

Who has a Right to Know What about Youth in Care? Confidentiality and Information Sharing Beyond the Bench 2019

Case Study:

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.

Part 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.

1. *Who should be at the CFT? Is anyone missing? How do we encourage participation? Any concerns about someone coming to the table?*

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.

2. *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

3. *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?

4. *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?

Part 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

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

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.

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

3. *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?*

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?

Part three – Criminal Case

In the meantime, the criminal case against Robert is proceeding. Robert B'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 B'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.

- 1. What, if anything, should he be provided?**
- 2. Would there be any restrictions on the release or use of records from Emily's case?**
- 3. May Theresa S., Emily's bio mom, obtain the dependency file? May Theresa share the requested information with Robert's defense attorney?**
- 4. 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?**

Robert B'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.

- 1. 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.

- 1. Does Robert have a right to these records?**
- 2. How should the providers respond to the subpoenas?**

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?

Part four – Sibling placements

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.

- 1. 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?**
- 2. Do grandparents have a right to information in the child welfare file?**
- 3. Do grandparents have a right to information directly from the therapist?**
- 4. What information is the therapist entitled to from the court file?**

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

- 1. 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.

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

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?