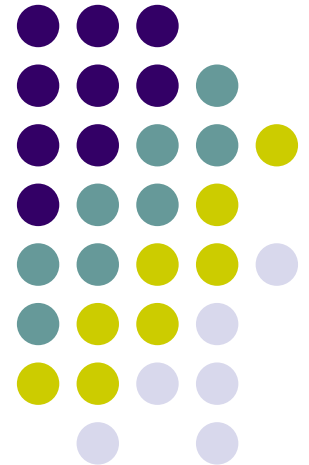


Information Gathering and Sharing

Juvenile Defender Conference
UNC School of Government
August 19, 2011



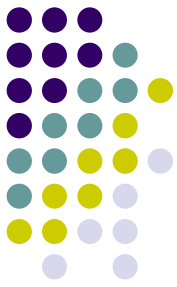


Introductions

- Erwin Byrd
 - Staff Attorney
- Jason Langberg
 - Equal Justice Works Fellow
- Advocates for Children's Services
 - Statewide project of Legal Aid of NC
 - Based out of Durham Legal Aid Office
 - 4-5 Attorneys; 1 paralegal
 - Focus on school-to-prison pipeline—access & quality in public education

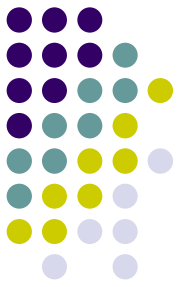
Agenda

- Why get records?
- What records exist?
- How do I get the records?
- How do I use the records?



Why get records?

- System failure and overlap
- Ethical obligation
- Best practice



What records exist?

School/education



- Attendance
- Grades/report cards
- Test scores
 - EOGs, EOCs
- Interventions
 - Student Support Team
 - Personal Education Plan
- Behavior/discipline
 - Referrals
 - Long-term suspension or expulsion notices
- Special education
 - Psychological testing
 - Individualized Education Program (IEP)
 - Minutes from IEP Team meetings
 - Functional Behavioral Assessment (FBA)
 - Behavior Intervention Plan (BIP)

What records exist?

Medical/mental health



- Personal Health Information (PHI) = any information created by a health care provider or health plan that: "relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual."
- Evaluations, diagnoses and recommendations from physicians, psychologists, psychiatrists, LCSWs, and other medical professionals.
- Notes from doctor/hospital visits (except psychotherapy notes)
- Records of tests performed and results
- Person-Centered Plans or Personal Care Plans
- Billing Information – e.g., Medicaid/EPSTD prior authorization requests and action on those requests.

What records exist?

Social services/child welfare



- Reports of abuse/neglect/dependency or abandonment.
- Documentation of investigation/assessment (e.g. notes from visits to home, safety plans for family/guardian, assessments of family/home, evaluations of child)
- If child ever in DSS custody, many records, including:
 - placement history log
 - court documents
 - medical/mental health records
 - education records
 - social worker documentation
 - safety plans
 - pictures of child
 - vital records

How do I get the records?

School/education



- Parent/guardian has right to review records
 - Federal Education Rights and Privacy Act (FERPA)
 - Check local school board policies
 - No right to copies unless parent not able to review in-person
 - If copies, fee must be reasonable
- Get authorization from parent/guardian
- Send request and authorization to principal of school client attends or most recently attended
- Call and email to follow up
- School supposed to provide w/in 45 days

How do I get the records?

Medical/mental health



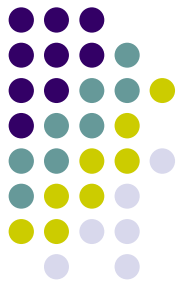
- Person who consented to the treatment has right to inspect and obtain a copy of the child's protected health information (HIPAA) from a "covered entity" (health care provider, health plan, health care clearinghouse).
- Need a release signed by the parent, OR signed only by the child, if the records you are requesting document treatment for:

**STD's, alcohol/drug abuse,
pregnancy, emotional disturbance**

- Covered entity must act on the request for records within 30 days (if records are maintained and accessible on-site) or 60 days (if records are off-site).
- Covered entity can charge a reasonable, cost-based fee (cannot charge for searching for and gathering the records, but can charge for copying and mailing).

How do I get the records?

Abuse/neglect/dependency/abandonment



- Juvenile has right to his own child protective services/child placement services records at DSS, according to state statute and case law.
- Write a cover letter to the director of the local county DSS (cc the social worker, if applicable) requesting the records, and citing (even attaching) the law authorizing the child's access.
- Can have the child sign a release of information, authorizing the Department of Social Services of ___ County (where the child lived when abuse reported) to release records concerning the child to you/your office.
- No guidelines on timing or fees.
- N.C. COA upheld juvenile and juvenile's attorney's "absolute right" to review juvenile's records maintained by DSS (which included mental health records from the area mental health agency).

In re J.L., 199 N.C.App. 605, 685 S.E.2d 11 (2009)

How do I get the records?

Discovery



- § 7B-2300 (c) requires the petitioner to permit the juvenile to inspect (upon the juvenile's motion) documents "within the possession, custody, or control" of the petitioner, prosecutor or law enforcement investigating the case.
- *State v. Pigott*, 320 N.C. 96, 102 (1987) includes materials not only in the prosecutor's control, but also anything from "*those working in conjunction with him [the prosecutor] and his office.*"
- Prosecutor or law enforcement working with the DA may thus have in their custody, control or possession discoverable:
 - Information from DSS concerning abuse, which DSS has to report to the DA (**§ 7B-307**).
 - Information from school resource officers who may have coordinated with the DA in past or current investigations involving the juvenile.

How do I use the records? Delinquency proceedings



- Capacity to proceed
- Custody hearings
- Suppression hearings
- Transfer
- Negotiation
- Adjudication
- Disposition

How do I use the records? Referrals



- Know the rights of children
- Spot the issues
- Make the referrals

Sharing goes both ways: juvenile court counselors' duty to alert school principals



- **N.C.G.S. § 7B-3101** requires juvenile court counselors to alert the principal when: student charged with (petitioned for) felony; jurisdiction transferred to superior court; or dispositional order issued, modified, or vacated.
- Though **§115C-404** strictly limits principals' use and sharing of the information acquired by 7B-3101 (*e.g., cannot suspend or expel based solely on this info.*), school boards statewide :
 - allow the suspension or transfer of a student because of petitions or charges filed against him/her.
 - allow discipline (including long-term suspension) for off-campus conduct: **“that has or is reasonably expected to have a direct and immediate impact on the orderly and efficient operation of the schools or the safety of individuals in the school environment.”**



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