

STATE OF SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
POLICY AND PROCEDURES

Title:	Confidentiality and Release of Juvenile Information	Policy No.:	B-5.3	Page(s):	1 of 15
Authority:	Division of Administrative Services				
Juvenile Justice Code:	n/a				
PbS Related Standard(s):	n/a				
Related Statutes/Regulations:	45CFR, Parts 160 and 164 (HIPAA) and South Carolina Code of Laws Section 63-19-2020				
November 19, 2014 Effective Date	SIGNED/ <i>Margaret H. Barber</i> Margaret H. Barber Director				
DATES UPDATED:					

POLICY: Juvenile records, information, and reports prepared and maintained by DJJ or any of its employees, volunteers, and interns are confidential. Juvenile records and information will not be disclosed by any employee, volunteer, or intern directly or indirectly to anyone, except where disclosure is authorized by law and in compliance with the procedural guidelines set forth in this policy. DJJ will comply with the Health Insurance Portability and Accountability Act (and DJJ Policy A-4.4, HIPAA) when using or disclosing a juvenile's Protected Health Information. Juveniles who are 16 years of age or older have the right to release their personal, confidential and privileged information. Unauthorized release by DJJ of juvenile information is both unethical and illegal.

PROCEDURAL GUIDELINES:

A. General Juvenile Information

1. Juvenile information includes any identifiable data or information on a juvenile contained in DJJ manual and automated records and those contained in any employee's, intern's or volunteer's personal working file. Protected health information contained in a juvenile file must be handled in accordance with the provisions in Section B of this policy.
2. The DJJ Records Manager will coordinate the release of inactive juvenile records. Primary custodians of juvenile files and records in county offices and juvenile residential facilities will be advised by the DJJ Records Manager concerning the release of active juvenile records from their respective work areas. If a question arises concerning whether or not the release of a juvenile's records or information is appropriate and the DJJ Records Manager cannot answer the question, the matter will be referred to the DJJ Legal Office.

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3. DJJ Employees, Interns, and Volunteers:

- a. Statements made by a juvenile as part of the intake interview relating to the offense for which the juvenile is charged and for which the intake interview is being conducted will not be revealed to the Solicitor's Office prior to the Solicitor making its determination related to that juvenile's prosecution. DJJ County Case Managers will advise juveniles prior to the intake interview that statements made to a DJJ employee are confidential, but that the information is subject to being released under certain circumstances, including:
 - 1) A court order to release statements and information. The County Case Manager will comply with the order.
 - 2) To the Solicitor/Attorney General involved with the prosecution of a juvenile after the intake review process is complete.
 - 3) When statements are made that pertain to crimes other than the crime for which the juvenile is currently referred, the County Case Manager will report the information to local law enforcement.
 - 4) When statements provide a reason to believe that the juvenile or another child has been abused or neglected, or is at risk of either. The County Case Manager will report the information to the South Carolina Department of Social Services and local law enforcement *per the SC Children's Code, Article 3, Sub article 1, 63-7-310, Persons required to report*. If the suspected abuse/neglect occurred at a DJJ facility, the County Case Manager will report the information to DJJ Office of the Inspector General as an ERMIS event pursuant to DJJ Policy I-3.1, Alleged Abuse and Neglect of Juveniles.
- b. Active juvenile records will be made available to DJJ staff when access is required to provide services to the juvenile, to perform official duties within DJJ, and for authorized research purposes. Access to interns and volunteers will be strictly limited to only that information needed to carry out the supervisory assignment. Access to protected health information contained in a juvenile's record should be limited to the minimum amount necessary to provide for treatment, payment or agency operations.
- c. DJJ employees that conduct inquiries/investigations involving juveniles may share the juvenile's name and the minimum amount of information about the juvenile in order to conduct inquiries. Employees will identify themselves as DJJ employees and use DJJ official stationary in all written

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correspondence. Records and information on a juvenile are available to and may be shared between DJJ employees with a need to know. Records and information also may be shared with independent contractors providing services to DJJ, entities under the direction of DJJ and entities with whom the juvenile is placed, upon request of that individual or entity and upon a determination being made of the need for that information/record. Protected health information contained in a juvenile's record will be limited to the minimum amount necessary to provide for treatment, payment or agency operations.

- d. Internal communication among DJJ staff concerning a juvenile's protected health information will be discreet and only include those staff members with a need to know the information in order to perform their job duties. Email or written communications may include a juvenile's name in the body content of the correspondence, however, will not include a juvenile's name in the subject line. Emails, facsimiles, and other written communications will contain the following warning:

"The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or by email and delete all copies of this message and all attachments."

4. Other Child Serving Agencies

DJJ may verbally share information about a juvenile with the employees of other agencies, departments, school districts, or private child serving agencies that are members of the juvenile's treatment team. DJJ staff may also provide copies of written records upon request, if the entity is involved with, or anticipates being involved with that particular juvenile, or if the juvenile is seeking enrollment, admission or the continuation of services in a program or facility managed by the entity. If the information or record includes protected health information, any disclosure must comply with the provisions set forth under Section B of this policy.

5. Guardians Ad Litem and Attorneys Representing the Juvenile

DJJ may release juvenile records to a juvenile's Guardian Ad Litem or to the attorney representing a juvenile. If the request is from the Guardian Ad Litem, a statement of appointment and a copy of the Order of Appointment must be submitted with the request.

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6. Court Orders Issued by South Carolina Courts

- a. Records will only be released upon receipt of an order from a court of competent jurisdiction (e.g., South Carolina Family Court, Circuit Court General Sessions/Common Pleas). The Records Liaison will refer court orders received from other states and from other courts to the DJJ Legal Office for a determination on the release of records.
- b. The receipt of a subpoena for juvenile records is not legally sufficient for the DJJ to release juvenile records. Unless the DJJ Legal Office directs the release of juvenile records pursuant to a subpoena, juvenile records will be released only upon the receipt of a court order specifically directing the release of the records.
 - 1) Upon receipt of a subpoena for juvenile records, the Records Liaison will send a letter to the requesting party citing the provisions of S.C. Code Ann. Section 63-19-2020 that requires a court order.
 - 2) The subpoena and letter will be maintained in the juvenile's file.
- c. Before releasing records regarding a juvenile's protected health information including a referral, assessment, or treatment for substance abuse, the Records Liaison will consult with the DJJ Records Manager, and/or the DJJ Legal Office regarding the adequacy of a court order requiring the disclosure of these records.
- d. Only those records specified in the court order will be provided to the entity authorized by the court order to receive the records.
- e. A copy of the order and documentation of records released pursuant to the court order will be maintained in the juvenile's file. Correspondence will also be maintained in the juvenile's case management record.

7. Release of Information to the Armed Services of the United States

Juveniles seeking to enlist or advance in the United States Armed Forces may request that DJJ release information to the United States Department of Defense. Upon consent of a juvenile, the Records Liaison will release the juvenile's record of arrests and adjudications to the requesting Department of Defense branch of the armed services.

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8. Requests from Parents/Guardians

- a. All records and information may be released to the juvenile's legal custodian. State law provides that a non-custodial parent has equal access and the same right to obtain the juvenile's educational records and health records if the juvenile is under the age of 18. Evaluation reports will only be released to the court, the solicitor, and the defense attorney prior to disposition. After disposition, the legal guardian shall be allowed access to the evaluation only with a face to face meeting with the psychologist.
- b. The Records Liaison may request a copy of the juvenile's birth certificate, court order, or other proof that the person requesting records is the parent or legal custodian of the juvenile, prior to releasing juvenile information.

9. Media Requests

If the juvenile has been either waived to the Court of General Sessions or adjudicated delinquent for a violent crime, grand larceny of a motor vehicle, a crime in which a weapon was used, or the distribution or trafficking in unlawful drugs, information may be released. Identifiable information released to the media will be limited to the juvenile's name, photograph, record of arrests/adjudications, and other basic information which may aid in his/her apprehension or identification. All requests for information from the media will be immediately referred to the Office of Public Affairs and released only as directed by the Office of Public Affairs and the Legal Office.

10. Requests from Victims

Information may be released to victims of crimes committed by the juvenile, in compliance with DJJ Policy F-2.2, Victim Services.

11. Juvenile Information may also be released:

- a. Pursuant to an interagency agreement entered into by the agency for purposes of sharing information about children under the supervision of DJJ.
- b. When necessary to defend against an action initiated by a juvenile.
- c. A copy of the child offense history to the Attorney General, a solicitor or a law enforcement agency for any criminal justice purpose.

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- d. Other information retained by DJJ may be provided to the Attorney General, a solicitor or law enforcement agency pursuant to a current investigation or prosecution of that juvenile or another juvenile or adult.
- e. To the Court of General Sessions for the purposes of sentencing an individual as an adult.
- f. To the South Carolina Law Enforcement Division, Department of Child Fatalities when conducting an inquiry into the death of a child.
- g. To Local Education Agencies (LEAs) when a juvenile transfers from the DJJ school district to another school within the LEA.
- h. To the school principal, the final disposition of a case in which the child was charged with: a violent offense defined as violent in S.C. Code Ann. 16-1-60 (Attachment B-5.3A); a crime in which a weapon (SC Code Section 59-63-370) was used; assault and battery against school personnel; assault and battery of a high and aggravated nature committed on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity; or distribution or trafficking of drugs.

B. Protected Health Information Contained in Juvenile Files

- 1. Protected Health Information (PHI): Health information collected from an individual and created or received by DJJ that identifies the individual or can be used to identify the individual. The information relates to the individual's past, present or future physical or mental health or condition, the provision of health care to them, or the payment for the provision of health care. Health information that does not identify an individual and from which there is no reasonable basis to believe that the information can be used to identify an individual is not protected health information. PHI includes (but is not limited to) the individually identifiable health information contained in DJJ records such as juvenile medical records, evaluation reports, placement packages, juvenile classification files, birth certificates, and psychiatric and psychological evaluations.
- 2. DJJ staff members are permitted to disclose PHI in the following instances:
 - a. To the individual who is the subject of the PHI.
 - b. For treatment, payment or healthcare operational purposes.
 - c. In compliance with valid authorization. Authorizations are required to disclose PHI unless otherwise required or permitted under this policy. DJJ

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must obtain a signed authorization using Authorization to Release Information (Form B-5.3A).

- 1) DJJ must obtain a signed authorization form for any use or disclosure of PHI for the purposes of marketing.
- 2) DJJ must obtain an authorization for any use or disclosure of Psychotherapy Notes except in the following circumstances:
 - A) For use by the originator for treatment.
 - B) To defend against a legal action brought by the patient.
 - C) For purposes of the Department of Health and Human Services in determining compliance with the privacy rule.
 - D) To a health oversight agency for a lawful purpose related to oversight of a psychotherapist.
 - E) To a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.
 - F) To law enforcement in instances of permissible disclosure related to a serious or imminent threat to the health or safety of a person or the public.
- d. DJJ may disclose PHI to a government authority when there is a reasonable belief that the person is a victim of child abuse, neglect, or domestic violence. This report should occur with the consent of the individual or limited to the necessary information to comply with legal reporting requirements. Individuals should be notified of all disclosures made without consent unless it would place them in risk of serious harm or the personal representative requiring notice is believed to be the perpetrator and informing this representative would not be in the individual's best interest.
- e. Judicial and administrative proceedings: in response to an order of the court or other administrative tribunal. Disclosures must be limited to PHI information expressly authorized by the order.
- f. Disclosures for Law Enforcement Activities: DJJ may disclose PHI to law enforcement under the following conditions:

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- 1) When required by law to report certain types of injuries or wounds, such as gun shot.
- 2) A court order, warrant or subpoena issued by a judicial officer or a grand jury subpoena.
- 3) An administrative request when the information is relevant to a legitimate law enforcement inquiry and the request is specific and limited to the extent practicable and de-identified information could not be used.
- 4) For identifying or locating a suspect, witness, fugitive or missing person. Information disclosed must be limited to:
 - A) Name and address.
 - B) Date and place of birth.
 - C) Social security number.
 - D) ABO blood type and Rh factor.
 - E) Type of injury.
 - F) Date and time of treatment.
 - G) Date and time of death, if applicable.
 - H) A description of distinguishing physical characteristics.Information regarding DNA, dental records or body fluids and tissue cannot be released for identification purposes.
- 5) In response to a request for information about the suspected victim of a crime. The individual must agree to the disclosure unless the victim is incapacitated or the information is needed to determine if a crime has been committed and is required immediately and disclosure is in the best interest of the suspected victim.
- 6) If it is suspected that the death resulted from criminal conduct.
- 7) When PHI that is judged to constitute evidence of criminal conduct that occurred on DJJ premises.

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- 8) When providing emergency healthcare, DJJ may disclose PHI to alert law enforcement regarding the commission and nature of a crime, the location of a victim or to provide information about the perpetrator of such crime.
- g. Information on decedents may be released to:
- 1) Coroners, medical examiners and funeral directors as required to carry out their duties authorized by law (for example, to determine a cause of death).
 - 2) Organ procurement organizations for cadaver organ, eye or tissue donation purposes.
- h. Specialized government functions:
- 1) To authorized federal officials for the conduct of lawful intelligence, counter-intelligence and other nation security activities.
 - 2) To authorized federal officials for the provision of protective services to the President or other persons authorized by law.
 - 3) To a correctional institution or law enforcement official having lawful custody, if the protected health information is needed for the provision of health care; the health and safety of other inmates, officers or employees, including transportation personnel; or the administration of safety security and good order.
 - 4) In compliance with worker's compensation programs.
- i. Other Permitted Disclosures
- 1) In accordance with applicable laws and ethical standards, when the Department has made a determination in good faith that disclosure:
 - A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the information is reasonably able to prevent or lessen the threat.
 - B) Is necessary for law enforcement to identify and apprehend the individual because they have escaped from correctional

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or other lawful custody or because of statements indicating they have caused physical harm to the victim.

- 2) This information cannot be gathered in the course of treatment counseling or therapy.
 - 3) Only the following information may be provided under this section:
 - A) Name and address.
 - B) Date and place of birth.
 - C) Social security number.
 - D) ABO blood type and Rh factor.
 - E) Type of injury.
 - F) Date and time of treatment.
 - G) Date and time of death, if applicable.
 - H) A description of distinguishing physical characteristics.
 - j. To a health oversight agency for oversight activities authorized by law, including audits; civil, administrative or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system, government benefit programs for which health information is relevant to beneficiary eligibility, government regulatory programs for which health information is necessary for determining compliance with program standards, or compliance with civil rights laws for which health information is necessary in determining compliance.
3. Internal Uses of Protected Health Information
- a. PHI may be used internally and with independent contractors providing services to DJJ, entities under the direction of DJJ and entities with whom the juvenile is placed, upon request when the requested information is necessary for the payment or treatment or one of the conditions listed above. The Records Custodian in consultation with the Department Privacy Officer and or Legal Office may make this determination.

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- b. PHI may be provided to the Office of Inspector General in connection with administrative inquiries conducted by this office for the purpose of determining whether policy violations, including HIPAA violations, have occurred.
- c. PHI may be used for research purposes pursuant to conditions contained in HIPAA Privacy Regulations and approved by the Office of Planning and Programs.

4. Minimum Necessary

Staff will make reasonable efforts to limit the release of protected health information to the minimum necessary to accomplish the intended request. When using or disclosing PHI, or when requesting PHI from another covered entity or internally, DJJ staff will make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

C. Release of Records Procedures

- 1. Consent for Release of Records: With written consent, DJJ will release records/information about a juvenile to an individual, entity, or governmental agency.
 - a. A juvenile age 16 or older may execute an authorization to release records/information, including protected health information, for all of his/her record information using the Authorization to Release Information (Form B-5.3A). The juvenile's parent/guardian or personal representative's written consent is required for a juvenile under the age of 16 to release PHI. Parent/guardian or personal representative's written consent is required for a juvenile age 16 or older that is incapacitated.
 - b. The Records Custodian will provide the Authorization for Release of Information (Form B-5.3A) to the juvenile or his/her parents/guardians or personal representative.
- 2. Consent Form Not Required: The use of this form is not required provided that the following information is provided on the written request to release juvenile information:
 - a. Juvenile's legal name, date of birth, and social security number.
 - b. Name of the Individual/entity/agency to whom the information is to be released.

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- c. Specific information to be released.
- d. Purpose of the release of the information.
- e. Duration of the authorization, including an expiration date or event.
- f. Request is within the duration of the authorization.
- g. Signature of the individual with legal authority to release the information (e.g., juvenile, parents/guardians).
- h. Signature of the juvenile or parent/guardian is dated within 90 days of the request.

3. Processing Requests for Information or Records

- a. Upon receipt of requests or court orders for juvenile records, the Records Custodian will contact the DJJ Records Manager to determine the adequacy and validity of the request for records.
- b. The Records Manager will identify the records to be released pursuant to the release, request, or court order and make arrangements with Records Liaisons of the juvenile records for the release of the particular records requested.
- c. The Records Manager will contact the Legal Office for clarification regarding unresolved issues.
- d. Requests will be made in writing or in person.
- e. The DJJ employee receiving a request will verify the identity of the requestor and establish whether the person is entitled to the requested information.
- f. Telephone requests may be accepted if the employee can verify the caller's identity and determine if the caller is entitled to receive the information.
- g. All requests will include the requester's name, relationship to the juvenile, the specific information requested and the basis upon which the requesting party is entitled to receive the information/records.
- h. All requests will be documented in the juvenile's case management record. The request date, juvenile's name, DJJ number, and requester's

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name, information requested and provided and the basis for release or the denial will be included.

- i. If a question arises concerning whether or not the release of records/information about a juvenile is appropriate and cannot be resolved by the appropriate DJJ County Office Director or Facility Manager, it will be brought to the Legal Counsel for resolution.

4. Documentation of Information Release

- a. DJJ employees will document by maintaining a copy of the completed Authorization and any other documentation from the requestor will be permanently filed in the juvenile's classification record.
- b. DJJ employees will use Accounting Log for Disclosures of PHI (Form B-5.3.B) to document the release of all juvenile PHI unless the release was: to carry out treatment, payment or health care operations; to the individual; to the person involved in the individual's care or for notification purposes; for national security or intelligence purposes; to correctional institutions or law enforcement officials; pursuant to a valid authorization; or occurred prior to April 14, 2003.
- c. Prior to release of any information, the Record Liaison may request photographic proof of identify using a driver's license, passport, state or federal identification card, or employment identification card as appropriate.
- d. The Records Custodian may also request that the juvenile's signature or the juvenile's parent/guardian's signature be notarized.
- e. The Records Custodian will document the date and a description of the records released in the juvenile's file.

5. Cost of Providing Records

- a. DJJ requires payment of \$10.00 as prepayment for the costs of copying and mailing requested records.
- b. DJJ requires payment of \$.50 per page for requests over 20 pages.
- c. All sums will be made payable to DJJ, transmitted to the Fiscal Affairs Office, and credited to the Information Technology budget.

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D. Unauthorized Release of Juvenile Information

1. Any employee, volunteer, or intern that knowingly releases confidential and /or protected juvenile information will be subject to employee disciplinary action and possible criminal charges.
2. Allegations and complaints of unauthorized release of juvenile information will be reported through the DJJ Event Reporting Management System and investigated:
 - a. Employees, volunteers, or interns will report unauthorized release of juvenile information to the DJJ Office of the Inspector General.
 - b. Employees receiving complaints, verbal or written, from parents or other persons in the community will direct the person or written complaint to the Office of the Inspector General.
 - c. The Office of the Inspector General will investigate an allegation/complaint and provide their written findings to the appropriate supervising Deputy Director for action. The Deputy Director will provide a written summary of the action taken to the Office of the Inspector General.
3. The Office of the Inspector General will provide quarterly statistical information to the Deputy Director for Administrative Services summarizing the number and types of reported, founded, and unfounded complaints regarding juvenile information releases.

RELATED FORMS AND ATTACHMENTS:

Attachment B-5.3A, Violent Crimes, SC Code of Laws Section 16-1-60
 Form B-5.3A, Authorization to Release Juvenile Information
 Form B-5.3B, Accounting Log for Disclosures of PHI

REFERENCED POLICIES:

A-4.4, Health Insurance Portability and Accountability Act (HIPAA)
 F-2.2, Victim Services
 I-3.1, Alleged Abuse and Neglect of Juveniles

SCOPE: This policy applies to all employees, volunteers, and contracted vendors, facilities, offices and programs that maintain juvenile records.

LOCAL PROCEDURAL GUIDE: Not required.

TRAINING REQUIREMENT:

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All staff is required to review this policy within 30 days of its publication. Designated Record Liaisons are required to receive specific training from the DJJ Records Manager within 60 days of this policy's publication.