

LEGAL ANALYSIS SUBCOMMITTEE

TOP ISSUES/MYTHS

February 14, 2005

1. What documents contained in the child welfare record may/may not be shared by a DCFS social worker with county Juvenile Probation Counselors or JRA parole officers without the consent of the youth when that individual has the responsibility of supervising the youth?

- Specifically, documents in the child welfare record originally generated by a physician, mental health provider, educator?

Under RCW 13.50.100(3), records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. The intent behind this statutory provision is to permit the sharing of otherwise confidential information regarding a child so that there can be coordination of services and assistance to meet the needs of the child. Under RCW 13.50.010(1)(a) a juvenile justice or care agency includes the court, prosecuting attorney, defense attorney, attorney general, DSHS and its contracting agencies, schools, and persons or public or private agencies having children committed to their custody. CPS, FRS, and CWS services are included in this definition as part of DSHS. JRA is also part of DSHS and have children committed to their custody. JPCs are under the supervision of the court. Thus, a DCFS social worker is authorized to share information with these other juvenile justice or care agencies (JRA and JPCs) when they are investigating the juvenile or are pursuing a case involving that juvenile or when they are assigned the responsibility of supervising the juvenile.

The statute permits the disclosure of “records retained or produced” by the agency. This language authorizes the DCFS social worker to share health care information without the consent of the youth, including mental health records contained in the DSHS record, with the JPC or parole officer when these individuals are assigned the responsibility to supervise the youth. The information shared should be limited to information necessary to supervise the youth or relevant to the provision of services to the youth.

With respect to school records, the Department is authorized by RCW 28A.150.510 to receive school records of dependent children to “effectively serve students” who are dependent. This statutory authorization requires the release of the child’s school records to the Department upon request if the Department certifies it will not release the records to others without the consent of the parent or student unless authorized to disclose the records by state law. The Department may also share school records with a foster parent, guardian or an “entity authorized by DSHS to provide residential care to the student.” RCW 28A.150.510. So, if JRA is providing residential care to the student, school

records contained in the DSHS file may be disclosed to JRA. Additionally, since RCW 13.50.100(3) authorizes such the disclosure of records held by DSHS to JPCs or JRA when they are assigned the responsibility to supervise the juvenile, state law therefore permits the Department the ability to release education records to them when they are supervising the juvenile.

2. Can a DCFS social worker obtain records of the parent and/or child when they are responsible for the case (investigation, case planning, etc) from a health care provider, mental health provider or substance abuse provider without consent?

Under RCW 26.44.030, the Department is entitled to obtain information related to reports of child abuse or neglect from mandated reporters and information for case planning purposes. The sharing of this information does not violate privilege or confidentiality afforded by other statutes, including HIPAA. See 45 C.F.R. §164.512(a) and 45 C.F.R. §164.103. The information provided must relate to the incident being investigated.

If the information is outside the scope of the incident being investigated, then a release of information must be obtained from the parent or the child if the child is over the age of 13 for alcohol/drug abuse treatment or mental health treatment records and the age of 14 for sexually transmitted disease, including HIV, information. If the child is under the age of consent and the child is committed to the supervision of the Department, the Department may obtain information necessary to provide for the health needs of the child.

If the information sought is the result of a court ordered service, the order providing for such service should address the Department's ability to obtain reports and information from the provider or the order should provide for the parent or child over 13 or 14, depending on the type of information sought, to sign an authorization to release information.

3. What educational information may the DCFS social worker obtain without parental consent? What information may the DCFS social worker share with school personnel?

Under RCW 13.50.100, both agencies/entities fall within the definition of a juvenile justice or care agency. As such, they may share information with each other when the entity/agency seeking the release of the records is pursuing a case regarding the juvenile or is responsible for supervising the juvenile. The information sought must be necessary and relevant to the requestor's responsibility/investigation.

Under RCW 28A.150.510, educational records shall be released to DSHS upon request provided that the child is dependent and DSHS certifies that it will not disclose to any other party the educational records without prior written consent of the parent or student unless authorized to disclose the records under state law.

DCFS may share necessary information when it has an open case and the child is enrolled in school. RCW 13.50.100(3). The DCFS social worker may share information necessary for case planning with the school. RCW 26.44.030(7). The information must

be relevant for educational planning and help the school to provide necessary services to the child.

Additionally, under RCW 13.50.050(7), upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Incident reports may be released to the school, unless the release would jeopardize the investigation or prosecution or endanger witnesses. However, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff and school property.

4. What type of information can a DCFS social worker provide in a report to court for a dependency or offender proceeding? What type of information may be shared with the court, JPC, youth's attorney in an offender proceeding involving a dependent youth?

Report to Court in a Dependency Proceeding: In a dependency proceeding, the DCFS social worker is required to provide information as set forth in the ISSP. Such information includes the case background, placement, visitation, permanency plan, compliance and progress in services, recommended case plan, current status of the child, and any information that would be relevant to the issues in the dependency proceeding. For example, if the presenting problem that caused the removal of the child is the parent's use of illegal drugs, then information regarding the parent's use or non-use of illegal drugs during the relevant periods of time is important and should be brought to the court's attention. Generally, information that supports the services to be provided to the parents should be included in the Department's report to the court in the dependency proceeding. Copies of UA results, treatment progress summaries, treatment reports, and evaluations are also relevant information that should be presented to the court. Also, information about the child's mental health status, treatment received and service and placement options should be included if relevant. The dependency proceeding also reviews permanency planning for the child, including return to the parent, adoption, guardianship or long term foster care. Information regarding permanent planning for the child and barriers to achieving the plan should be included in a report to court in a dependency proceeding.

Department Report in an Offender Proceeding: In an offender proceeding, the Department is usually not a party to the proceeding. The focus of an offender proceeding is to determine whether the juvenile should be found to have committed the offense (criminal charge). The prosecutor represents the public in bringing the "information" (crime charged) against the juvenile (the defendant). Once the juvenile is either found guilty or pleads guilty, the proceeding moves to the dispositional phase. At that time, the court will impose a sentence which may range from community supervision to commitment to JRA.

A DCFS social worker may have information that may be relevant to the offender proceeding regarding the juvenile's social history or previous services provided to the

juvenile. This information may or may not be relevant to disposition of the offender proceeding. In most circumstances, the DCFS record will not relate to the commission of the juvenile offense and RCW 13.50.050 would not apply to the DCFS record, although it does apply to permit the JPC to share information with the Department. Instead, RCW 13.50.100 applies to the DCFS record. RCW 13.50.100(3) provides that all records may be shared with the court, prosecuting attorney and defense attorney. Thus, the Department is authorized to provide to the court any relevant information regarding the juvenile contained in its records that would be helpful to the court in determining the appropriate action to be taken.

The Department Obtaining Information/Records from JPC, Prosecuting Attorney or Defense Counsel: RCW 13.50.050 governs records relating to the commission of juvenile offenses. Under RCW 13.50.050(4), information retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that participant is assigned the responsibility for supervising the juvenile. The court, the Department, prosecuting attorney and defense attorney fall within the definition of juvenile justice or care agency. Thus, they are authorized to share information with the DCFS social worker regarding the juvenile when the Department is assigned the responsibility to supervise the juvenile (e.g., the juvenile is a dependent child).

Releasing Department Records to the Juvenile and/or the Juvenile's Parents: RCW 13.50.100(7) specifically addresses the information to be released to the juvenile, his or her parents and their respective attorneys. These afore mentioned individuals "shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile." There are exceptions. If the agency determines that the release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents, the agency may withhold the information subject to an order of the court. Also, if the juvenile has voluntarily obtained services and has a legal right to these services without parental consent, then the information or record may not be disclosed to the juvenile's parents without the juvenile's consent unless authorized by law. A juvenile has the right to seek both inpatient and outpatient mental health services at the age of 13 without the parent's consent. A juvenile has the right to seek chemical dependency treatment at the age of 13 without parental consent. A juvenile has the right to seek reproductive care at the age of 14 without parental consent. If these services were voluntarily sought by the juvenile, these records regarding this treatment may not be disclosed.

Releasing Department Records Regarding the Parent: With respect to releasing information about a parent contained in the DSHS record to the juvenile, RCW 13.50.100 permits the disclosure of this information to the extent it "pertains to the juvenile." Additionally, under case law if the service was court ordered and the order provides for the sharing of information, the information may be shared. Otherwise, there does not appear to be a statutory right to this otherwise confidential information and the

information may not be disclosed absent a court order or a signed written authorization to release information signed by the parent.

Deletions from the Record: The identity of individuals making allegations of abuse or neglect may be kept confidential. RCW 13.50.100(7)(c). Additionally, the Department deletes the names, addresses and other personal information about foster parents, social security numbers and attorney-client communication (ie, communication between a DCFS social worker and assistant attorney general) under statutes specifically protecting attorney-client communication, and protecting personal and private information from disclosure.

Summary: In summary, in an offender proceeding involving a dependent youth, RCW 13.50.100 permits the Department to share information regarding the juvenile contained in the DCFS record (with the exceptions noted above) with the court and the JPC so long as they are either investigating the juvenile or assigned the responsibility to supervise the juvenile. The juvenile's attorney may also have access to all information contained in the DCFS file (with the exceptions noted above) regarding the juvenile unless the release of the information would cause severe psychological or physical harm to the juvenile or the juvenile's parents. In either an offender or a dependency proceeding, the JPC, prosecuting attorney, and defense attorney are authorized to share information with the Department regarding a dependent child or a child whom the Department is assigned the responsibility of supervising.

5. What type of information must be provided in a discovery request?

RCW Chapter 13.50 is the exclusive means by which child welfare records may be disclosed. When a discovery request is made, there is pending litigation. If the discovery request is made in a dependency or termination case, RCW 13.34.090, the dependency statute requires disclosure pursuant to RCW 13.50.100. The juvenile and his or her parents, or their attorneys, are entitled to the DSHS file regarding the juvenile with the exceptions noted above (release would cause severe psychological or physical harm or the juvenile voluntarily obtained the services to which he/she has a right without parental consent). Parents are entitled to a copy of their own records. When one parent is requesting the other parent's record, the record would be released under most circumstances, to the extent that it pertains to the child. However, if the record includes mental health or drug/alcohol evaluation or treatment information and this evaluation or treatment was not court ordered as part of the dependency action, this information should not be released without first consulting with the assigned assistant attorney general. Additionally, the names and identities of confidential referents and foster parents, social security numbers and attorney-client communication are not discoverable. The child's guardian ad litem also has a right to the information in the DCFS file under RCW 13.34.105.

If the requestor through the discovery request (usually a request for production of documents or a subpoena duces tecum), is not the parent or child's attorney, the DSHS record is not subject to discovery, except in limited circumstances. The DCFS social

worker who receives such a discovery request should immediately contact their local Attorney General's Office. Remember, generally a child welfare record is confidential, except with respect to certain limited situations. Sharing with another juvenile justice or care agency is an exception to confidentiality.

6. If DCFS provides confidential treatment information to others, how far does this information go? What are the expectations of privacy with respect to information provided to the court?

Under RCW 13.50.100(5), any records or information disclosed by the Department that are confidential or privileged under federal or state law shall be maintained by the recipient in a manner consistent with those laws and the recipient must protect against unauthorized disclosure. Thus, those who receive confidential information from the Department are expected to use the information for legitimate purposes and not further disseminate the information.

If the information provided by the Department in a juvenile offender proceeding is filed in the official court file, it may then be accessed by the public, unless sealed. RCW 13.50.050(2). RCW 13.50.050(11) – (24) contains provisions for the sealing and destruction of juvenile offender records. If the court grants this request, the documents sealed cannot be disclosed to anyone, other than a party to the case, without first obtaining the court's permission.

Department records that are not filed in the official court file, but retained by the JPC remain confidential pursuant to RCW 13.50.050(3) and may only be released only to other participants in the juvenile justice or care system pursuant to RCW 13.50.050 or .100.

Juvenile dependency court files (the legal files) are confidential and the general public does not have access to these files. RCW 13.50.100(2). Thus, if the DCFS social worker files documents in the legal file, they are accessible only by the parties to the dependency proceeding. Dependency hearings are now open to the public, so while a non-party may hear the information presented in court, they would not be able to obtain a copy of documents filed or presented to the court. RCW 13.34.115.