Chapter 14
Confidentiality and Information Sharing

Resource: For a discussion of confidentiality and disclosure and the laws discussed in this Chapter, see AIMEE WALL, DISCLOSING PROTECTIVE SERVICES INFORMATION: A GUIDE FOR NORTH CAROLINA SOCIAL SERVICES AGENCIES (UNC School of Government, 2015). Note that since this bulletin was written, the statutes and North Carolina Administrative Code have been amended. Be sure to check current law.

14.1 Juvenile Records

Most information related to abuse, neglect, or dependency cases is confidential and has special protections under laws governing departments of social services, juvenile court proceedings, and adoption proceedings.

A. Department of Social Services Information

1. Public agency and public records law. Each of North Carolina's 100 counties are political subdivisions of the state. Each county must provide social services programs pursuant to Chapters 108A (social services) and 111 (aid to the blind) of the General Statutes. G.S. 153A-255. The county board of commissioners creates agencies of the county government, which includes a department of social services (DSS). *See* G.S. 153A-76.

Note, for purposes of this Manual, "department of social services" or "DSS" refers to a department as defined by G.S. 7B-101(8a) regardless of how it is titled or structured.

The county DSS administers public assistance and social services programs. Public assistance programs relate to financial benefits that assist the county's indigent citizens (e.g., Food and Nutrition Services, Work First), and social services programs relate to the protection of the county's citizens (e.g., child welfare, public guardianship). *See* G.S. 108A-14; 108A-15; *see also* G.S. Chapter 108A, Articles 2 (Programs of Public Assistance), 3 (Social Services Programs), 6 (Protection of the Abused, Neglected, or Exploited Disabled Adult Act), and 6A (Protection of Disabled and Older Adults from Financial Exploitation).

A public record includes all documents, photographs, recordings, and other documentary materials made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of the North Carolina government or its subdivisions. G.S. 132-1(a). Generally, records maintained by a county DSS are public records. People have a right to have access to public records. G.S. 132-1(b). However, a statutory exception may apply that limits and/or prohibits disclosure of a public record. The confidentiality of and access to DSS records are governed by several state and federal laws and regulations, some of which are discussed below.

Resources:

For a discussion about public records and disclosure, see

- Frayda Bluestein, *Is This a Public Record? A Framework for Answering Questions About Public Records Requests*, UNC SCH. OF GOV'T: COATES' CANONS: NC LOCAL GOVERNMENT LAW BLOG (June 9, 2010).
- DAVID LAWRENCE, PUBLIC RECORDS LAW FOR NORTH CAROLINA LOCAL GOVERNMENTS (UNC School of Government, 2d ed. 2010).

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2. Disclosure prohibited for public assistance and social services information. One of the confidentiality statutes that applies to DSS is G.S. 108A-80, and it covers client (including applicant) information generally. Absent limited statutory exceptions, G.S. 108A-80(a) prohibits the disclosure of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from DSS records. Although the term "social services" is not defined, statutory context and usage indicate that child welfare is clearly encompassed within the scope of the expansive term. For example, child welfare services are specifically included in Article 3 of G.S. Chapter 108A, which is titled "Social Services Programs". Specific reference is also made to "grants-in-aid available for social services under the Social Security Act." G.S. 108A-71. Child welfare

services and foster care and adoption maintenance payments are funded by Titles IV-B and IV-E of the Social Security Act. *See e.g.*, 42 U.S.C. 622; 42 U.S.C. 671; 45 C.F.R. Parts 1355, 1356, and 1357.

G.S. 108A-80(a) has broad application. It makes it unlawful for "any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of" the protected information. This particular subsection, G.S. 108A-80(a), does not include a criminal penalty; however, a violation is likely a misdemeanor. *See* G.S. 108A-80(b), (c) (both stating any violation of "this section" is a Class 1 misdemeanor)*; see also State v. Bishop*, 228 N.C. 371 (1947) (holding common law authorizes punishment by misdemeanor when a statute, in the interests of the public, forbids an act and does not expressly include a penalty).

In addition to the statute, state regulations (or Rules) based on G.S. 108A-80 that address confidentiality and access to client records are set forth in Title 10A of the North Carolina Administrative Code (N.C.A.C.) Chapter 69. The Rules consist of six sections:

- general provisions,
- safeguarding client information,
- client access to records,
- release of client information,
- disclosure of information without client consent, and
- service providers.

Under the Rules, the director of the state Division of Social Services or a county department of social services is required to disseminate written policy to and provide trainings for all persons with access to client information. 10A N.C.A.C. 69.0203(d); *see* 10A N.C.A.C. 69.0101(4) (definition of "director"). An employee who violates the confidentiality Rules is subject to disciplinary action including suspension or dismissal. 10A N.C.A.C. 69.0205.

The Rules specifically address conflict of laws with federal regulations or state statutes addressing confidentiality and require that DSS follow the statutes or regulations that provide more protection for the client. 10A N.C.A.C. 69.0201. The federal Child Abuse Prevention and Treatment Act (CAPTA), Titles IV-E and IV-B of the Social Security Act, and North Carolina's Juvenile Code (G.S. Chapter 7B) provide for additional restrictions on the disclosure of confidential information as it relates to information concerning a juvenile's abuse, neglect, or dependency. *See* 42 U.S.C. 5106a(b)(2)(B)(viii)−(xi); 42 U.S.C. 671(a)(8); 45 C.F.R. 1355.21(a); G.S. 7B-302(a1); 7B-2901(b); 7B-3100.

Resource: For a discussion of restrictions on internal sharing of confidential information within a DSS, see Kristi Nickodem, *Internal Sharing of Information Within a County Department of Social Services*, SOCIAL SERVICES LAW BULLETIN No. 50 (UNC School of Government, May 2022).

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3. Disclosure prohibited for abuse, neglect, dependency information. In addition to the disclosure prohibition for social services client records under G.S. 108A-80, the Juvenile Code addresses the confidentiality and disclosure of DSS records related to abuse, neglect, or

dependency in three different statutes: G.S. 7B-302(a1), 7B-2901(b), and 7B-3100. Additionally, the Rules regulating confidentiality of DSS child protective services information are found in 10A N.C.A.C. 70A.

G.S. 7B-302(a1) requires that all information received by DSS be held in "strictest confidence" unless a disclosure is authorized by statute. The requirement to maintain the information in "strictest confidence" starts when DSS first receives information about a child, typically from a report of suspected abuse, neglect, or dependency. DSS must maintain a case record for a child for whom protective services are initiated or who the court places in the custody of a DSS. 10A N.C.A.C. 70A.0112. The case record contains information about the assessment; family background information; safety responses; the case decision; notifications made to the family and others; the family services case plan and reviews of the case plan; and if applicable, court pleadings and reports, medical and psychological reports, and a summary of services. G.S. 7B-2901(b); 10A N.C.A.C. 70A.0112. The case record is confidential and information from it may only be disclosed in accordance with the Juvenile Code or other applicable law. 10A N.C.A.C. 70A.0112(a); *see* G.S. 7B-302(a1); 7B-2901(b); 10A N.C.A.C. 70A.0113.

Resource: For information about DSS policies and procedures related to confidentiality in the child welfare setting, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Cross Function," available here.

(a) Exceptions authorizing disclosure. There are a number of statutory exceptions to the requirement of confidentiality for DSS records and information.

Circumstances affecting the reporter. There is an extra layer of protection for the identity of the person who made the report of a child's suspected abuse, neglect, or dependency. A reporter's identity is confidential and may only be disclosed when authorized by court order or when the disclosure is to a federal, state, or local government entity or agent when that entity demonstrates a need for the reporter's name to carry out its mandated responsibilities. G.S. 7B-302(a1)(1a); 7B-303(e) (interference or obstruction petition); 7B-700(a) (reporter's identity may not be shared); *see Ritter v. Kimball*, 67 N.C. App. 333 (1984) (holding trial court did not abuse its discretion in limiting in a custody action the discovery of the reporter's identity based on (1) the statute requiring information received by DSS concerning reports of abuse or neglect be held in "strictest confidence" and the trial court's perception of the purpose of that statute as encouraging the reporting of abuse or neglect, and (2) G.S. 1A-1, Rule 26(c), which protects a person from "unreasonable annoyance, embarrassment, oppression, or undue burden").

DSS is required to disclose certain information to the reporter, specifically, whether the report was accepted for an assessment and/or referred to the appropriate law enforcement agency; whether there was a finding of abuse, neglect, or dependency; and whether and what action DSS is taking to protect the juvenile. G.S. 7B-302(f), (g).

Resource: Sara DePasquale, *A/N/D Reporting: Rights, Protections, and Prosecutor Review*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (June 21, 2017).

Discovery and parties sharing information. The Juvenile Code addresses information sharing among the parties and discovery in abuse, neglect, dependency, and termination of parental rights proceedings. When a juvenile case is pending, DSS is authorized to share with any other party information that is relevant to the subject matter of the action. G.S. 7B-700(a). *See* G.S. 7B-302(a1)(2) and (5); 7B-2901(b)(1) and (4). There may be a local rule or administrative order that addresses information sharing among the parties (including the sharing of predisposition reports) and the use of discovery. G.S. 7B-700(b); 7B-808(c). Although G.S. 7B-700(c) permits parties to file motions for discovery, they may do so only if they have been unable to obtain information through information sharing authorized by G.S. 7B-700(a) and local rules (if applicable). *See* G.S. 7B-700(b). Motions for protective orders are a means by which any party can seek to protect information that the party believes should not be disclosed. Requests for a protective order in a juvenile proceeding are governed by G.S. 7B-700(d). Information that is obtained through discovery or information sharing authorized by G.S.7B-700 may not be redisclosed if the redisclosure is prohibited by state or federal law. G.S. 7B-700(e).

See Chapters 4.6 (discussing discovery) and 7.2.E.3 (discussing predisposition reports).

The child's guardian ad litem (GAL). The Juvenile Code gives the child's GAL the authority to obtain any information or reports, whether or not confidential, that may in the GAL's opinion be relevant to the case. G.S. 7B-601(c). This includes information received and maintained by DSS, and when requested, DSS must provide electronic or written copies of the information to the GAL within a reasonable period of time. G.S. 7B-302(a1)(2); 7B-2901(b)(1). The only privilege that may be invoked to prevent the GAL from obtaining the information is the attorney-client privilege. G.S. 7B-601(c).

Absent a court order or statutory authorization, the GAL is required to keep information confidential. G.S. 7B-601(c). The GAL attorney advocate is authorized to disclose confidential information about the juvenile to an attorney who is representing the juvenile in a delinquency or undisciplined action. G.S. 7B-3100(c). For a further discussion of a GAL's access to information and disclosures by a GAL generally, see section 14.1.D, below.

The child. The child has a right to review their DSS records, even after reaching the age of majority or becoming emancipated. Unless disclosure is prohibited by federal law, DSS must provide the child with electronic or written copies of the information the child requested within a reasonable period of time. G.S. 7B-302(a1)(2); 7B-2901(b)(1). This right to review the records includes the child's attorney. 10A N.C.A.C. 70A.0113(a)(2).

Law enforcement and district attorney. In certain circumstances, DSS will be required to notify law enforcement and the district attorney of a report or results of its assessment. If DSS receives a report that a child may have been physically harmed as a result of a crime that was not committed by the child's parent, guardian, custodian, or caretaker, the director must report that information to the district attorney (or designee) and the appropriate law enforcement agency so that the initiation of a criminal investigation and possible prosecution can commence. G.S. 7B-307(a).

If, during the course of its assessment, DSS finds evidence that the child may have been abused, DSS must report those findings to the district attorney (or designee) and the appropriate law enforcement agency so as to coordinate the criminal investigation with the DSS assessment. G.S. 7B-307(a). In both situations, DSS must make an immediate oral report and a subsequent written report within forty-eight hours after receiving the information. G.S. 7B-307(a). If a report alleges that a child is abandoned, DSS must request law enforcement investigate through the North Carolina Center for Missing Persons and other national and state resources. G.S. 7B-302(a).

When DSS substantiates an individual (i) who is not the juvenile's parent, guardian, custodian, or caretaker as the "responsible individual" and (ii) who abused or seriously neglected the juvenile as a minor victim of human trafficking, DSS must first cooperate with local law enforcement and the district attorney before sending a notice to that individual under the laws governing the responsible individuals list (RIL). G.S. 7B-320(a1). *See also* G.S. 7B-101(18b) (definition of "responsible individual"). DSS, local law enforcement, and the district attorney will address whether the notice will cause the juvenile mental or physical harm or danger, will undermine a criminal investigation (ongoing or future), or will jeopardize the State's ability to prosecute the individual. G.S. 7B-320(a1). See Chapter 5.2.B (discussing the Responsible Individuals List).

Under G.S. 14-318.6, effective December 1, 2019, any adult who knows or reasonably should have known that a juvenile has been or is a victim of a violent offense, sexual offense, or misdemeanor child abuse must immediately report that case to the appropriate local law enforcement agency in the county where the juvenile resides or is found. This universal mandatory reporting statute does not have an exception for DSS employees.

If the person who reports the suspected abuse, neglect, or dependency requests a prosecutor review of a DSS decision not to file a petition, DSS must allow the district attorney (or designee) to access the case record. G.S. 7B-305; 10A N.C.A.C. 70A.0113(c).

Resources:
Sara DePasquale, *BIG NEWS: S.L. 2019-245 Creates a New Universal Mandated Reporting Law for Child Victims of Crimes and Changes the Definition of "Caretaker,"* UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Nov. 13, 2019).

Sara DePasquale, *A/N/D Reporting: Rights, Protections, and Prosecutor Review,* UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (June 21, 2017).

Government entity to protect a child. DSS must disclose confidential information to any federal, state, or local government entity or its agent that needs the information to protect a child from abuse or neglect. G.S. 7B-302(a1)(1). The government entity may redisclose confidential information received from DSS if redisclosure is for purposes directly connected with carrying out the entity's mandated responsibilities. G.S. 7B-302(a1)(1).

If DSS receives a report of a child's suspected maltreatment occurring in a child care facility, DSS must notify the North Carolina Department of Health and Human Services

(NCDHHS) within twenty-four hours or on the next working day after receiving the report. G.S. 7B-307(a); *see* G.S. 110-105.3(a), (c).

Practice Note: Effective January 1, 2016, investigations and responses involving protective actions and sanctions involving suspected child maltreatment occurring in a child care facility are part of the child care licensing system of the NCDHHS Division of Child Development and Early Education and are no longer regulated by the Juvenile Code. *See* S.L. 2015-123.

Resources: For more information about alleged child maltreatment occurring in a child care facility, including mandated reporting, investigations, and confidentiality of those records, see

- SARA DEPASQUALE, *Suspected Child Maltreatment Occurring in a Child Care Facility* (UNC School of Government, 2016) supplemental Chapter 13a *in* JANET MASON, REPORTING CHILD ABUSE AND NEGLECT IN NORTH CAROLINA, (UNC School of Government, 3d ed. 2013).
- Sara DePasquale, *The New Law Addressing Child Maltreatment in Child Care Facilities: It's the State's Responsibility*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Jan. 6, 2016).

North Carolina General Assembly member or joint legislative oversight committee. Access to DSS information by the General Assembly is addressed by G.S. 7B-302(a3)–(a5), enacted by S.L. 2021-132, sec. 1.(c). For information received or created by DSS on or after October 1, 2022, an individual member or a joint legislative oversight committee of the North Carolina General Assembly may request access to confidential child protective services information and records maintained by DSS. The purpose of the request must be limited to oversight of programs related to child protective services. The disclosure of confidential DSS information must not be prohibited by federal law, including state plan requirements for federal programs. DSS must not disclose the identity of the person or institution that reported the juvenile's suspected abuse, neglect, or dependency or any court records resulting from a report.

Under G.S. 7B-302(a3), the request is made to either the North Carolina Department of Health and Human Services (DHHS) or the county DSS director. DHHS and the county DSS must coordinate with one another to obtain the necessary information and records to respond to the request. DHHS, not the county DSS, makes the information available to an individual member at the county DSS and for a joint legislative oversight committee in a closed session pursuant to G.S. 143-318.11(a)(1). The information shared is the minimum necessary to satisfy the request.

The information that is shared cannot be retained or captured (*e.g.*, a photograph or electronic image) by the individual member or joint legislative oversight committee of the General Assembly. The information must be withheld from public inspection and maintained in a confidential manner. G.S. 7B-302(a3).

A violation of the provisions of G.S. 7B-302(a3) is punishable as a Class 1 misdemeanor. G.S. 7B-302(a4).

Resource: For more information about G.S. 7B-302(a3)–(a5), see Kristi Nickodem, *The Impact of S.L. 2021-132 on the Confidentiality of Child Protective Services Information and Records*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Oct. 5, 2021).

Military affiliation. Effective August 23, 2019, as part of its assessment of a report of abuse, neglect, or dependency, DSS should collect information about the military affiliation (if any) of the juvenile's parent, guardian, custodian, or caretaker. G.S. 7B-302(a). If DSS finds evidence that the juvenile may have been abused or neglected, DSS must (1) notify the appropriate military authority by making an immediate oral report and a subsequent written report within forty-eight hours after receipt of the information and (2) share information with that military authority. G.S. 7B-307(a); 7B-302(a), (a1)(1).

Court order. Confidential social services information may be disclosed pursuant to a court order. 10A N.C.A.C. 70A.0113(a)(1). There are several different situations in which a court may order disclosure.

The court may order public agencies to share information regarding a child victim who is under DSS protective custody or placement by the court if the court finds that information sharing is necessary to reduce the trauma to the child victim. G.S. 7B-2901(c).

A district or superior court judge who is hearing a civil matter in which DSS is not a party (e.g., child custody) may order DSS to release confidential information if (1) DSS has reasonable notice and an opportunity to be heard and (2) the court determines the information is relevant and necessary to the trial and is unavailable from another source. G.S. 7B-302(a1)(3); 7B-2901(b)(2). The court may conduct an in camera review if needed to make that determination. G.S. 7B-302(a1)(3).

A defendant in a criminal action has a constitutional right to access third party information if that information is favorable and material to the defendant's defense. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). In a criminal or delinquency action, the district or superior court judge presiding over that action must conduct an in camera review before releasing confidential DSS records to the defendant unless it is the child (who may now be an adult) who is the criminal defendant or alleged delinquent juvenile. G.S. 7B-302(a1)(4); 7B-2901(b)(3). The child (even upon reaching the age of majority) is entitled to examine the records without a court order. G.S. 7B-302(a1)(2); 7B-2901(b)(1).

Resource: For a discussion on a criminal defendant's right to access, see Jessica Smith, *Defendant's Right to Third Party Confidential Records*, UNC SCH. OF GOV'T: NORTH CAROLINA CRIMINAL LAW BLOG (Oct. 2, 2014).

Provision of protective services. In conducting its assessment or arranging for and providing protective services, DSS may consult with any agency or individual. G.S. 7B-302(e). DSS may share information and a "summary of documentation" from the case

record without a court order with agencies or individuals that provide or facilitate the provision of protective services to a child. 10A N.C.A.C. 70A.0113(b). Protective services include screening reports, conducting assessments, and providing casework or other counseling services to the families to improve, preserve, and stabilize the family's life. G.S. 7B-300. Effective July 1, 2024, DSS may share information with the multidisciplinary team for children who are served by a Children's Advocacy Center. *See* S.L. 2023-96, enacting Article 3A of Chapter 108A of the North Carolina General Statutes, and specifically G.S. 108A-75.3 ("sharing of information"); 108A-75.1(5) (definition of "Children's Advocacy Center") and (10) (definition of "multidisciplinary team").

DSS is required to identify and notify the child's relatives and other persons with legal custody of the child's siblings that the child is the subject of an abuse, neglect, or dependency action and, when applicable, is in nonsecure or DSS custody. G.S. 7B-505(b); 7B-800.1(a)(4); 7B-901(b). This notification is part of DSS efforts to explore the willingness and appropriateness of the relatives and other persons with legal custody of a child's siblings as potential resources for support or placement of the child.

Under the Indian Child Welfare Act (ICWA), when the court knows or has reason to know the child is an Indian child, DSS, as the petitioner, is required to send notice to (i) the federally recognized tribe(s) the child is believed to be either a member of or eligible for membership of when a biological parent is a member of a federally recognized tribe, (ii) the regional director of the Bureau of Indian Affairs, (iii) the child's parents, and (iv) the Indian custodian (if any). 25 U.S.C. 1912(a); 25 C.F.R. 23.11(a) and 23.111. *See* 25 U.S.C. 1903(4) (definition of "Indian child"). See Chapter 13.2 (discussing ICWA).

Foster parents and DSS (or the supervising agency) are required to exchange information about matters affecting the child's adjustment to the home, and the foster parent must agree to keep the information confidential and may only discuss it with DSS (or the supervising agency) or professionals designated by the agency. 10A N.C.A.C. 70E.0902(a)(4). Foster parents are also to be included in the child's decision-making team. 10A N.C.A.C. 70E.0902(b)(9). The importance of foster parents in supporting children and families and being a member of a team working to address the issues that led to a child's placement in foster care is recognized in the Foster parents' Bill of Rights. *See* G.S. 131D-10.9C. Foster parents must receive training on confidentiality. 10A N.C.A.C. 70E.1117(1)(n).

In cases where children who are in DSS custody present to a hospital emergency department for mental health treatment but have been determined that continued hospitalization is not medically necessary, two laws – G. S. 122C-142.2 and 7B-903.2 – address care coordination for that child. DSS continues to provide ongoing case management to the juvenile, and the hospital must cooperate with DSS and provide access to the juvenile. G.S. 122C-142.2(e). DSS must contact the appropriate managed care organization or prepaid health plan to address the child's treatment needs and placement. G.S. 122-142.2(b)–(d). If an appropriate placement is not available or the recommendations of the juvenile's comprehensive clinical assessments differ, DSS must

contact the Rapid Response Team at the North Carolina Department of Health and Human Services, which will coordinate a response to address the child's needs. G.S. 122C-142.2(f), (g), as amended by S.L. 2023-65, sec. 3.4, effective June 29, 2023. Ultimately, an emergency motion to address the child's placement and payment for the cost of the child's continued hospitalization may be made pursuant to G.S. 7B-903.2. If requested, DSS must provide the party or agency filing the motion with the case file number for the abuse, neglect, or dependency action, the juvenile's name, and the addresses of all the parties and their attorneys in the abuse, neglect, and dependency action so that service may be made. G.S. 7B-903.2(d). See Chapter 7.6.C (discussing G.S. 122C-142.2 and 7B-903.2).

(b) Disclosure in child fatality or near-fatality cases. The Juvenile Code addresses a child's fatality or near fatality resulting from suspected abuse, neglect, or dependency, including the disclosure of information. A public agency (this includes but is not limited to DSS) that receives a request to disclose information related to a child fatality or near fatality must disclose the findings and information as defined by G.S. 7B-2902(a)(2) and limited by G.S. 7B-2902(c) through (f) (as amended by S.L. 2023-134, sec. 9H.15) if

- a person is criminally charged with causing the death or near death of a child or
- a district attorney certifies that a person would be charged but for that person's death.

However, not all confidential information is required to be disclosed, and there are circumstances under which the agency is permitted to deny a request for information. If a request is denied, the person seeking the information may go to superior court to seek an order compelling disclosure, and the court must conduct an in camera review to determine whether denial of the request was warranted. G.S. 7B-2902.

Resources:
For a detailed discussion of confidentiality and disclosure of information related to child fatalities, see Kristi Nickodem, *When Child Abuse or Neglect Ends in a Fatality, What Does the Public Have a Right to Know?,* UNC SCHOOL OF GOV'T: COATES' CANONS: NC LOCAL GOVERNMENT BLOG (Dec. 15, 2023).

For more information about child fatality reviews, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Cross Function" and "Child Fatality Prevention and Review," available here.

Legislative Note: North Carolina has a Child Fatality Prevention System, which involves a multidisciplinary, community-wide approach to promote safe and healthy child development and to prevent future child abuse, neglect, and death by understanding the causes of childhood deaths, identifying gaps in services, improving coordination between state and local entities, and recommending changes to laws and policies. That system is in the process of restructuring by July 1, 2025. *See* S.L. 2023-134, sec. 9H.15, creating Part 4C in Article 3 of G.S. Chapter 143B and enacting new statutes and amending others in Article 14 of G.S. Chapter 7B.

B. Court Records and Proceedings

1. The juvenile court record. The clerk of superior court is responsible for maintaining all records pertaining to juvenile cases. The clerk's record includes the summons, the petition, custody orders, other court orders, written motions, other papers filed in the proceeding, and recordings of hearings. G.S. 7B-2901(a). All adjudicatory and dispositional hearings in abuse, neglect, or dependency proceedings are recorded; the court may order that other hearings be recorded. G.S. 7B-806. The recordings may be reduced to a written transcript only when notice of appeal has been timely filed. G.S. 7B-806; 7B-2901(a); *see* G.S. 7B-1001(appeal). Recordings may be erased after the time for appeal has expired with no appeal having been filed pursuant to a court order or the retention schedule that is approved by the Director of the Administrative Office of the Courts and Department of Natural and Cultural Resources. G.S. 7B-2901(a).

Records of juvenile cases alleging abuse, neglect, or dependency are withheld from public inspection and may be examined only by court order unless an exception applies. G.S. 7B-2901(a); *see* G.S. 1-72.1(f). The following persons may examine the court record and obtain copies of written parts of the record without a court order:

- the child who is named in the petition;
- the child's guardian ad litem;
- the county department of social services; and
- the child's parent, guardian, or custodian, or the attorney for the child, parent, guardian, or custodian.

G.S. 7B-2901(a).

For more information about the clerk's records in juvenile proceedings, see the Appendix at the end of this Manual. Note that Comment D. of Rule 12.5, Access to Files, of the Rules of Recordkeeping states that "Entry of a TPR changes the legal relationship between a parent and child. The parent should not have access to documents filed subsequent to the TPR even if the TPR is on appeal unless the court has stayed the TPR order on appeal."

2. Juvenile court hearings: open or closed to the public. Federal law allows a state to determine its own policy related to public access to court proceedings that determine child abuse or neglect, but the state policy must ensure the safety and well-being of the child, parents, and family. 42 U.S.C. 671(c). In North Carolina, although court and DSS records related to abuse, neglect, or dependency are withheld from public inspection, the court hearings are open to the public. However, the court has the discretion to close a hearing or any part of a hearing so long as the child does not request that it remain open. G.S. 7B-801(a), (b).

When determining whether to close all or part of the hearing, the court considers the circumstances of the case, including but not limited to

- the nature of the allegations,
- the child's age and maturity,

- the benefit to the child of confidentiality,
- the benefit to the child of an open hearing, and
- the extent to which the confidentiality afforded the child's record pursuant to G.S. 132-1.4(*l*) (which addresses criminal investigations and refers to Article 29 of G.S. Chapter 7B) and G.S. 7B-2901 will be compromised by an open hearing.

G.S. 7B-801(a).

Even if a hearing is open, Rule 15 of the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure prohibits electronic media coverage and still photography of judicial proceedings.

3. Adoption proceedings and records. An adoption proceeding is a special proceeding that is heard before the clerk of superior court and is a separate proceeding from an abuse, neglect, dependency, or termination of parental rights proceeding. G.S. 48-2-100(a); *see* G.S. 7B-1101. However, when there is a question of fact, an equitable defense, or a request for equitable relief, the clerk must transfer the proceeding to district court. G.S. 48-2-601(a1). Judicial hearings related to an adoption must be held in closed court. G.S. 48-2-203.

Subject to very limited exceptions, all records related to an adoption, including those that are in the possession of the court, an agency, the State, a county, an attorney, or other professional, are confidential and may not be disclosed unless authorized by statute. G.S. 48-9-102(a). The only two exceptions to this strict confidentiality rule are the adoption decree and the entry in a special proceedings index in the office of the clerk of superior court. Records subject to this confidentiality rule include any documents, notes, pleadings, or other types of records that pertain to an adoption proceeding regardless of the physical form of the record, such as printed, written, microfilmed, audio- or video-tape recorded, and electronic materials. G.S. 48-9-101. During an adoption proceeding, records are not open to inspection by anyone without a court order that finds disclosure is necessary to protect the adoptee's interests. G.S. 48-9-102(b). When the adoption decree is final, all records except the Special Proceedings Index must be permanently retained and sealed. G.S. 48-9-102(c). Information may only be disclosed pursuant to the criteria set forth in Article 9 of G.S. Chapter 48. *See* G.S. 48-9-103 (release of non-identifying information); 48-9-104 (release of identifying information); 48-9-105 (written motion for release of information); 48-9-109 (certain disclosures authorized). The Indian Child Welfare Act (ICWA) requires certain disclosures that are not addressed in North Carolina law. See Chapter 13.2 (discussing ICWA, section K regarding adoptions).

The Juvenile Code briefly addresses the confidentiality of adoption records and explicitly states the final decree of adoption must not be filed in the juvenile court file. *See* G.S. 7B-908(e) (post-termination of parental rights placement review hearing); 7B-909(c) (incorporation of G.S. 7B-908 for post-relinquishment review hearing). Applying the restrictive provisions of G.S. Chapter 48, none of the adoption records (e.g., the adoption petition) should be included in a juvenile court record).

C. DSS Access to Information

When DSS is assessing whether a child is abused, neglected, or dependent and is subsequently providing services to that child and family, DSS will need to acquire information about the child and family from collateral sources. The Juvenile Code authorizes DSS to access information, including some confidential information, but that access to information is complicated by several factors, including federal laws that prohibit or limit access to certain types of records.

DSS may *demand in writing* any information or reports, whether or not confidential, that in the director's opinion may be relevant to an assessment of an abuse, neglect, or dependency report or to the provision of protective services. G.S. 7B-302(e). This authority does not extend to information protected by the attorney-client privilege. G.S. 7B-302(e). An agency or individual must provide access to and copies of the requested information to the extent the disclosure is permitted by federal law and regulations. G.S.7B-302(e). For a discussion of selected federal laws related to health, substance use disorder, and educational records, see sections 14.2 (HIPAA), 14.4 (42 C.F.R. Part 2) and 14.5 (FERPA), below.

State laws restrict access to, or provide for the confidentiality of, some types of records and information. However, the broad access to confidential information DSS has under the Juvenile Code does not refer to state laws when limiting the authority of DSS to access confidential information. Additionally, some state laws explicitly make an exception to confidentiality for situations involving the reporting or assessment of abuse or neglect. *See, e.g.,* G.S. 122C-54(h) (although Mental Health, Developmental Disability and Substance Use Services providers are restricted from disclosing information, this provision states that providers are required to disclose confidential information for purposes of complying with Article 3 of G.S. Chapter 7B, which includes the mandatory reporting law, the DSS assessment, and provision of protective services).

A custodian of criminal investigative information or records may seek a court order from a court of competent jurisdiction that prevents disclosure to DSS when a written request has been made for that information if the custodian believes that the disclosure would jeopardize an ongoing or future investigation, the rights of the state to prosecute a defendant, or a defendant's right to receive a fair trial. G.S. 7B-302(e). These actions must be set for immediate hearing and any subsequent proceedings, including an appeal, must be given priority by the court. G.S. 7B-302(e). The custodian must prove by a preponderance of the evidence that one of these three criteria exists. G.S. 7B-302(e).

An agency's or individual's refusal to disclose information sought by DSS might be considered interference with or obstruction of an assessment and subject that agency or individual to an interference proceeding brought under G.S. 7B-303. See Chapter 5.1.G (relating to interference proceedings).

NCDHHS DSS Form:
DSS-5297, Consent for Release of Confidential Information.

D. The Child's GAL Access to and Disclosure of Information

Unless protected by attorney-client privilege, the child's guardian ad litem (GAL) has the authority to obtain any information or reports, whether or not confidential, that in the opinion of the GAL may be relevant to the case. G.S. 7B-601(c). Given the GAL's duties, the type of information that they consider relevant may be very broad. The GAL represents the child to assure the protection of the child's legal rights and protect and promote the child's best interests. G.S. 7B-601(a). A GAL's duties include making an investigation to determine the facts, the child's needs, and available resources within the family and community to meet those needs; exploring options with the court at dispositional hearings; conducting follow-up investigations to insure that court orders are being properly executed; and reporting to the court when the child's needs are not being met. G.S. 7B-601(a).

Although G.S. 7B-700(a) permits DSS to share with any other party information relevant to the juvenile proceeding, the same is not true for the GAL. The GAL is not generally authorized to share information they obtain unless ordered by the court, local rules provide otherwise, or if the sharing is pursuant to agency sharing provisions or disclosure to the juvenile's attorney in a delinquency or undisciplined action under G.S. 7B-3100. G.S. 7B-700(f); *see* G.S. 7B-601(c). However, the GAL must share with all parties reports and records before submitting the reports and records to the court. G.S. 7B-700(f). The AOC form Order to Appoint or Release Guardian Ad Litem and Attorney Advocate contains the following language related to this provision:

> The Guardian ad Litem has the authority to obtain any information or reports, whether or not confidential, that may in the Guardian ad Litem's opinion be relevant to the case. This order includes the release of confidential information subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). 45 C.F.R. 164.512(a), (e). No privilege other than the attorney-client privilege may be invoked to prevent the Guardian ad Litem and the Court from obtaining such information. The confidentiality of the information or reports shall be respected by the Guardian ad Litem and no disclosure of any information or reports shall be made to anyone, except by order of the Court or unless otherwise provided by law.

Practice Note: Some custodians of records ask for a certified copy of the GAL appointment order before allowing access to or copies of records. Others accept a copy of a certified copy or simply look at the appointment order to verify the appointment before allowing access to records. Occasionally a records custodian will refuse to release information or records without a subpoena.

AOC Form:
AOC-J-207, Order to Appoint or Release Guardian Ad Litem and Attorney Advocate.

E. Designated Agency Information Sharing

The Juvenile Code provides for information sharing among agencies who work with children that are receiving protective services in abuse, neglect, or dependency cases. Specifically, G.S. 7B-3100(a) requires that "designated agencies" share with other designated agencies information that is in their possession (even if it is confidential) and has been requested and is relevant to

- any DSS assessment of a report or provision or arrangement of protective services in a child abuse, neglect, or dependency case;
- any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent; or
- any case in which a vulnerable juvenile is receiving juvenile consultation services (*see* G.S. 7B-1501(27b) (definition of "vulnerable juvenile"); 7B-1706.1 (juvenile consultation services).

Designated agencies must share information, however, only to the extent permitted by federal law and regulations (such as the Confidentiality of Substance Use Disorder Patient Records regulations and the Family Educational Rights and Privacy Act, discussed respectively in sections 14.4 and 14.5, below). G.S. 7B-3100(a). See also sections 14.2.D.4 and 14.4.D.4, below (discussing the Health Insurance Portability and Accountability Act and 42 C.F.R. Part 2 as related to G.S. 7B-3100). If an agency refuses to disclose the information, it must inform the agency seeking the information of the federal law that prohibits the disclosure upon request by that agency. 14B N.C.A.C. 11A.0302(b). When there is not a federal prohibition on information sharing, designated agencies that share information must document the name of the agency to which the information was provided and the date it was provided. 14B N.C.A.C. 11A.0302(a).

Practice Note: Information sharing is not defined. The applicable statute and rules do not explicitly authorize or prohibit the exchange of agency records. When determining whether copies of documents may be provided, the designated agencies should first look to any applicable federal laws. If a federal law prohibits the release of documents, that law must be followed. If there is no prohibition, absent a signed consent to release or court order that allows records to be released from one designated agency to another, the designated agencies will need to determine whether information sharing means releasing copies of records or disclosing information contained in the agency's records without providing copies of those records.

The purpose of the information sharing is limited. Designated agencies that receive information pursuant to these provisions may use the information only for the protection of the child and others or to improve the child's educational opportunities. G.S. 7B-3100(a).

Designated agencies must continue to share information until (i) DSS closes the protective services case, (ii) the juvenile is no longer subject to the jurisdiction of the juvenile court if a petition was filed, or (iii) the juvenile consultation case involving a vulnerable juvenile is closed. Designated agencies must keep shared information confidential and may not permit

public inspection of the information. G.S. 7B-3100(a). Information shared with a local educational agency shall not be part of the student's official education record, and the principal must destroy the information when they find that the school no longer needs the information to protect the safety of or improve the education opportunities for the student or others. G.S. 115C-404(a). The purpose of the information for use by the school, the sharing of that information to necessary school employees, and the sanction of the employee's dismissal for not maintaining the confidentiality of the shared information is addressed in G.S. 115C-404.

The Juvenile Code requires that the Division of Juvenile Justice of the Department of Public Safety consult with the Conference of Chief District Court Judges and adopt rules that designate certain local agencies that are authorized to share information. G.S. 7B-3100(a). The applicable rules are 14B N.C.A.C. 11A.0301 and 11A.0302. The designated agencies include

- the Division of Juvenile Justice of the Department of Public Safety (note the Division is still referred to as the Department of Juvenile Justice and Delinquency Prevention in the rules), which includes juvenile court counselors;
- Guardian Ad Litem offices;
- county departments of social services;
- local management entities or area mental health, developmental disability, and substance abuse authorities;
- local law enforcement agencies;
- the district attorney's office in the district (however, while a district attorney (DA) may obtain information, G.S. 7B-3100(a) does not impose on a DA a requirement to disclose or release any information in the DA's possession);
- county mental health facilities and developmental disabilities and substance use disorder programs;
- local school administrative units;
- local health departments; and
- any local agency that is located in the judicial district and is designated by an administrative order issued by the chief district court judge.

G.S. 7B-3100(a); 14B N.C.A.C. 11A.0301.

The court is not an "agency" and records maintained by the clerk of superior court are not subject to these provisions. Court records are governed by G.S. 7B-2901 (discussed in section 14.1.B, above).

Practice Note: In 2006, G.S. 7B-3100 was amended to expand its application to situations where DSS is assessing a report of or arranging for protective services for a child in an abuse, neglect, or dependency case. The rule governing information sharing among designated agencies, 14B N.C.A.C. 11A.0301, has not been revised since the statutory amendment and only authorizes information sharing between designated agencies in those cases where a petition is filed that alleges a juvenile is abused, neglected, dependent, delinquent, or undisciplined. Designated agencies may rely on G.S. 7B-3100. A chief district court judge

may want to include in an administrative order authorized by G.S. 7B-3100 the language in that statute regarding the circumstances that allow for information sharing to occur between the agencies designated in that administrative order.

Resource: For more information about agency information sharing pursuant to G.S. 7B-3100 and the confidentiality laws that apply to health, mental health, and substance use disorder services, see Mark F. Botts, LaToya B. Powell, Rachel Johnson, Jessica Jones, *North Carolina Juvenile Justice - Behavioral Health Information Sharing Guide* (UNC School of Government, 2015).

F. Subpoenas

A subpoena may be served on a DSS, other agency, or person to acquire information through testimony or the production of records. *See* N.C. R. CIV. P. 45. Depending on state and federal laws related to confidentiality or privilege that apply to the agency or person served with a subpoena, the disclosure of the requested information may be prohibited or require a court order to disclose the information. In those cases, the service of a subpoena will not be sufficient to obtain the sought-after information. Additionally, agencies and attorneys sometimes may feel caught between the duty to protect information based on a belief that sharing the information would be damaging and a statutory authority to share the information. In situations where the recipient of the subpoena does not believe it has the statutory authority to disclose the information or it would be harmful to disclose the information, a written objection to the subpoena or motion to quash the subpoena may be necessary. *See* N.C. R. CIV. P. 45(c). The court will then resolve the dispute about whether the information should be disclosed, and if so, result in any necessary court orders for disclosure.

Resource: For a discussion of subpoenas, see John Rubin & Aimee Wall, *Responding to Subpoenas for Health Department Records*, HEALTH LAW BULLETIN No. 82 (UNC School of Government, Sept. 2005).

14.2 Health Records and HIPAA[1]

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations at Chapter 45 of the Code of Federal Regulations, Parts 160 and 164 (the "privacy rule") govern the use and disclosure of health care information. Generally, information acquired or created in connection with providing health care is confidential and may not be disclosed except as permitted or required by the privacy rule. *See* 45 C.F.R. Parts 160 and 164.

Note, mental health records are governed by both the privacy rule and the state law discussed in section 14.3. The use and disclosure of mental health records must comply with both laws. Substance use disorder treatment records are governed by the privacy rule, the state law

[1] This section was written by School of Government faculty member Mark Botts.

discussed in section 14.3, below, and a federal law discussed in section 14.4, below. The use and disclosure of substance use disorder treatment records must comply with all three laws.

HIPAA is a complex federal law. For purposes of this Manual, this section focuses on disclosure of information by a covered health care provider when there is cause to suspect or a substantiation by DSS that a child is abused, neglected, or dependent. This section is an introductory overview of the relevant provisions of HIPAA and does not provide a comprehensive review of this federal law. Additionally, it does not address when DSS is subject to HIPAA requirements as a covered entity.

Resource: For information about whether DSS is a HIPAA covered entity, see Aimee Wall, *Should a Local Government Be a HIPAA Hybrid Entity?*, UNC SCH. OF GOV'T: COATES' CANONS: NC LOCAL GOVERNMENT LAW BLOG (April 28, 2015).

A. Covered Health Care Providers

The privacy rule applies to any "health care provider" that transmits health information in electronic form in connection with certain transactions, including the electronic transmission of information to a health plan for purposes of obtaining authorization or payment for health care services. *See* 45 C.F.R. 160.103, 164.500. While the transmission of information in electronic form for specified activities makes a health care provider a "covered entity" under the privacy rule, once covered, the privacy rule protects health information maintained by the provider in any form, whether electronic or on paper. (Other covered entities include health plans and health care clearinghouses.) "Health care provider" is defined broadly to include any person or organization that, in the normal course of business, furnishes, bills, or is paid for care, services, or supplies related to the health of the individual. This includes services relating to the mental condition or functional status of an individual. *See* 45 C.F.R. 160.103 for definitions of "health care provider" and "health care".

B. Protected Health Information

The privacy rule governs health information that is maintained in any form or medium (e.g., electronic, paper, or oral) that

- is created or received by a health care provider, health plan, or health care clearinghouse;
- identifies an individual or provides a reasonable basis to believe that the information can be used to identify an individual; and
- relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

See 45 C.F.R. 160.103 for the definition of "health information" and "individually identifiable information".

C. Duty to Comply with HIPAA

A covered entity, including a covered health care provider, may use and disclose protected health information only as permitted or required by the privacy rule. Any person or organization alleging a HIPAA violation may file a complaint with the U.S. DHHS Office of Civil Rights (OCR). OCR has the authority to impose significant civil monetary penalties for impermissible disclosures of protected health information. Anyone seeking information from a health care provider will often be asked to point to a provision of the privacy rule that authorizes the provider to disclose the information. *See* 45 C.F.R. 160.402.

D. Impact on Abuse, Neglect, Dependency Laws

The privacy rule contains many provisions allowing a covered health care provider to disclose protected health information in particular circumstances. These exceptions to confidentiality recognize that the patient's privacy interests sometimes must give way to important public interests. When disclosing health information as permitted by the privacy rule, including under the laws discussed below, the privacy rule requires covered entities to disclose only as much information as is necessary to comply with the law requiring disclosure. Generally, a disclosure must comply with and be limited to the relevant requirements of the law, the covered entity must verify a requesting person's legal authority to acquire protected health information, and the covered entity must verify the requestor's identity if their identity is not already known to the entity disclosing information. *See* 45 C.F.R. 164.512(a) and 45 C.F.R. 164.514(h).

1. Reporting child abuse, neglect, or dependency. Anyone who has cause to suspect that a child is abused, neglected, or dependent, or has died as a result of maltreatment, has a legal duty under state law to report the case to the department of social services in the county where the child resides or is found. G.S. 7B-301. The HIPAA privacy rule permits a covered health care provider or other covered entity to disclose protected health information to a government authority authorized by law to receive reports of child abuse or neglect. *See* 45 C.F.R. 164.512(b). Thus, the privacy rule does not prevent a covered provider from complying with North Carolina's reporting law nor does it bar the provider from disclosing protected health information when making a report required by G.S. 7B-301.

2. Assessment and protective services. The department of social services is required to assess every abuse, neglect, and dependency report that falls within the scope of the Juvenile Code. G.S.7B-302. The director of social services (or the director's representative) may make a *written* demand for any information or reports, whether or not confidential, that in the director's opinion may be relevant to the assessment of a report or to the provision of protective services. G.S. 7B-302(e) (emphasis added). Upon such demand, any agency or individual is required to provide access to and copies of confidential information to the extent permitted by federal law. The privacy rule permits a health care provider to disclose protected health information to the extent the disclosure is required by law. *See* 45 C.F.R. 164.512(a). Thus, the privacy rule permits a covered provider to disclose protected health information to DSS when DSS makes a written demand for the information pursuant to G.S. 7B-302(e).

3. The child's GAL access to information. G.S. 7B-601 authorizes the court to appoint a guardian ad litem (GAL) to represent children alleged to be abused, neglected, or dependent in juvenile court proceedings. The GAL has the authority to obtain "any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case." G.S. 7B-601(c). Because the privacy rule says a health care provider may disclose protected health information to the extent that such disclosure is required by law, 45 C.F.R. 164.512(a), and because state law requires disclosure of information to a GAL appointed under G.S. 7B-601, the privacy rule permits a health care provider to disclose protected health information to the GAL as necessary to comply with G.S. 7B-601.

The form order used by courts to appoint a GAL includes the authorizing language of G.S. 7B-601(c) and adds that the authority includes the ability to obtain information protected by the HIPAA privacy rule. *See* AOC-J-207, Order to Appoint or Release Guardian ad Litem and Attorney Advocate, quoted and linked as a Resource in section 14.1.D, above.

4. Interagency information sharing. As discussed in section 14.1.E, G.S. 7B-3100 of the Juvenile Code requires the adoption of rules designating local agencies that are *required* to share with one another, upon request and to the extent permitted by federal law and regulations, information in their possession that is relevant to

- any assessment of a report of child abuse, neglect, or dependency;
- the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services;
- any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined or delinquent; or
- any case in which a vulnerable juvenile is receiving juvenile consultation services.

To the extent that the rules designate health care providers or other HIPAA covered entities to disclose information pursuant to G.S. 7B-3100, the HIPAA privacy rule permits the information sharing because it authorizes a covered entity to disclose protected health information to the extent that such disclosure is required by law. 45 C.F.R. 164.512(a). The state law requirement to share information, combined with the privacy law's permission to disclose information when required by state law, requires the health care provider to disclose information in accordance with G.S. 7B-3100 if the health care provider is a designated agency by rule. Presently, local health departments and area mental health authorities (see "area authority" definition in section 14.3.A, below) are the only health care providers or HIPAA-covered entities designated by rule, but the rule permits other health care providers to be designated by administrative court order. *See* 14B N.C.A.C. 11A.0301 for a list of agencies designated to share information and the authority of district courts to issue an administrative order designating other agencies.

5. Disclosure pursuant to a subpoena. The privacy rule permits a health care provider or other covered entity to disclose protected health information in response to a subpoena if the covered entity receives *satisfactory assurance* from the party seeking the information that reasonable efforts have been made by the party either to

- ensure that the individual who is the subject of the information has been given notice of the request or
- secure a qualified protective order.

See 45 C.F.R. 164.512(e).

Satisfactory assurance of notice means a written statement and accompanying documentation that the party requesting records has made a good faith attempt to provide written notice to the individual that includes sufficient information about the proceeding to permit the individual to raise an objection to the court, and the time for the individual to raise objections has elapsed and either no objections were filed or all objections filed were resolved by the court and the disclosures being sought are consistent with such resolution.

Satisfactory assurance of a qualified protective order means a written statement and accompanying documentation demonstrating that the parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or tribunal, or the party seeking the information has requested a qualified protective order. (*See* 45 C.F.R. 164.512(e) for more information on protective orders.)

Practice Note: The HIPAA privacy rule does not preempt state and federal confidentiality laws that place greater restrictions on the disclosure of protected information. Because the state mental health confidentiality law and the federal law governing substance use disorder patient records do not permit the disclosure of protected information in response to a subpoena alone, information that is governed by those laws cannot be disclosed pursuant to a subpoena, notwithstanding the fact that the same information also may be subject to the HIPAA privacy rule. See sections 14.3 and 14.4, below.

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6. Disclosure pursuant to a court order. A health care provider or other HIPAA covered entity may disclose protected health information in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the information expressly authorized by the order. 45 C.F.R. 164.512(e)(1)(i). The privacy rule expresses no particular procedure or criteria for obtaining a court order to disclose protected health information.

7. Disclosure with patient authorization. A health care provider may disclose protected health information as authorized by the patient. The authorization must be voluntary and in writing. It also must be informed, which means that the individual signing the authorization must understand what information will be shared, with whom it will be shared, and for what purpose. Toward this end, the privacy rule specifies required content for a valid authorization. *See* 45 C.F.R. 164.508(c).

The patient's written authorization permits, but does not require, the health care provider or other covered entity to disclose information. Any disclosure made by a health care provider pursuant to a patient's authorization must be consistent with, and may not exceed, the terms of the written authorization. The patient may revoke the authorization at any time.

Resources:
For a detailed guide to HIPAA, see "The HIPAA Privacy Rule" section of the U.S. Department of Health and Human Services website.

For a chart of "required by law" disclosures of protected health information by HIPAA-covered local health departments to county departments of social services, see Kirsten Leloudis, "Required by Law" Disclosures of PHI to DSS: G.S. 7B-302 and 7B-3100 (Chart) (UNC School of Government, 2023).

For a sample patient-authorization-to-disclose form that meets the requirements of the HIPAA privacy rule, see Mark F. Botts, LaToya B. Powell, Rachel Johnson, Jessica Jones, *North Carolina Juvenile Justice - Behavioral Health Information Sharing Guide* (UNC School of Government, 2015).

14.3 Mental Health Records and G.S. Chapter 122C[2]

The Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985, G.S. Chapter 122C, governs providers of mental health, developmental disabilities, and substance abuse services (MH/DD/SA services). G.S. 122C-52 through -56 govern the information relating to those services.

A. Covered Providers

G.S. Chapter 122C applies to any "facility"—meaning any individual, agency, company, area authority, or state facility—at one location *whose primary purpose* is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or those with substance use disorder. G.S. 122C-3(14) (emphasis added). This definition includes public and private agencies, providers of outpatient as well as inpatient services, state-operated psychiatric hospitals, psychiatric residential treatment centers, and agencies and individuals who contract with area authorities to provide services to area authority clients.

An "area authority" is commonly referred to as a "local management entity/managed care organization" or "LME/MCO." Though these terms have distinct meanings in some contexts, for the purposes of this section of the Manual, the terms are interchangeable and refer to the public authorities responsible for contracting for the provision of publicly-funded MH/DD/SA services within a specified geographic service area. *See* G.S. 122C-3 for the definitions of these terms.

In addition to G.S. Chapter 122C, rules at 10A N.C.A.C. 26B impose additional confidentiality requirements on a subset of MH/DD/SA facilities: area authorities, state facilities, and the individuals and agencies that contract to provide services on behalf of area authorities and state facilities.

[2] This section was written by School of Government faculty member Mark Botts.

B. Confidential Information

Any information, whether recorded or not, relating to an individual served by a "facility" and received in connection with the performance of any function of the facility is confidential and may not be disclosed except as authorized by G.S. 122C-52 through -56 and, where applicable, 10A N.C.A.C. 26B. *See* G.S. 122C-3(9); 122C-52.

C. The Duty of Confidentiality

"No individual" having access to confidential information may disclose it except as authorized by G.S. Chapter 122C and, where applicable, 10A N.C.A.C. 26B. *See* G.S. 122C-52(b). The unauthorized disclosure of confidential information is a Class 3 misdemeanor (*see* G.S. 122C-52(e)) and could result in civil liability for the treatment facility or its employees. Further, because employees of area and state facilities are subject to disciplinary action if they disclose information in violation of G.S. Chapter 122C (*see* 10 N.C.A.C. 26B.0104), agencies subject to G.S. Chapter 122C will generally insist on identifying the legal authority for a disclosure before making the disclosure.

Note that the duty of confidentiality is not limited to MH/DD/SA treatment providers ("facilities"). The duty extends to any "individual having access to confidential information." G.S. 122C-52(b). Thus, the duty of confidentiality applies to departments of social services that receive confidential information from a facility, and these departments may not redisclose such information except as permitted or required by G.S. 122C-53 through G.S. 122C-56 (*e.g.*, pursuant to patient consent, court order, or a provision of law like those discussed in 14.3.D, below). In this respect, the state law governing MH/DD/SA records is similar to the federal law governing substance use disorder records, for an "individual" having access to information protected by state law has a duty much like the duty of a "lawful holder" of information protected by 42 C.F.R Part 2. *See* section 14.4.C, below, for the confidentiality duty of DSS as a lawful holder of protected substance use disorder information.

D. Impact on Abuse, Neglect, Dependency Laws

1. Reporting child abuse, neglect, or dependency. Anyone who has cause to suspect that a child is abused, neglected, or dependent, or has died as a result of maltreatment, is required to report the case to the department of social services in the county where the child resides or is found. G.S. 7B-301. Under G.S. 122C-54(h), providers of MH/DD/SA services are required to disclose confidential information for purposes of complying with Article 3 of G.S. Chapter 7B, which includes 7B-301. Thus, the state law governing the confidentiality of MH/DD/SA services is not a bar to complying with the state's child abuse reporting statute, and providers of services must disclose confidential information when necessary to comply with the mandatory reporting law.

2. Assessment and protective services. The department of social services is required to assess every abuse, neglect, and dependency report that falls within the scope of the Juvenile Code. G.S.7B-302. The director or director's representative may make a *written* demand for

any information or reports, whether or not confidential, that in the director's opinion may be relevant to the assessment or to the provision of protective services. Upon such demand, any agency or individual must provide access to and copies of confidential information to the extent permitted by federal law. G.S. 7B-302(e) (emphasis added).

The state mental health confidentiality law requires individuals and agencies subject to the law to disclose confidential information for purposes of complying with Article 3 of G.S. Chapter 7B, which includes 7B-302. *See* G.S. 122C-54(h). Thus, even if DSS seeks information that falls within the scope of the confidentiality protections of G.S. Chapter 122C, providers of MH/DD/SA services must provide access to and copies of the requested information, unless disclosure is prohibited by federal law and regulations.

3. The child's GAL access to information. A guardian ad litem (GAL) appointed under G.S. 7B-601 to represent children who are alleged to be abused, neglected, or dependent, has the authority to obtain "any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case." G.S. 7B-601(c).

G.S. 122C-54(h) provides that facilities governed by G.S. Chapter 122C must disclose confidential information "as required by other State or federal law." Thus, when a court order appoints a GAL under G.S. 7B-601, the GAL must be granted access to any information, whether or not protected by G.S. Chapter 122C, that the GAL believes is relevant to the case.

4. Interagency information sharing. As discussed in sections 14.1.E and 14.2.D.4, above, G.S. 7B-3100 of the Juvenile Code requires the adoption of rules designating local agencies that are *required* to share with one another, upon request and to the extent permitted by federal law and regulations, information that is in their possession that is relevant to

- any assessment of a report of child abuse, neglect, or dependency;
- the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services;
- any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined or delinquent; or
- any case in which a vulnerable juvenile is receiving juvenile consultation services.

To the extent that the applicable rules, 14B N.C.A.C. 11A.0301, designate MH/DD/SA service providers among the agencies required to share information in accordance with G.S. 7B-3100, those service providers would be required to share information upon the request of another designated agency because G.S. Chapter 122C requires providers to disclose confidential information as required by other state law. *See* G.S. 122C-54(h).

The rules designate area mental health, developmental disabilities, and substance abuse authorities among the agencies required to share information pursuant to the statute, as well as any "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." 14B N.C.A.C. 11A.0301(10). Because the rules do not designate individuals and agencies who contract with area authorities to provide services to area authority clients, such providers of services do not

come under G.S. 7B-3100 and, therefore, would not be permitted to disclose confidential information pursuant to the statute unless they are designated by an administrative court order as provided for in the rule. *See* 14B N.C.A.C. 11A.0301 for a list of agencies designated to share information pursuant to G.S. 7B-3100.

5. Disclosure pursuant to a subpoena. Unlike the privacy rule governing health records, discussed in section 14.2, above, G.S. Chapter 122C does not include a provision permitting a provider of MH/DD/SA services to disclose confidential information in response to a subpoena alone. A subpoena would compel disclosure of confidential information only if the confidentiality bar is removed by the client's written authorization to disclose, a court order requiring disclosure, or some other legal mandate, such as a statute or regulation, that requires disclosure under the particular circumstances.

6. Disclosure pursuant to a court order. A facility must disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure. G.S. 122C-54(a). G.S. 122C-54(a) expresses no standard or criteria for the issuance of a court order. Presumably, the court should use a public interest test similar to the test articulated in the regulations governing substance use disorder records, which requires the court to balance the public interest and need for the disclosure against the potential injury to the patient, the patient-provider relationship, and the provider's on-going treatment services. See section 14.4.D.6, below.

The evidentiary privilege statutes for mental health professionals may provide some guidance to the court. The privilege statutes for psychologists and other mental health professionals provide that a judge may order disclosure of privileged information when "necessary to the proper administration of justice" (e.g., in order that the truth be known and justice done). *See* G.S. 8-53.3 (psychologists); 8-53.5 (marital and family therapists); and 8-53.7 (social workers) and case annotations.

7. Disclosure with patient authorization. A facility may disclose confidential information regarding a client if the client or his or her legally responsible person consents in writing to the release of the information. *See* G.S. 122C-53(a), as amended by S.L. 2023-95, effective October 1, 2023.

The state rules that apply to area authorities and their contracted providers of services require patient consent to be voluntary, informed, and in writing. *See* 10A N.C.A.C. 26B. 0200. The client's consent is revocable, and it permits, but does not require, a facility to disclose confidential information.

Any consent form used for the disclosure of information that is confidential under G.S. Chapter 122C will probably need to conform to the HIPAA privacy rule requirements for patient authorization, as most MH/DD/SA providers also are healthcare providers covered by the privacy rule. The most effective way to ensure that you are using a consent form that meets the requirement of law is to have the patient sign and fully complete the treatment provider's own consent form.

Legislative Note: The state rules applicable to area authorities and their contract providers specify particular elements for the written consent form (10A N.C.A.C. 26B.0202(a)), including an automatic one-year expiration date. However, some of these requirements were superseded by an amendment to G.S. 122C-53(a), which reads, "[a] written release that contains the core elements for authorizations as set forth in Subpart E of Part 164 of Title 45 of the Code of Federal Regulations [the HIPAA privacy rule] shall be valid for the purposes of this subsection." S.L. 2023-95. Now, there is no automatic one-year expiration date, and the patient need only specify a date, condition, or event upon which consent will expire (e.g., when my protective services case ends).

Resources:
For sample patient-authorization-to-disclose forms designed to meet the requirements of the HIPAA privacy rule and G.S. Chapter 122C, see:

- Mark F. Botts, LaToya B. Powell, Rachel Johnson, Jessica Jones, *North Carolina Juvenile Justice - Behavioral Health Information Sharing Guide* (UNC School of Government, 2015).
- The SUN Project—Interagency Sharing of Confidential Information to Coordinate Care and Treatment for Pregnant Women, *Patient Authorization to Disclose*.

14.4 Substance Use Disorder Records and 42 C.F.R. Part 2[3]

Federal law restricts the use and disclosure of patient information received or acquired by a federally assisted alcohol or drug abuse program. 42 U.S.C. 290dd-2; 42 C.F.R. Part 2.

A. Covered Programs

The federal law governs federally assisted programs. A "program" is

- an individual or entity (other than a general medical facility) that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment;
- an identified unit within a general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or
- medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers.

See 42 C.F.R. 2.11 (definition of "program" and "substance use disorder").

A program is considered "federally assisted" if it participates in Medicare, has tax exempt status, is registered to dispense a controlled substance used in the treatment of substance use disorders, receives federal financial assistance in any form even if the financial assistance does not directly pay for substance use disorder treatment, or is a local government unit that

[3] This section was written by School of Government faculty member Mark Botts.

receives federal funds that could be but are not necessarily spent for a substance use disorder program. *See* 42 C.F.R. 2.12(b). By participating in Medicaid and receiving federal block grant funding, area authorities (LME/MCOs) and the agencies that contract with them to provide substance use disorder diagnosis, treatment, or referral for treatment are federally assisted programs governed by 42 C.F.R. Part 2.

The federal regulations cover those treatment or rehabilitation programs, employee assistance programs, programs in general hospitals, and school-based programs who hold themselves out as providing and provide substance use disorder diagnosis, treatment, or referral for treatment. A private practitioner who specializes, and holds herself out as specializing, in diagnosing substance use disorders and referring patients elsewhere for treatment is covered by the regulations even though she does not treat substance use disorders.

As noted above there are three separate "program" definitions, or three independent ways that a person or entity may fall within the definition of "program." Two of the definitions apply to "general medical facilities," a term not defined in the regulations. Looking at the definitions above, and considering a general or acute care hospital to be a general medical facility, we can see that the federal regulations would not apply to hospital emergency department personnel who refer a patient to the hospital's intensive care unit for an apparent drug overdose unless the *primary* function of such personnel is the provision of substance use disorder diagnosis, treatment, or referral for treatment and they are identified as providing such services. Alternatively, if the general hospital has promoted its emergency department or other identified unit, such as a detox unit, to the community as a provider of such services, the identified unit, but not the rest of the general hospital, would be a program covered by the regulations.

Practice Note: If a hospital emergency room treating a trauma patient performs a blood test that identifies cocaine or other drugs in the patient's blood, this alone would not make the hospital emergency room a "program" covered by the regulations and, therefore, the drug test results would not be protected by 42 C.F.R. Part 2. If, however, a substance use disorder counselor evaluates the same patient for drug use and referral for treatment after the patient is admitted to a medical floor of the hospital, then the substance use disorder counselor would be considered a "program."

B. Confidential Information

The federal restrictions on disclosure apply to any information, whether recorded or not, that

- would identify a "patient" (defined as an individual who has applied for or been given substance use disorder treatment, diagnosis, or referral for treatment) as having or having had a substance use disorder and
- is alcohol or drug abuse information obtained by a federally assisted alcohol or drug abuse program for the purpose of treating substance use disorder, making a diagnosis for that treatment, or making a referral for that treatment.

See 42 C.F.R. 2.12. The mere acknowledgement by program staff of the presence of an identified patient at a residential or inpatient facility would involve the disclosure of confidential information if the facility is publicly identified as a place where only substance use disorder diagnosis, treatment, or referral for treatment is provided. Acknowledging the presence of a patient in this circumstance would require either the patient's written consent or an authorizing court order issued in compliance with the regulations. For disclosures pursuant to a court order or patient consent, see section 14.4.D, below (discussing the impact of confidentiality law on abuse and neglect laws).

Practice Note: Suppose a child protective services worker investigating a report of child neglect requests access to a child's mental health record. The family/social history section of the child's record states that the mother, during the intake interview with the child's mental health counselor, disclosed that she uses cocaine. This information is not covered by 42 C.F.R. Part 2 because it was not obtained for the purpose of treating or diagnosing the mother or referring her for treatment. The information also would not be covered because it does not identify the mother as a person who has applied for or received substance use disorder treatment, diagnosis, or referral for treatment.

A diagnosis that is made solely for the purpose of providing evidence for use by law enforcement agencies or officials is not confidential information because it is not obtained for the purpose of treating substance use disorder, making a diagnosis for treatment, or making a referral for that treatment. On the other hand, a diagnosis that is initially prepared by a program in connection with treatment or referral for treatment of a substance use disorder patient is covered by the regulations even if the diagnosis is not used for treatment because the patient does not follow up on the referral.

C. Duty Imposed by Federal Substance Use Disorder Records Law

The regulations prohibit the *disclosure* and *use* of patient records except as permitted by the regulations themselves. Anyone who violates the law is subject to a criminal penalty in the form of a fine (up to $500 for a first offense, up to $5,000 for each subsequent offense). *See* 42 C.F.R. 2.3.

It is important for social services departments, guardians ad litem (GALs), and others who receive substance use disorder (SUD) information from a "program" to understand that the duty of confidentiality imposed by the federal regulations may extend to them. For example, when a department of social services receives SUD information from a treatment program pursuant to the patient's written authorization, the department becomes a "lawful holder" of protected information that may not be redisclosed except as permitted or required by the federal law. The restrictions on disclosure apply to individuals and entities who receive patient information directly from a program or other lawful holder of information if they are notified of the prohibition on redisclosure in accordance with section 2.32 of the regulations. That section requires a program that discloses information pursuant to the patient's written consent to notify the recipient that the information continues to be protected by 42 C.F.R. Part 2 and may be redisclosed only as permitted by the regulations. The recipient, a lawful holder of

protected information, is bound by the restrictions on disclosure in the same way that a "program" is bound.

D. Impact on Abuse, Neglect, Dependency Laws

If the federal law does not expressly permit the disclosure of confidential patient information in a particular circumstance, then the disclosure is prohibited. To understand the impact of 42 C.F.R. Part 2 on North Carolina's laws pertaining to child abuse, neglect, and dependency, we must start with the federal law's own rule regarding its relationship to state law: "no state law may either authorize or compel any disclosure prohibited by the regulations in this part." 42 C.F.R. 2.20. Thus, where the Juvenile Code or other state law authorizes or compels a disclosure that is not permitted by 42 C.F.R. Part 2, the federal prohibition on disclosure must be followed. Conversely, the federal regulation does not preempt the field of state law. If the federal law permits a particular disclosure, but state law prohibits it, then state law controls. The federal law does not compel disclosure under any circumstance.

In addition to restricting the *disclosure* of information, the regulations also restrict the *use* of information to initiate or substantiate criminal charges against a patient. *See* 42 C.F.R. 2.12(a) (emphasis added). Generally, when a department of social services or guardian ad litem seeks and receives information from SUD programs for the purpose of carrying out their functions relating to child abuse, neglect, or dependency, only the restrictions on *disclosures* will apply. The restrictions on the *use* of information for purposes of criminal investigation or prosecution generally will not apply and are not discussed here. *See* 42 C.F.R. 2.12 for the restrictions on *use* of information for purposes of criminal investigation and prosecution.

Legislative Note: The U.S. Department of Health and Human Services has issued a notice of proposed rulemaking that would, among other things, expand the restrictions on *use* to *civil* proceedings. The proposed rule would prohibit the use of SUD information, or testimony that describes such information, in any civil, criminal, administrative, or legislative proceedings by any Federal, State, or local authority, against the patient unless authorized by the consent of the patient or a court order issued in accordance with 42 CFR 2.64 or 2.65. See 42 C.F.R. 2.12(d). This proposed rule change would extend the restrictions on use to court proceedings relating to child abuse, neglect, or dependency, and would apply to any person who obtains SUD information from a program or other lawful holder. *See* 87 Fed. Reg. 74216, 74276 (Dec. 2, 2022).

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1. Reporting child abuse, neglect, or dependency. The federal restrictions on the disclosure of confidential information do not apply to the reporting of suspected child abuse or neglect under state laws mandating such reports. 42 C.F.R. 2.12(c)(6). Therefore, the federal law does not bar compliance with North Carolina's mandatory reporting statute (G.S. 7B-301), even if it means disclosing patient identifying information.

2. Assessment and protective services. Although substance use disorder programs (or third party payers who have received information from such programs) must make a report of suspected abuse, neglect, or dependency as mandated by G.S. 7B-301, they are not authorized to provide information beyond the initial report when DSS requests further information

pursuant to its duty under G.S. 7B-302(e) to assess the report. The federal rules permit the disclosure of information for follow-up investigations or for court proceedings that may arise from the report only with the patient's written *consent* or a *court order* issued pursuant to Subpart E of the federal regulations. 42 C.F.R. 2.12(c)(6). See sections 6 and 7, below.

3. The child's GAL access to information. A guardian ad litem (GAL) appointed under G.S. 7B-601 to represent children who are alleged to be abused, neglected, or dependent, has the authority to obtain "any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case." G.S. 7B-601(c). However, the federal regulations governing substance use disorder treatment records do not recognize this as a policy exception to the confidentiality of patient information. (The federal regulations do not contain a provision permitting disclosure in this circumstance.) The federal regulations permit the disclosure of information to a GAL only with the patient's written consent or a court order issued in compliance with Subpart E of the federal regulations. See sections 6 and 7, below.

4. Interagency information sharing. Although the HIPAA privacy rule and state mental health law permit the interagency sharing of confidential information required by G.S. 7B-3100 and 14B N.C.A.C. 11A.0301, as discussed in sections 14.2.D.4 and 14.3.D.4, above, the federal drug and alcohol confidentiality law and its implementing regulations at 42 C.F.R. Part 2 do not permit the disclosure of confidential information pursuant to these state laws. (The federal regulations do not contain a provision permitting disclosure in these or similar circumstances.)

5. Disclosure pursuant to a subpoena. Unlike the privacy rule governing health records, discussed in section 14.2, above, but like the state confidentiality law governing MH/DD/SA services, 42 C.F.R. Part 2 does not include a provision permitting a provider of services to disclose confidential information in response to a subpoena alone. A subpoena compels disclosure of confidential information only if accompanied by the client's authorization to disclose, a court order to disclose, or some other legal mandate, such as a statute or regulation that requires disclosure under the circumstances.

6. Disclosure pursuant to a court order. Under Subpart E of 42 C.F.R. Part 2, a court of competent jurisdiction may authorize a use or disclosure that would otherwise be prohibited under the regulations. *See* 42 C.F.R. 2.61. Such an order does not compel disclosure; to compel disclosure a subpoena or similar mandate must be issued.

Subpart E, sections 2.64 through 2.67 set forth the procedure and criteria for court orders authorizing

- disclosure for noncriminal purposes,
- disclosure and use of information to criminally investigate or prosecute patients,
- disclosure and use of information to investigate or prosecute a program or the person holding the records, and
- the use of undercover agents and informants to investigate employees or agents of a program in connection with a criminal matter.

The kind of order needed by a department of social services to obtain confidential information in the context of child abuse, neglect, or dependency proceedings is an order authorizing disclosure for noncriminal purposes. Any person having a legally recognized interest in the disclosure that is sought may apply for the order. The application may be filed separately or as part of a pending action and must use a fictitious name, such as John Doe, to refer to the patient unless the court orders the record of the proceeding sealed from public scrutiny. *See* 42 C.F.R. 2.64. When seeking a court order where there is no pending action, *see In re Albemarle Mental Health Center*, 42 N.C. App. 292 (1979) (where no civil or criminal proceeding has been commenced, the superior court has jurisdiction to hear a motion requesting an in camera hearing to determine whether information in the possession of a mental health center should be disclosed; the action is in the nature of a special proceeding.).

When the information is sought for noncriminal purposes, the patient and person holding the records must be given adequate notice and opportunity to file a written response or appear in person for the limited purpose of providing evidence on the legal criteria for issuance of the order. 42 C.F.R. 2.64. The judge may examine the records before making a decision. Any oral argument, review of evidence, or hearing on the application must be held in camera.

To order disclosure, the court must find "good cause" for the disclosure. For an order authorizing disclosure for noncriminal purposes, this means the court must find that

- other ways of obtaining the information are not available or would not be effective and
- the public interest and need for disclosure outweigh the potential injury to the patient, the patient's relationship to the program, and the program's ongoing treatment services.

Any order authorizing disclosure must (i) limit disclosure to those parts of the record that are essential to fulfill the purpose of the order, (ii) limit disclosure to those persons whose need for the information forms the basis for the order, and (iii) include any other measures that are necessary to limit disclosure for the protection of the patient, the patient-treatment provider relationship, and the program's ongoing treatment services (e.g., sealing from public scrutiny the record of any proceeding for which the disclosure of information has been ordered). *See* 42 C.F.R. 2.64.

The disclosure of certain information—the things a patient says to program personnel—requires additional findings by the court. A court may order the disclosure of "confidential communications" made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if the disclosure is

- necessary to protect against an existing threat to life or serious bodily injury, including circumstances that constitute suspected child abuse and neglect and verbal threats against third parties;
- necessary to the investigation or prosecution of an extremely serious crime; or
- in connection with litigation in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

42 C.F.R. 2.63.

7. Disclosure with patient authorization. A program may disclose confidential information with the consent of the patient. As with the HIPAA privacy rule and the state mental health law, patient consent must be voluntary and in writing. It also must be informed, which means that the individual signing the authorization must understand what information will be shared, with whom it will be shared, and for what purpose. Toward this end, the federal law governing substance use disorder programs specifies certain content that must be included in the written consent for it to be considered valid. *See* 42 C.F.R. 2.31.

Any consent form used for the disclosure of information that is confidential under 42 C.F.R. Part 2 will need to conform to the state law requirements for consent because G.S. Chapter 122C also applies to substance use disorder treatment services. In addition, if the program is a covered entity under the HIPAA privacy rule, the privacy rule's requirements for patient authorization will apply. The most effective way to ensure that you are using a consent form that meets the requirements of law is to have the patient sign and fully complete the treatment program's own consent form.

Resources:

For a sample consent-to-disclose form that meets the requirements of the HIPAA privacy rule, G.S. Chapter 122C, and 42 C.F.R. Part 2, see

- Mark F. Botts, LaToya B. Powell, Rachel Johnson, Jessica Jones, *North Carolina Juvenile Justice - Behavioral Health Information Sharing Guide* (UNC School of Government, 2015).
- The SUN Project—Interagency Sharing of Confidential Information to Coordinate Care and Treatment for Pregnant Women, *Patient Authorization to Disclose*.

14.5 Education Records and FERPA

A. Introduction

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, was enacted in 1974; the corresponding regulations are found at 34 C.F.R. Part 99. Amendments were made to FERPA by the Uninterrupted Scholars Act (USA) to address timely access to records. *See* Pub. L. No. 112-278, 126 Stat. 2480, effective January 14, 2013. Federal regulations have not been amended to include the USA provisions.

FERPA is a complex federal law that provides for access to education records by parents and "eligible students" while protecting the privacy of students and parents by governing the disclosure of education records by all educational institutions that receive federal funds. A parent includes a natural parent, guardian, or individual acting as a parent in the absence of a parent or guardian. An eligible student is a student who is 18 years old or attending a postsecondary institution. 34 C.F.R. 99.3. FERPA gives parents and eligible students certain rights with respect to inspecting, requesting changes to, and preventing disclosure of education records.

A county DSS that is providing protective (including an initial assessment) services to a child needs to access a child's education record. A DSS assessment of abuse, neglect, or dependency may require information from the child's school records. 10A N.C.A.C. 70A.0106(i)(4). A child's case plan with a county DSS includes the child's education records. 42 U.S.C. 675(1)(C); 10A N.C.A.C. 70G.0506(a)(5). Although state laws give certain individuals and agencies access to confidential information for the purpose of child protection and abuse, neglect, or dependency proceedings, access to and disclosure of education records in some circumstances are subject to FERPA requirements.

For the purposes of this Manual, this section focuses on consent to disclose information and certain exceptions to the need for consent. This section is an introductory overview of FERPA requirements most relevant to abuse, neglect, or dependency proceedings and does not comprehensively address FERPA.

Resources:
For more detailed information about FERPA, including regulations, explanations, fact sheets, and model forms, see

- "Family Educational Rights and Privacy Act (FERPA)" page on the U.S. Department of Education website.
- The "Protecting Student Privacy" website by the U.S. Department of Education: A Service of the Privacy Technical Assistance Center and the Student Privacy Policy Office.
- Areas of Focus, "Data & Information Sharing" section of the Legal Center for Foster Care and Education website.

B. Consent Required for Disclosure

1. Consent required. Under FERPA, an educational agency or institution may not provide personally identifiable information from a student's education records without obtaining a *specific dated written consent* from the parent or eligible student, unless an exception to the consent requirement applies. 20 U.S.C. 1232g(b)(2)(A); 34 C.F.R. 99.30(a); *see* 20 U.S.C. 1232g(d) (student consent). The consent signature may be in an electronic form. 34 C.F.R. 99.30(d).

A consent to release records protected by FERPA must

- specify the records that may be disclosed,
- state the purpose of the disclosure, and
- identify the party or class of parties to whom the disclosure may be made.

34 C.F.R. 99.30(b).

Upon request, a parent or eligible student must also receive a copy of the records disclosed. 34 C.F.R. 99.30(c).

An educational agency must give FERPA rights and protections to a parent unless the school has been provided with evidence of a court order, state statute, or legally binding document that relates to divorce, separation, or custody that specifically revokes these rights. 34 C.F.R. 99.4.

2. Personally identifiable information. "Personally identifiable information" includes but is not limited to

- the student's name;
- the name of the student's parent or other family members;
- the address of the student or student's family;
- a personal identifier, such as the student's social security number, student number, or biometric record;
- other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

34 C.F.R. 99.3. *See also* G.S. 115C-402.5(a)(4)a.

3. Education records. The term "education records" used in FERPA generally includes all records (which is information recorded in any way including handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche) that are maintained by the agency or institution (or by a party acting for the agency or institution) and contain information directly related to a student. 20 U.S.C. 1232g(a)(4)(A); 34 C.F.R. 99.3. This means the records themselves and the information in them, wherever they are stored. Educational records are broadly defined. The health records of a student enrolled in elementary or secondary school, such as immunization and school nurse's records that are maintained by the school, are education records under FERPA. *See* Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records, (U.S. Department of Health and Human Services and U.S. Department of Education, Dec. 2019 Update).

North Carolina law identifies what information must be included in a student's official record. At a minimum, there must be adequate student identification data including a date of birth, attendance, grading and promotion, notices of long-term suspensions and expulsions and the conduct for which the suspension or expulsion was based, and other factual information deemed appropriate by the local board of education. G.S. 115C-402(b).

There are a number of exceptions in the definition of "education records." One narrow exception excludes personal notes that are kept in the sole possession of the maker, are used as a memory aid, and are not accessible or revealed to anyone except a temporary substitute

for the person who made the notes. 20 U.S.C. 1232g(a)(4)(B)(i); 34 C.F.R. 99.3. Thus, a teacher's or administrator's personal notes that are not shared and are based on the personal knowledge and observations of the teacher or administrator are likely not subject to FERPA requirements.

Another exception involves "records of a law enforcement unit" of the education agency that were created and maintained by that unit for law enforcement purposes. 20 U.S.C. 1232g(a)(4)(B)(ii); 34 C.F.R. 99.3 and 99.8(b)(1). A law enforcement unit includes any individual, office, department, division, or other component of the agency such as a unit of commissioned police officers or non-commissioned security guards that is officially authorized or designated by the agency to (1) maintain the physical security and safety of the agency; (2) enforce federal, state, or local law; or (3) refer to appropriate authorities a matter for enforcement of any federal, state, or local law against an individual or organization (that is not the education agency). 34 C.F.R. 99.8(a)(1). A law enforcement unit may also perform non-law enforcement functions, such as investigating incidents resulting in school disciplinary action. 34 C.F.R. 99.8(a)(2). Law enforcement records are not covered by FERPA. 34 C.F.R. 99.8(d). But, records that are not law enforcement records and are subject to FERPA are those records that (1) are created by the law enforcement unit for law enforcement purposes but are maintained by the educational agency and not the law enforcement unit and (2) are created and maintained by the law enforcement unit exclusively for a non-law enforcement purpose, such as school disciplinary action. 34 C.F.R. 99.8(b)(2).

Resource: For more information see School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act (FERPA) (Feb. 2019) on the U.S Department of Education Protecting Student Privacy website.

C. Exceptions to Consent Requirement

1. Overview. There are a number of exceptions to the requirement of written consent to allow disclosure to certain parties under certain conditions. Those most relevant to juvenile proceedings are disclosures

- to an agency caseworker or tribal organization authorized to access a student's case plan when legally responsible for the care and protection of the student;
- to comply with a judicial order or lawfully issued subpoena;
- to appropriate officials in cases of health and safety emergencies;
- of information that is "directory" information such as name, address, phone number, dates of attendance, etc.

See 34 C.F.R. 99.31, 99.36, 99.37, and 99.38 and the Uninterrupted Scholars Act, Pub. L. No. 112-278, 126 Stat. 2480.

2. Disclosure to child welfare agency responsible for child. The Uninterrupted Scholars Act allows educational agencies to release records without first obtaining written consent from a parent to a child welfare agency caseworker or other representative who has the right to access

a student's case plan when the agency is legally responsible for the care and protection of the student. 20 U.S.C. 1232g(b)(1)(L). Note that this provision is permissive and not mandatory.

The child welfare agency may only disclose (or redisclose) the education record to an individual or entity that is authorized by the agency to receive the information and is engaged in addressing the student's education needs. The disclosure must be consistent with the applicable state law that protects the confidentiality of a student's education record. 20 U.S.C. 1232g(b)(1)(L).

Resource: NCDHHS Division of Social Services Dear County Directors Letter, CWS-07-2013: Family Educational Rights and Privacy Act (June 1, 2013).

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3. Disclosure to comply with judicial order or subpoena. An educational agency or institution may disclose information to comply with a judicial order or lawfully issued subpoena. 34 C.F.R. 99.31(a)(9)(i). A juvenile court may order that the information be disclosed. The educational agency or institution must make a reasonable effort to notify the parent or eligible student of the order or subpoena before complying so the parent or eligible student may seek legal recourse. 34 C.F.R. 99.31(a)(9)(ii). However, notification to the parent is not required if

- the parent is a party to a court proceeding involving child abuse, neglect, or dependency and the order to disclose information is issued in that proceeding (this exception applies even if there is not an order removing the child from the home);
- the disclosure is in compliance with a federal grand jury subpoena or a subpoena issued for law enforcement purposes for which a court has ordered that the existence or contents of the subpoena or information furnished in response to the subpoena not be disclosed; or
- the disclosure is in compliance with an ex parte court order obtained by the U.S. Attorney General or that person's designee concerning certain investigations or prosecutions related to terrorism.

20 U.SC. 1232g(b)(2)(B); 34 C.F.R. 99.31(a)(9)(ii)(A)–(C).

4. Disclosure for health or safety emergency. An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. 34 C.F.R. 99.36(a); *see* 20 U.S.C. 1232g(b)(1)(I); 34 C.F.R. 99.31(a)(10). In making a determination as to whether this exception applies, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the determination is made that there is an articulable and significant threat to the health or safety of a student or other individual, disclosure may be made to any person whose knowledge of the information is necessary to protect the health or safety of the student or others. 34 C.F.R. 99.31(a)(10) and 99.36(c). When personally identifiable information is disclosed under the health and safety emergency exception, the education agency must record the articulable and significant threat to the health or safety of a student or other persons and the parties to whom the information was disclosed. 34 C.F.R. 99.32(a)(5).

Although FERPA does not include a specific exception for reporting child abuse or neglect, the health or safety exception may apply in the few cases in which it is necessary to consult school records to determine whether a report should be made. The exception also may apply when a social services director acting pursuant to G.S. 7B-302(e) makes a written demand for information or reports the director believes are relevant to an assessment or to the provision of protective services. It will depend on the education agency's determination, based on the totality of the circumstances, whether there is an articulable and significant threat to the child (who is the student whose record is sought) or others.

5. Disclosure to school personnel and schools where child seeks to enroll. A student's school records may be shared with other school officials (including teachers) who the educational agency has determined has a legitimate educational interest in the information; the access should only be to those portions of the record in which there is a legitimate educational interest. 20 U.S.C. 1232g(b)(1)(A); 34 C.F.R. 99.31(a)(1). This provision limits who may access selected information contained in the student's record.

A student's educational record may be shared with other schools that the student seeks or intends to enroll in upon the condition that the student's parents are notified, receive a copy of the record if requested, and have an opportunity for a hearing to challenge the contents of the record. 20 U.S.C. 1232g(b)(1)(B). This issue may arise when children are moved to placements that result in a school transfer. School transfers should only happen when it is in the child's best interests to do so and is made in compliance with the Fostering Connections and Increasing Adoptions Act and the Every Student Succeeds Act as discussed in Chapter 13.7. In North Carolina, when a child transfers school systems, the receiving school shall obtain the child's record from the transferring school within thirty days of the child's enrollment. If a parent, custodian, or guardian provides the new school system with a copy of the child's records, the receiving school must request written verification of the records from the prior school. G.S. 115C-403(b).

6. Disclosure of directory information. Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status, honors and awards, dates of attendance (which does not mean specific daily records of attendance), participation in recognized activities and sports, and most recent educational agency attended. 20 U.S.C. 1232g(a)(5)(A); 34 C.F.R. 99.31(a)(11) and 99.37; *see* 34 C.F.R. 99.3 (definition of "directory information"). Directory information does not include a student's social security number or a student identification number that is used to gain access to education records (when not used in conjunction with other authenticating factors such as a PIN or password). 34 C.F.R. 99.3.

Parents and eligible students must be informed about directory information and their right to ask the school not to disclose it. 34 C.F.R. 99.31(a)(11) and 99.37(a); *see* G.S. 115C-402.5(a)(4)b.; 115C-402.15.

D. Documentation of Disclosure, Redisclosure, and Use of Information

An educational agency must use reasonable methods to authenticate the identity of the person to whom it discloses personally identifiable information from the education record. 34 C.F.R. 99.31(c). An educational agency must maintain a record within each student's education record that indicates (1) all agencies and individuals (other than personnel within the agency) who have requested or obtained access to the student's record and (2) the person's or agency's legitimate interests in obtaining the information. 20 U.S.C. 1232g(b)(4)(A); 34 C.F.R. 99.32(a).

When an educational agency or institution is permitted to disclose personally identifiable information from an education record, it may do so only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student. 20 U.S.C. 1232g(b)(4)(B); 34 C.F.R. 99.33(a)(1). The disclosed information may be used only for the purposes for which the disclosure was made. 34 C.F.R. 99.33(a)(2). This restriction on redisclosure does not include disclosure that is required by a court order or subpoena, for directory information, or when redisclosure has been authorized and documented by the education agency. 34 C.F.R. 99.33(b), (c); *see* 34 C.F.R. 99.32(b).

Note that redisclosure by child welfare agencies is also governed by G.S. 7B-302 and 7B-2901(b), which require information received by the department of social services to be maintained confidentially except for one of the enumerated statutory conditions.

E. Complaints and Enforcement

A parent or eligible student may file a written complaint regarding an alleged violation of FERPA with the

U.S. Department of Education
Student Privacy Policy Office
400 Maryland Avenue, SW
Washington, DC 20202-8520

Or by email to FERPA.Complaints@ed.gov

34 C.F.R. 99.63; "File a Complaint" page of the U.S. Department of Education Protecting Student Privacy website.

The complaint contents, investigation procedures, and enforcement actions are explained in 34 C.F.R. 99.64 through 99.67. The United States Supreme Court has held that FERPA's nondisclosure provisions create no personal rights that are enforceable under 42 U.S.C. 1983. *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002).

RULE 12.1 - CASE FILE FOLDER ESTABLISHED:

RULE 12.1.1 - The clerk shall establish and maintain one case record for each juvenile who is the subject of one or more of the actions listed below. The case record shall consist of both a file folder, to house all original paper documents relating to the actions, and the electronic data entered into the automated JWise System as provided by the NCAOC. Electronic data shall be entered into the JWise System as prescribed by the user's manual.

1. An abuse, neglect, or dependency proceeding. (G.S. §7B-1000 through -1004)

2. A proceeding under the Interstate Compact on the Placement of Children. (G.S. §7B-3800 through -3806) (Example: placing a child from another state into foster care within this state)

3. A proceeding involving judicial consent for emergency surgical or medical treatment. (G.S. §7B-3600)

4. A proceeding to review a voluntary foster care placement. (G.S. §7B-910)

5. A proceeding in which a person is alleged to have obstructed or interfered with an investigation of abuse, neglect, or dependency. (G.S. §7B-303)

6. A proceeding to review an agency's plan for the placement of a child when one or both parents have surrendered the child for adoption or when a child returns to foster care after an adoption is dismissed or withdrawn. (G.S. §7B-909)

7. A delinquency or undisciplined juvenile proceeding. (G.S. §7B-1500 through -2706)

8. A proceeding under the Interstate Compact on Juveniles. (G.S. §7B-4000 through -4002)

9. A termination of parental rights (TPR) proceeding whether initiated by petition or motion (G.S. §7B-1100 through -1112) including any motions to reinstate the rights of a parent whose parental rights have been previously terminated. (G.S. §7B-1114)

10. An emancipation proceeding (G.S. §7B-3500 through -3509)

11. Juvenile judicial sterilization proceedings

12. Application for an ex parte order finding infant has been safely surrendered and confirming the county DSS has legal custody (G.S. 7B-525)

The case file shall be divided into sub-folders:

- Subfolder A shall contain all documents relating to proceedings 1-6 and 12 above.
- Subfolder B shall contain all documents relating to proceedings 7 and 8 above.
- Subfolder T shall contain all documents relating to proceedings in 9 above.
- Subfolder E shall contain all documents relating to proceedings in 10 above.
- Subfolder P shall hold copies of newly filed petitions and other pre-adjudication documents, such as those relating to service of process. The file numbers on these documents should be "blacked out" before presenting the file to the judge. Upon adjudication or dismissal of the petition, all "blacked out" copies housed in Subfolder P should be discarded.

The first petition filed involving a juvenile shall establish the case file, and all subsequent petitions or related documents for any of the proceedings listed above shall receive the same file number and be placed in the appropriate subfolder. The juvenile's name, date of birth, and case file number shall appear on the top tab of the juvenile file folder and subfolder(s), that are labeled "A", "B", "T", or "E" according to the type of documents they contain. Only the juvenile's name and date of birth shall appear on Subfolder P.

RULE 12.1.2 -

A proceeding to review a voluntary foster care placement for a young adult. (G.S. §7B-910.1)

All documents filed in the proceeding shall establish a new case file and receive a new juvenile file number. The young adult's name, date of birth and case file number shall appear on the top tab of the file folder. (For file numbering see RRK 12.3.) There is no associated filing fee for these proceedings.

A young adult may leave and re-enter a voluntary foster care placement such that the court conducts additional reviews of the placement of the young adult pursuant to G.S. §7B-910.1, If the young adult re-enters any additional filings for the G.S. §7B-910.1 review shall be placed in the existing juvenile file of the young adult, maintaining the existing file number.

NOTE: Under no circumstances should any documentation relating to a Judicial Waiver of Parental Consent be placed in the juvenile file. (See RRK 18).

COMMENTS:

A. Subfolders may be held together in a larger folder or simply filed next to each other.

B. If a juvenile petition names several juveniles, each juvenile should have a separate case file. Copies of any petition, order, or other document that involves multiple juveniles, should be placed in each juvenile's file.

C. A TPR petition should never be filed as a civil action. TPR should be initiated only by the filing of:

- a juvenile petition; or,
- a motion in the cause in a pending abuse, neglect, or dependency proceeding.

Normally, TPR documents should not be placed in a CVD case file. An order based on a TPR may be necessary to terminate a child support obligation, but the TPR order itself should not be placed in the CVD child support file.

If the Court does allow a party to pursue a TPR in a domestic relations or other civil (CVD) case, the clerk should place the original TPR documents in subfolder T of the existing juvenile file for the child; or, if there is not a juvenile file the Clerk shall create one.

D. The judge should only be provided the entire file on the juvenile after adjudication. Once the petition has been adjudicated the duplicate copy of the petition and supporting documents may be discarded, and any new orders or other filings shall be placed in subfolder A, B, T or E as appropriate. Once this is done, subfolder P may be retained in case another petition is filed.

E. Subfolder P should be used only for pending petitions and related documents, not for any documents filed subsequent to adjudication.

F. Fingerprint cards should not be accepted for filing. If these cards are submitted to the clerk, the clerk should return them to the agency responsible for taking the fingerprints. (G.S. §7B-2102(d))

G. Where a parent, guardian, custodian, or caretaker in a juvenile case is cited for or found in criminal contempt of court, that criminal contempt becomes a new criminal case with the contemnor as the named defendant. (G.S. §7B-904 and §7B-2706)

- If a show cause order directs that the alleged contemnor show cause why he/she not be held in "criminal" contempt with no reference to possible civil contempt, the clerk shall establish a CR case file for the contempt action upon the issue of the show cause order. The file should be given the next available CR number and entered into

the Automated Criminal and Infraction System (ACIS). Only the show cause order, contempt adjudication, and filings that are specific to the contempt action shall be placed in the CR file. Any references to the juvenile in the documents filed in the CR file shall be redacted from the public copy; the original unredacted document shall be retained in the juvenile file.

- If the court adjudicates a contemnor to be in criminal contempt without previously having issued a show cause order for that contempt, e.g., after a summary proceeding for direct criminal contempt, G.S. 5A-14, the clerk shall establish a CR case for the contempt adjudication. (See form AOC-CR-390 Direct Criminal Contempt/Summary Proceedings/Findings and Order.) The file should be given the next available CR number and entered into the Automated Criminal and Infraction System (ACIS). Any references to the juvenile in the documents filed in the CR file shall be redacted from the public copy; the original unredacted document shall be retained in the juvenile file.

- If a show cause order directs the alleged contemnor to show cause why he/she not be held in "civil or criminal" contempt or simply "contempt" (without specifying either civil or criminal), the show cause order shall be maintained in any underlying juvenile case file for the action from which the contempt action arose. (See forms AOC-J-155 Motion and Order to Show Cause and AOC-J-344 Motion and Order to Show Cause)

    - If the court subsequently enters an adjudication of criminal contempt, the clerk shall establish a CR case for the contempt action and include in it the motion and show cause order, the contempt adjudication, and any filings that are specific to the contempt action and distinct from the original action (e.g., an appointment or denial of appointed counsel). Copies of the motions and orders to show cause, contempt orders, and filings that are specific to the contempt action shall be placed in the CR file. All references to the juvenile on the public facing documents (CR file) shall be redacted from the public copy; the unredacted originals shall be retained in the juvenile file. (See forms AOC-J-155, AOC-J-156, AOC-J-344, and AOC-J-345.)

    - If the court subsequently enters an adjudication of civil contempt or does not find the person to be in contempt, all documents specific to the contempt action shall remain in the case file of the original juvenile action. This civil contempt information shall not be entered into ACIS or VCAP.

H. When a probation violation is filed in a JB case that has previously been destroyed (pursuant to RRS No. 7.6D. or 7.6E) the clerk shall create a duplicate folder with the

original case number. The duplicate file should be retained until, at a minimum, the time in the order has passed. Once the time in the order has passed, the file may be destroyed pursuant to RRS No. 7.6D. or 7.6E.

RULE 12.2 - DATE STAMP ON FILINGS:

The clerk shall record the actual date of filing on all copies of the petition or any other filings in juvenile proceedings.

COMMENTS:

A. The best practice for the clerk in stamping the date and time of filing is to place his or her initials by the date and time stamp. While initialing the date and time stamp is not required, it is useful in tracking errors in filing and preventing the filing of papers without the clerk's control or knowledge.

B. When there is an emergency situation and the clerk's office is closed, magistrates may accept juvenile petitions for filing. (See G.S. §7B-404 and §7B-1804). Petitions received by a magistrate must be delivered to the clerk's office as soon as the office is opened for business. The clerk shall record the date it is actually received in the office as the date of filing.

RULE 12.3 - FILE NUMBERS:

The first petition filed relating to a juvenile shall be assigned the next available file number from the juvenile series for that year. The format for the juvenile series is: year of filing (i.e., 06); court designation "J" for juvenile; and, the unique sequence number that begins with "1" at the beginning of each calendar year, (1, 2, 3, 4, etc.). Examples of complete file numbers are; 06J1, 06J2, 06J3, etc.

The format for the voluntary foster care placement of a young adult series (G.S. §7B-910.1) is: year of filing (i.e., 2017); case type "JA"; and the unique sequence number that begins with "1" at the beginning of each calendar year, (1, 2, 3, 4, etc.). Examples of complete file numbers are 17JA1, 17JA2, 17JA3, etc.

COMMENTS:

A. The designation of A, B, T, E or P for the subfolders of the case file are not considered part of the case number. They are used only to separate different types of case documents within the file. When a file number is assigned to a voluntary foster care placement of a young adult case it receives a "JA" file number and there are no subfolders in these cases.

B. If a petition involves more than one juvenile, a number must be assigned to each individual juvenile. (See Comment B following RRK 12.1)

C. If using the JWise system, the file number will appear in the following format: 06JA1 (abuse, neglect, dependency), 06JB1 (undisciplined or delinquency) 06JT1 (TPR), or 06JE1 (emancipation).

RULE 12.4 - INDEX TO JUVENILE CASES:

The clerk shall maintain an Index To Juvenile Proceedings. This index shall indicate the name of the juvenile, the nature of the case [i.e., abuse, neglect, dependency, undisciplined, delinquency, emancipation or TPR], the file number, and whether the case has been appealed to the Court of Appeals. If a TPR or an adjudication of delinquency is contained in the file, this should be noted on the index. The Index to Juvenile Proceedings is not open to public inspection.

RULE 12.5 - ACCESS TO FILES:

Abuse, neglect, and dependency cases are not open to public inspection. The record includes the summons, petition, any custody order, court order, written motion, electronic or mechanical recording of the hearing, and other papers filed in the proceeding. (See G.S. §7B-2901). The following persons may review the record and obtain copies of the written parts of the record without a court order:

A. The person named in the petition as the juvenile;
B. The guardian ad litem;
C. The county department of social services; and
D. The juvenile's parent, guardian, or custodian, or attorney for the juvenile or the juvenile's parent, guardian, or custodian.

Undisciplined and delinquency cases are not open to public inspection. The record includes the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, and any written motions, orders or papers filed in the proceedings. (See G.S. §7B-3000). In undisciplined and delinquency cases, the following persons may examine the juvenile's record and obtain copies of written parts of the record without a court order:

E. The juvenile or the juvenile's attorney;
F. The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
G. The prosecutor;

H. Court counselors; and

I. Probation officers in the Section of Community Corrections of the Division of Adult Corrections, as provided by G.S. §7B-3000(e1).

COMMENTS:

A. The court may direct the clerk to "seal" any portion of the juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT." The sealed information may be examined only by court order. (See G.S. §7B-3000 (c))

B. Law enforcement officers are only allowed to review documents in subfolder B if accompanied by the prosecuting attorney. The district attorney may make copies of information contained in subfolder B, but law enforcement officers are not entitled to copies.

C. An electronic recording of the juvenile proceedings shall only be transcribed when notice of appeal has been timely given. The electronic recording can only be copied electronically or mechanically by order of the court. G.S. §7B-3000(d) (G.S. §7B-806 and §7B-2410). (See RRK 10 for WebEx recording requirements.)

D. Entry of a TPR changes the legal relationship between a parent and child. The parent should not have access to documents filed subsequent to the TPR even if the TPR is on appeal unless the court has stayed the TPR order on appeal. These documents should be bound together, placed within the appropriate sub-folder, and removed prior to providing the file to a parent for review. (See G.S. §7B-1112)

E. Orders Determining Parentage in Juvenile Proceedings. (see RRK 12.19 below)

RULE 12.6 - EXPUNCTION OF RECORDS:

Certain records of juvenile delinquency/undisciplined proceedings can be expunged upon an order from the juvenile court in which the adjudication or proceeding occurred. G.S. §7B-3200 provides for expunction of these records in subsections:

(a) – expunction of adjudications of undisciplined status

(b) – expunction of certain adjudications of delinquency

(h) – expunction of dismissed allegations of delinquency or undisciplined status

This rule covers only the basics of filing and disposing of juvenile expunction petitions. For detailed procedures to carry out this rule, see the "Expunction Guide for Clerks" from NCAOC's Court Services, available on JUNO.

Filing: An expunction petition for juvenile records is to be filed in the "JB" subfolder containing the records of the allegation/adjudication addressed by the petition. If the JB subfolder already has been destroyed pursuant to the retention schedule, create a new JB subfolder for the expunction petition and related filings.

Expunction Order Appealed: If the court's order granting or denying the expunction is appealed, retain all documentation related to the petition until final resolution of the appeal. If the order was granted and appealed by the State, treat the order as granted while the appeal is pending, unless the court orders otherwise, remove the expunged records from the primary juvenile file, keeping them in a secure location that is unavailable to persons who otherwise may have access to the juvenile files (e.g., court counselors).

Petition Denied: If the proceeding results in a denial of the petition, whether after an appeal or by the trial court and not appealed, place the denial order in the JB subfolder, but destroy all attachments (e.g., affidavits of good character). If the JB subfolder is later destroyed pursuant to the retention schedule, destroy the denied order with the subfolder. If the JB subfolder was destroyed pursuant to the retention schedule prior to the filing of the petition, then the petition (and its temporary subfolder) may be destroyed upon NCAOC approval.

Petition Granted: (Note: Detailed procedures for each of the steps below are provided in the "Expunction Guide for Clerks.")

1. Pursuant to G.S. 7B-3202, provide written notice of the granted order to the juvenile by sending a certified copy to the juvenile's last known address. If the petition was filed on the AOC-J-909 for dismissed allegations of undisciplined status or delinquency, notice of the granted petition may be given on the same form. If the petition was filed in any other format, use AOC-J-906 to provide notice to the juvenile.

2. Expunge only the allegations/adjudications specified in the expunction order.

    a. If records of other delinquency/undisciplined proceedings exist in the petitioner's JB subfolder, retain those other records.
    b. If the petitioner had no other delinquency/undisciplined proceedings, expunge the entire JB subfolder.
    c. If the JB subfolder is expunged and constituted the petitioner's only juvenile proceeding for the county, expunge the entire juvenile file and remove the petitioner's name from the Index to Juvenile Actions (i.e., the JWise system).

3. Expunge the paper and electronic records as directed in the "Expunction Guide for Clerks."

4. Do not expunge civil records arising from the juvenile proceeding, such as civil judgments for attorney fees against a parent or guardian. (See RRK 12.17)

5. Notify State and local law enforcement agencies as directed in the "Expunction Guide for Clerks".

6. The clerk must send a certified copy of the expunction order to the NCAOC at the address in the guide. Note that if the expunction was for a dismissed allegation of delinquency or undisciplined status, provide a certified copy to the court counselor, also.

7. See the "Expunction Guide for Clerks" for "Other Cases & Special Situations" in juvenile expunction proceedings, such as juveniles whose names are recorded on the former, manual index to juvenile actions (the "green book"), expunging the verbatim recording of juvenile proceedings, and cases in which there was a change of venue to another county.

COMMENTS:

A. The NCAOC provides template forms for juvenile expunction proceedings. See AOC-J-903, J-904, J-906, and J-909. While parties are not required to use NCAOC forms for these proceedings, the forms cover all of the components of the expunction proceeding, so clerks should encourage petitioners to use them.

B. As custodian of the record, the clerk's function in the expunction process is to receive petitions for filing, schedule the petitions for hearing when required, and then file and carry out any order entered by the court. Questions such as whether or not a particular juvenile case qualifies for expunction, whether or not the correct form has been used, and whether or not any affidavits or other materials required by the expunction statute have been included are not of concern to the clerk's office. The court before which the petition is heard must determine any questions of its adequacy. Occasionally, a court may enter an order for expunction that appears questionable on its face. When such an order has been entered (e.g., expunction of adjudication of a Class A - E felony, prohibited by G.S. §7B-3200(b)), the clerk may wish to confirm with the judge who entered the order that the order is what the court intended. If the judge indicates that the order is as intended, then the clerk should carry the order out.

RULE 12.7 - CHANGE OF VENUE, OR TRANSFER OF CASE TO ANOTHER COUNTY OR TRIBAL COURT:

Transfer to Another County: The clerk shall ask the judge for instructions regarding whether the entire case or portions thereof are being transferred and what specifically the clerk should send to the other county. The clerk should transfer only those documents ordered transferred by the judge. Upon the filing of an order of the court transferring a case from one county (venue) to another, the clerk in the original county shall prepare a certified copy of the order of transfer and forward it along with all original papers in the file related to the juvenile proceedings specified in the order to the clerk in the receiving county by certified mail or other secure method. If the case has been scanned into EIMS, then it should be printed and certified to send to the transfer county. The clerk in the original county shall retain the original order of transfer along with photocopies of all the papers transferred.

Transfer to Tribal Court: The clerk may receive a request/order from a tribal court to transfer a juvenile case to the tribal court. The clerk shall ask the presiding district court judge for instructions regarding whether the case or portions thereof should be transferred to the tribal court. The clerk should transfer only those documents ordered transferred by the district court judge. Upon the filing of the district court judge's order to transfer the case, the clerk shall prepare a certified copy of the order of transfer and forward it along with copies of all papers in the file related to the juvenile proceedings specified in the order. If the case has been scanned into EIMS, then it should be printed and certified to send to the transfer county. The clerk in the original county shall retain the original order of transfer and the originals of all the papers transferred.

COMMENTS:

Transfers of abuse/neglect/dependency proceedings after adjudication shall occur within three business days of the entry of the order transferring venue (G.S. §7B-900.1). Transfers of other cases should be done as rapidly as possible.

No recording(s) of the juvenile proceeding(s) should be sent by the transferring county to the receiving county or the tribal court, unless ordered by a district court judge in the transferring county. If the case is appealed, the clerk in the hearing county shall submit the requested recording(s) to the transcriptionist.

Upon receiving a case that has been transferred from another county or a tribal court, the clerk shall promptly assign an appropriate file number to the case, ensure that any necessary appointments of new attorneys or guardians ad litem are made; and calendar the next court action as set forth in the order transferring venue and give appropriate notice to all parties.

RULE 12.8 - TRANSFER OF A CASE TO SUPERIOR COURT:

RULE 12.8.1 - When the offense is a Class A felony committed by a juvenile who is 13 or older or a Class A-G felony committed by a juvenile at age 16 or 17, transfer to superior court is mandatory if the court finds probable cause. In such cases, form AOC-J-343, Juvenile Order – Probable Cause Hearing, is the initiating document in the superior court file. When transfer to superior court is ordered based on a transfer hearing for a non-mandatory transfer, form AOC-J-442, Juvenile Order Transfer Hearing, is the initiating document in the superior court file.

The record of a juvenile case remains confidential even after jurisdiction over the juvenile is transferred to superior court. The initiating document, either form AOC-J-442 or AOC-J-343, is the only document from the juvenile file that may become part of the public record of the superior court proceedings, along with all documents made part of the record after transfer, which includes form AOC-CR-922, Release Order for Juvenile Transferred to Superior Court for Trial. [If the district court addresses the appointment or waiver of counsel for the juvenile's superior court proceeding, i.e., AOC-CR-226 (Affidavit of Indigency) and AOC-CR-224 (Order of Assignment or Denial of Counsel) or AOC-CR-227 (Waiver of Counsel), all documents related to that counsel determination should also become part of the public record of the superior court proceedings.]. A copy of the initiating document (AOC-J-442 or AOC-J-343) and any other documents made part of the record after transfer should be kept in the juvenile case file. Do not create a CRS file or enter information in the ACIS system for 10 days after entry of the transfer in order to allow opportunity for appeal.

Appeals of a transfer: When a transfer order is appealed, the appeal is heard in Superior Court. Notice of the appeal may be given in open court during the hearing or in writing within 10 days after the entry of the order. (NOTE: Entry means reduced to writing, signed by the judge, and filed with the clerk.) The clerk shall also provide a copy of the written notice of appeal filed by the juvenile's attorney to the district attorney. The appeal should be included on the superior court calendar as an add-on hearing/case using the title "In the Matter of 06JB1492" and listing only the issue of "Appeal of Transfer". The offense or the juvenile's name may not be entered on the calendar. The clerk completing the case transfer shall add the case into the ACIS system only when the superior court judge denies the transfer appeal. If the appeal is granted, and thus the transfer does not move forward, all related documents are filed in the juvenile folder and no entry is made in the ACIS system.

RULE 12.8.2 – TRANSFER TO SUPERIOR COURT UPON NOTICE OF THE RETURN OF A TRUE BILL OF INDICTMENT:

When the offense is a Class A felony committed by a juvenile who is 13 or older or a Class A-G felony committed at age 16 or 17, transfer to superior court is mandatory upon notice to the juvenile of the return of a true bill of indictment as provided in G.S. 15A-630. When transfer to

superior court is based on the return of a bill of indictment, form AOC-J-444, Juvenile Order – Transfer After Bill of Indictment, is the initiating document in the superior court file.

The record of a juvenile case remains confidential even after jurisdiction over the juvenile is transferred to superior court. The initiating document, form AOC-J-444, is the only document from the juvenile file that may become part of the public record of the superior court proceedings, along with all documents made part of the record after transfer, which includes form AOC-CR-922, Release Order for Juvenile Transferred to Superior Court for Trial. [If the district court addresses the appointment or waiver of counsel for the juvenile's superior court proceeding, i.e., AOC-CR-226 (Affidavit of Indigency) and AOC-CR-224 (Order of Assignment or Denial of Counsel) or AOC-CR-227 (Waiver of Counsel), all documents related to that counsel determination should also become part of the public record of the superior court proceedings.] A copy of form AOC-J-444 and any other documents made part of the record after transfer should be kept in the juvenile case file. Do not create a CRS file or enter information in the ACIS system for 10 days after entry of the transfer in order to allow opportunity for appeal.

NOTE: The court may enter a transfer order based on the return of a bill of indictment without a hearing. If form AOC-J-444 is entered without a hearing, the prosecutor or judge should forward a copy of the order to the juvenile clerk to process the transfer.

Appeals of a transfer: When a transfer order is appealed, the appeal is heard in Superior Court. Notice of the appeal may be given in open court during the hearing or in writing within 10 days after the entry of the order. (NOTE: Entry means reduced to writing, signed by the judge, and filed with the clerk.) The clerk shall also provide a copy of the written notice of appeal filed by the juvenile's attorney to the district attorney. The appeal should be included on the superior court calendar as an add-on hearing/case using the title "In the Matter of 06JB1492" and listing only the issue of "Appeal of Transfer". The offense or the juveniles name may not be entered on the calendar. The clerk completing the case transfer shall add the case into the ACIS system only when the superior court judge denies the transfer appeal. If the appeal is granted, and thus the transfer does not move forward, all related documents are filed in the juvenile folder and no entry is made in the ACIS system.

RULE 12.8.3 – REMAND TO DISTRICT COURT AFTER TRANSFER (REVERSE TRANSFER):

Upon the joint motion of the prosecutor and the juvenile's attorney, the superior court must remand the charges back to district court for juvenile adjudication and order the expunction of the superior court charges. The superior court judge should use form AOC-CR-291, Motion and Order to Remand Case from Superior Court to District Court and Order of Expunction under G.S. §15A-145.8, to both remand the case and expunge the superior court charges. If the superior court judge issues a secure custody order, the judge should use form AOC-J-440, Order for Secure

Custody/Detention (Undisciplined/Delinquent) and check the box "On Remand from Superior Court" in the caption. The criminal clerk should forward a copy of the AOC-CR-291, along with the original transfer order (i.e., AOC-J-343, AOC-J-442 or AOC-J-444), the AOC-J-440 if executed, and any order assigning counsel for the juvenile, to the juvenile clerk for placement in the JB file. Once the original transfer order has been returned to the JB file, any copy of that order contained in the JB file may be destroyed.

Upon receipt of a copy of the AOC-CR-291, the juvenile clerk should calendar the case for adjudication, unless otherwise instructed by the prosecutor or juvenile court counselor and send notice of the hearing to all parties using form AOC-J-240A, Notice of Hearing in Juvenile Proceeding (Delinquent). The hearing should be scheduled for a date that provides the parties with at least 5 days written notice, as required by G.S. §7B-1807.

RULE 12.9 - NOTIFICATION OF APPOINTED ATTORNEY:

Where an attorney is appointed by the court to represent a juvenile or parent(s) in a juvenile proceeding the clerk shall send the Notice of Appointment to the attorney in a sealed envelope. (NOTE: You may also place the sealed envelope in the attorney's mailbox located within the courthouse, if this is the established practice in your county.)

A. Court appointed attorneys may be appointed by either a District Court Judge or the clerk. If an abuse, neglect, or dependency petition is filed, the clerk must appoint provisional counsel at the time of filing.

B. An attorney should not be appointed for a juvenile alleged to be undisciplined.

C. A juvenile does not need to prove indigence to receive a court-appointed attorney. However, parents seeking court appointed representation must go through the indigence screening process.

D. When the parents are eligible for court appointed attorneys, separate attorneys should be appointed for each parent.

E. In all TPR cases, a parent who is indigent is entitled to an appointed attorney unless the parent waives the right to counsel (Note: It does not matter whether the petition to terminate was filled by DSS or a private petitioner.)

F. When a juvenile in a delinquency or undisciplined action is placed in the custody or placement responsibility of DSS, a parent who is indigent is entitled to an appointed attorney

for representation in hearings conducted pursuant to G.S. §7B-906.1 (review of placement), unless the parent waives the right to counsel. The court should address the issue of counsel with the juveniles' parent(s) at the dispositional hearing in which the juvenile is placed in custody to ensure that court-appointed counsel is assigned prior to the G.S. §7B-906.1 hearing. If counsel is appointed to represent a parent, the clerk should provide notice to the attorney, as provided in RRK 12.9.

RULE 12.10 - CALENDARS:

The clerk shall tightly control the distribution of juvenile calendars to ensure the confidentiality of the information listed on the calendar. In all juvenile proceedings, the presiding judge and the courtroom clerk shall each receive a copy of the juvenile calendar.

Delinquency Sessions of Court. One copy of the juvenile calendar shall be given to the district attorney, the chief court counselor and any attorney representing a juvenile on the calendar.

Abuse/Neglect/Dependency Sessions of Court. One copy of the juvenile calendar shall be given to the DSS attorney, the GAL Program Administrator, the GAL Attorney Advocate, and any attorney representing a parent on the calendar.

A juvenile calendar shall never be provided to the juvenile or the juvenile's parents.

COMMENTS:

A. The clerk may want to write the name of the person receiving the juvenile calendar on the calendar provided to the person.

B. If the calendar is not handed directly to the person authorized to receive the calendar, for example, the calendar is placed in the attorney's mailbox located in the clerk's office, it should be placed in a sealed envelope.

RULE 12.11 - MINUTES:

The clerk shall record the minutes of the juvenile court proceedings by making brief notations on the court calendar showing the disposition of each case heard during the session.

Juvenile court minutes shall be kept confidential.

RULE 12.12 - AUTOMATED AUDIT REPORTS:

These reports are confidential and should not be distributed. The reports should be stored in a secured manner as any other juvenile record.

RULE 12.13 –

A. MICROFILM: No part of the juvenile case file shall be microfilmed, including the attorney fee judgments.

B. SCANNING INTO EIMS (Enterprise Information Management System): REPEALED EFFECTIVE APRIL 29, 2019 and RESERVED FOR FUTURE USE.

RULE 12.14 - EMANCIPATION ORDERS:

The certificate of emancipation shall be filed as a Registration and treated as any other filing of that type.

COMMENTS:

Only the certificate of emancipation order shall be filed as a Registration. The petition and all other supporting documents shall remain in the juvenile file. Emancipation proceedings are as confidential as any other juvenile proceeding. However, where an order of emancipation has been entered the juvenile may receive a Form AOC-J-902M, Certificate Of Emancipation, at any time to verify that status.

RULE 12.15 - RECORDING JUVENILE HEARINGS:

All adjudicatory, dispositional, probable cause, and transfer to superior court hearings shall be recorded. The court may order that other hearings be recorded. (See RRK 19 for Webex recording requirements.)

COMMENTS:

A. The log of what is recorded is considered part of the minutes and should be physically attached to it.

B. When a case is heard out-of-county, but venue remains in the originating county, the recording should be sent to the originating county and kept with the case file. When the venue of a case is transferred to another county, the juvenile's file is sent to the transfer county, and the recording will remain in the hearing county.

C. If a case is later appealed, the clerk in the county where a recording exists must submit the recording to a transcriptionist. The juvenile clerk in the county where notice of appeal is given must notify the clerk in any other county with a recording that the case has been appealed.

The clerk must provide the name and contact information for the assigned transcriptionist to the clerk in any other county with a recording.

RULE 12.16 - PETITIONS FOR JUDICIAL REVIEW: DHHS LIST OF "RESPONSIBLE INDIVIDUALS":

The clerk shall establish a case file for each petition filed under G.S. §7B-323 seeking judicial review of a determination that the petitioner is a responsible individual. The clerk shall use one sequential number series for all responsible individual petitions filed. Each petition will be assigned the next available number from that JRI series. No index is to be maintained for these cases.

The format for the responsible individual series is: Year of filing and case type designator (i.e., 07JRI); and the unique sequence number that begins with "1" at the beginning of each calendar year, (1, 2, 3, 4, etc.). Examples of complete file numbers are; 07JRI-1, 07JRI-2, 07JRI-3, etc.

JRI files are to be maintained by the Juvenile Department in the clerk's offices. However, they are to be kept separate from the juvenile files. Each hearing shall be recorded to a CD with no other cases or hearings on the same CD. (See RRS No. 7.11.1 for retention requirements and See RRK 19 for WebEx recording requirements.)

RULE 12.17 - PROCESSING FEE APPLICATIONS WITH JUDGMENT ORDERED:

If the court enters a judgment on side two of the Fee Application/Judgment Order the original judgment shall be placed in a file titled, "Juvenile Fee Apps Reduced to Judgment", in case number order. A copy of this judgment shall be placed in the related juvenile file.

If the court did not enter a judgment on side two of the Fee Application/Judgment Order, the original judgment shall remain in the related juvenile file.

Periodically the clerk may compare the judgments in the Juvenile Fee Apps Reduced to Judgment file against the VCAP system to determine if any have been satisfied. If so, they may be destroyed one year after the satisfaction date, without NCAOC approval. Fee Application/Judgment Orders held in the "Fee Applications Reduced to Judgment" folder continue to be maintained in as confidential a manner as any other documents filed in a juvenile proceeding.

RULE 12.18 - NOTIFICATION OF FOSTER PARENTS:

The foster parent of a juvenile must be given 15 days' notice of all review hearings. The Department of Social Services must provide the clerk with the name and address of the foster parent providing care for the juvenile or provide written documentation to the clerk that the foster parent was sent notice of the

hearing. If the clerk sends the notice, the clerk should not include the foster parent's name and address on the same notice sent to the juvenile's biological parents.

A notice to a foster parent should be housed separately from the juvenile file. The clerk should retain the notice in a suitable repository associated with the court calendar referred to in the notice. Access to this repository should be limited to the clerk of superior court.

RULE 12.19 – ORDERS DETERMINING PARENTAGE IN JUVENILE PROCEEDINGS:

A juvenile proceeding may involve an adjudication affecting a child's parentage. When a judicial determination of parentage is entered in a juvenile proceeding, the court may issue a stand-alone Order that addresses the juvenile's parentage. The original stand-alone order should be placed in the new CVD file and a copy retained in the juvenile file. (See RRK 3.1, B,12(b))

RULE 12.20 – VICTIMS' RIGHTS MOTION IN DELINQUENCY CASES:

In some delinquency cases, a victim (or a person acting on behalf of a victim) may assert his or her rights by filing a motion with the clerk of superior court in the same juvenile action that gave rise to the rights in question. Upon request, the clerk of superior court in each county shall provide form AOC-J-380, Motion and Order to Enforce Rights of Juvenile Delinquency Victim, to a person who seeks to file a victims' rights motion in a delinquency case. There are no filing fees for this motion.

Upon the filing of form AOC-J-380 with the clerk's office, the clerk shall forward copies of the motion to the prosecutor (if the prosecutor is not the elected district attorney), the elected district attorney, and the judge involved in the proceeding that gave rise to the rights in question. Upon receipt of the motion, the judge must review the motion in a timely manner. At the conclusion of this review, the judge must dispose of the motion or set it for a hearing.

If the judge sets the motion for a hearing, the clerk shall provide notice of the hearing to the person who filed the motion and the prosecutor (if the prosecutor is not the person filing the motion). The notice of hearing for this motion is included on side two of form AOC-J-380.

NOTE: A victim in a delinquency case is not entitled to examine or obtain copies of confidential juvenile records (see G.S. §7B-2057). When providing form AOC-J-380 to a victim, the clerk shall not acknowledge the existence of the juvenile's case or disclose any information from the confidential juvenile record, including the file number. The clerk should refer the victim to a prosecutor for any questions about the case or assistance completing the form. Once the motion is filed with the clerk, it becomes part of the juvenile's confidential record, and the clerk cannot provide a copy to the victim, unless ordered to do so by the court to provide notice of a hearing on the motion.

RULE 12.21 – PROCESSING SEARCH WARRANTS AND NONTESTIMONIAL IDENTIFICATION ORDERS IN DELINQUENCY CASES:

Search warrants and Nontestimonial Identification Orders filed in juvenile cases are confidential juvenile records and must be kept in a secure location along with other juvenile files. Upon issuance of a search warrant or Nontestimonial Identification Order in a juvenile matter, the judicial official shall forward the court record copy of these documents to the juvenile clerk. The juvenile clerk shall file these in the case folders that contain the juvenile petition. Where there is no pending petition, this copy of the warrant or order shall be filed alphabetically in a confidential folder designated for these documents, which shall be kept in the file cabinet with other juvenile files. When the original warrant or order is returned to the clerk, it shall be filed in the case folder that contains the juvenile petition. Where there is no related pending petition, the original warrant or order shall be filed alphabetically in the confidential folder designated for these documents. Those copies of these warrants or orders being held by the clerk may be destroyed once the original is received by the clerk's office. If no petition is ever filed, the original warrant or order may be destroyed pursuant to RRS No.
7.8.< of the Retention Schedule.

RULE 12.22 – NOTICE TO STATE BAR:

The clerk shall transmit to the NC State Bar a certified copy of any order finding a NC licensed attorney in contempt of court within 10 days of entry of such order. (G.S. §84-36.1)