

FAQs: Sharing Confidential CPS Information with Adult Services

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How might this type of information sharing become an issue?

- A child has aged out of foster care and needs some support from adult services moving forward.
- A child is 17.5 and DSS has custody. DSS files a petition to have the child declared incompetent.
- A parent has filed a petition to have a child declared incompetent. The parent has asked to be appointed guardian. The family has been involved with CPS for many years and the CPS staff has concerns about the parent's ability to safely care for the child.
- Other examples?

These situations are not uncommon. Unfortunately, the state's confidentiality laws do not address them directly or appear to anticipate them.

May an adult or personal representative consent to information sharing between CPS and APS?

Yes. An adult or a personal representative may provide written consent to allow sharing of information between CPS and adult services. Both the general confidentiality laws (G.S. 108A-80 and the implementing regulations in Chapter 69) and the specific child welfare laws (G.S. 7B-302, 7B-2901, 10A NCAC 70A .0113) all recognize either a right of access by the child or the child's attorney or the right to consent to release.

The key to relying on consent is determining whether the child or adult has the capacity to provide *informed* consent. In addition, the person may consent only to sharing of information about services provided to him or her, not to others in the family.

May adult services staff access CPS records directly (either electronically or on paper)?

Probably not. There is no authority in state law for adult services staff to access CPS records directly. While it may feel like the most efficient way to handle a case, the strict confidentiality laws governing CPS records do not allow for this information sharing without a court order or consent.

Three possible arguments could support information sharing in this situation:

- 10A NCAC 69 .0503 authorizes one part of DSS to share with another part of DSS because it allows disclosure to facilitate "the administration of other state and federal

programs” as long as the need is justifiable and adequate safeguards are in place. This regulation is implementing G.S. 108A-80, which is the confidentiality law that applies broadly to all social services programs. If this was the only body of law to consider, this may be a reasonable argument. But the confidentiality laws in Chapter 7B are more specific in nature and do not appear to allow adult services staff to access child welfare related information.

- 10A NCAC 69 .0501(b) allows sharing client information from the “service record” (rather than the “public assistance record”) without consent with other DSS employees “for purposes of making referrals, supervision, consultation or determination of eligibility....” Again, this regulation implements G.S. 108A-80, so the counter-argument is that the confidentiality laws in Chapter 7B are more specific and stringent.
- In the case of a 17.5 year old, one could argue that G.S. 7B-302 allows CPS to share records with adult services in order to protect the juvenile from neglect. Again, this is an attenuated argument because the 17.5 y.o. is probably not being neglected at the time the disclosure is needed.

May adult services staff ask CPS staff to share CPS records with them?

Probably not. The same analysis that applies to directly accessing the information (above) applies to requesting access to the information.

May CPS staff voluntarily share CPS information with adult services when they know they have important and/or relevant information?

Probably not. The same analysis applies.

May the clerk of superior court order disclosure of CPS information in a 35A proceeding?

Yes. The clerk has the authority to order disclosure of CPS information in a guardianship proceeding (either incompetency or appointment). While there is not specific statutory authority on point, the clerk has exclusive and original jurisdiction to hear these proceedings. G.S. 35A-1103(a).

This is somewhat awkward if DSS is the petitioner and issues a subpoena for records from its own agency. It seems reasonable to involve two DSS attorneys for these cases so one can issue the subpoena and the other can file a motion to quash.

It is also difficult to imagine how the clerk or the DSS attorney would have knowledge of the CPS information in the absence of a confidentiality breach. One possible approach might be to involve the DSS director who, by virtue of the office, has the authority to have access to all of the information. The DSS director could review both sides and notify the attorney if the attorney should request CPS records. While this formulation is not completely faithful to the boundaries of the applicable confidentiality laws, the purpose seems consistent with the overall public policy goals of the holistic social services system.

May a district court judge overseeing a 7B case order disclosure of CPS information to adult services staff?

The court clearly has the authority to order disclosure of information subject to G.S. 7B-2901(a). For information subject to G.S. 7B-2901(b) or -302, the answer is probably *yes* but the statute provides that the district court judge has authority in a civil matter *in which DSS is not a party*. If DSS has filed a petition for guardianship, this language could be a problem.

Selected Statutes

G.S. 7B-302

(a1) All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except under the following circumstances:

(1) The department shall disclose confidential information to any federal, State, or local government entity or its agent, or any private child placing or adoption agency licensed by the Department of Health and Human Services, in order to protect a juvenile from abuse or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent under this subsection shall remain confidential with the other entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.

(1a) The department shall disclose confidential information regarding the identity of the reporter to any federal, State, or local government entity or its agent with a court order. The department may only disclose confidential information regarding the identity of the reporter to a federal, State, or local government entity or its agent without a court order when the entity demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.

(2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.

(3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law, before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department

of social services may surrender the requested records to the court, for in camera review, if the surrender is necessary to make the required determinations.

(4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (2) of this subsection.

(5) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter.

§ 7B-601. Appointment and duties of guardian ad litem.

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The juvenile is a party in all actions under this Subchapter. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate when the permanent plan has been achieved for the juvenile and approved by the court. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights throughout the proceeding. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) The court may authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) 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. 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.

§ 7B-2901. Confidentiality of records.

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office alleging abuse, neglect, or dependency. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the court or in accordance with a retention schedule approved by the Director of the Administrative Office of the Courts and the Department of Natural and Cultural Resources under G.S. 121-5(c). The following persons may examine the juvenile's record maintained pursuant to this subsection and obtain copies of written parts of the record without an order of the court:

- (1) The person named in the petition as the juvenile;
- (2) The guardian ad litem;
- (3) The county department of social services; and
- (4) The juvenile's parent, guardian, or custodian, or the attorney for the juvenile or the juvenile's parent, guardian, or custodian.

(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only in the following circumstances:

- (1) The juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated, may examine the records.
- (2) A district or superior court judge of this State presiding over a civil matter in which the department is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law

before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department may surrender the requested records to the court, for in camera review, if surrender is necessary to make the required determinations.

(3) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review before releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (1) of this subsection.

(4) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700.

(c) In the case of a child victim, the court may order the sharing of information among such public agencies as the court deems necessary to reduce the trauma to the victim.

§ 35A-1107. Right to counsel or guardian ad litem.

(a) The respondent is entitled to be represented by counsel of his own choice or by an appointed guardian ad litem. Upon filing of the petition, an attorney shall be appointed as guardian ad litem to represent the respondent unless the respondent retains his own counsel, in which event the guardian ad litem may be discharged. Appointment and discharge of an appointed guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense Services.

(b) An attorney appointed as a guardian ad litem under this section shall represent the respondent until the petition is dismissed or until a guardian is appointed under Subchapter II of this Chapter. After being appointed, the guardian ad litem shall personally visit the respondent as soon as possible and shall make every reasonable effort to determine the respondent's wishes regarding the incompetency proceeding and any proposed guardianship. The guardian ad litem shall present to the clerk the respondent's express wishes at all relevant stages of the proceedings. The guardian ad litem also may make recommendations to the clerk concerning the respondent's best interests if those interests differ from the respondent's express wishes. In appropriate cases, the guardian ad litem shall consider the possibility of a limited guardianship and shall make recommendations to the clerk concerning the rights, powers, and privileges that the respondent should retain under a limited guardianship.

Selected Regulations

10A NCAC 70A .0113 CONFIDENTIALITY OF COUNTY DSS PROTECTIVE SERVICES RECORDS

(a) The county director shall not allow anyone outside of the county department of social services other than state and federal agency personnel carrying out their lawful responsibilities for program audit and review to examine a protective services case record as described in Rule .0112 of this Subchapter unless:

- (1) the judge orders the county director to allow examination; or
- (2) the child or the child's attorney requests to examine his own record.

(b) The county director in carrying out his duties may share information and a summary of documentation from the case record without a court order with public or private agencies or individuals that are being utilized to provide or facilitate the provision of protective services to a child.

(c) The county director shall allow the District Attorney or his designee access to the case record, including any information or documentation therein, which he needs to carry out his mandated responsibilities that result from a report of confirmed abuse or from the county director's decision not to file a petition.

10A NCAC 69 .0101 DEFINITIONS

As used in this Subchapter, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Client" means any applicant for, or recipient of, public assistance or services, or someone who makes inquiries, is interviewed, or is or has been otherwise served to some extent by the agency. For purposes of this Subchapter, someone acting responsibly for the client in accordance with agency policy is subsumed under the definition of client.
- (2) "Agency" means the state Division of Social Services and the county departments of social services, unless separately identified.
- (3) "Client information" or "client record" means any information, whether recorded or not and including information stored in computer data banks or computer files, relating to a client which was received in connection with the performance of any function of the agency.
- (4) "Director" means the head of the state Division of Social Services or the county departments of social services.

(5) "Delegated representative" means anyone designated by the director to carry out the responsibilities established by the rules in this Subchapter. Designation is implied when the assigned duties of an employee require access to confidential information.

(6) "Court order" means any oral order from a judge or a written document from a judicial official which directs explicitly the release of client information.

(7) "Service provider" means any public or private agency or individual from whom the agency purchases services, or authorizes the provision of services provided or purchased by other divisions of the Department of Human Resources.

10A NCAC 69 .0301 RIGHT OF ACCESS

Confidentiality of information about himself is the right of the client. Upon written or verbal request the client shall have access to review or obtain without charge a copy of the information in his records with the following exceptions:

(1) information that the agency is required to keep confidential by state or federal statutes or regulations.

(2) confidential information originating from another agency as provided for in Rule .0102 of this Subchapter.

(3) information that would breach another individual's right to confidentiality.

10A NCAC 69 .0306 REVIEW OF RECORD BY PERSONAL REPRESENTATIVES

Upon written request from the client, his personal representative, including an attorney, may have access to review or obtain without charge, a copy of the information in his record. The client may permit the personal representative to have access to his entire record or may restrict access to certain portions of the record. Rules .0301 through .0305 of this Subchapter shall apply.

SECTION .0400 - RELEASE OF CLIENT INFORMATION

10A NCAC 69 .0401 PROCEDURE FOR OBTAINING CONSENT FOR RELEASE OF INFORMATION

(a) As a part of the application process for public assistance or services, the client shall be informed of the need for and give consent to the release of information necessary to verify statements to establish eligibility.

(b) As a part of the application process for Aid to Families with Dependent children, and State or County Special Assistance for Adults, the client shall be informed of the requirement for listing of the public assistance recipient's name, address, and amount of the monthly grant in a public record open to public inspection during the regular office hours of the county auditor.

(c) No individual shall release any client information which is owned by the state Division of Social Services or the county departments of social services, or request the release of information regarding the client from other agencies or individuals without obtaining a signed consent for release of information. Disclosure without obtaining consent shall be in accordance with Section .0500 of this Subchapter.

10A NCAC 69 .0402 CONSENT FOR RELEASE OF INFORMATION

(a) The consent for release of information shall be on a form provided by the state Division of Social Services or shall contain the following:

- (1) name of the provider and the recipient of the information;
- (2) the extent of information to be released;
- (3) the name and dated signature of the client;
- (4) a statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent;
- (5) length of time the consent is valid.

(b) The client may alter the form to contain other information which may include but is not limited to:

- (1) a statement specifying the date, event or condition upon which the consent may expire even if the client does not expressly revoke the consent;
- (2) specific purpose for the release.

10A NCAC 69 .0403 PERSONS WHO MAY CONSENT TO THE RELEASE OF INFORMATION

The following persons may consent to the release of information:

- (1) the client;
- (2) the legal guardian if the client has been adjudicated incompetent;
- (3) the county department of social services if the client is a minor and in the custody of the county department of social services.

10A NCAC 69 .0404 INFORMED CONSENT

Prior to obtaining a consent for release of information, the delegated representative shall explain the meaning of informed consent. The client shall be told the following:

- (1) contents to be released;
- (2) that there is a definite need for the information;
- (3) that the client can give or withhold the consent and the consent is voluntary;
- (4) that there are statutes and regulations protecting the confidentiality of the information.

10A NCAC 69 .0405 PERSONS DESIGNATED TO RELEASE CLIENT INFORMATION

Directors and their delegated representatives, as defined, may release client information in accordance with rules in Section .0400 of this Subchapter.

10A NCAC 69 .0406 DOCUMENTATION OF RELEASE

Whenever client information is released on the basis of a consent as defined in .0402 of this Subchapter, the director or delegated representative shall place a copy of the signed consent in the appropriate client record.

SECTION .0500 - DISCLOSURE OF CLIENT INFORMATION WITHOUT CLIENT CONSENT

10A NCAC 69 .0501 DISCLOSURE WITHIN THE AGENCY

(a) Client information from the public assistance record may be disclosed without the consent of the client under the following circumstances:

- (1) to other employees of the county department of social services for purposes of making referrals, supervision, consultation or determination of eligibility;
- (2) to other county departments of social services when the client moves to that county and requests public assistance;
- (3) between the county departments of social services and the state Division of Social Services for purposes of supervision and reporting.

(b) Client information from the service record may be disclosed without the consent of the client under the following circumstances:

(1) to other employees of the county department of social services for purposes of making referrals, supervision, consultation or determination of eligibility;

(2) to another county department of social services when that county department of social services is providing services to a client who is in the custody of the county department of social services;

(3) to another county department of social services to the extent necessary to facilitate the provision of a service requested by referring county department of social services;

(4) between the county department of social services and the state Division of Social Services for purposes of supervision and reporting.

10A NCAC 69 .0503 DISCLOSURE FOR PURPOSES OF ACCOUNTABILITY

Client information may be disclosed without the consent of the client to federal, state, or county employees for the purpose of monitoring, auditing, evaluating, or facilitating the administration of other state and federal programs, provided that the need for the disclosure of confidential information is justifiable for the purpose and that adequate safeguards are maintained to protect the information from re-disclosure.