

Confidentiality and Release of Information

	DIVISION OF CHILD AND FAMILY SERVICES Juvenile Justice Services STATEWIDE POLICY
SUBJECT:	Confidentiality and Release of Information
POLICY NUMBER:	DCFS/JJS 300.11
EFFECTIVE DATE:	October 4, 2021
APPROVED BY:	Kathryn Roose, Deputy Administrator – Division of Child and Family Services
DATE:	9/27/2021
SUPERSEDES:	Confidentiality and Release of Juvenile Justice Information effective July 1, 2017
APPROVED BY:	Ross Armstrong, Administrator – Division of Child and Family Services
DATE:	9/27/2021
REFERENCES:	NRS 62H.025; NRS 62B.212; NAC 62B.085; NRS 432B; 42 CFR Part 2; 45 CFR Part 160; Family Educational Rights and Privacy Act (FERPA); ACA: 4-JCF-4C-31; Prison Rape Elimination Act (DCFS/JJS 300.09)
ATTACHMENTS:	Attachment A: Authorization for Release of Confidential Information Form

I. SUMMARY

The Division of Child and Family Services (DCFS) classifies all juvenile justice information as confidential and may only be released in accordance with the provisions of NRS 62H.025 or as expressly authorized by other federal or state law.

II. PURPOSE

To outline the process for confidentiality and release of information for youth under state supervision.

III. DEFINITIONS

- A. 42 CFR Part 2: The part of the Code of Federal Regulations under the Public Health chapter which deals with the confidentiality of alcohol and drug abuse patient records. Specialists, organizations, or units of organizations who provide substance abuse diagnosis, treatment, or referrals for treatment are usually covered by these regulations.
- B. Confidential/Privileged Information: Juvenile justice information subject to specific limitations on its disclosure. Such information must be specifically labeled, handled, and stored in such a way as to guard against accidental or unauthorized disclosure.

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- C. Consent to release information: A written authorization to release specific juvenile justice information to a specific individual or agency pursuant to applicable laws, regulations, and policy by an authorized individual.
- D. Director of Juvenile Services: The county Chief Probation Officer, county director of juvenile services, or the county director of the department of juvenile justice services.
- E. FERPA: Refers to the federal Family Educational Rights and Privacy Act which governs the access to and release of educational records by federally funded schools.
- F. Gender Identity: A person's internal sense of being male or female, regardless of their sex assigned at birth.
- G. Gender nonconforming (GNC): A person whose appearance or manner does not conform to traditional societal gender expectations.
- H. Health Insurance Portability and Accountability Act (HIPAA): Refers to the federal Health Insurance Portability and Accountability Act of 1996, together with regulations promulgated by the United State Department of Health and Human Services (HHS), available at 45 CFR Part 160. These regulations establish federal standards for the privacy and security of "protected health information" (PHI), including mental health information.
- I. Intersex: A person whose sexual or reproductive anatomy or chromosomal pattern does not fit typical definitions of male or female as determined by medical examination or review of medical records. Intersex medical conditions are sometimes referred to as disorders of sexual development. Note: this term is preferred by advocates and intersex people over the term disorders of sex development (DSD) because the term "disorder" is stigmatizing.
- J. Juvenile Justice Agency: Nevada Division of Child & Family Services, Juvenile Justice Services (DCFS/JJS) or a county director of juvenile services.
- K. Juvenile Justice Information: Any information directly related to a child in need of supervision, a delinquent child, or any other child who is otherwise subject to the jurisdiction of a juvenile court.
- L. LGBTI: Acronym for lesbian, gay, bisexual, transgender, questioning, and intersex. This acronym can be inclusive of other recognized classifications of sexual orientation, gender identity, or gender expression.
- M. Prison Rape Elimination Act (PREA): A federal law supporting the prevention, detection, and response to sexual abuse and sexual harassment within facilities. This law applies to all DCFS state facilities.

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N. ROI: Release of Information.

O. Transgender: A person whose gender identity is different from the person's biological sex assigned at birth. *This may include non-binary youth who do not identify with any one gender.*

IV. RELEASE OF JUVENILE JUSTICE INFORMATION

A. To ensure the safety, permanent placement, rehabilitation, educational success, and well-being of a child or the safety of the public, a juvenile justice agency may only release juvenile justice information to:

1. A director of juvenile services or their designee.
2. The Chief of the Youth Parole Bureau or their designee.
3. The Chief Parole and Probation Officer or their designee.
4. The Director of the Department of Corrections or their designee.
5. A district attorney or their designee.
6. An attorney representing a child.
7. The director, chief, or sheriff of a state or local law enforcement agency or their designee.
8. The director of a state or local agency which administers juvenile justice or their designee.
9. A director of a state or local facility for the detention of children or regional facility for the treatment and rehabilitation of children or their designee.
10. The director of an agency which provides child welfare services or their designee.
11. The director of an agency which provides mental health services or their designee.
12. A guardian ad litem or court appointed special advocate who represents a child.
13. A parent or guardian of a child.
14. The child to whom the juvenile justice information pertains if the child has reached the age of majority, or a person who presents a release signed by the child who has reached the age of majority, and which specifies the juvenile justice information to be released and the purpose for the release.
15. A law enforcement agency in the course of a criminal investigation, a delinquency proceeding conducted pursuant to the provisions of this title or a situation involving a child who is subject to the jurisdiction of a juvenile court and who poses a threat to themselves or to the safety or well-being of others.
16. A school district, if the juvenile justice agency and the school district have entered into a written agreement to share juvenile justice information and data from an educational record of a child maintained by the school district for the purpose consistent with the purpose of 62H.025.
17. A person or organization who has entered into a written agreement with the juvenile justice agency to provide assessments or juvenile justice services.
18. A person engaged in bona fide research which may be used to improve juvenile justice services or secure additional funding for juvenile justice services if the juvenile justice information is provided in the aggregate and without any personal identifying information.

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19. A person who is authorized by a court order to receive the juvenile justice information, if the juvenile justice agency was provided with notice and opportunity to be heard before the issuance of the order.

- B. The most common reasons for sharing juvenile justice information across government agencies is for custody (dual eligible youth), court proceedings, treatment services, placements, education services, and re-entry into the community. Information may be shared with government entities via secure methods, for these reasons, through informal requests such as email, phone calls, or during Child and Family Team (CFT) meetings. These releases do not require an Authorization for Release of Confidential Information Form (Attachment A). The following can be released:
 - a. School transcriptions, IEP's, and education information
 - b. Case Plans
 - c. Placement information
 - d. YLS PDF reports
 - e. Addresses, phone numbers, and names of the youth and family members
 - f. Services and providers of services
 - g. Progress towards goals in the eight (8) domains of the YLS as applicable to the youth

- C. Parents, guardians, youth, and attorneys representing the youth do not require an Authorization for Release of Confidential Information Form (Attachment A) but shall identify the information they are specifically requesting.

- D. Denial of Information Requests
 1. A juvenile justice agency may deny a request for juvenile justice information if:
 - a. The request does not, in accordance with the purpose of 62H.025, demonstrate good cause for the release of the information.
 - b. The release of the information would cause material harm to the child or would prejudice any court proceeding to which the child is subject.
 2. Prior to any denial, a designated DCFS staff person shall seek assistance from the Deputy Attorney General to ensure a denial of the request is appropriate.
 3. A denial pursuant to this subsection must be made in writing to the person requesting the information not later than five business days after receipt of the request.

- E. Information provided pursuant to 62H.025 may not be used to deny a child access to any service for which the child would otherwise be eligible, including, without limitation:
 1. Educational services
 2. Social services
 3. Mental health services
 4. Medical services
 5. Legal services

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- F. Except as otherwise provided, any person who is provided with juvenile justice information pursuant to 62H.025 and this policy, and who further disseminates the information or makes the information public, is guilty of a gross misdemeanor. This does not apply to:
 - 1. A district attorney who uses the information solely for the purpose of initiating legal proceedings; or
 - 2. A person or organization described in section IV. A., who provides a report concerning juvenile justice information to a court or other party pursuant to 62H.025 or chapter 432B of NRS (Protection of Child from Abuse and Neglect).
- G. Release of juvenile justice information to an agency or individual not listed in NRS 62H.025, this policy, or as required by other federal or state regulations, shall require a Release of Information (ROI) from the youth who is 18 years of age or older or from the parent/guardian of the youth if under the age of 18. The ROI (Attachment A) shall comply with all applicable provisions for the release of the juvenile justice information.
- H. Child & Family Team (CFT) members not listed in NRS 62H.025 or this policy shall require an ROI to have access to juvenile justice information.
- I. An ROI is not required for a medical emergency which presents a clear or imminent danger to the youth or others.
- J. As required by PREA, “Medical and mental health practitioners shall obtain informed consent from residents before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the resident is under the age of 18.”
- K. An ROI is not required when making a mandated report of Child Abuse and Neglect (NRS 32B.220).
- L. Consistent with the requirements of 62H.025 and this policy, an ROI is not required for a qualified individual or organization requiring access to youth records for the purpose of program evaluation.
- M. Staff shall assist youth or the legally responsible person with the completion of an ROI (Attachment A), as necessary.
- N. All DCFS/JJS staff shall be trained on the requirements of 62H.025 and this policy.
- O. The Superintendent and Chief of the Youth Parole Bureau shall designate a team member as Coordinator of Juvenile Justice Information and Records for their respective units to ensure compliance with this policy.
- P. The designated team member may seek assistance from the Deputy Attorney General if there are questions regarding the release of information.

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V. CONFIDENTIALITY AND RELEASE OF ALCOHOL AND DRUG ABUSE RECORDS, PROTECTED HEALTH INFORMATION AND EDUCATIONAL RECORDS.

- A. Federal law and regulations provide for specific confidentiality protections and procedures for the release of information pertaining to alcohol and drug abuse records (42 CFR Part2), protected health information (HIPAA), and educational records (FERPA). Issues related to these program areas should be referred to the appropriate substance abuse, medical/mental health, or education staff/treatment provider to ensure compliance with these federal requirements. Additionally, any alcohol or drug abuse records released in accordance with this paragraph must have the following non-disclosure statement (see Attachment A): “I understand that my records are protected under federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows: (specification of the date, event, or condition upon which it expires).”

VI. CONFIDENTIALITY OF YOUTH AND FAMILY INFORMATION

- A. Family information shall be treated as juvenile justice information and maintained as confidential and only released pursuant to the provisions of NRS 62H.025 and this policy.
- B. Transgender and intersex youth may choose to go by their chosen name which is in line with their gender identity in lieu of their legal name. Their legal name shall be kept confidential unless it must be released for the purposes identified in this policy.
1. Facility and parole staff shall maintain a youth’s gender identity or sexual orientation confidential to the extent of the youth’s wishes.
 2. The chosen name of the youth shall be the name entered in the data management system.

VII. STANDARD OPERATING PROCEDURE

- A. Each facility and the Youth Parole Bureau shall develop a Standard Operating Procedure (SOP) for this policy, including:
1. Identification of the team member to be Coordinator of Juvenile Justice Information and Records.
 2. Staff member responsible for ensuring ROIs are completed, as necessary.
 3. Process for medical and mental health staff to obtain consent from parent/guardian
 4. Process to assist youth with completion of ROI
 5. Training on the requirements of 62H.025 and DCFS/JJS 300.11