

## Who has a Right to Know What about Youth in Care?:

### Confidentiality and Information Sharing

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1

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## Handling information about youth in care can feel like a tug of war



2

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I need it!  
Sharing information helps youth!!

I can't give it because...!  
Honoring privacy helps youth!

3

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## Legal Requirements to Obtain and Disclose


Including:

- Placing agencies must maintain education, health, mental health records for children in foster care. (42 U.S.C. 671, 675; W.I.C. 16010)
- Placing agencies must share health and education information with certain individuals, including caretakers and courts. (42 U.S.C. 622, 675; W.I.C. 208, 16010, 16010.5, 16501.1)



4

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## Legal Requirements to Protect Privacy

- Disclosures are controlled by state and federal laws and regulations that protect the confidentiality and limit disclosure of certain information.
- More than a dozen federal and state laws may impact disclosure of records related to youth.



5

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## Balancing Confidentiality and Access



6

## Confidentiality Law – The scale

Protection of personally identifiable information about which individuals (and their families) have an expectation of privacy

### Federal and State statutes establish:

- When, what and to whom information **must not** be disclosed
- When, what and to whom **must** be disclosed
- When, what and to whom **may** be disclosed

**MUST NOT**  
Disclose

**MAY** Disclose or Keep  
Confidential

**MUST** Disclose

7

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## Confidentiality vs. Sharing: Where does the balance tip?

Many factors may shape how much is and is not shared including:

- Ethical and Professional Practice Standards
- Relationships and Trust
- Ideas of what is “appropriate”
- Having the necessary protocols and tools in place



8

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## Today's Agenda

Who has a right to know what? The laws:

1. Education
2. Health and Mental Health
3. Juvenile case files

Case Study: Bringing it all together

1. Child and Family Team
2. Court Report
3. Criminal Law
4. Placements



*Briefing Series from Judicial Council's  
Center for Families, Children & the  
Courts*

**Sharing Information for Children in  
Foster Care:**

- Education Information
- Health Information
- Mental Health Information
- Substance Use Information
- Juvenile Case Files

*Second edition expected in 2020*

**Judicial Council of  
California's Center for  
Families, Children &  
the Courts**

*Briefing series on Information  
Sharing:*

**SHARING HEALTH  
INFORMATION FOR  
CHILDREN IN FOSTER CARE**

JUDICIAL COUNCIL  
OF CALIFORNIA  
OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS

## And because we are lawyers.....

1. This is legal information, not legal advice.
2. Individuals should consult their own counsel for advice on application of these law to their specific situation.
3. This is not a comprehensive review of all applicable laws.
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11

## Sharing Education Information in Juvenile Dependency

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## EDUCATION CONFIDENTIALITY LAWS

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- Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g)
- Education Code (*Educ. Code 49060 et seq.*)



13

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## FERPA: Who must comply?

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### Educational agencies and institutions:

- Any public or private agency or institution which is the recipient of funds administered by the Sec. of Education under any applicable program if the agency provides educational services or instruction to students, or the agency is authorized to direct and control schools.

*20 U.S.C. 1232g(a)(3), 34 C.F.R. 99.1*

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14

## FERPA: What info is protected?

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### Education Record:

Records, files, recordings, other documents, which:

- Contain information directly related to a student; and
- Are maintained by an educational agency or institution or by a person acting for such agency or institution

*20 U.S.C. 1232g(a)(4)(A); 34 C.F.R. 99.3, 99.8*

## FERPA: General Rule

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- Generally, FERPA prohibits educational agencies from releasing any personally identifiable information (PII) in the education record without written consent. *20 U.S.C. 1232g(b)(1), 34 C.F.R. 99.30*
- A written consent must include certain elements to be valid. *20 U.S.C. 1232g(b)(2), 34 C.F.R. 99.30*
- There are exceptions.



## FERPA : Consent to Release

### Who must sign a release for PII?

- “Parent” for students under 18 years old
- “Student” if student is 18 or older, including non-minor dependent 18 and older.



*20 U.S.C. 1232g(b)(1),(d); 34 C.F.R. 99.30, 99.3*

## FERPA: Exceptions that allow disclosure without signed authorization

Some exceptions in FERPA **allow** or **require** education agencies to release PII without need of signed release. *20 U.S.C. 1232g(b), 34 C.F.R. 99.31. Examples:*

- ❖ Legitimate educational interests
- ❖ Directory information
- ❖ Parents exception
- ❖ Juvenile Justice exception
- ❖ Child Welfare exception
- ❖ Research exception
- ❖ Child Abuse Reporting exception
- ❖ Court Order exception
- ❖ School transfer
- ❖ Others

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## Who may access education records?

### May access if:

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1. Signed FERPA-compliant consent to release form authorizes the disclosure.



2. Court order requires the release.



3. Or...

Access for:

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## Parents, caregivers and educational representatives?

### Thought question: Antonio part 1

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Carlos is the foster caregiver for his nephew, Antonio, 9 years old. Carlos asks the school for a copy of Antonio's most recent grades and teacher reports. The school tells Carlos that they cannot give him anything until they get a court order or a signed release form from Antonio's parent.

**May Carlos get the information without such a form or order?**

**May Antonio's parents still sign a form?**



## FERPA Exception: “Parent” access

Generally, upon request, “**parents**” must be allowed to review and inspect records about their student under age 18.

### Who is a parent?

FERPA says that parent for this purpose “includes a **natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.**” *34 C.F.R. 99.3, see Educ. Code 49061*

### **BUT:**

What does local district policy say?

What do court orders or legal documents say?

## Caregiver access clarified

### **Who?**

- Foster family agency with jurisdiction over a currently enrolled or former pupil,
- STRTP staff responsible for the education or case management of a pupil, and
- Caregiver who has direct responsibility for the care of the pupil

### **What?**

The current or most recent records of grades, transcripts, attendance, discipline, and online communication on platforms established by schools for pupils and parents, and any 504 or IEP maintained by schools for students under their care

### **Why?**

For purposes of monitoring the student’s educational progress, updating and maintaining education records and ensuring the student has access to educational services, supports, and activities.

*Educ. Code 49069.3.*

## Thought question: Antonio part 2

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Antonio's caseworker asks for a copy of Antonio's most recent grades and teacher reports.



**May the school share information with Antonio's caseworker?**

Access for:

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**Child welfare?**

## FERPA Exception: Child Welfare

- May disclose to an agency caseworker or other representative of a state or local child welfare or tribal agency who has the right to access a student's case plan when such agency or organization is legally responsible for the care and protection of the student
- Agency cannot re-disclose records or personally identifiable information, except to an individual or entity engaged in addressing the student's education needs and authorized by the agency to receive such disclosure, and disclosure is consistent with state law. *20 U.S.C. 1232g(b)(1)(L), Educ. Code 49076(a)(1)(N).*

Access for:

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**Other schools?**

## FERPA Exception: School to school

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Educational agencies may share PII in the education record with the officials of another school or school system if:

1. The student seeks to enroll there, or
2. The student is already enrolled there, as long as disclosure is for purposes of enrollment or transfer

*20 USC 1232g(b)(1)(B), Educ. Code 49069.5*

## FERPA: Re-disclosure limitations

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In most cases, an educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without prior consent.

The educational agency must inform the third party receiving the education record regarding this limitation.

**If the U.S. DOE determines that a third party improperly re-disclosed information, the educational agency may not allow that third party access to PII for at least five years.**

*20 U.S.C. 1232a(b)(4)(B), 34 C.F.R. 99.33, Educ. Code 49076(a)(3)*

Access for: \_\_\_\_\_

**Multidisciplinary teams?  
Child and Family teams?**

Access for: \_\_\_\_\_

**No special exceptions in FERPA  
authorize disclosure to  
multidisciplinary teams or child and  
family teams.**



# Sharing Health Information in Juvenile Dependency

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## **CONFIDENTIALITY: Information flow?**

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Medical and Mental Health Records may be found in:

- Court Case File
- Child Welfare Department File
- School File
- Medical Provider Files
- Probation File

**Different confidentiality and disclosure laws depending on the source file in question.**

## Confidentiality and Privilege

Two independent legal barriers may limit a health care provider or clinic's ability to share medical/mental health information:

- Confidentiality Statutes
- Provider-Patient Privilege



35

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## HEALTH CONFIDENTIALITY LAWS

- Health Insurance Portability and Accountability Act (HIPAA) *45 C.F.R. Parts 160, 164*
- California Confidentiality of Medical Information Act (CMIA) *Civ. Code 56.05 et al.*
- Other laws and regulations may apply in addition to or in lieu of HIPAA and state medical confidentiality law. (e.g. federal drug treatment, Title X, HIV)



36

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## HIPAA and CMIA: General Rules

- Health care providers must protect the confidentiality of personal health information.
- Providers must have a signed “authorization” in order to share protected health information.
- Some exceptions in confidentiality law allow or require disclosure of records absent signed release.

*45 C.F.R. 164.502, 164.508; Civ. Code 56.10*



37

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## HIPAA and CMIA: Authorizations

### Who signs the authorization?

- **Non-minor dependent** signs for self.
- The **minor** must sign if records relate to services that minor consented to or could have consented to.



*45 C.F.R. 164.502, 164.508; Civ. Code 56.11, Health & Saf. Code 124260*

38

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## MINOR CONSENT: Which services may minors consent to?

CALIFORNIA MINOR CONSENT AND CONFIDENTIALITY LAWS*		
MINORS OF ANY AGE MAY CONSENT	LAW/DETAILS	MAY/MUST THE HEALTH CARE PROVIDER INFORM A PARENT ABOUT THIS CARE OR DISCLOSE RELATED MEDICAL INFORMATION TO THEM?
<b>PREGNANCY</b>	"A minor may consent to medical care related to the prevention or treatment of pregnancy," except sterilization. (Fam. Code § 6925).	The health care provider is not permitted to inform a parent or legal guardian without the minor's consent. The provider can only share the minor's medical information with them with a signed authorization from the minor. (Health & Saf. Code §§ 123110(a), 123115(a)(1); Civ. Code §§ 56.10, 56.11).
<b>CONTRACEPTION</b>	A minor may receive birth control without parental consent. (Fam. Code § 6925).	
<b>ABORTION</b>	A minor may consent to an abortion without parental consent. (Fam. Code § 6925; <i>American Academy of Pediatrics v. Lungren</i> , 16 Cal.4 <sup>th</sup> 307 (1997)).	The health care provider is not permitted to inform a parent or legal guardian without the minor's consent. The provider can only share the minor's medical information with them with a signed authorization from the minor. ( <i>American Academy of Pediatrics v. Lungren</i> , 16 Cal.4 <sup>th</sup> 307 (1997); Health & Safety Code §§ 123110(a), 123115(a)(1); Civ. Code §§ 56.10, 56.11).
<b>SEXUAL ASSAULT<sup>1</sup> SERVICES</b>	"A minor who [may] have been sexually assaulted may consent to medical care related to the diagnosis, treatment and the collection of medical evidence with regard to the ...assault." (Fam. Code § 6928).	The health care provider must attempt to contact the minor's parent/guardian and note in the minor's record the day and time of the attempted contact and whether it was successful. This provision does not apply if the treating professional reasonably believes that the parent/guardian committed the assault. (Fam. Code § 6928).
<b>RAPE<sup>2</sup> SERVICES FOR MINORS UNDER 12 YRS<sup>3</sup></b>	A minor under 12 years of age who may have been raped "may consent to medical care related to the diagnosis, ... treatment and the collection of medical evidence with regard" to the rape. (Fam. Code § 6928).	Both rape and sexual assault of a minor are considered child abuse under California law and mandated reporters, including health providers, must report it as such. Providers cannot disclose to parents that they have made this report without the adolescent's authorization. However, adolescent patients should be advised that the child abuse authorities investigating the report may disclose to parents that a report was made. (See Pen. Code §§ 11165.1, 11165.6, 11166, 11167.)

See [www.TeenHealthLaw.org](http://www.TeenHealthLaw.org) for all minor consent laws

## HIPAA and CMIA: Authorizations

### Who signs the authorization?

If not minor consent, in all other cases:

- CMIA says the minor's "legal representative" must sign.



45 C.F.R. 164.502, 164.508; Civ. Code 56.11, Health & Saf. Code 124260

## HIPAA and CMIA: Authorizations

### What should the form look like?

Specific requirements under each law.  
For example:

- CMIA requires **14 point font**.
- HIPAA requires several notices of rights.

Make sure your forms include the required elements and notices!

*45 C.F.R. 164.508; Civ. Code 56.11*

The image shows a sample Medical Authorization Form. It includes fields for Patient Information (Name, Address, City, State, Zip, Date of Birth, Sex, Race, Ethnicity, Language, Telephone, Fax, Email, and Other), Provider Information (Name, Address, City, State, Zip, Date of Birth, Sex, Race, Ethnicity, Language, Telephone, Fax, Email, and Other), and Authorization Information (Type of Information to be Released, Purpose of Release, Date of Release, and Signature of Patient/Proxy). The form is titled "MEDICAL AUTHORIZATION FORM" and has a header section for Patient Information.

41

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## HIPAA and CMIA: Exceptions that allow disclosure absent signed authorization

Some exceptions to confidentiality allow providers to release medical information even in absence of signed release. Examples:

- Sharing for Payment Purposes
- Treatment exception
- Care Coordination exception
- Emergency exception
- Child Abuse Reporting exception
- Court Order/Subpoena exception
- Other

*45 C.F.R. 164.502; Civ. Code 56.10*

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42

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## Who may access health records?

### May access if:

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1. Signed HIPAA and CMIA compliant authorization to release form authorizes the disclosure.
2. Court order requires release of health records.
3. Or...



Access for:

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**Parents, caregivers and case workers?**

## Thought Exercise: Kyla Part 1

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Kyla, 15, has asthma and is seen frequently at her community health clinic. She is placed in her grandmother's home in another county after removal by child welfare. Kyla's grandmother brings her to a clinic for an initial screen.

**May the clinic share the information with bio mom?**

**May the clinic share information with grandmother?**

**May the clinic share information with the child welfare worker?**

## EXCEPTION: PARENT ACCESS

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### GENERAL RULE:

Parent has right to access records regarding services to their children, unless minor consented to or could have consented to the services.

### EXCEPTION:

- Provider can refuse parent access where the health care provider determines that access to the patient records requested by the parent/guardian would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being.

*Health & Saf. Code 123115*

## Exception: Discretion to release to social worker, probation officer, person legally authorized to have custody

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- Provider may disclose medical information to a county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor.

### Limits:

- Exception: May not disclose either psychotherapy notes or information related to minor consent treatment
- Limits on further use of this information, limit on use for other purposes.
- Discretionary. Provider may decide whether or not to disclose.

*Civ. Code 56.103*



## Thought Exercise: Kyla part two

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Kyla's new pediatrician reaches out to her former clinic and asks to speak to her prior provider to better understand Kyla's asthma history.

**May the two pediatricians discuss Kyla's case?**



Access for:

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**Other health care providers?**

## Exception: Discretion to release to other health and mental health providers

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Providers may share information with “providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient”, all but psychotherapy notes.

*Civ. Code 56.10(c)(1)*

51

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## Case Example: Kyla part three

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Kyla’s hearing is approaching. Kyla’s attorney asks to see her medical records.

**May the attorney see Kyla’s record?**



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52

Access for:

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**The attorney?**

## **Exception: Must release to dependency attorney if requested**

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### **Dependency Attorney Exception:**

The minor's dependency attorney has "access to all records with regard to the child maintained by a health care facility..., health care providers, a physician and surgeon or other health practitioner..."

*W.I.C. 317(f)*

## Case Example: Kyla part three

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Kyla's hearing is approaching. The agency invites the pediatrician to participate in a Child and Family Team.

- May the health provider disclose information
- as part of a Child and Family Team?



Access for:

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**The Child and Family Team?**

Access for:

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## The Child and Family Team?

**No specific exceptions in HIPAA or CMIA for this purpose.**

## Health professional participation on a Child and Family Team?

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- Health provider who is member of team may receive information from other members.  
*WIC 832(a)(1)*
- Must share pursuant to valid court order and privilege is addressed
- May disclose if compliant written authorization form authorizes and privilege is addressed.
- Any request to dependent to sign authorization shall note their right to consult attorney before signing.
- Section 832 requires CFT to obtain appropriate authorizations to release information to team members. *WIC 832 (c)*
- Once authorization is in place, relevant information and records may be shared with members of the team; however, if the team determines that the disclosure of information would present a reasonable risk of a significant adverse or detrimental effect on the child's or youth's psychological or physical safety, the information shall not be released.  
*WIC 832 (c)*

*WIC 832 / AB 1068 (2019)*

## Child and Family Team

### Limits on use of information disclosed during a Child and Family Team:

- Information exchanged shall be received in confidence for limited purpose of CFT and shall not be further disclosed, except to court, subject to applicable privilege and confidentiality.
- Disclosure of otherwise privileged information is not a waiver of privilege.
- Information disclosed shall be deemed private and protected from discovery.
- All discussions during team meetings are confidential unless disclosure is required by law.
- Testimony concerning any team meeting discussion is not admissible in any criminal or civil proceeding.

*W.I.C. 832 (a)(d)(f)(g)/ AB 1068 (2019)*

## Case Example: Kyla part three

Kyla's hearing is approaching. The case worker has a signed release from the bio parent authorizing the agency to receive records for purposes of coordinating care.

- **May the caseworker put Kyla's health information into the court report?**



## CONFIDENTIALITY AND PRIVILEGE

Statutory exceptions to confidentiality law may allow or require health care providers to share medical information with child welfare workers, probation, and court, but

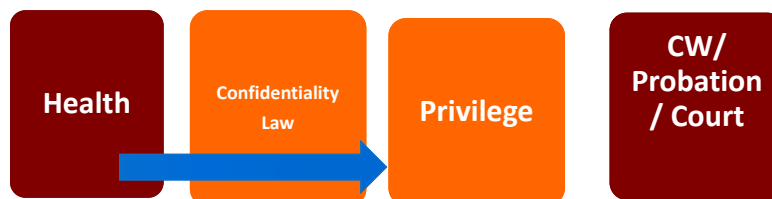
Providers ability to disclose still may be limited by the **psychotherapist-patient** or **physician-patient** privilege



61

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### Confidentiality and Privilege: When does the Evidence Code come into play?



62

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Access for:

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## Substance use treatment records?

## Case Example: Kyla part four

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Kyla's mother entered a substance use treatment program after Kyla was removed from her custody.

**May the substance use treatment program share information with the child welfare worker in preparation for the next hearing?**





## Special protection for most substance abuse treatment records

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**Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act 42 C.F.R. Part 2**

CAAPTR restricts the disclosure and use of patient identifying information about individuals in substance abuse treatment

**Strict limits on disclosure absent written authorization from patient or specialized court order**

Strict limits on re-disclosure

Doesn't apply to records from every agency

65

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## Sharing Mental Health Information in Juvenile Dependency

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## Clinical Considerations in Honoring Children's Privacy

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- Developmental considerations
  - Teens are striving for individuation and autonomy
- Access to care considerations
  - Youth who forego care name lack of confidentiality as the most significant reason
- Disclosure considerations
  - Assurances of confidentiality enhances youth's willingness to discuss sensitive issues

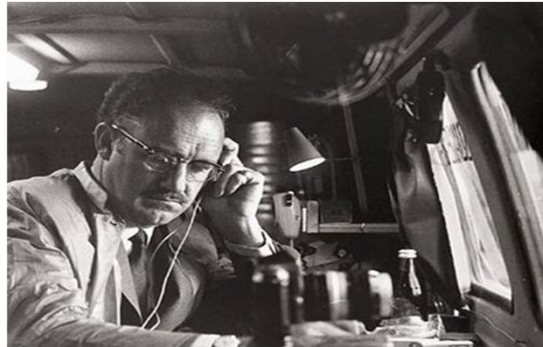
## Sexual Abuse Victims

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- Child sexual abuse is a "syndrome of secrecy for the child." Tilman Furniss, *The Multi-professional Handbook of Child Sexual Abuse* (Routledge 1991) at 22
  - Sexual abuse warps or destroys the child's sense of trust, autonomy and personal boundaries.
- Treatment may not be effective where:
  - Secrets are broadcast and trust is violated.
  - The child is unable to experience autonomy or feel in control of personal boundaries.

## Who is listening to *The Conversation*?

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69

## Mental Health Information

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Two independent legal barriers may limit disclosure and re-disclosure of mental health information:

- Confidentiality Statutes
- Provider-Patient Privilege



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70

## Mental Health Confidentiality

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- **HIPAA**
- **CMIA**
- ***The California Lanterman-Petris-Short Act (LPS) WIC 5328 et seq.***



## Mental Health: General Rule

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- Generally, HIPAA, LPS and CMIA require signed authorization or court order before a provider may release information to child welfare, probation or courts for unrestricted use.
- May require minor's signature if minor is 12 or older.
- Some exceptions authorize or require providers to disclose for specific purposes, even absent signed release or court order.

## HIPAA, CMIA, LPS: Authorizations

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### Who signs the authorization?

#### If not minor consent, in all other cases:

- CMIA says the minor's "**legal representative**" must sign.
- LPS says the minor's "**parent, guardian, guardian *ad litem*, or conservator**" must sign.



*45 C.F.R. 164.502, 164.508; Civ. Code 56.11, Health & Saf. Code 124260, WIC 5328*

73

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## Parent Signature

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If a child has been removed from a parent or guardian's custody under WIC 300, a parent cannot sign a release of information for that child absent a court order that it would not be detrimental to the child.

*Civ. Code 56.106, WIC 5328.03.*

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74

## Thought Exercise: Max part 1

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Max, 11, is made a dependent and placed with a resource family. He is receiving ongoing mental health therapy. Max's resource family asks the therapist for some information on Max's progress so that they can better address his needs. His father also asks to see the therapy records.

**May caregiver access the information?**

**May father access the information?**



Access for:

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**Parents, caregivers and case workers?**

## Disclosure to Parents after Removal

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If a child has been removed from a parent or guardian's custody under WIC 300, a therapist cannot release confidential mental health information to that parent absent a court order that it would not be detrimental to the child.

*H&S Code 123116*

## Exception: Discretion to release to social worker, probation officer, person legally authorized to have custody

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- Provider may disclose mental health information to a county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor.

### Limits:

- Exception: May not disclose either psychotherapy notes or information related to minor consent treatment
- Limits on further use of this information, limit on use for other purposes.
- Discretionary. Provider may decide whether or not to disclose.

*Civ. Code 56.103, WIC 5328.04*

## Case Example: Max part two

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Max's hearing is approaching. The agency invites the therapist to participate in a Child and Family Team.

- May the health provider disclose information
- as part of a Child and Family Team?



Access for:

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**The Child and Family Team?**



## Case Example: Max part three

Max's hearing is approaching. The case worker has a signed release from the bio parent authorizing the agency to receive records for purposes of coordinating care.

- May the caseworker put Max's detailed mental health information into the court report?



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81

## CONFIDENTIALITY AND PRIVILEGE

Statutory exceptions to confidentiality law may allow or require health care providers to share medical information with child welfare workers, probation, and court, but

Providers ability to disclose still may be limited by the **psychotherapist-patient** or **physician-patient** privilege



82

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## Physician-Patient and Psychotherapist-Patient Privilege

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- The privilege protects confidential communications between the child and therapist and details of therapy. (*Evid 1012, 1014*)
- While patient holds the privilege, providers are required to raise the privilege on behalf of their clients – unless the client says otherwise. *Evid 1015*
- Dependent child holds privilege, if capable of informed consent
  - Presumed capable at age 12 yrs. *WIC sec. 317(f)*
  - Belongs to the client, not the professional. *Daniel C.H.*

The privilege stands without an affirmative need for the child or the child's attorney to openly assert it.

See also *Evid. Code 992, 994, 995*

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## Confidential Communications

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Confidential communication between patient and psychotherapist means information, including information obtained by an examination of the patient, transmitted between a patient and his psychotherapist in the course of that relationship, and in confidence, by a means which, so far as the patient is aware, discloses the information to no third parties other than those who are present to further the interest of the patient in consultation, or those to whom disclosure is reasonably necessary for the transmission of the information **or the accomplishment of the purpose for which the psychotherapist is consulted**, and includes a diagnosis made and the advice given by the psychotherapist on the course of that relationship.

*Evid. Code 1014*

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84

## Physician-Patient and Psychotherapist-Patient Privilege

Courts have held that counseling in the context of dependency and delinquency proceedings serves a dual purpose:

- Treatment
- Disclosure of information from which reasoned recommendations and decisions regarding the child's welfare can be made.

See *In re Pedro M.*, 81 C.A.4th 550, *In re Kristine W.*, 94 C.A.4th 521, *In re Mark L.* 94 Cal. App. 4th 573  
But see *People v. Gonzales* (2013) 56 Cal. 4th 353, 375 fn. 6

Thus, the privilege does not preclude a therapist from giving **circumscribed information** to accomplish the **information-gathering goal** of therapy.

## Exceptions to Evidentiary Privilege

Include but not limited to:

- Patient dangerous to self or other
- Court ordered Psych. Evaluations
- Patient-litigant exception

An NMD does not waive privilege under patient-litigant exception by submitting a Category 5 letter.

*N.S. v. Sup. Court*, 7 C.A. 5th 713

# Sharing Information from Juvenile Case File

ALYSSA SKOLNICK, LOS ANGELES COUNTY COUNSEL

## What Is A Juvenile Case File?

(Welf. & Inst. Code § 827)

### Juvenile case law is defined differently by:

- Statute – *WIC 10850.4(K)(3)*
- Case Law – *In re Tiffany G. (1994) 29 Cal. App. 4<sup>th</sup> 443, City of S.D. v Superior Court, 136 Cal. App. 3d 236 (1981)*
- Rules of Court – *ROC 5.552(a)*

## How Does WIC 827 Protect A Juvenile Case File?

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- It **restricts access** to juvenile case files, documents contained therein, and information relating to those documents.
  - Who is entitled to access, who can inspect, who can copy?
  
- It **restricts the type of information** released.
  - Do other laws protect information in the file?
  
- It **restricts the use** of the information relating to those files and documents.
  - What can be done with the information released?

## Thought Question: Family lawyer

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Family Law Attorney Donaldson is representing mother in a dependency action. Mother has several other children who have been prior dependents. The attorney would like to obtain the case history to prepare for the initial hearing.

**How does Attorney Donaldson obtain access to the records? What records is the attorney entitled to?**

## Parties Entitled to Inspect & Copy Child Welfare Agency (CWA) Files (WIC § 827.10)

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- Judge, commissioner, other hearing officer assigned to the family law or probate case
- Parent of legal guardian of the minor
- An attorney for a party to the family law or probate case
- A family court mediator
- A court-appointed investigator
- Counsel appointed for the minor in family law case

## What's The Difference Between Inspecting & Copying?

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### ▪What does it mean to inspect a juvenile case file?

- What is the definition?
  - **California Public Records Inspection Act** – The right to inspect and the right to copy public records may be coextensive. (*See Rosenthal v. Hansen* (1973) 34 Cal. App. 3d 754, 759 (1973).)
  - **WIC § 827** – The right to inspect juvenile records “does not include the automatic right to copy documents in the file.” (*In re Gina S.* (2005) 133 Cal.App.4th 1074, 1082; *see also* 85 Ops.Cal.Atty.Gen. 194 (2002) [right granted in section 827 to inspect file does not include authority to copy without first obtaining a court order].)
- How do you inspect an electronic court file?
- What is your local practice/definition? (e.g. Los Angeles County Superior Court Local Rule 7.2(a)(3))

### ▪What does it mean to copy?

- Is oral communication the same as making copies of a document?

### ▪What is your county's local practice?

## Thought Question: Subpoena

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A family law attorney would like to obtain child welfare records to use in the family law case. She issues a subpoena to CPS to obtain the records.

**Who determines who is entitled to access to the records? Can the records be obtained by a subpoena?**

## Judicial Authority

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Unless statutorily designated as a party entitled to inspect or copy the juvenile case file, the Juvenile Court has **exclusive authority** to determine whether the records may be released AND the extent to which juvenile case records can be disclosed.

*(In re Elijah S. (2005) 125 Cal.App.4th 1532.)*



## Juvenile Case Files May Not Be Obtained By a Subpoena

- Juvenile case records “cannot be obtained by a subpoena.” (*Lorenzo P. v. Superior Court* (1988) 197 Cal.App.3d 607, 611.
- California Rules of Court, Rule 5.552(b)(4) states that “juvenile case files may not be obtained or inspected by civil or criminal subpoena.”
- May not sign a release to authorize inspection/copying of juvenile records.
- What if the juvenile case file is sealed? How can it be obtained?

## How Non-Entitled Parties Access Records: File Form JV-570

The image shows Form JV-570, 'Request for Disclosure of Juvenile Case File'. Red boxes and arrows highlight several critical requirements:

- Item 1:** 'Your name' and 'Relationship to child of case' must be filled out.
- Item 2:** 'Name of child of interest' must be provided.
- Item 3:** 'Child's date of birth of interest' must be provided.
- Item 4:** A petition regarding the child in Item 3 has been filed under Welfare and Institutions Code section 802 or 803, and the date of filing is provided.
- Item 5:** 'Reasons for this request are:' must be detailed, including case number, court case pending, juvenile court case pending, or other reasons.
- Item 6:** 'I want the records because:' must be detailed, including reasons for another court case.
- Item 7:** A declaration under penalty of perjury is required.

Additional annotations include: 'Must file with JV-571-575 & JV-578', 'Must provide a copy of this form to the Custodian of Records of the county child welfare agency', 'If at all in nature and address of the court to inform you are making the request', 'Item 2 REQUIRED - Full name of children whose records are being sought', 'Item 3 REQUIRED - Provide the name, address and telephone number of the person requesting records', 'Always must provide the number', 'Provide state of birth or state (do not know)', 'State without cases or state "do not know"', 'Item 5 REQUIRED - State in detail the reasons you are requesting the records and why the records are relevant to your request. If you need these records for another court case, you must complete item 6 and 7, stating the reasons, allegations or dispute in the other case that the child's records will be used to address.', and 'Item 7 REQUIRED - State in detail the reasons you are requesting the records for another court case, include the court, case number and future hearing date.'

<https://www.courts.ca.gov/formnumber.htm>  
Must file with JV-571-575 & JV-578



## Thought Question: Sensitive information

A CASA has requested access to the juvenile case records. The juvenile case records contain information related to education, medical treatment, and psychiatric records. Is the CASA entitled to all of these records?

**Do some records have extra layers of protection?**

## WIC § 827: Limits On Access To Information

### **Limit on disclosure of information that is confidential or privileged:**

If information in a juvenile case file “is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof...shall prevail.”

(Welf. & Inst. § 827(a)(3)(A); Cal. Rules Court 5.552(h))

## Other Layers of Protection: Confidential Information

### California Constitution Art. 1

#### Medical and Mental Health Records

- Health Insurance Portability and Accountability Act (HIPAA)
- Confidentiality of Medical Information Act (CMIA)
- Lanterman-Petris-Short Act (LPS)
- Evidence Code section 900 et seq.

#### Education Records

- Family Educational Rights and Privacy Act (FERPA)
- California Education Code section 49075

#### Substance Abuse Treatment Records

- Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act (CAAPTR)
- Health and Safety Code section 11845.5

#### Child Abuse Reports and Mandated Reporters

- Penal Code section 11167.5

#### Personal Identification

- California Vehicle Code

## Confidential Information → Redact

You may receive redacted records.



## What If Petitioner Wants Information In the Juvenile Case File That Has An Extra Layer Of Protection ?

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“Unless a person is... [entitled to inspect or receive copies of records under 827] and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, **shall petition the juvenile court.**”

### FILE A JV-570

(Welf. & Inst. § 827(a)(3)(A); see Cal. Rules Court 5.552(h))

## Thought Question: Sensitive Information

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Family law attorney wants access to original child abuse reports in Child Welfare Agency custody that led to initial investigation of attorney's client.

**Does family law attorney get to inspect or receive copies of this particular information?**

## Confidentiality of Child Abuse Reports & Mandated Reporters

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**Child Abuse Reports:**

Penal Code 11167.5 strictly limits disclosure of reports of suspected abuse and the information contained in the report.

**Child Abuse Reporter (Mandated Reporter)**

Reports made by a reporter to a child protection agency per PC § 11167(d)(1) may be **disclosed only** to limited list of individuals or pursuant to a court order.

**The name of the reporting party may not be further disclosed.**

**Family law and probate attorneys are not on this list.**

### Thought Question: Release mandated reporter to family attorney?

827?

- Family law attorney is entitled to inspect the child welfare agency file

Is there information in the file protected by other confidentiality laws?

- Mandated reports of abuse protected by Penal 11167.5



Applying the law

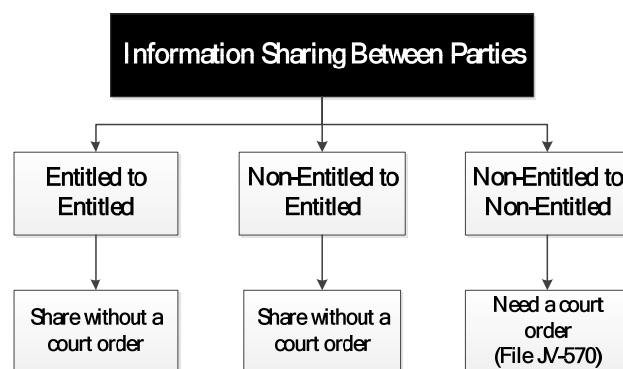
- Not allowed access to abuse report. Must redact absent court order

## Thought Question: Redisclosure

A social worker receives confidential case information. The Foster Family Agency (FFA) case worker is asking for access to that information. Can the social worker share with the FFA?

**Once an entitled party receives the records what can they do with it?**

## The Use: Redislosure Under WIC § 827



Access for:

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## Caregivers?

## Disclosure to Caregivers under 827

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Generally, the **caregiver may obtain** from the [Child Welfare Agency](#)

- School records and information that are part of the health and education summary  
(WIC § 16010(a) & (c) & 42 USCS 675(1)(C) & (5)(D))
- Medical records and information that are a part of the health summary or related to treatment  
(WIC §§ 16010(a) & (c), 16010.5 & 42 USCS 675(1)(C) & (5)(D))
- Court information: Visitation with parents & siblings; name, phone, fax, and email of assigned CSW/SCSW, child's attorney, and CASA; child's needs and services; copy of birth certificate, etc. (WIC § 16010.4(e))

Consistent with state and federal law, information shall be provided to a caregiver regarding the child's or youth's educational, medical, dental and mental health history and current needs. WIC 827.11

## Disclosure to De Facto Parents

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De Facto parents are not automatically entitled to copies of social worker's report or other documents.

De Facto parents receive their discovery through WIC § 827 and should be limited to that which is relevant to the issues the de facto parent is involved.

Must file a **JV-570**.

Seiser & Kumli, § 2.109[15]

*In re Damion B.* (2011) 202 Cal.App.4th 880

*In re B.F.* (2010) 190 Cal.App.4th 811

*In re Matthew P.* (1999) 71 Cal.App.4th 841



Access for:

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**Federal officials?**

## Thought Exercise: ICE

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An ICE Agent contacts a social worker. The ICE agent wants to know the immigration status of a certain youth? The ICE Agent also wants to know the status of the mother and father and their address?

**Can this information be shared with the ICE Agent?**

## Disclosure to Federal Officials WIC 831

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Federal agencies/officials must file a JV-570. May not obtain records without a court order, including information such as:

- Name of the minor
- Date or place of birth
- Immigration status (maintained by the court, child welfare agency, probation, and/or law enforcement agency)



Access for:

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## Child and Family Team?

## Disclosure to Child and Family Team Meeting

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Section 832 of the Welfare and Institutions Code addresses sharing of information and records among members of a 16501 "child and family team."

Section 832 requires the child and family team to obtain the appropriate authorizations to release information to team members and states that once such authorizations are in place, "relevant information and records may be shared with members of the team." (See Welf. & Inst. Code, § 832(b, c).)

May disclose information from juvenile case file to members of CFT except if the agency files or records, or any portions thereof, are privileged or confidential, pursuant to any other state law, except Section 827, or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the child welfare agency files or records, or any portions thereof, shall prevail.

## Updates to Child and Family Team Meeting AB 1068 – Effective 1/1/2020

- Requires a **youth's court-appointed educational rights holder (ERH) be invited to a Child and Family Team (CFT) meeting** if a placement change is being discussed.
- Requires the CFT, in consultation with the foster care educational liaison, to determine an appropriate transportation plan for the child when the ERH determines that remaining in, or returning to, the **child's school of origin is in the child's best interest**.
- If the county has produced a **summary report or an action plan** of the child and family team meeting for use by the team members, a copy of that report or action plan with any necessary redactions made may be **attached to the court report** that is prepared pursuant to Section 358.1.
- The State Department of Social Services shall, by July 1, 2021, **issue written instructions** to counties that describe all protections provided by statute for the confidentiality of mental health, reproductive and sexual health, and minor drug treatment information concerning minors and nonminor dependents for whom a child and family team meeting is held.
- Upon the scheduling of a child and family team meeting, **a notification shall be provided to the child or youth, their parent or guardian, and the caregiver**.
- The occurrence of the child and family team meeting shall be **documented in the court report** that is prepared pursuant to Section 358.1 or 366.1.

Access for:

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**Criminal Defendant?**

## Brady and Criminal hearings

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- Defendants may have a right to certain information in a juvenile case file pursuant to the Due Process clause of the Fourteenth Amendment and Confrontation clause of the Sixth Amendment to the U.S. Constitution.
- CONTRAST: Victim's privacy rights under Cal. *Constitution Article I section 28(b)*

## 827: Law enforcement exceptions

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Several exceptions allow or require disclosure regarding juveniles who have been taken into custody and/or found to have committed certain crimes.

*See e.g. WIC 827.2, 827.5, 827.7, 827.9, 828*

## Non-minor dependent (NMD) Files

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WIC § 362.5 created special rules regarding the records for an NMD. Access is **limited** to the following:

- Court personnel
- The DA ONLY if the NMD is also a delinquent ward
- The NMD
- The NMD's attorney
- Judges and other hearing officers actively participating in juvenile proceedings involving the NMD
- DCFS and Probation
- CDSS
- County Counsel
- Certain personnel of the State Department of Social Services

**NOTE:** NMD's parent(s) and attorney **may** only access file if still receiving family reunification services.

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## PUTTING LAW INTO PRACTICE

### The Smith-Brown Family

## Background

Theresa Smith and Robert Brown have been married for six years. They have a blended family:

Theresa has two children: Emily S., 14, and Sarah S., age 12. Robert has Chris B., 17, and Theresa and Robert are both parents to Daniel B., 5. Emily reported to her teacher that her stepfather had been molesting her since she was 12. She explained that she is reporting it now because her sister is about to turn 12 and she is worried for her.

CWS investigates. They perform a sexual assault forensic exam on Emily and then Sarah and conduct multidisciplinary interviews with all the children. The exams were consistent with sexual abuse. All children were taken into custody and placed in foster care. All the children receive initial medical exams. Emily and Sarah are offered an STI screen during this exam. Both agree and they discover that Emily has asymptomatic Chlamydia.

Separate dependency petitions are filed on behalf of each child. A jurisdiction-disposition report is filed that includes the police report, a summary of the interviews of all children, statements from the mother, stepfather and biological parents of each child.

In the meantime, Christopher is arrested for assault of another teen and placed in a diversion program. Christopher already has a sealed juvenile record. Mr. Brown was arrested for sexual abuse of Emily and criminal charges initiated.

## Section one - Emily's Child and Family Team

As part of their initial evaluations, CWS established that 14 year-old Emily has had behavior issues since she was twelve and has been receiving individual therapy from a therapist who works at her school. Theresa also shared with CWS that she has been receiving services from a substance use outpatient treatment program for the last two months. Emily is provided a CANS assessment through the Department of Mental Health.

The agency begins the process of pulling together a Child and Family Team (CFT) for Emily. They invite her mother, the therapist with whom Emily has been working since age 12, a child welfare representative, and her teacher. Theresa asks that a support person from her substance use program be able to attend with her.

***Who should be at the CFT?***

***Is anyone missing?***

***How do we encourage participation?***

***Any concerns about someone coming to the table?***

## CFT continued

---

At the initial CFT meeting, the therapist is asked to share Emily's prior diagnosis, the services she currently is receiving and a recommendation for future needs. The team also wants to review the CANS assessment results and medical file to determine how best to meet her immediate and longer term needs.

***What steps need to take place before any of the following participants receive or share information in this meeting:***

- \* The therapist
- \* The caseworker
- \* The bio mother, Theresa
- \* The medical provider
- \* The substance use program support person
- \* The teacher

## CFT continued

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***Balancing confidentiality and the need to share information:***

- If you are Emily, what are your concerns related to confidentiality and disclosure entering the CFT?
- If you are Emily's attorney, what are your concerns for her entering the CFT with you present?
- If you are the caseworker, what are your concerns?
- If you are mother, what are your concerns?
- If you are the therapist or medical provider, what are your concerns?

## CFT continued

*Once information is disclosed at a meeting, what are the participants' obligations to keep it confidential?*

*What strategies must or could they adopt to ensure the appropriate balance of information is disclosed?*

### Questions to Ponder:

What if a CFT participant won't sign the confidentiality forms?

What if the child does not want someone present in the CFT?

What if parent brings a lawyer to the CFT?

What if it is discovered that someone in the CFT has disclosed confidential information to outside sources?

## Section two - Court Report

The J/D hearing is approaching. The case worker has a case plan, informed by recommendations from the CFT. The file also includes the youth's identified gender and sexual orientation. Now the case worker must develop the court report. The case worker includes the following in the court report:

- CANS assessment
- Letter from mental health evaluator with diagnosis and treatment recommendations, including possible need for substance use disorder treatment for Emily and continued services for bio mother
- School records showing that Emily had some behavior issues starting at age 12
- Placement recommendations from the CFT, which include recommendation for STRTP placement
- Emily's identified gender and sexual orientation
- Health and Education passport, which includes current medication list, including Emily's diagnosis with STI and antibiotics prescribed to treat the STI
- Information on Emily's siblings

***What information is the case worker required to put in the court report?***

## Court Report continued

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When Emily's attorney sees the court report, the attorney immediately exerts privilege related to the medical and mental health records, including CANS assessment and asks the court to recall the report and have this information redacted.

*What are the next steps for the court? How should the court rule?*

*What are best practices for child welfare sharing information with caregivers and providers in CWS/CMS, court reports and the HEP while also honoring concerns about privacy?*

## Court Report continued

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### Questions to Ponder:

- What if County Counsel discovers confidential information that should be redacted from the report?
- What if the Judge requests information that a party does not want disclosed, such as reproductive health information?
- What if a reporter wants to be present in the courtroom for an article they are writing about foster care practices?



## Section three - Criminal Case

In the meantime, the criminal case against Robert is proceeding. Robert's criminal defense attorney wants access to stepchild Emily's dependency records for use in Robert's criminal case. He files an 827 petition with the juvenile court. Robert's criminal defense counsel would like to see Emily's medical records, mental health records, school records, social worker contact notes and any records pertaining to any acts of moral turpitude, prior or subsequent sexual activity, drug use and mental instability.

- *What, if anything, should he be provided?*
- *Would there be any restrictions on the release or use of records from Emily's case?*
- *May Theresa, Emily's bio mom, obtain the dependency file? May Theresa share the requested information with Robert's defense attorney?*
- *May Theresa sign a release for Emily's mental health and medical records asking that Emily's providers disclose information for use in the criminal proceedings?*

## Criminal Case continued

Robert's criminal defense attorney also wants access to his bio son Chris's sealed juvenile record. He believes that mental health records in that file may contain exculpatory evidence he can use to refute the sexual abuse charges. He files a subpoena with the juvenile court demanding access to the records.

***Is this the appropriate mechanism? Do they have a right to an in camera review? How should the court proceed?***

At the same time, the criminal defense attorney issues a subpoena to the treatment center for the substance use records of Theresa and a separate subpoena to Chris's former therapist for Chris's mental health records.

***Does Robert have a right to these records?***

***How should the providers respond to the subpoenas?***

## Criminal Case Continued

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### Questions to Ponder:

What if the DA wants to use juvenile case records in the criminal hearing? What is the process? Is a protective order needed?

What if a reporter is present in the courtroom?

What if Emily does not want her STI disclosed?

## Section four - Sibling Placements

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Emily's younger brother and sister, Daniel and Sarah, have been placed with their maternal grandparents. The court has ordered that both receive weekly therapy. Sarah is having difficulty sleeping with the light off. During her initial evaluations, the therapist identified that Sarah was abused by Robert at night, in the dark. Grandparents have asked the therapist what they can do to help Sarah sleep.

- *What information might the grandparents need to address the children's needs? How does the agency ensure the grandparents have the information they need to address these needs?*
- *Do grandparents have a right to information in the child welfare file?*
- *Do grandparents have a right to information directly from the therapist?*
- *What information is the therapist entitled to from the court file?*

## Sibling Placements continued

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Daniel's school calls and advised the Grandparents an IEP meeting has been scheduled.

***Can the grandparents attend the IEP? Who holds the educational rights?***

A CASA is appointed for Daniel and Sarah. The CASA requests access to the children's medical, education, and mental health records. The CASA notifies the school that she will be present at the IEP meeting.

- ***What records is the CASA entitled to?***
- ***Can the CASA attend educational meetings?***
- ***Does the CASA have the right to make educational decisions for the children?***

## Sibling Placements continued

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**Questions to Ponder:**

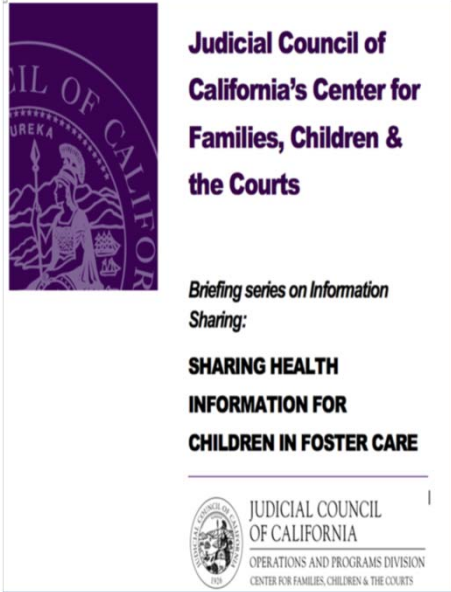
- **Who holds the educational rights?**
- **What if the grandparents are deemed to be De Facto parents?**
- **What if the grandparents file a 388 petition to change a court order, does that entitle them to more access to records, or does it change nothing?**

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**Confidentiality and Information Sharing**

Rebecca Gudeman, National Center for Youth Law  
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136

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