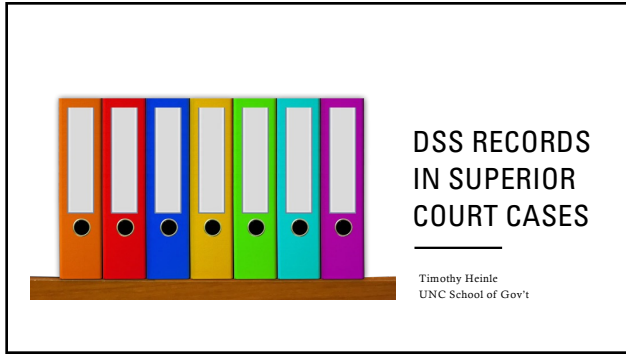




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### Forecasting Our Conversation

- ✓ What are DSS records? Are they confidential?
- ✓ Civil proceedings (when DSS is not a party)
- ✓ Criminal proceedings

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### Defining DSS Records

- Social Worker created + collected



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### Defining DSS Records

- Social Worker created + collected
- Juvenile A/N/D and TPR court files



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- G.S. 108A-80(a)
- G.S. 7B-302
- G.S. 7B-2901
- 10A N.C.A.C. 69, 70



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Do any of the people who appear before me have an automatic right of access?

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Can a party subpoena the records from DSS without involving the court?

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Civil cases  
(where DSS is  
not a party)



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### Scenario #1

Mother and Father have filed a medical malpractice claim alleging that Doctor caused an injury to Son. Doctor has reason to know that Aunt and Uncle were previously investigated by DSS for alleged abuse and neglect of Son (their nephew) that, if true, may explain Son's injuries.

Doctor wants access to DSS records about Son. Is that possible? What's required?

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### Civil Case (DSS not a party)

Is a court  
order  
necessary?

Who gets  
notice of  
motion?

Who has  
standing to  
object?

N.C. Gen. Stat. 7B-302(a1)(3), -2901(b)(2)

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DSS  
(records custodian)

Mom, Dad, + Son  
(opposing parties)

3<sup>rd</sup> Parties  
(created records  
held by DSS)

Son  
(subject of records)

Aunt + Uncle  
(subject of records)

Other Persons  
(subject of records)

**Who may *want* notice and the  
chance to be heard? Who gets it?**

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**Civil Case (DSS not a party)**

|                                           |                                  |                                        |
|-------------------------------------------|----------------------------------|----------------------------------------|
| Is a court order necessary?               | Who gets notice of motion?       | Who has standing to object?            |
| Is a hearing required? By whom? For what? | Is an in camera review required? | Who should DSS produce the records to? |

N.C. Gen. Stat. 7B-302(a1)(3), -2901(b)(2)

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What is the most judicially efficient way to manage this process?

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**MAY CLARIFY OR LIMIT THE SCOPE OF ANY...**

- Request
- Production
- Disclosure
- Redisclosure

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WHAT ABOUT RECORDS SUBJECT TO ADDITIONAL  
CONFIDENTIALITY LAWS (E.G., HIPAA; 42 CFR PART II)?

Juvenile Code reinforces  
federally-required hearings  
and findings by trial court

See Chapter 14 of the A/N/D Manual  
[https://www.sog.unc.edu/resources/  
microsites/abuse-neglect-dependency-  
and-termination-parental-rights](https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights)

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**Criminal proceedings**

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**Scenario #2**

Donna relies on her neighbor, Norah, to babysit Donna Jr. when Donna works late. Recently, Donna Jr. was asleep in her crib when Donna got home and relieved Norah. The next morning, Donna found Donna Jr. groggy and lying in vomit. She took Donna Jr. to the doctor, who determined Donna Jr. had ingested sleeping pills. The doctor made reports to DSS and law enforcement. Donna is charged with felony child abuse.

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**Scenario #2**

Donna has since learned Norah was previously investigated by DSS for allegedly giving Norah Jr. NyQuil to fall asleep. Donna's criminal defense attorney wants access to DSS records about Norah and Norah Jr.

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**Criminal Proceeding**

Is a court order necessary?

Who gets notice of motion?

Who has standing to object?

N.C. Gen. Stat. 7B-302(a1)(4), -2901(b)(3)

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DSS  
(records custodian)

Prosecutor  
(opposing party)

Norah, Jr.  
(subject of records)

3<sup>rd</sup> Parties  
(created records held by DSS)

Other Persons  
(subject of records)

**Who may *want* notice and the chance to be heard? Who gets it?**

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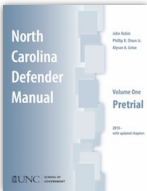
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**Prosecutors and a Defendant's Access to DSS Records**




**NC PRO** NC PROSECUTORS' RESOURCE ONLINE

See Discovery, Section 119, including 119.3.C.5 (protective orders)

See Ex Parte Application, p 4-56

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### Criminal Proceeding

|                             |                                  |                             |
|-----------------------------|----------------------------------|-----------------------------|
| Is a court order necessary? | Who gets notice of motion?       | Who has standing to object? |
| Is a hearing required?      | Is an in camera review required? |                             |

N.C. Gen. Stat. 7B-302(a1)(4), -2901(b)(3)

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### In Camera Review



- Determine **relevance**
- Determine if appropriate use of constitutional right to **exculpatory + impeaching evidence** in possession of a third party
- Prevent **fishing expeditions**

N.C. Gen. Stat. § 7B-302(a1)(4), 2901(b)(3); *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987); *State v. McGill*, 141 N.C. App. 98, 101 (2000).

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### Scenario #2 (Criminal child abuse)

|                             |                                  |                                        |
|-----------------------------|----------------------------------|----------------------------------------|
| Is a court order necessary? | Who gets notice of motion?       | Who has standing to object?            |
| Is a hearing required?      | Is an in camera review required? | Who should DSS produce the records to? |

N.C. Gen. Stat. 7B-302(a1)(4), -2901(b)(3)

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MAY CLARIFY OR LIMIT THE SCOPE OF ANY...

• Request

• Production

• Disclosure

• Redis closure

I do not have time to review 500 pages of records.

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Unless an exception applies, confidential DSS records may be released by court order only.  
G.S. 7B-302, - 2901

DSS Records

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Timothy Heinle

[Heinle@sog.unc.edu](mailto:Heinle@sog.unc.edu)

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