Brooks*, 143 N.C. App. 601, 548 S.E.2d 748 (2001) (holding that the superior court had jurisdiction to consider a district attorney’s petitions for release of confidential personnel files but that the petitions were inadequate because they were not accompanied by sworn affidavits, did not include specific factual allegations justifying disclosure, and did not state grounds allowing disclosure).

civil or criminal case, for example, should not have to seek a court order to obtain records that his or her client has a right to obtain without a court order.

In some circumstances, a request or motion for access to juvenile records should be directed to someone other than a district court judge. In a criminal case, for example, a defendant has a constitutional due process right to any information that is material to his or her guilt, innocence, or punishment.<sup>46</sup> A defendant in a criminal trial seeking access to another individual's confidential juvenile record should make a motion to the judge presiding in the criminal case. If the defendant can show that the information sought might be material and favorable to his or her defense, the judge in the criminal case must examine the juvenile record in camera and order the release of any portion or portions that are material and favorable to the defendant's defense.<sup>47</sup>

Any request, consent form, or court order relating to access to or copies of a juvenile's record needs to be specific and clear with regard to the intended meaning of "record." Confusion and delay can result if it is not clear whether a request, consent, or court order refers to

- everything in the juvenile's entire court file;
- everything in a particular subfolder, e.g., delinquency or undisciplined matters; abuse, neglect, or dependency cases; or termination of parental rights proceedings;
- only information relating to the juvenile's delinquency adjudication for a specific offense;
- information about when and for what offenses the juvenile was adjudicated delinquent;
- the most recent dispositional order, including conditions of the juvenile's probation; or
- something else.

### Recordings of Juvenile Hearings

Some hearings in a juvenile court delinquency proceeding must be recorded, and in practice most hearings are recorded.<sup>48</sup> The electronic or mechanical recording of a juvenile hearing is considered part of the official juvenile court record. It can be turned into a written transcript, however, only when a party has given notice of appeal from a juvenile court order.<sup>49</sup> If no appeal is taken, the court may order the clerk to destroy the recording.<sup>50</sup> No one, not even the juvenile him or herself, may obtain an electronic or mechanical copy of the recording of a hearing in a delinquency case without a court order.<sup>51</sup> As with written parts of a juvenile's file, the Juve-

---

46. *Brady v. Maryland*, 373 U.S. 83 (1963).

47. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). *See also* *State v. Phillips*, 328 N.C. 1, 399 S.E.2d 293, *cert. denied*, 501 U.S. 1208 (1991) (upholding the trial court's determination that sealed social services, mental health, hospital, and education records did not contain information favorable to the defendants); *State v. McGill*, 141 N.C. App. 98, 539 S.E.2d 351 (2000) (holding that the trial court erred in refusing to give the defendant access to sealed social services records regarding the alleged victim); *State v. Johnson*, 165 N.C. App. 854, 599 S.E.2d 599 (2004) (holding that the child victim's social services file included information material and favorable to the defendant's case and should have been disclosed); *State v. Allen*, 166 N.C. App. 139, 601 S.E.2d 299 (2004) (upholding the trial court's determination that social services records did not contain evidence material and favorable to the defendant's case).

48. G.S. 7B-2410. Adjudicatory hearings, dispositional hearings, and hearings on probable cause and transfer to superior court must be recorded; the court has discretion to order that other types of hearings be recorded.

49. G.S. 7B-2410, -3000(d).

50. G.S. 7B-2901(a), -3000(d).

51. G.S. 7B-3000(d).

nile Code includes no procedures or criteria relating to requests for copies of the recordings of juvenile court hearings. Sometimes the court will order the recording of a hearing to be copied electronically for administrative reasons, for example, when a juvenile's case is transferred to another district for disposition and the adjudicatory hearing is recorded on a tape that includes hearings in other juveniles' cases.

### Law Enforcement Records

Law enforcement records and files relating to juveniles are not public records. The following individuals, without a court order, may inspect and obtain copies of these records and files:

- the juvenile or his or her attorney;
- the juvenile's parent, guardian, or custodian, or the authorized representative of one of those people;
- the prosecutor;
- juvenile court counselors; and
- law enforcement officers sworn in the state.<sup>52</sup>

Otherwise, these records may be accessed and copied only pursuant to a court order or the information-sharing rules described below.

Law enforcement agencies are required by law to keep juvenile records separate from adult records and files. The provisions on segregation of records do not apply to law enforcement records concerning a juvenile whose case has been transferred to superior court for trial as an adult.<sup>53</sup> Although the pertinent statute refers to "all law enforcement records and files concerning a juvenile," it probably does not encompass all law enforcement records that mention juveniles. To wit, a 1988 North Carolina Attorney General opinion took the position that the Juvenile Code confidentiality provision did not prohibit the identification of a juvenile in a law enforcement officer's collision report, which had to be made available for public inspection.<sup>54</sup> The confidentiality statute, the opinion stated, pertains specifically to investigations and records arising under the Juvenile Code.<sup>55</sup> The fact that the victim of a crime is a juvenile does not mean that law enforcement records relating to that crime are subject to the Juvenile Code's confidentiality mandates.<sup>56</sup>

Sheriffs maintain a special category of juvenile records. The court in a delinquency proceeding may order the juvenile to register as a sex offender when

1. the juvenile is adjudicated delinquent for first- or second-degree rape, first- or second-degree sexual offense, or attempted rape or sexual offense; and
2. the court finds that the juvenile is a danger to the community.<sup>57</sup>

The registered information is not available for public inspection and may not be included in county or statewide registries or made available to the public on the Internet.<sup>58</sup> The sheriff must

52. G.S. 7B-3001(b).

53. *Id.*

54. Response of Attorney General Lacy H. Thornburg to Maurice A. Cawn, Police Attorney for the City of Greensboro, 58 N.C.A.G. 33-34, May 17, 1988.

55. *Id.*

56. Access to law enforcement records relating to criminal investigations is governed by G.S. 132-1.4.

57. G.S. 7B-2509, 14-208.26.

58. G.S. 14-208.29.

maintain juvenile sex offender registration information separately from other records and may release it only to law enforcement agencies and local boards of education.<sup>59</sup> Although the registration requirement ends automatically when the juvenile reaches age eighteen,<sup>60</sup> the registration information is included in the Police Information Network, where it is kept permanently but remains confidential.<sup>61</sup>

### Fingerprints and Photographs

In delinquency matters, a juvenile may be fingerprinted and photographed only in prescribed circumstances, and the fingerprints and photographs generally must be treated as confidential information. The Juvenile Code is clear in some respects—but not others—regarding the proper custody, use, and retention or destruction of a juvenile’s fingerprints or photograph.

#### 1. Nontestimonial Identification Orders

A juvenile’s photograph or fingerprints may be taken pursuant to a nontestimonial identification order to assist in determining whether the juvenile committed an offense that would be a felony if committed by an adult.<sup>62</sup> Only the prosecutor or the juvenile may request a nontestimonial identification order, and a judge may issue the order only after making certain findings based on an affidavit that is part of the request.<sup>63</sup>

The law enforcement agency having custody of records relating to nontestimonial identification procedures, including a juvenile’s fingerprints and photograph, must destroy these items if

- a petition is not filed against the juvenile,
- the juvenile is not adjudicated delinquent, or
- the juvenile is younger than thirteen and is adjudicated delinquent only for an offense that is less than a felony.<sup>64</sup>

If the juvenile is adjudicated delinquent for a felony offense, the law enforcement agency having possession of the records should retain them until further order of the court.<sup>65</sup>

---

59. *Id.*

60. G.S. 14-208.30.

61. G.S. 14-208.31, 114-10.1.

62. G.S. 7B-2105. Nontestimonial identification orders also may authorize procedures for taking palm prints, measurements, blood or urine specimens, saliva or hair samples, handwriting exemplars, and other identification procedures that require the juvenile’s presence.

63. See G.S. 7B-2103, -2105, and -2107. Also see these forms developed by the Administrative Office of the Courts: AOC-J-204, “Application For Nontestimonial Identification Order (Juvenile Suspect),” July 1999, available at [www.nccourts.org/Forms/Documents/488.pdf](http://www.nccourts.org/Forms/Documents/488.pdf), and AOC-J-205, “Nontestimonial Identification Order (Juvenile Suspect),” July 1999, available at [www.nccourts.org/Forms/Documents/489.pdf](http://www.nccourts.org/Forms/Documents/489.pdf).

64. G.S. 7B-2108. See text at note 74, *infra*, regarding the destruction of fingerprints and photographs obtained pursuant to statutory mandates rather than nontestimonial identification orders.

65. G.S. 7B-2108. The statute states that “[i]f a juvenile 13 years of age or older is adjudicated delinquent for . . . a felony . . . , all records resulting from a nontestimonial order may be retained in the court file.” But it also requires “safeguards . . . to limit their use to inspection by law enforcement officers for comparison purposes in the investigation of a crime.” Since law enforcement officers do not have access to a juvenile’s court file but are the intended users of these records, it is logical to assume that they should remain in the possession of the law enforcement agency. When fingerprints or photographs are taken

## 2. Required Photographs and Fingerprints

Law enforcement officers are required to take a juvenile's photograph and fingerprints when

- the juvenile is in the physical custody of either law enforcement or the Department of Juvenile Justice and Delinquency Prevention (DJJDP); and
- a petition has been prepared alleging that the juvenile, while at least ten years of age, committed a nondivertible offense.<sup>66</sup>

A county juvenile detention facility must photograph any juvenile who is committed to the facility and may release the photograph to DJJDP,<sup>67</sup> which also is required to maintain a photograph of every juvenile in its custody.<sup>68</sup> Unless the juvenile's photograph and fingerprints were taken while the juvenile was in custody and have not been destroyed, a juvenile's photograph and fingerprints must be taken after the juvenile is adjudicated delinquent for committing a felony while at least ten years of age.<sup>69</sup>

Fingerprints and photographs taken pursuant to these provisions must be in a proper format for transfer to the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation.<sup>70</sup> If the juvenile is adjudicated delinquent for committing a felony while at least ten years of age, the juvenile's fingerprints—and probably the photograph as well—must be sent to the SBI. Fingerprints sent to the SBI must be entered into the Automated Fingerprint Identification System (AFIS), and the juvenile's fingerprints and photograph may be used “for all investigative and comparison purposes.”<sup>71</sup>

The Juvenile Code does not address the use of the fingerprints and photograph before a juvenile is adjudicated delinquent and they are sent to the SBI. Clearly they can be used for investigative and comparison purposes in relation to the nondivertible offense that triggered the requirement that the juvenile be fingerprinted and photographed.<sup>72</sup> The intent of the statute is unclear with respect to whether they can be used in the investigation of other offenses and shared with other law enforcement agencies.

Fingerprints and photographs of juveniles are not public records. They should not be placed in the juvenile's court file, they must be kept separate from any juvenile record (other than the electronic file maintained by the SBI), and they may not be expunged.<sup>73</sup> However, all juvenile fingerprints and photographs taken pursuant to G.S. 7B-2102(a)—when the juvenile is in the physical custody of law enforcement or DJJDP and a petition

---

pursuant to G.S. 7B-2102 because the juvenile is alleged to have committed a nondivertible offense, the statute explicitly provides that they “shall not be included in the clerk's record.”

66. G.S. 7B-2102(a). Nondivertible offenses include murder, first- or second-degree rape, first- or second-degree sexual offense, arson, certain felony drug offenses, first-degree burglary, crime against nature, and any felony that involves willful infliction of serious bodily injury or that was committed by use of a deadly weapon. G.S. 7B-1701.

67. G.S. 7B-2102(a1).

68. G.S. 7B-3102(d).

69. G.S. 7B-2102(b).

70. G.S. 7B-2102(c).

71. *Id.* Although the statute does not refer directly to sending the juvenile's photograph to the SBI, it does state that the SBI “shall release any photograph received pursuant to this section to the Department of Juvenile Justice and Delinquency Prevention upon request.”

72. G.S. 7B-2102(a).

73. G.S. 7B-2102(d). For provisions relating to expungement, see G.S. 7B-3200 through -3202.

has been prepared alleging that the juvenile, while at least ten years of age, committed a nondivertible offense—must be destroyed if

- no delinquency petition is filed against the juvenile within one year after the fingerprints and photograph are taken;
- the court does not find probable cause pursuant to G.S. 7B-2202; or
- a petition is filed but the juvenile is not adjudicated delinquent for any offense.<sup>74</sup>

In any of these circumstances, the chief court counselor is responsible for notifying the local custodian of records—most likely the law enforcement agency that took the photograph and fingerprints—who then must notify any other agencies that have the fingerprints or photograph.

### 3. Case Is Transferred to Superior Court

A juvenile's fingerprints must be taken when the juvenile court finds probable cause to believe the juvenile has committed a felony while at least thirteen years of age and orders that the juvenile's case be transferred to superior court for trial as an adult. These fingerprints must be sent to the SBI.<sup>75</sup>

### Department of Juvenile Justice and Delinquency Prevention Records

The Department of Juvenile Justice and Delinquency Prevention (DJJDP) is the state agency that provides juvenile services throughout the state. Juvenile court counselors employed by the department receive and screen complaints about delinquent behavior, divert cases from court or approve the filing of juvenile petitions, prepare predisposition reports and recommendations for the court, and supervise juveniles who are on probation or who have been released from a youth development center. In addition to copies of many of the same items that are included in a juvenile's court record, the juvenile court counselor's record may include family background information; social, medical, psychiatric, educational, or psychological reports; probation reports; and other information the court finds should be protected from public inspection.<sup>76</sup>

DJJDP also keeps records in relation to its responsibility for the state's youth development centers, state-operated detention facilities, and a variety of community-based programs for juveniles. Those who may access and obtain copies of DJJDP's records about a juvenile without a court order are

- the juvenile and the juvenile's attorney;
- the juvenile's parent, guardian, or custodian, or that person's authorized representative;
- DJJDP professionals who are involved directly in the juvenile's case; and
- juvenile court counselors.<sup>77</sup>

Otherwise, these records may be examined only by order of the court or pursuant to the information-sharing rules described below.<sup>78</sup>

74. G.S. 7B-2102(e). See text at note 64, *supra*, regarding the destruction of records and results of court-ordered nontestimonial identification procedures.

75. G.S. 7B-2201.

76. G.S. 7B-3001(a).

77. G.S. 7B-3001(c).

78. The issues regarding how one obtains a court order for these records are similar to those discussed above regarding the juvenile's court file. Occasionally, though, someone other than a judge might have authority to order the release of confidential agency records. In an appeal challenging the authority of the

### Social Services Records

If the court places a juvenile in the custody of a county department of social services,<sup>79</sup> the records kept by that department will contain information about the juvenile, his or her family, the juvenile's placement, and the court proceeding. These records are not open to the public and may be examined or copied only by order of the court, as permitted by social services statutes or administrative rules,<sup>80</sup> or pursuant to the information-sharing rules described below.

### Electronic Records

Records that are confidential remain so regardless of the form they take. When confidential documents are created, stored, or shared electronically, risks of improper disclosure may increase and issues unique to electronic records may arise.<sup>81</sup> But the law as to who may access or obtain copies of the records is not unique when the records are electronic—the same rules, discussed above, apply. Juvenile justice agencies and courts—like medical providers, schools, and innumerable other public and private organizations charged with protecting confidential records—have taken a variety of steps to adapt to the increasing role of technology in managing records and information.<sup>82</sup> Those efforts are reflected, for example, in JWISE, the automated information system for juvenile courts in the state, and NC-JOIN (the North Carolina Juvenile Online Information Network), a Web-based system that allows court counselors and other staff in the Department of Juvenile Justice and Delinquency Prevention (DJJDP) to access information about juveniles in the system. Both the Administrative Office of the Courts and DJJDP are among the state agencies working together to develop and implement North Carolina Criminal Justice Law Enforcement Automated Data Services (CJLEADS), which integrates data from a variety of state criminal justice systems and eventually may incorporate juvenile court case information.<sup>83</sup>

---

North Carolina Industrial Commission to compel discovery of confidential information from the state Department of Juvenile Justice and Delinquency Prevention, the court of appeals held that in a proceeding under the State Tort Claims Act the commission was a “court” for purposes of compelling the discovery. *Doe v. Swannanoa Valley Youth Dev. Ctr.*, 163 N.C. App. 136, 592 S.E.2d 715 (2004).

79. G.S. 7B-1905(a) specifies when the court may place a juvenile who is alleged to be delinquent in nonsecure custody with a county department of social services. Under G.S. 7B-2506(1)c, placement of the juvenile in the custody of the county department of social services is an available disposition in every delinquency case if the social services director has been given notice and an opportunity to be heard.

80. See G.S. 108A-80 (Confidentiality of records) and 10A N.C.A.C. Ch. 69 (Confidentiality and Access to Client Records).

81. See David M. Lawrence, “Electronic Records,” Ch. 5 in *PUBLIC RECORDS LAW FOR NORTH CAROLINA LOCAL GOVERNMENTS* 85–101 (2d ed. 2009, School of Government, University of North Carolina at Chapel Hill). A description and ordering information for this publication are available at <http://shopping.netsuite.com/s.nl/c.433425/it.A/id.2178/f>.

82. See N.C. DEP’T OF CULTURAL RESOURCES, GOV’T RECORDS BRANCH, “ELECTRONIC RECORDS” WEB PAGE, available at [www.records.ncdcr.gov/erecords/default.htm](http://www.records.ncdcr.gov/erecords/default.htm). See also N.C. DEP’T OF CULTURAL RESOURCES, GOV’T RECORDS BRANCH, *LAWS RELATING TO CONFIDENTIAL RECORDS HELD BY NORTH CAROLINA GOVERNMENT* (Jan. 2009), available at [www.records.ncdcr.gov/guides/confidential\\_publicrec\\_2009.pdf](http://www.records.ncdcr.gov/guides/confidential_publicrec_2009.pdf).

83. See N.C. OFFICE OF THE STATE CONTROLLER, *CJLEADS QUARTERLY REPORT JANUARY 2011*, available at [www.ncosc.net/cjleads/CJLEADS\\_Quarterly\\_Report\\_Jan\\_2011\\_final.pdf](http://www.ncosc.net/cjleads/CJLEADS_Quarterly_Report_Jan_2011_final.pdf). For additional information about CJLEADS, go to <https://cjleads.nc.gov/index.html>.



## Confidentiality of Information about Juveniles

The North Carolina Juvenile Code not only restricts access to juvenile records, it also contains the following broad proscription against disclosure of information about juveniles who are involved with the court: “Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited.”<sup>84</sup> The Code also carves out some huge exceptions to this general prohibition.

### Agencies Authorized to Share Information

Professionals who work with children and families often hold the perception that confidentiality requirements frustrate their ability to provide appropriate services to the very people those requirements were designed to protect.<sup>85</sup> In an effort to address this concern, the North Carolina General Assembly required the state Department of Juvenile Justice and Delinquency Prevention (DJJDP), after consulting with the Conference of Chief District Court Judges, to adopt rules designating agencies that must share information about juveniles in specified circumstances.<sup>86</sup> The list of authorized agencies, which includes DJJDP, district attorneys’ offices, and local law enforcement agencies, appears in the administrative rule that is duplicated on page 19.<sup>87</sup> The DJJDP rules do not apply to court records.

The relevant General Statutes provision requires authorized agencies to share information requested by other authorized agencies. It also sets the parameters of the information that must be shared and the purposes for which it may be requested and used. In this vein, at the request of one authorized agency, another authorized agency must share with the requesting agency information in the responding agency’s possession that is relevant to

1. any assessment by a county department of social services of a report of child abuse, neglect, or dependency;
2. a county social services department’s provision or arrangement of protective services in a child abuse, neglect, or dependency case; or
3. any case in which a petition is filed alleging that a juvenile is delinquent, undisciplined, abused, neglected, or dependent.<sup>88</sup>

An authorized agency that receives information about a juvenile pursuant to the statute and/or rules may use the information only

- to protect the juvenile,
- to protect others, or
- to improve the educational opportunities of the juvenile.

84. G.S. 7B-3100(b).

85. *See, e.g.*, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, GUIDELINES FOR JUVENILE INFORMATION SHARING (OJJDP REP.) (2006), available at [www.ncjrs.gov/pdffiles1/ojjdp/215786.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/215786.pdf).

86. G.S. 7B-3100.

87. Although the district attorney’s office is an authorized agency for purposes of requesting information, G.S. 7B-3100(a) makes clear that nothing in the statute or the administrative rule requires the district attorney to disclose or release to others any information in the district attorney’s possession. The statute also acknowledges that any federal restrictions on the disclosure of information supersede the state statute and rules. Chief district court judges are authorized to supplement the list of authorized agencies by issuing local administrative orders designating local agencies that are not already listed in the rule.

88. G.S. 7B-3100(a). The administrative rule, 28 N.C.A.C. 01A .0301 (duplicated on page 19), refers only to cases in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent. The rule has not been rewritten to reflect the other two categories, which were added to the statute in 2006. *See* S.L. 2006-205.

The obligation to share information continues until the court's jurisdiction over the juvenile ends or, in a child protective services case in which no petition is filed, until the department of social services closes its case. Any confidential information shared by authorized agencies must remain confidential. The statute does not specify any sanction for misusing the information, and it does not address circumstances in which two agencies disagree about whether information is "relevant" to a juvenile court case.

### Information Provided to Schools

As representatives of authorized agencies, juvenile court counselors and school principals must share with each other requested information about a juvenile when that information and its intended use fall within the information-sharing requirements described above.<sup>89</sup> In addition, juvenile court counselors are required to notify public and private school principals, both orally and in writing, whenever

1. a juvenile petition is filed alleging that a student is delinquent for committing a felony;
2. a juvenile petition alleging that a student is delinquent for committing a felony is dismissed;
3. the juvenile court transfers a student's case to superior court for trial as an adult;
4. the court enters a dispositional order requiring a juvenile to attend school in a case in which the petition alleged that the student was delinquent for committing a felony (even if the adjudication was for a lesser offense); or
5. the court modifies or vacates an order in a case in which the petition alleged that a student was delinquent for committing a felony (even if the adjudication was for a lesser offense).<sup>90</sup>

Notification that a petition has been filed must describe the nature of the offense alleged in the petition. Notification of the entry of an order must describe the court's action and any applicable disposition requirements.<sup>91</sup>

A public or private school principal may use juvenile court information about a student only to protect the safety of or to improve educational opportunities for the student or others.<sup>92</sup> Documents provided to the principal may not be copied, but the principal must share them with "individuals who have (i) direct guidance, teaching, or supervisory responsibility for the student, and (ii) a specific need to know in order to protect the safety of the student or others."<sup>93</sup> Those

---

89. Schools may release information only in accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g. G.S. 7B-3100(a). Information about FERPA is provided by the U.S. Department of Education at [www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html](http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html).

90. G.S. 7B-3101. A law enforcement official must notify a school principal when a student who is sixteen or older, and therefore not a juvenile for purposes of criminal conduct, is charged with a felony other than a motor vehicle offense. G.S. 15A-505. That information is not confidential and is not subject to the restrictions that apply to juvenile court information provided by a court counselor.

91. G.S. 7B-3101. As the representative of an "authorized agency," a school principal could request additional information from the juvenile court counselor or other agencies (but not the court) under the information-sharing rules described above, but only for the purposes sanctioned by those rules.

92. G.S. 115C-404(b). The statute also states that information received from another authorized agency pursuant to G.S. 7B-3100 may not be the sole basis for a decision to suspend or expel a student. It is silent in that regard with respect to information provided by the juvenile court counselor pursuant to G.S. 7B-3101.

93. *Id.*

**NORTH CAROLINA ADMINISTRATIVE CODE**  
**TITLE 28 – JUVENILE JUSTICE AND DELINQUENCY PREVENTION**  
**CHAPTER 1 – DEPARTMENTAL RULES**  
**SUBCHAPTER 01A – DEPARTMENTAL MANDATES**  
**SECTION .0300 – INFORMATION SHARING**

**28 NCAC 01A .0301 DESIGNATED AGENCIES AUTHORIZED TO SHARE INFORMATION**

The following agencies shall share with one another upon request, information in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined or delinquent:

- (a) The Department of Juvenile Justice & Delinquency Prevention;
- (b) The Office of Guardian Ad Litem Services of the Administrative Office of the Courts;
- (c) County Departments of Social Services;
- (d) Area mental health developmental disability and substance abuse authorities;
- (e) Local law enforcement agencies;
- (f) District attorneys' offices as authorized by G.S. 7B-3100;
- (g) County mental health facilities, developmental disabilities and substance abuse programs;
- (h) Local school administrative units;
- (i) Local health departments; and
- (j) A local agency designated by an administrative order issued by the chief district court judge of the district court district in which the agency is located, as an agency authorized to share information pursuant to these Rules and the standards set forth in G.S. 7B-3100.

Authority G.S. 7B-3100;

**NOTES:**

History Note:

Temporary Adoption Eff. July 15, 2002;  
 Eff. April 1, 2003.

**28 NCAC 01A .0302 INFORMATION SHARING AMONG AGENCIES**

- (a) Any agency that receives information disclosed pursuant to G.S. 7B-3100 and shares such information with another authorized agency, shall document the name of the agency to which the information was provided and the date the information was provided.
- (b) When the disclosure of requested information is prohibited or restricted by federal law or regulations, a designated agency shall share the information only in conformity with the applicable federal law and regulations. At the request of the initiating designated agency, the designated agency refusing the request shall inform that agency of the specific law or regulation that is the basis for the refusal.

Authority G.S. 7B-3100;

**NOTES:**

History Note:

Temporary Adoption Eff. July 15, 2002;  
 Eff. April 1, 2003.

individuals must state in writing that they have read the documents and agree to maintain their confidentiality. Violating that confidentiality agreement can be grounds for dismissal.<sup>94</sup> Juvenile court information received by a principal, whether pursuant to the information-sharing rules or as notification from the juvenile court counselor, must be kept in locked storage separate from the student's other school records and may not be made part of the student's official record.<sup>95</sup> G.S. 7B-404 specifies the circumstances in which the principal must either destroy the records or return them to the juvenile court counselor.

### **Information about Juveniles Who Escape**

Some information must be disclosed to the public when a juvenile who has been adjudicated delinquent escapes from a detention facility, secure custody, or a youth development center. Within twenty-four hours after the juvenile escapes, the Department of Juvenile Justice and Delinquency Prevention (DJJDP) must release to the public the following information:

1. the juvenile's first name and last initial;
2. the juvenile's photograph;
3. the name and location of the facility from which the juvenile escaped or, if the juvenile's escape was not from an institution, the circumstances and location of the escape; and
4. a statement, based on the juvenile's record, of the level of DJJDP's concern regarding the threat the juvenile poses to him or herself or to others.<sup>96</sup>

When a juvenile who is alleged to be delinquent for a felony escapes from a detention facility or secure custody prior to adjudication, DJJDP is not required to make any disclosure. However, DJJDP may make the same disclosures listed above within twenty-four hours after the escape if it determines, based on the juvenile's record, that the juvenile presents a danger to him or herself or to others.<sup>97</sup>

In either circumstance, before releasing information to the public, DJJDP must make a reasonable effort to notify the juvenile's parent, guardian, or custodian. If the juvenile is returned to custody before DJJDP releases the information, the department may not release it.<sup>98</sup>

### **Information Relating to Child Abuse, Neglect, or Dependency**

If information or records about a juvenile give an individual cause to suspect that the juvenile or any other child is abused, neglected, dependent, or has died as the result of maltreatment, that individual must report the information to the county department of social services.<sup>99</sup> Although the reporting requirement has long applied to everyone in the state, in 2009 the General Assembly added a new section to the part of the Juvenile Code that addresses delinquent juveniles, emphasizing that juvenile court counselors must report suspected abuse, neglect, or dependency.<sup>100</sup> In addition, on written demand of a county department of social services that is either

94. *Id.*

95. G.S. 115C-404(a).

96. G.S. 7B-3102.

97. *Id.*

98. *Id.*

99. G.S. 7B-301.

100. Section 14 of S.L. 2009-311, effective October 1, 2009, added a new section G.S. 7B-1700.1, which states, "Any time a juvenile court counselor or any person has cause to suspect that a juvenile is abused,

investigating a report of child abuse, neglect, or dependency or providing protective services, public and private agencies and individuals must provide the requested information or records, even if they are otherwise confidential.<sup>101</sup> Similarly, a guardian ad litem—a court-appointed advocate for a child in a juvenile abuse, neglect, dependency, or termination of parental rights proceeding—may demand any confidential information he or she considers relevant to that juvenile’s case.<sup>102</sup>

### Use of the Juvenile’s Record in Court Proceedings

Despite the general confidentiality accorded a delinquent juvenile’s record and related information about the juvenile, some adjudications of delinquency must be disclosed in other court proceedings and some have the potential to affect the juvenile long after he or she becomes an adult.<sup>103</sup>

#### Pretrial Uses in Criminal Cases

If a defendant in a criminal case is charged with a felony or a Class A1 misdemeanor allegedly committed before he or she reached age twenty-one, some information from the defendant’s juvenile record may be used by law enforcement, the magistrate, the prosecutor, and the court in making decisions about pretrial release, plea negotiations, and plea acceptance.<sup>104</sup> The only part of the juvenile record that can be used for these purposes is information about adjudications for felonies or A1 misdemeanors, where the adjudication occurred

- within the eighteen months before the defendant reached age sixteen, or
- after the defendant reached age sixteen.<sup>105</sup>

The ability of law enforcement and magistrates to use this adjudication information is limited, since they cannot access the juvenile’s court record directly. The prosecutor, in his or her discretion, may share information from the record with magistrates or law enforcement officers but may not allow them to copy any part of it.<sup>106</sup>

---

neglected, or dependent, or has died as the result of maltreatment, the juvenile court counselor or the person shall make a report to the county department of social services as required by G.S. 7B-301.” G.S. 115C-400 contains a similar provision emphasizing the reporting responsibilities of school personnel.

101. G.S. 7B-302(e). Disclosure is not required if it would violate the attorney-client privilege or federal law or regulations.

102. G.S. 7B-601(c).

103. See JUSTICE POLICY INST., *Collateral Consequences in the State of North Carolina*, THINK BEFORE YOU PLEA: JUVENILE COLLATERAL CONSEQUENCES IN THE UNITED STATES, available at [http://beforeyouplea.com/nc#\\_ftnref30](http://beforeyouplea.com/nc#_ftnref30).

104. G.S. 7B-3000(e). When information from a juvenile record is used for these purposes, it may not be placed in any public record.

105. G.S. 7B-3000(e). While adjudications relate only to offenses committed before age sixteen, the adjudication itself may occur later. A bill introduced in the 2011 session of the General Assembly proposed deleting restrictions on when the adjudication occurred. The text and bill history of Senate Bill 135 are available at [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=s+135](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=s+135).

106. G.S. 7B-3000(b).

### Impeachment of a Witness in a Juvenile Proceeding

Ordinarily, witnesses may be impeached—that is, have their credibility challenged—by evidence of their prior criminal convictions.<sup>107</sup> An adjudication of delinquency is not a criminal conviction.<sup>108</sup> Nevertheless, if a juvenile chooses to testify in a case in which he or she is alleged to be delinquent, or if he or she is a witness in another juvenile’s delinquency proceeding, the court may order the juvenile to testify about whether he or she has been adjudicated delinquent, even if the record of that adjudication has been expunged.<sup>109</sup>

### Impeachment of a Witness in Other Proceedings

In cases other than juvenile delinquency proceedings, a witness’s delinquency adjudication generally may not be used to impeach the witness.<sup>110</sup> In a criminal case, however, the court may allow evidence of a witness’s earlier delinquency adjudication for purposes of impeaching the witness, but only if

1. the witness is not the defendant;
2. an adult’s conviction for the same offense would be admissible to attack an adult witness’s credibility—that is,
  - (a) the offense for which the witness was adjudicated delinquent was a felony or a Class A1, Class 1, or Class 2 misdemeanor and
  - (b) the adjudication is either less than ten years old or meets an exception to the ten-year rule; and
3. the court finds that the evidence is necessary for a fair determination of the defendant’s guilt or innocence.<sup>111</sup>

Thus, in a delinquency case, evidence of an adjudication of delinquency may be used to impeach the testimony of a juvenile witness or a juvenile who testifies in his or her own case. Evidence of an adjudication of delinquency may not be used to impeach a witness in other civil cases or to impeach a defendant who testifies in his or her own criminal case.<sup>112</sup> Evidence of a delinquency adjudication may be used in a criminal case to impeach a witness other than the defendant, but only if a criminal conviction of the same offense could be used to impeach a wit-

107. G.S. 8C-1, Rule 609.

108. G.S. 7B-2412 (“An adjudication that a juvenile is delinquent . . . shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship rights.”).

109. G.S. 7B-3201(b). *See also In re S.S.T.*, 165 N.C. App. 533, 599 S.E.2d 59 (2004) (holding that when a juvenile who was alleged to be delinquent for assault, disorderly conduct, and resisting an officer chose to testify in his own defense, evidence of his prior juvenile adjudications for assault and communicating threats was admissible to impeach his credibility).

110. G.S. 8C-1, Rule 609(d).

111. G.S. 8C-1, Rule 609(d). This statute reflects the U.S. Supreme Court’s holding in *Davis v. Alaska*, 415 U.S. 308, 320 (1974), that the State’s interest in protecting confidentiality of a juvenile’s record “cannot require yielding of so vital a constitutional right as the effective cross-examination of an adverse witness.” In an unpublished opinion, the North Carolina Court of Appeals rejected a defendant’s argument that the *Davis* rule could be invoked only to impeach witnesses for the State. *State v. Jenkins*, 155 N.C. App. 222, 573 S.E.2d 774 (2002) (unpublished op.) (holding that the trial court did not err in allowing the State to question the defendant’s alibi witness about her juvenile record).

112. Courts have rejected the argument that for impeachment purposes public policy also requires excluding evidence of prior bad acts the defendant committed while a juvenile. *See State v. Perkins*, 154 N.C. App. 148, 571 S.E.2d 645 (2002).

ness and the court makes a finding of necessity.<sup>113</sup> Within those parameters, the determination of admissibility of a witness's juvenile record for impeachment purposes is in the trial court's discretion.<sup>114</sup>

### Substantive Evidence in Criminal Cases

The Juvenile Code provides that the record of a criminal defendant's delinquency adjudication for a Class A, B1, B2, C, D, or E felony may be used against the defendant in a criminal trial "under G.S. 1A-1, Rule 404(b)."<sup>115</sup> Rule 404(b), in turn, allows the use of evidence of "other crimes, wrongs, or acts" for purposes other than proving character—for example, to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." This rule of evidence also states that "admissible evidence may include evidence of an offense committed by a juvenile if it would have been a Class A, B1, B2, C, D, or E felony if committed by an adult." The Juvenile Code's reference to a record of a delinquency adjudication is not entirely consistent with the reference in Rule 404(b) to evidence of an offense committed by a juvenile.

Under case law interpreting Rule 404(b) in criminal cases, a party ordinarily may *not* introduce the record of a criminal conviction as evidence of the commission of the offense on which the conviction was based; the offering party must prove the commission of the offense by other evidence.<sup>116</sup> Although G.S. 7B-3000(f) states that the court may allow the prosecutor to use the record of a delinquency adjudication, its reference to use "under G.S. 8C-1, Rule 404(b)" suggests that the State is subject to the limitations of Rule 404(b) and ordinarily may not prove the commission of an offense for which a defendant was adjudicated delinquent through evidence of the adjudication itself.<sup>117</sup>

On the other hand, because G.S. 7B-3000(f) refers specifically to "the record," the argument can be made that a different rule applies with respect to delinquency adjudications. The Juvenile Code provision allows use of "the record" in a criminal case only by order of the court in the criminal case, after a motion by the prosecutor, and only "after an in camera hearing to determine whether the record in question is admissible."<sup>118</sup>

---

113. *See* State v. McAllister, 132 N.C. App. 300, 511 S.E.2d 660, *aff'd per curiam*, 351 N.C. 44, 519 S.E.2d 524 (1999) (holding that the trial court did not abuse its discretion in excluding evidence of the victim's juvenile adjudications).

114. State v. Whiteside, 325 N.C. 389, 383 S.E.2d 911 (1989) (the trial court did not abuse its discretion when it allowed use of a witness's juvenile record on cross-examination for impeachment purposes but denied the defendant's request to introduce the record into evidence at the close of the defendant's evidence).

115. G.S. 7B-3000(f).

116. *See* State v. Wilkerson, 356 N.C. 418 (2002), *rev'g per curiam for the reasons stated in the dissent*, 148 N.C. App. 310 (2002) (describing rule and exceptions).

117. It should also be noted that G.S. 8C-1, Rule 404(b), allows either party, not just the State, to introduce evidence of a juvenile's commission of an offense if it would have been a Class A, B1, B2, C, D, or E felony if committed by an adult, and it allows a party to do so regardless of whether the offense resulted in an adjudication of delinquency.

118. G.S. 7B-3000(f). There is a risk that the requirements for a motion by the prosecutor and an in camera hearing will be overlooked in a criminal case because they are stated only in the Juvenile Code.

### Aggravating Factor or Circumstance at Sentencing

The court may allow use of the record of a defendant's juvenile adjudication for a Class A, B1, B2, C, D, or E felony at sentencing. This use requires a motion by the prosecutor and an order allowing the State to introduce the record, after an in camera hearing to determine whether the record is admissible.<sup>119</sup> The court may allow the State to use a juvenile record as follows:

- as an aggravating factor for purposes of sentencing in a non-capital case;<sup>120</sup> or
- as an aggravating circumstance for purposes of sentencing in a capital case, but only if the delinquency adjudication was for an offense that would be a capital felony if committed by an adult or for an offense that involved the use or threat of violence to a person.<sup>121</sup>

### Publicity about Juveniles

As explained above, the North Carolina Juvenile Code generally prohibits the disclosure of information that would reveal the identity of a juvenile who is under investigation or alleged to be delinquent.<sup>122</sup> It is difficult to reconcile this provision with the fact that court hearings in delinquency cases are usually open to the public. Unless the court finds good cause for closing a hearing, the juvenile's identity and extensive information about the case may be disclosed to anyone who chooses or happens to sit in court during a juvenile hearing.<sup>123</sup> Even when a hearing is closed, a variety of people who are properly in court during the hearing may know the identity of the juvenile and have extensive information about the juvenile when they leave. The Code does not expressly answer questions about what particular people may do with information they have obtained properly.

For example, if one of the people observing a juvenile hearing is a reporter or other media representative, how much leeway does that person have to publish what he or she observes and hears? What if the reporter does not attend the hearing but learns a juvenile's identity and receives information about the case from the victim's family? Does the identity disclosure prohibition apply to the reporter in such circumstances? Does it apply to the victim's family under any circumstances?

Most likely the prohibition is directed toward the custodians of official records concerning a juvenile and toward those with official duties connected to a juvenile's alleged or adjudicated delinquent conduct. If that interpretation is correct, the prohibition on disclosure of identifying information would apply to the clerk of superior court, law enforcement officers, juvenile court counselors, social workers, the prosecutor, the judge, and possibly others; it would not constrain the juvenile's family or classmates, the victim and his or her family, or the media, however.

---

119. *Id.*

120. G.S. 7B-3000(f); G.S. 15A-1340.16(d)(18a). *See, e.g.,* State v. Taylor, 128 N.C. App. 394, 496 S.E.2d 811, *aff'd per curiam*, 349 N.C. 219, 504 S.E.2d 785 (1998) (holding that use of the defendant's prior juvenile adjudication for second-degree rape as an aggravating factor after he was convicted in superior court of second-degree rape did not violate due process).

121. G.S. 7B-3000(f); G.S. 15A-2000(e)(2), (3). *See, e.g.,* State v. Wiley, 355 N.C. 592, 565 S.E.2d 22 (2002) (finding no error in use of the defendant's juvenile adjudication for solicitation to commit murder as an aggravating circumstance); State v. Leeper, 356 N.C. 55, 565 S.E.2d 1 (2002) (finding no error in use of the defendant's juvenile adjudication for armed robbery as an aggravating circumstance).

122. G.S. 7B-3100(b).

123. *See* G.S. 7B-2402.



Unlike the confidentiality of records, the prohibition against disclosing information extends only to information that would reveal the juvenile's identity. So a reporter, even if subject to the prohibition, could safely publish a detailed description of the case that did not name the juvenile or disclose information that directly or indirectly would reveal the juvenile's identity. However, even a prohibition against disclosing the juvenile's identity is probably unenforceable against the reporter and others for constitutional reasons.<sup>124</sup>

In order for the prohibition against disclosing information about the juvenile to be constitutional, it very likely has to be read as applying only to (1) the public officials whose duties include safeguarding the confidentiality of juvenile records and information,<sup>125</sup> (2) those who have the information only by virtue of their positions in relation to the juvenile justice system or a specific statute or rule that includes a restriction on disclosure, or (3) someone who obtained the information unlawfully. Appellate courts are unlikely to uphold orders enjoining the publication or disclosure of information about juvenile cases by someone who acquired the information by being present during a court hearing that was open to the public or in some other legal fashion.<sup>126</sup> However, under the North Carolina General Rules of Practice for the Superior and District Courts, in the juvenile proceeding itself, neither photography nor electronic media coverage is allowed.<sup>127</sup>

A statute that is not specific to juvenile cases—but which does not exclude them either—provides as follows:

No court shall make or issue any rule or order banning, prohibiting, or restricting the publication or broadcast of any report concerning any of the following: any evidence, testimony, argument, ruling, verdict, decision, judgment, or other matter occurring in open court in any hearing, trial, or other proceeding, civil or criminal . . . . If any rule or order is made or issued by any court in violation of the provisions of this statute, it shall be null and void and of no effect, and no person shall be punished for contempt for the violation of any such void rule or order.<sup>128</sup>

In a juvenile case from Oklahoma, the U.S. Supreme Court held that a pretrial order restraining publicity about a juvenile case violated the free press guarantee of the First and Fourteenth Amendments, where (1) members of the press had been present at the juvenile hearing with the knowledge of the judge and both counsel, (2) there was no objection to the presence of the press or to their photographing the juvenile when he left the hearing, and (3) the juvenile's identity had not been acquired unlawfully but was revealed publicly during the hearing.<sup>129</sup>

The imposition of a penalty after the publication of a juvenile's identity is similarly unlikely. In *Smith v. Daily Mail Publishing Co.*, the Supreme Court held that imposing criminal sanctions on

---

124. See text at notes 128 and 129, *infra*. A full discussion of the constitutional issues is beyond the scope of this bulletin.

125. See G.S. 14-230, which makes it a criminal offense for a public official to willfully omit, neglect, or refuse to discharge the duties of his or her office.

126. In 1995, without written opinion, the North Carolina Supreme Court vacated the portion of a trial court's order that prohibited the print and electronic media from disclosing or publishing the name of a juvenile who was accused of first-degree murder. *In re a Minor Charged in this Proceeding*, 341 N.C. 417, 463 S.E.2d 72 (1995). The order of the trial court in that case can be found at 24 Media L. Rep. 1057.

127. N.C. Gen. R. Prac. Super. & Dist. Cts. 15(b)(2) (2011).

128. G.S. 7A-276.1.

129. *Okla. Publ'g Co. v. Dist. Court*, 430 U.S. 308 (1977).

a newspaper for publishing the name of a juvenile who was alleged to be delinquent, when the paper had obtained the information lawfully, violated the First Amendment.<sup>130</sup> The Court held that the state's interest in protecting juvenile offenders, while substantial, was not substantial enough to overcome the constitutional interests at stake.

Juveniles, of course, have a constitutional right to a fair trial, and the State has legitimate interests in protecting juveniles from undue publicity. When those rights and interests conflict with the First Amendment rights of others, "one seeking to impose a 'gag' rule carries a heavy burden of showing justification for the imposition of such a rule."<sup>131</sup> The presumed invalidity of restraints on expression is not limited to juvenile proceedings or to attempts to impose prior restraints on the media. Requests for gag orders directed to the parties, their attorneys, or people who are not parties to the action are subject to comparable scrutiny.<sup>132</sup>

Except in extraordinary circumstances, appellate courts will not uphold prior restraints on or subsequent sanctions for the publication or broadcasting of legally obtained information about delinquent juveniles (or those alleged to be delinquent). Still, the media in North Carolina have shown a substantial willingness, consistent with the state's policy of confidentiality, to refrain from disclosing information that would reveal the identity of juveniles involved in delinquency proceedings.<sup>133</sup> It is relatively unusual to see juvenile offenders identified by name in news reports in this state. The media's self-restraint in this regard is not universal; however, most cases in which the media do identify juvenile suspects or offenders involve serious offenses and strong public interest. As one media law expert has written, "When truly heinous crimes of violence are committed by juveniles, the news media may well have an obligation to the community to report not only the nature of the crime but also the name of the juvenile accused of committing it."<sup>134</sup>

130. 442 U.S. 97 (1979).

131. *State v. Williams*, 304 N.C. 394, 403, 284 S.E.2d 437, 444 (1981). The state supreme court referred to the trial court's "delicate task" of balancing the conflicting rights.

132. *Williams*, 304 N.C. 394, 284 S.E.2d 437 (upholding the trial court's denial of the defendant's motion to restrain unnamed public officials and attorneys from commenting about the case to the news media).

133. The media's long-standing acknowledgment of the policy is reflected in "Guidelines for Reporting Juvenile Proceedings," developed in the 1960s and 1970s by the News Media-Administration of Justice Council in North Carolina. See N.C. BAR ASS'N & SCH. OF JOURNALISM & MASS COMM'N, UNIV. OF N.C. AT CHAPEL HILL, *THE NEWS MEDIA AND THE COURTS: A GUIDE FOR JOURNALISTS* 38-39 (3d ed. undated) (the introduction to the third edition does indicate, however, that the second edition was published in 1972).

In these guidelines the bar and the media, among other things,

- recognized that they, along with court officials, were responsible for developing sound public interest in and understanding of juvenile problems in the community;
- stated that neither public officials concerned with juvenile matters nor court officials should comment for publication on juvenile cases in which they are or may be involved;
- stated that "because immaturity and dependency are underlying bases in law and reality for regarding children individually as less accountable than adults for their behavior and condition," the news media in deciding what to publish should give due consideration to (1) court officials' recommendations and (2) whether the public must have the information to be fully aware of its juvenile court and the delinquency situation; and
- stated that the guidelines were not intended to constrain the media's publication of news about juvenile offenders when the information was obtained from sources other than court officials who are involved in the case.

134. Mark J. Prak, "Access to the Judicial Process," in N.C. PRESS FOUND. & SCHOOL OF JOURNALISM & MASS COMM'N, UNIV. OF N.C. AT CHAPEL HILL, *NORTH CAROLINA MEDIA LAW HANDBOOK* 129

## Community Awareness

Expanded access to juvenile hearings and records in cases of individual juveniles has been accompanied to some extent by efforts to improve community awareness of and involvement in the juvenile justice system.<sup>135</sup> While the North Carolina Juvenile Code aims to ensure accountability by the juvenile and the juvenile's parents for the juvenile's delinquent conduct, it also suggests a community responsibility for providing appropriate, effective services to prevent and respond to delinquent behavior. The General Assembly has expressed an intention to provide local, noninstitutional dispositional alternatives for delinquent juveniles and to encourage local strategies to identify and provide services to juveniles who are at risk of becoming delinquent. These programs and services are to be "planned and organized at the community level and developed in partnership with the State."<sup>136</sup>

The board of county commissioners in every county is required to appoint a Juvenile Crime Prevention Council (JCPC) to serve as the planning body for these programs and services.<sup>137</sup> The councils include representatives from local schools, law enforcement agencies, human services agencies, court systems, and juvenile services offices. The legislature also provided that each council should include a member of the business community, a member of the faith community, at least two people under age eighteen, a representative from the United Way or another non-profit agency, and up to seven members of the public.<sup>138</sup> Each local council plays a role in deciding how available funds for juvenile justice programs are spent. The councils are also charged with conducting annual reviews of community needs and resources relating to delinquency; increasing public awareness of the causes of delinquency and strategies to reduce it; and evaluating juvenile services and programs in the county.<sup>139</sup>

## Conclusion

Most juveniles in North Carolina never have contact with the state's juvenile justice system. Many of those who do are diverted from the system at an early stage. Others are placed on probation with supervision from a juvenile court counselor, are connected with appropriate counseling or treatment services, or are placed in residential or nonresidential programs consistent with the Juvenile Code's goal of helping them become nonoffending, responsible, and productive members of the community. A few are placed in secure residential youth development centers, formerly known as training schools. The range of delinquent acts these young people commit mirrors the crimes committed by adults. Many are minor, even petty. But others are violent, destructive, or, on occasion, deadly. Some are committed by children as young as six, and others by fifteen-year-old juveniles who may have extensive histories in the juvenile justice system.

---

(Cathy Packer, Hugh Stevens, & C. Amanda Martin eds., 2007).

135. See Leonard P. Edwards, *Confidentiality and the Juvenile and Family Courts*, cited in full *supra* note 7, at 10–12, for examples of concrete steps that some courts have taken to increase understanding and working relationships among the bench, the bar, the media, and the public with respect to juvenile court.

136. G.S. 143B-543.

137. G.S. 143B-543, -544. Because Orange and Chatham counties jointly formed a JCPC, there are 99 councils in the 100-county state.

138. See G.S. 143B-544 for a complete list of the kind of representatives each council should include.

139. See G.S. 143B-543 through -550.

Some juveniles' rehabilitation will be made more difficult if they and their families are subjected to widespread publicity or if their teachers, acquaintances, and peers are made aware of the details of their court involvement. At the same time, information about a juvenile's court involvement may be very relevant to educational, psychological, or other services the juvenile needs. In addition, the public has a strong interest in knowing that certain juveniles are or may be dangerous. Allowing public access to the juvenile court process, in the words of one court, "can promote informed public involvement in government and enhance public confidence in the judicial branch,"<sup>140</sup> as well as "promote informed public discussion and lead to more intelligent responses to problems and issues."<sup>141</sup>

At every stage of a juvenile case, the North Carolina Juvenile Code requires balancing concurrent, and sometimes conflicting, goals that include providing fair procedures, rehabilitating the juvenile, and protecting the public. Frequent changes to the Code's treatment of confidentiality in delinquency proceedings reflect part of the ongoing search for the right balance.

---

140. *In re T.R.*, 52 Ohio St. 3d 6, 16–17, 556 N.E.2d 439, 450 (1990).

141. *Id.* at 18, 556 N.E.2d at 451.