



## Who Can Access a Delinquency or Undisciplined Juvenile Court Record?

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**Categories :** [Uncategorized](#)

**Tagged as :** [7B-3000](#), [confidential records](#), [Juvenile Code](#), [juvenile records](#)

**Date :** April 23, 2019

I have had the pleasure of working here at the School of Government for eight months now. In that time I have gotten some interesting questions about North Carolina's delinquency laws. Most often, those questions relate to the confidentiality of juvenile court records. When I first read the statute – [G.S. 7B-3000](#) – I thought it was an open and shut case. Unless you are on the list of people allowed access without a court order, access can only be allowed pursuant to a court order. But then the questions started to come in. Who exactly is the juvenile's attorney under this statute? Can any prosecutor access juvenile records any time? Can a federal court order disclosure of a North Carolina juvenile record? On what basis can courts order release of juvenile records? It turns out that it's not open and shut at all. Here is what I have learned so far.

### Basic Statutory Structure

G.S. 7B-3000 governs the confidentiality of juvenile court records in delinquency and undisciplined cases. It tasks the clerk with maintaining a complete juvenile record that includes the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, and any written motions, orders, or papers filed in the proceeding. G.S. 7B-3000(a). This record can only be examined pursuant to a court order or by any of these listed people:

- The juvenile or the juvenile's attorney;
- The juvenile's parent, guardian, or custodian, or the authorized representative of that person;
- The prosecutor;
- Court counselors; and
- Probation officers (only for the purpose of assessing risk related to supervision if the juvenile is now under adult probation supervision for an offense committed under the age of 25 and was adjudicated for a felony as a juvenile). G.S. 7B-3000(b).

Prosecutors are allowed to share information from a juvenile record with magistrates and law enforcement officers, but magistrates and law enforcement officers are not allowed to photocopy any part of the juvenile record. In addition, courts can direct the clerk to seal any portion of a juvenile record. G.S. 7B-3000(c). Any sealed portion of a juvenile record can only be made available pursuant to a court order that specifically authorizes inspection or copying.

### Who is the juvenile's attorney?

Many of the questions I have received center on attorneys who are representing people who have delinquency records but are not the attorney of record in the actual delinquency proceeding. For example, is an attorney who is representing a juvenile at a school suspension hearing the juvenile's attorney under this statute? What about an attorney representing someone who has a juvenile record and is now the defendant in a capital case?

Subchapter II of Chapter 7B does not define the meaning of the juvenile's attorney and there is no case law that provides a definition. There is one case that addresses a juvenile's absolute right to review his or her DSS record that

may shed some light on this question. In [In re J.L., 199 N.C.App. 605 \(2009\)](#), the North Carolina Court of Appeals held that the trial court abused its discretion in its failure to allow the juvenile to examine his DSS record in the context of a delinquency proceeding.

This holding was based on [G.S. 7B-2901\(b\)](#), the statute that, much like the delinquency court record confidentiality statute, allows only a limited list of people to access a DSS record without a court order. The juvenile is one of the people allowed access without need for a court order. G.S. 7B-2901(b) lists the guardian ad litem, not the juvenile's attorney, as another person who can access the DSS record without a court order. The juvenile in a DSS proceeding is represented by a guardian ad litem whereas the juvenile is represented by an attorney in a delinquency proceeding.

In this decision, the Court reasoned that because the juvenile had the absolute right to review his DSS record, his attorney in the delinquency proceeding also had that right. The court found that this right existed outside of the DSS proceeding, in a subsequent court proceeding in which the juvenile was a party and was represented by an attorney who was not involved in the DSS matter.

If this same reasoning is applied to G.S. 7B-3000, it would appear that any attorney who is representing someone who is or was the juvenile in a delinquency or undisciplined proceeding would have an absolute right to access that juvenile's record. Just as in G.S. 7B-2901(b), listing the juvenile as a person who is entitled to access his or her juvenile delinquency or undisciplined court record provides that juvenile, and anyone representing him or her, an absolute right to review his or her juvenile record. This would cover both the attorney representing the juvenile at a suspension hearing and the attorney representing the juvenile, who is now an adult, in a capital case.

This question of record access for the juvenile's attorney may also be informed by an analysis of who is considered the prosecutor under the language of G.S. 7B-3000. [G.S. 7B-1501\(23\)](#) defines prosecutor as the district attorney or an assistant district attorney. This is all the law we have to determine who the prosecutor is pursuant to G.S. 7B-3000. Several people who work in this field have told me that, in practice, district attorneys and assistant district attorneys are generally allowed access to juvenile records as they request. It stands to reason that, if the prosecutor in G.S. 7B-3000 means any district attorney or assistant district attorney at any time, then the juvenile and any attorney representing him or her have the same right to access his or her record at any time.

### **What court can order release of a juvenile record?**

Many other questions that I have received related to access to juvenile court records have not focused on the statutory list of people entitled to access, but instead revolve around the meaning of the statutory requirement for a court order for those not on that list. G.S. 7B-3000(b) clearly states that those who are not on the list of people allowed to have access to juvenile records may only examine those records "by order of the court."

The juvenile code defines "court" as the district court division of the General Court of Justice. [G.S. 7B-1501\(4\)](#). A plain reading of the statute would therefore mean that only a district court can issue an order allowing access to a juvenile record. However, the Court of Appeals held that the North Carolina Industrial Commission had the authority to issue a court order for the release of juvenile records in [Jane Doe v. Swannanoa Valley Youth Development Center, 163 N.C.App. 136 \(2004\)](#). The Court of Appeals reasoned that, as the sole arbiter of tort claims against the State and its agencies, the Commission had exclusive jurisdiction in the matter. Because there was no district court jurisdiction, the Court held that the Commission could properly issue an order compelling discovery that included demand for the names and contact information for all the juveniles who resided in a particular juvenile facility. In coming to this conclusion, the Court explicitly rejected the argument that only a district court has the authority to order release of juvenile records.

The reasoning in this decision can inform one of the questions I have received on this topic. Is a federal court order demanding release of a juvenile record binding in North Carolina? Under the *Doe* decision, one may need to consider whether that federal court had exclusive jurisdiction over the matter. If so, it would seem that the federal court would

have authority to issue a court order allowing for the release of a juvenile record.

Finally, I have also received questions regarding the basis on which a court can order release of an otherwise confidential juvenile record. That question appears to be unanswered under current law. While G.S. 7B-3000(b) clearly allows for a court to order release of an otherwise confidential juvenile record, there are no statutory criteria provided to frame factors to consider before issuing such an order. This seems to be an area ripe for thought given the strong confidentiality ethic embedded in our Juvenile Code.

### **And there is so much more...**

If you have gotten this far and you are thinking that I am missing a lot about juvenile record confidentiality, you are right. This post is focused on two discreet questions that I have repeatedly received. But, yes, there is a lot more to the law on juvenile record confidentiality, including the confidentiality of law enforcement records and the confidentiality of records housed at the Division of Adult Correction and Juvenile Justice. You can find a comprehensive discussion of these additional legal requirements in [Confidentiality in Juvenile Delinquency Proceedings](#), a 2011 bulletin authored by Janet Mason. I look forward to continuing to learn these complexities with you. Keep those questions coming!