

2.8 Right to Confidentiality

- A. Juvenile Court Records
 - B. Juvenile Court Counselor's Records
 - C. Law Enforcement Records and Files
 - D. Division of Adult Correction and Juvenile Justice Records
 - E. Nontestimonial Identification Records
 - F. Exception for Designated Local Agencies
 - G. Confidentiality on Appeal
-

2.8 Right to Confidentiality

This section briefly reviews a juvenile's right to confidentiality of information related to juvenile court proceedings. For a more in-depth discussion of this topic, see Janet Mason, [*Confidentiality in Juvenile Delinquency Proceedings*](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2011/01 (May 2011).

A. Juvenile Court Records

Juvenile court records generally closed to public. The clerk of superior court must maintain a complete record that includes every document filed in a juvenile case. G.S. 7B-3000(a). This record is not open to the public except by court order. G.S. 7B-3000(b). The juvenile court record is accessible to the following people without an order: the juvenile or the juvenile's attorney; the juvenile's parent, guardian, or custodian; the prosecutor; court counselors; and probation officers (as provided in subsection (e)(1) of G.S. 7B-3000 for the purpose of assessing risk related to supervision). The prosecutor has discretion to share information from the court file with magistrates and law enforcement officers sworn in this state, but may not provide a photocopy of any part of the record. G.S. 7B-3000(b).

The clerk's records for juvenile cases include both paper files and electronic files maintained in JWisE, the electronic records management system for juvenile courts. As part of the Juvenile Justice Reinvestment Act of 2017, the General Assembly mandated that the Administrative Office of the Courts expand access to JWisE to prosecutors and juvenile defense attorneys by July 1, 2018. For a further discussion of access to JWisE, see *infra* § 19.2, Changes Effective in 2017.

If a court issues an order under G.S. 7B-3000(b) allowing access to a juvenile record, it may concurrently issue a protective order preventing further dissemination of the information. See generally *Doe I v. Swannanoa Valley Youth Development Center*, 163 N.C. App. 136, 142 (2004) (court issued protective order prohibiting disclosure of information from juvenile record beyond those directly involved in case and allowed parties to submit confidential information under seal).

The court may direct the clerk to seal any part of the court record, which can then be examined or copied only on court order. G.S. 7B-3000(c). This order extends to all people, including those that ordinarily have access to the juvenile court record. Counsel should move to seal especially sensitive information in the file, such as mental health records or a psychological or sex offender evaluation, to provide additional protection to the juvenile. A sample motion and order to seal records is available on the [Juvenile Defender website](#).

Statutory exceptions for use in limited criminal court proceedings. If a defendant is charged in an adult criminal proceeding for a Class A1 misdemeanor or a felony and he or she was less than 21 years of age at the time of the offense, law enforcement officers, magistrates, courts, and prosecutors may examine the defendant’s juvenile court records under G.S. 7B-3000(e). The following additional criteria must be met:

- the records involve adjudications for offenses that would be a Class A1 misdemeanor or felony if committed by an adult,
- the adjudications occurred after the defendant reached 13 years of age, and
- the records are only used for pretrial release, plea negotiation recommendations, and plea acceptance decisions.

If these criteria are met and the defendant’s juvenile court record is used, the records must remain confidential and must not be placed in any public record. G.S. 7B-3000(e).

An adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in other ways against the juvenile in a subsequent criminal prosecution. The adjudication can be used to show “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident” under N.C. Evidence Rule 404(b). G.S. 7B-3000(f). It may also be used to prove an aggravating factor for felonies and capital cases on order of the criminal court after an in camera hearing to determine admissibility. *Id.* Counsel should explain these possible consequences to the juvenile if the juvenile is alleged to have committed one of the specified felonies, especially if there is an offer to plead to a misdemeanor or a lesser felony.

Impeachment exception in limited circumstances. Under Rule 609(d) of the North Carolina Rules of Evidence, evidence of an adjudication of delinquency is not generally admissible for impeachment purposes. In a criminal case, however, witnesses other than the defendant may be impeached with adjudications “if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.” *Id.*

In a 1972 opinion, the North Carolina Supreme Court held that adjudications could be used to impeach a criminal defendant who is under the age of 18. *State v. Miller*, 281 N.C. 70, 80 (1972). However, *Miller* appears to be superseded by Rule 609.

School exception for offenses that would be felonies if committed by an adult. A

statutory exception exists for information in the juvenile court file that *must* be released to the juvenile’s school if the case concerns an offense that would be a felony if committed by an adult. G.S. 7B-3101(a). The juvenile court counselor must notify the school principal if a petition is filed alleging that the juvenile committed a felony, other than a Chapter 20 (motor vehicle) offense. G.S. 7B-3101(a)(1). If the court dismisses the petition after an adjudicatory hearing, the school must be informed of the dismissal. G.S. 7B-3101(a)(3).

The school must be notified if the court modifies or vacates any order or disposition regarding a juvenile alleged or found to be delinquent for such an offense, or if jurisdiction is transferred to superior court. G.S. 7B-3101(a)(2), (5). The principal also must be notified of any dispositional order, including an order that requires school attendance as a condition of probation. G.S. 7B-3101(a)(4).

Counsel should advise the juvenile that the school will receive this information. The principal will know if school attendance has been ordered as a condition of probation and will be expected to report unauthorized absences. The juvenile should also be informed that any school that is a member of the North Carolina High School Athletic Association prohibits a student who is adjudicated delinquent for an offense that would be a felony if committed by an adult from participating in sports. This might be an important factor for some juveniles in plea negotiations.

B. Juvenile Court Counselor’s Records

The juvenile court counselor’s records are not open to public inspection but may be examined by the juvenile or the juvenile’s attorney without a motion or court order. G.S. 7B-3001(c). Counsel should obtain these records and review them to develop potential defenses during the adjudicatory hearing or alternative dispositional plans for the juvenile. The court counselor’s records include “family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile’s family; probation reports; interviews with the juvenile’s family; or other information the court finds should be protected from public inspection in the best interests of the juvenile.” G.S. 7B-3001(a).

As part of the Juvenile Justice Reinvestment Act of 2017, the General Assembly amended G.S. 7B-3001 to provide that the court counselor must, on request, share information with a law enforcement officer about a juvenile if the officer is investigating a matter that could result in the filing of a complaint. The court counselor may not provide the officer with copies of any part of the court counselor’s record, and any information shared with the officer must remain confidential. The change is effective October 1, 2017. *See infra* § 19.2, Changes Effective in 2017.

C. Law Enforcement Records and Files

Law enforcement records and files of a juvenile case must be kept separate from those of adults and are not open to public inspection except on a court order. The following people may examine law enforcement records without a court order: the juvenile or the juvenile's attorney; the juvenile's parent, guardian, custodian, or authorized representative thereof; the prosecutor; juvenile court counselors; and law enforcement officers sworn in this state. G.S. 7B-3001(b).

D. Division of Adult Correction and Juvenile Justice Records

Generally. Records of the Division of Adult Correction and Juvenile Justice include both records of the local court counselor and of facilities to which the juvenile has been committed. Those who may access and obtain copies of Division records about a juvenile without a court order are the juvenile, the juvenile's attorney, and the juvenile's parent, guardian, or custodian, or authorized representative of one of those people. G.S. 7B-3001(c). Additionally, professionals within the Division who are directly involved in the juvenile's case and juvenile court counselors may access the records without a court order. Otherwise, records maintained by the Division may only be disclosed pursuant to a court order. *Id.*; see also *Doe I v. Swannanoa Valley Youth Development Center*, 163 N.C. App. 136, 139 (2004) (deputy commissioner of Industrial Commission had authority to order discovery of records in a tort claims action).

Escape. If a juvenile who has been adjudicated delinquent escapes from secure custody, a detention facility, or a youth development center, the Division must release the following information to the public within 24 hours of the escape:

- the juvenile's first name and last initial,
- the juvenile's photograph, and
- the name and location of the facility from which the juvenile escaped or, if the juvenile's escape was not from a facility, the circumstances and location of the escape.

G.S. 7B-3102(a). If deemed appropriate, the Division must also release a statement, based on the juvenile's record, of the level of concern of the Division as to the threat the juvenile poses to himself, herself, or others. *Id.*

When a juvenile who is alleged to have committed a felony escapes from a detention facility or secure custody before adjudication, the Division is not required to release any information. However, the Division may release the same information described above within 24 hours after the escape if it determines, based on the juvenile's record, that the juvenile presents a danger to himself, herself, or others. G.S. 7B-3102(b).

Before the Division releases information about the juvenile to the public, it must make a reasonable effort to notify the juvenile's parent, guardian, or custodian. G.S. 7B-3102(e).

If the juvenile is returned to custody before the information is released, the Division is prohibited from releasing it. G.S. 7B-3102(c).

E. Nontestimonial Identification Records

Limited authority to conduct nontestimonial identification procedures. A law enforcement officer must obtain a court order before conducting nontestimonial identification procedures on a juvenile unless the juvenile has been charged as an adult or has been transferred to superior court for trial as an adult. G.S. 7B-2103. There are limited exceptions for fingerprints and photographs, discussed below.

Retention and destruction of nontestimonial identification records. Nontestimonial identification records of a juvenile 13 years of age or older who is adjudicated delinquent for an offense that would be a felony if committed by an adult may be kept in the juvenile court file. G.S. 7B-2108(3). *But see* G.S. 7B-2102(d), (e) (regarding retention and destruction of fingerprints). The records can be used by law enforcement officers only for comparison purposes in the investigation of a crime. “Special precautions,” which are not defined, must be taken to ensure that the nontestimonial identification records are “maintained in a manner and under sufficient safeguards” to ensure that they are accessible only to law enforcement officers for this purpose. G.S. 7B-2108(3).

All nontestimonial identification records must be destroyed if a juvenile petition is not filed, the juvenile is not adjudicated delinquent or convicted in superior court, or a juvenile under the age of 13 is adjudicated for an offense that would be less than a felony if committed by an adult. G.S. 7B-2108(1), (2).

Fingerprints and photographs. A law enforcement officer must take fingerprints and photographs without a court order in the following limited circumstances:

- (1) the juvenile was 10 years of age or older at the time of allegedly committing a nondivertible offense (*see infra* “Nondivertible and divertible offenses” in § 5.3A, Preliminary Inquiry), a petition is to be filed, and the juvenile is in the physical custody of law enforcement or the Division of Adult Correction and Juvenile Justice;
- (2) the juvenile has been adjudicated delinquent for an offense that would be a felony if committed by an adult and was 10 years of age or older at the time the offense was committed; or
- (3) the juvenile has been committed to a county juvenile detention facility.

G.S. 7B-2102(a), (a1), (b). Exception (1) applies to a juvenile in custody for a nondivertible offense *before* adjudication, while exception (2) applies *after* adjudication of an offense that would be a felony if committed by an adult. Exception (3) applies when a juvenile has been committed to a detention facility. There is no provision for fingerprints and photographs to be taken without a court order under any other circumstances.

Destruction of fingerprints and photographs. Counsel should file a motion to destroy fingerprints and photographs taken in violation of the provisions of G.S. 7B-2102. A sample motion and order to destroy fingerprints and photographs is available on the [Juvenile Defender website](#). For example, there is no statutory provision for a juvenile charged with a *divertible* offense to be fingerprinted or photographed unless later adjudicated for an offense that would be a felony if committed by an adult. There is also no provision for photographing a juvenile who is adjudicated delinquent for an offense that would be less than a felony if committed by an adult.

Fingerprints and photographs taken pursuant to G.S. 7B-2102(a) must be destroyed if a petition is not filed within one year, the court does not find probable cause, or the juvenile is not adjudicated delinquent of an offense that would be a felony or misdemeanor if committed by an adult. G.S. 7B-2102(e). It is the responsibility of the chief court counselor to notify the local custodian of records, and the local custodian of records must notify any other record-holding agencies, when any of the above conditions are met. *Id.* A motion should be filed if the evidence is not destroyed according to statutory provisions.

F. Exception for Designated Local Agencies

The Division of Adult Correction and Juvenile Justice is authorized by statute to designate local agencies that must share information on request concerning a juvenile who is the subject of a petition alleging abuse, neglect, dependency, delinquency, or undisciplined behavior. Designated agencies may include the local mental health facilities, health department, Department of Social Services, school, district attorney's office, and Office of Guardian ad Litem Services. The Division is also included as an agency that may be a designated agency. Shared information is to be used "only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile . . ." and must remain confidential and not open to public inspection. G.S. 7B-3100(a). Counsel should learn whether any local rule or order adds a local agency that is required to share information concerning a juvenile. *See* 14B North Carolina Administrative Code 11A.0301(j) (chief district court judge may designate a local agency as an agency authorized to share information), 11A.0302 (governing information sharing among agencies).

G. Confidentiality on Appeal

If a juvenile appeals, the juvenile's right to confidentiality continues in the appellate division. The juvenile's appellate attorney typically prepares the record on appeal, which is a compilation of documents and filings from the juvenile court file in the trial division. Under N.C. R. App. P. 3.1(b), the cover of the record on appeal must contain a notice stating that the record is not subject to public inspection. In addition, the contents of the record may only be disclosed with permission of a court of the appellate division. Transcripts for juvenile delinquency appeals must include the same notice and may not be disclosed to the public without permission of an appellate court. *Id.*

Attorneys assigned to the appeal may only refer to the juvenile in briefs and petitions through the use of initials or a pseudonym. *Id.* The attorneys must also redact the juvenile's name from any appendices or exhibits submitted with a brief or petition.

The courts of the appellate division release opinions for juvenile delinquency appeals to the public along with opinions in civil and criminal appeals. However, the caption of the opinion in a juvenile delinquency appeal only lists the juvenile's initials. The juvenile is also referred to in the body of the opinion through initials or a pseudonym.

Transcripts in juvenile delinquency cases are usually prepared by court reporters who listen to audio recordings of the hearings. In other words, court reporters are not present in court taking contemporaneous notes of the proceedings. Court clerks retain the recordings in their records of juvenile delinquency cases. If a juvenile does not appeal, the trial court may enter an order directing the clerk to destroy any recordings of the proceedings that occurred in the case. G.S. 7B-3000(d).