

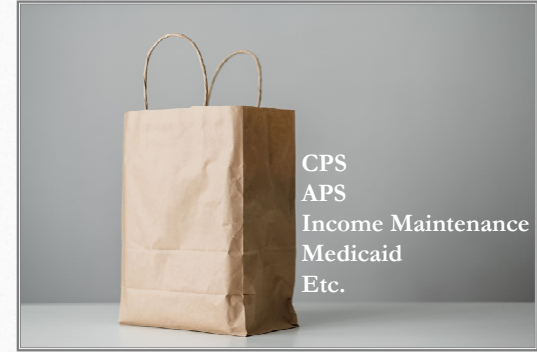
DSS Records

Sara DePasquale and Timothy Heinle
UNC School of Government
District Court Judges' Conference, Fall 2022



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What Are DSS Records?



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Public Records G.S. 132-1

“...all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, **regardless of physical form or characteristics**, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions...”

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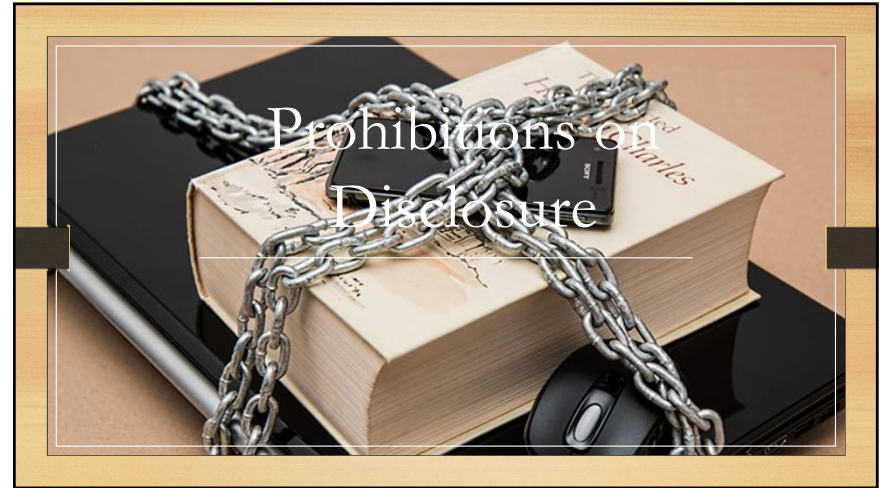
Public Records G.S. 132-1

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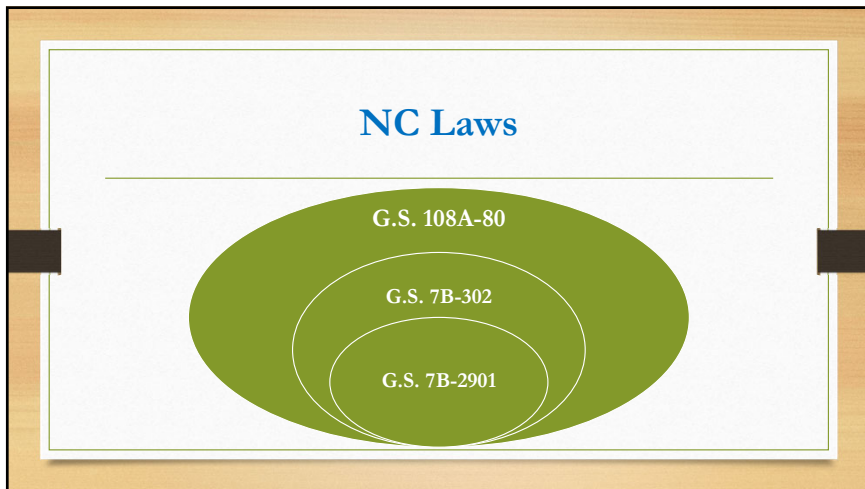
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G.S. 108A-80
It Shall Be Unlawful

- for any person
- to **obtain, disclose or use**, or to authorize, permit, or acquiesce in the use
- any list of names or other information concerning persons **applying for or receiving public assistance or social services** that may be
- **directly or indirectly** derived from the records, files or communications... or acquired **in the course of performing official duties**

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STATE OF NORTH CAROLINA		Case No.
County		File No.
In The General Court Of Justice		
<input type="checkbox"/> District <input type="checkbox"/> Superior Court Division		
Name Of Plaintiff		
VERSUS		
Name Of Defendant		
MEMORANDUM OF JUDGMENT/ORDER		

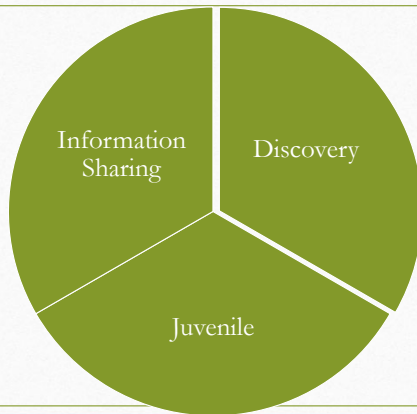
Allows for disclosure by court order
 10A-N.C.A.C. 69.0401(h); .0504(a)

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Child Protective: G.S. Ch. 7B

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Information Sharing
G.S. 7B-700(a)

- DSS may share
- With **any party**
- **Information relevant to the subject matter of any pending action** under Subchapter I
- You may have local rules (G.S. 7B-700(b))

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Discovery G.S. 7B-700(c)

- Any party may file a motion for discovery
- Must contain specific description of what is being sought and statement they made a reasonable effort to obtain it under information sharing
- Served on all parties
- Heard and ruled on within 10 business days of filing
 - Grant, restrict, defer, deny
 - May be a motion for protective order, with in camera inspection required (G.S. 7B-700(d))
 - Establish expedited timelines

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Motion

- Follow 7B-700, not Rules of Civil Procedure
- In re M.M., 272 N.C. App. 55 (2020)

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Juvenile Access

Juvenile Themselves

- G.S. 7B-302(a1)(2)
- G.S. 7B-2901(b)(1)
- Over/under 18 and GAL
- Electronic or written copies
- Reasonable period of time

Juvenile's GAL

- G.S. 7B-601(c)
 - Any information that GAL believes is relevant
- G.S. 7B-700(f)
 - No disclosure unless local rule

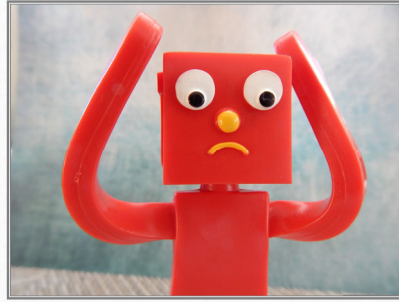
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Court Records G.S. 7B-2901(a)

- Court order required except for
 - Juvenile
 - GAL
 - DSS
 - Parent, guardian, custodian, or attorney

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DSS Records in Other Courts



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Forecasting our Conversation

- Civil proceedings when DSS is a party.
- Civil proceedings when DSS *is not* a party.
- Criminal and juvenile delinquency proceedings.

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Purpose of Discovery

Generally, information is relevant for discovery purposes if it is “reasonably calculated to lead to the discovery of admissible evidence.”

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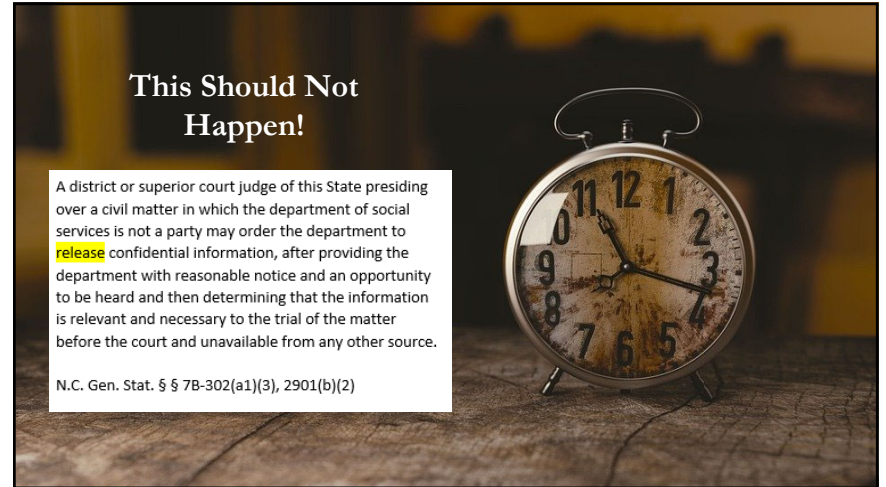


ANSWER: “Judge, the Department of Social Services dropped off records for you.”

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Scenario #1

Civil proceedings when DSS *is not* a party

Mark and Sue are divorced. Sue has primary custody. Sue remarries to Steve, who has a son, Steve, Jr. DSS recently investigated allegations Steve abused his son. Mark files a motion to modify custody. Mark wants DSS records regarding Steve and Steve, Jr. Does he get the records, and if so, how?

 **MARK NEEDS TO GET A COURT ORDER** 

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Should a hearing be held before issuing an order for production or disclosure of DSS records?

Prior to ordering DSS to release confidential records:

- (1) DSS must be given reasonable notice and an opportunity to be heard.
- (2) The court must determine that the information is
 - a) relevant and necessary to the trial of the matter before the court, and
 - b) is unavailable from any other source.

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

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A diagram titled "Who may want advanced notice?" with the subtitle "Defining the Universe of Possible Notice Recipients". It features a background of Earth from space with a sun rising over the horizon. Several entities are listed with their roles:

- *3rd Parties* (created records held in DSS files)
- *Steve, Jr.* (subject of records)
- *Steve* (subject of records)
- *Sue* (opposing party)
- *DSS* (records custodian)
- *Additional Unknown Individuals* (subject of records)

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A diagram titled "Who gets advanced notice?" with the subtitle "N.C. Gen. Stat. § 7B-302(a1)(3), 2901(b)(2)". It features the same background as slide 26. The entities are marked with green checkmarks or red X's to indicate their status:

- *3rd Parties* (created records held in DSS files) - Red X
- *Steve, Jr.* (subject of records) - Red X
- *Steve* (subject of records) - Red X
- *Sue* (opposing party) - Green checkmark
- *DSS* (records custodian) - Green checkmark
- *Additional Unknown Individuals* (subject of records) - Red X

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A diagram titled "Who has standing to object?" with the subtitle "N.C. Gen. Stat. § 7B-302(a1)(3), 2901(b)(2)". It features the same background as slide 26. The entities are marked with green checkmarks or red X's to indicate their standing:

- *3rd Parties* (created records held in DSS files) - Red X
- *Steve, Jr.* (subject of records) - Red X
- *Steve* (subject of records) - Red X
- *Sue* (opposing party) - Green checkmark
- *DSS* (records custodian) - Green checkmark
- *Additional Unknown Individuals* (subject of records) - Red X

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Standard for Access

Discovery

Information is relevant for discovery purposes if it is “reasonably calculated to lead to the discovery of admissible evidence.”

G.S. 7B-302(a1)(3)

The court must determine that the information is

- relevant and necessary to the trial of the matter before the court, and
- is unavailable from any other source.

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Who reviews DSS records to determine whether disclosure is appropriate?

30



The court, *if* a review is necessary to make the required determinations.

(relevant and necessary; unavailable from other source)

G.S. 7B-302(a1)(3)

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Possible Limits and Conditions on Production and Disclosure

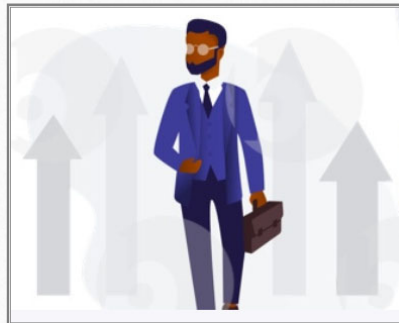
1. Available by other source
2. Limit production
 - a) by timeframe
 - b) by topic or content
3. Limit disclosure after ordering full production but following an in-camera review
4. In camera review, if any, may be limited to the records in dispute



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To Whom Should the Records be Produced?

- The court for in camera review, or
- to whomever release is ordered by the court following the hearing.



What about subpoenas? (Scenario #1)

Party serves DSS with a subpoena for records and sets compliance as delivery of the records to the party directly. → Does not comply with G.S. 7B-302, which gives DSS an opportunity to be heard and requires a court order for release of records.

What happens in this situation? Either DSS will file a motion to quash subpoena and schedule a G.S. 7B-302 hearing, or DSS will not act in response to the subpoena, likely leading the requesting party to file a motion to compel. Court hearing and order follows.

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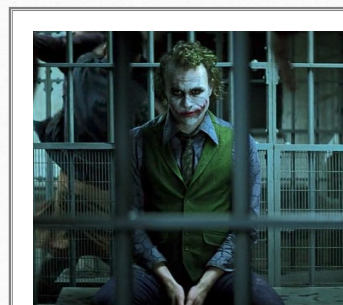
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What about subpoenas? (Scenario #2)

Party serves DSS with a subpoena for records to be produced on a date and time at the courthouse. DSS has notice. Party files motion for production of records and schedules motion hearing for same day as subpoena compliance.

- Allows DSS and the parties an opportunity to be heard at the same time as to production, in camera review, and disclosure. (Efficient!)
- Allows court to determine potential limits on production and disclosure.

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DSS Records in Criminal Proceedings

How the process for disclosure and production differs from the process in civil proceedings.

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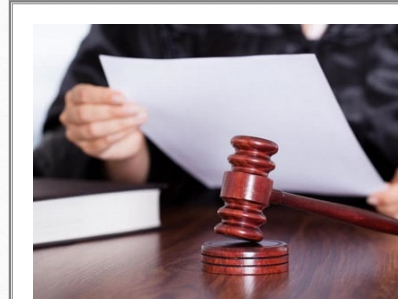
Scenario #2

DSS Records in Criminal Matters

One night, Donna's neighbor, Norah, babysat Donna's baby. The next morning, Donna found her baby groggy and covered in vomit. The pediatrician found evidence the baby ingested sleeping pills. The pediatrician called the police, who charged Donna with misdemeanor child abuse.

Donna has since learned that Norah was previously investigated by DSS for giving her own child, Norah, Jr., Nyquil to fall asleep. Donna wants Norah and Norah, Jr.'s DSS records. Can she get the records, and if so, how?

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Donna needs to get the DSS records to the court

Two methods:

- Subpoena with production to the court
- Motion to compel production

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Should a hearing be held before issuing an order for production or disclosure of DSS records?

Likely want to hold a hearing, unless the necessary determinations can be made based upon the motion alone.

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Who has standing to object prior to an order being entered?

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

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To Whom Should the Records be Produced?

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The records are produced to the court

- In camera review is required, per G.S. 7B-302(a1)(4).

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Who reviews DSS records to determine whether production and disclosure are appropriate?

The court in a criminal matter must conduct an in camera review prior to disclosing DSS records to a defendant (if the defendant is someone other than the juvenile at the center of the records).

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

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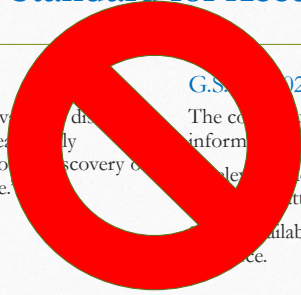
Standard for Access

Discovery

Information is relevant to discovery purposes if it is "reasonably calculated to lead to the discovery of admissible evidence."

G.S. 8A-02(a1)(3)

The court must determine that the information is necessary to the trial and is not available from any other source.



Standard for Access

Multiple cases have addressed a defendant's right under *Ritchie* to DSS records that contain **favorable, material evidence** in the criminal case against the defendant. *See, e.g., State v. McGill*, 141 N.C. App. 98, 101 (2000).

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Possible Limits and Conditions on Production and Disclosure

1. Limit production
 - a) by timeframe
 - b) by topic or content, potentially including who may be a favorable witness or what may be exculpatory evidence.
2. Limit disclosure after ordering full production but following an in-camera review.



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