

GUIDE ON THE DISCLOSURE OF CONFIDENTIAL INFORMATION

*FOR PROFESSIONALS IN MASSACHUSETTS
WORKING WITH CHILDREN, YOUTH AND FAMILIES*

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Contents

Introduction	1
Purpose and Principles.....	2
How to Use This Guide.....	2
What is Consent to Release Information?.....	3
Who can Consent to Release of Information about a Child?	3
Questions to Ask Yourself Before Disclosing Confidential Information	3
Disclosure of Confidential Information Quick Reference Grid	5
Department of Children and Families Information	7
When can DCF disclose information to Probation?	7
When can DCF disclose information to DYS?	7
When can DCF disclose information to a school?.....	7
When can DCF disclose information to a Juvenile Court Investigator?	8
When can DCF disclose information to Juvenile Court Clinicians?	8
When can DCF disclose information to attorneys appointed or retained for the child, parent, or legal guardian in a Care & Protection case?	8
When can DCF disclose information to attorneys appointed or retained in a Child Requiring Assistance (CRA) case?	8
When can DCF disclose information to a child's delinquency attorney or young adult's criminal defense attorney?.....	8
When can DCF disclose information to a GAL or CASA?	8
When can DCF disclose information to Probate and Family Court Probation Officers?	8
When can DCF disclose information to attorneys appointed or retained in a Probate and Family Court proceeding?	9
When can DCF disclose information to the District Attorney's Office?	9
When can DCF disclose information to Police?	9
When can DCF personnel disclose information as part of the Community Based Juvenile Justice Programs?	9
When can DCF disclose information to service providers?	9
When can DCF disclose information to the Office of the Child Advocate (OCA)?.....	9
Probation Information	10
When can Probation personnel disclose information to DCF?	10
When can Probation personnel disclose information to DYS?.....	10
When can Probation personnel disclose information to school officials?.....	10

When can Probation personnel disclose information to Juvenile Court Investigators?.....	10
When can Probation personnel disclose information to the child's delinquency attorney?.....	10
When can Probation personnel disclose information to a GAL or CASA?	10
When can Probation personnel disclose confidential information as part of the Community Based Juvenile Justice Programs?	10
When can Probation personnel disclose information to police/criminal justice agencies?.....	11
When can Probation personnel disclose information to service providers?	11
When can Probation personnel disclose information to victims?	11
Department of Youth Services Information.....	12
When can DYS personnel disclose information to Probation Officers?.....	12
When can DYS personnel disclose information to DCF?.....	12
When can DYS personnel disclose information to school personnel?	13
When can DYS personnel disclose information to Juvenile Court Investigators?.....	13
When can DYS personnel disclose information to Juvenile Court Clinicians ?.....	13
When can DYS personnel disclose information to a child or young adult's Care and Protection or CRA attorney?	13
When can DYS personnel disclose information to a parent's attorney?	14
When can DYS personnel disclose information to a child's delinquency or young adult's criminal attorney?	14
When can DYS personnel disclose information to a GAL or CASA?	14
When can DYS personnel disclose information to Police and Prosecutors?.....	14
When can DYS personnel disclose confidential information to victims?	14
When can DYS personnel disclose confidential information as part of the Community Based Juvenile Justice Programs?.....	15
When can DYS disclose information to the Office of the Child Advocate (OCA)?	15
Department of Elementary and Secondary Education.....	16
Definitions	16
When can school personnel disclose student record information to Probation Officers?.....	18
When can school personnel disclose student record information to DCF?.....	18
When can school personnel disclose student record information to DYS?	18
When can school personnel disclose student record information to Juvenile Court Investigators?	18
When can school personnel disclose student record information to the Probate and Family Court?.....	19

When can school personnel disclose student record information to Juvenile Court Clinicians?	19
When can school personnel disclose student record information to a student's Care and Protection attorney?	19
When can school personnel disclose student record information to a student's delinquency attorney?	19
When can school personnel disclose student record information to a parent's attorney?	19
When can school personnel disclose student record information to a GAL or CASA?	19
When can school personnel disclose student record information to Police and Prosecutors?	19
When can school personnel disclose student record information to school resource officers?	20
When can school personnel disclose student record information as part of the Community Based Juvenile Justice Programs?	20
When can school personnel disclose student record information to other school officials?	20
Are there other situations where school personnel can disclose student record information without prior written consent?	20
Court Information - Juvenile Court	21
When can Juvenile Court Clinic Clinicians disclose information to Probation Officers?	21
When can Juvenile Court personnel disclose information to DCF?	21
When can Juvenile Court personnel disclose information to DYS?	21
When can Juvenile Court personnel disclose information to schools?	21
When can Juvenile Court personnel disclose information to Juvenile Court Investigators?	21
When can Juvenile Court personnel disclose information to the attorney for a child or young adult?	22
When can Juvenile Court personnel disclose information to the attorney for a parent?	22
When can Juvenile Court personnel disclose information to a GAL or CASA?	22
When can Juvenile Court personnel disclose information to Police and Prosecutors?	22
When can Juvenile Court personnel disclose information to the Office of the Child Advocate?	22
Court Information - Probate and Family Court	23
When can court personnel disclose information to DCF?	23
When can court personnel disclose information to Juvenile Court Investigators?	23
When can court personnel disclose information to an attorney for a child or young adult?	24
When can court personnel disclose information to a parent's attorney?	24
When can court personnel disclose information to a GAL or CASA?	24
When can court personnel disclose information to the Office of the Child Advocate?	24
Health Care Information	25

Health Care Providers.....	25
Federal Confidentiality Law: HIPAA.....	25
State Confidentiality Laws	25
Heightened Duty of Confidentiality.....	26
Mental Health Treatment Information: Confidentiality Rules.....	26
Mental Health Treatment Information: Evidentiary Privileges.....	26
Substance Use Disorder Treatment Information.....	27
Other Information Subject to “Heightened” Protections: Genetic information, HIV and Venereal Test results	27
Authorized Representatives and Special Considerations Regarding Consent for Minor Patients..	27
When can a health care provider disclose information to DCF?	28
When can a health care provider disclose information to DYS?	29
When can a health care provider disclose information to school personnel?.....	29
When can a health care provider disclose information to the court or probation?.....	30
When can a health care provider disclose information to attorneys for parents or children? ...	30
When can a health care provider disclose information to Court Investigators?.....	30
When can a health care provider disclose information to Police or Prosecutors?	31
Police and Prosecutor’s Information.....	32
When can Police/Prosecutors disclose information to DCF?.....	32
When can Police/Prosecutors disclose information to Probation?	32
When can Police/Prosecutors disclose information to DYS?	32
When can Police/Prosecutors disclose information to schools?	32
When can Police/Prosecutors disclose information to the Community Based Juvenile Justice programs?	32
When can Police/Prosecutors disclose information to Juvenile Court Investigators?	32
When can Police/Prosecutors disclose information to a child's or young adult's Care and Protection or CRA attorney?	33
When can Police/Prosecutors disclose information to a child's delinquency attorney?.....	33
When can Police/Prosecutors disclose information to a parent's attorney?.....	33
When can Police/Prosecutors disclose information to a GAL or CASA?.....	33
When can Police/Prosecutors disclose information to victims?.....	33
Attorney Information.....	34
When can an attorney for a child, young adult or parent share information with others?	34

Appendix A: Links to Laws, Regulations, Rules, Policies, and Agreements	36
Appendix B: Glossary	37
<i>Acronyms / Abbreviations</i>	<i>37</i>
<i>Massachusetts Agencies Referred to in this Guide:.....</i>	<i>38</i>
<i>Terms.....</i>	<i>39</i>
Appendix C: HIPAA Requirements for Release of General Health Information.....	42
Appendix D: Requirements for Release of Substance Use Disorder Treatment Information Under 42 CFR Part 2	43
Appendix E: Caregiver Authorization Affidavit (2 page form)	44
Appendix F: Probation Consent for Release of Confidential Information.....	47

Introduction

Children, youth, and families involved with public systems have an expectation of, need for, and right to privacy. This interest is protected by the laws, regulations, and professional responsibilities that limit the disclosure of information. Protecting the confidentiality of information belonging to children, youth and families is not only a legal and ethical obligation, it is essential to establishing trust and building relationships among families and the systems that work with and come into contact with them. The disclosure of sensitive information carries the potential of significant consequences, some unintended and harmful. Children, youth, and families have due process rights that must be preserved and protected. For these reasons, **professionals should presume that personally identifiable information is confidential.**

Agencies and individuals who work with children, youth, and families are aware that the need or desire to share information commonly arises in their work. The lawful and appropriate disclosure of information has several benefits: services may be better coordinated and provided more efficiently, duplication in assessment and service provision can be avoided, and more informed decisions can be made based on accurate and timely information. In this way, information disclosure serves to further the welfare of the child or young adult and enhance child and family well-being. However, disclosure of information can also have harmful effects: providing information about a child or family can prejudice decision makers, it could incriminate the youth or a family member, or cause embarrassment to a family and lead to distrust of agencies and agency personnel. Therefore, disclosing information should not be viewed as strictly beneficial or harmful, but rather with an appreciation of the potential positive and negative consequences.

Personally identifiable confidential information must only be disclosed or used in a manner that is consistent with applicable federal and state laws. This means that personally identifiable confidential information is disclosed and used either with the informed and voluntary authorization of the person the information relates to or someone legally authorized to consent (e.g., parent of minor), or pursuant to an explicit exception to the consent requirement under applicable federal and state laws.

Recognizing that privacy laws are often confusing and that confidentiality policies are often outdated and unclear, the Massachusetts Court Improvement Program, through the Supreme Judicial Court of the Commonwealth, sought to collaboratively develop and produce a resource guide and quick reference grid on federal and state confidentiality laws and policies addressing Child Welfare, Juvenile Court, Probate and Family Court, Juvenile Justice, Education, and treatment information. This guide is the product of the work of a dedicated cross-system group of attorneys and practitioners aiming to provide a better understanding of how and when information can be disclosed.

At the end of the document is a Glossary along with links to pertinent laws, regulations, rules and policies.

Purpose and Principles

The *purpose* of this guide is to inform a wide range of professionals working with children and families about confidentiality and privilege laws, thus promoting adherence to the law when making decisions about the disclosure of information and minimizing any unintended negative consequences.

The *principles* guiding information disclosure are as follows:

- Personally identifiable confidential information must only be disclosed in accordance with the law.
- Privacy is essential to establishing trust and building relationships among children, youth, and families and the systems that serve them.
- Due process rights must be preserved and protected.
- Before requesting confidential information, consider the purpose of your request and whether you need the information.
- When requesting consent to disclose confidential information, any consent obtained must be fully informed.
- Whenever possible, parents, youth, and children should be informed about the disclosure of their confidential information.
- Where disclosure of confidential information is allowed, but not required, it should be done for the purpose of promoting positive outcomes for children, youth, and families, and any possible unintended consequences of disclosure should be considered.

How to Use This Guide

Users of this guide are encouraged to read the introduction in its entirety and to return to the principles outlined above when considering whether or not information can and should be disclosed. Following the introduction, the guide is organized by section, with each section specific to agencies or entities that hold information. Within each section, questions are posed that represent common information sharing scenarios involving the particular agency or entity. The answers address what law and/or policy directs you to do when asked for information if you are the **holder of information**. If you are the individual or entity **requesting the information**, the answers indicate how you can anticipate the holder of information will respond to your request.

Note that there may be different limitations or requirements if the information requested originated with an entity different from the one holding the information. This is particularly relevant to entities whose records may include information obtained from other sources, such as education, mental health or substance use disorder treatment records.

When the term “**disclosure**” is used, it is referring to both the written and oral communication of confidential information. This includes phone conversations, communication at meetings, casual conversations, written records, etc. **Where a specific rule treats oral and written communications differently, this will be noted.**

This guide relies primarily on statutes, regulations, and court rules. There also may be agreements between agencies and entities allowing for the sharing of information in limited circumstances, e.g. *Memorandum of Understanding*. If you have questions about whether your request for information may fall within an information sharing agreement, contact the relevant agency or entity.

What is Consent to Release Information?

Many laws permit the disclosure of information with the written consent of the individual or someone authorized to consent for the individual. This is sometimes referred to as a “consent,” an “authorization to release,” a “release of information,” or “authorization for disclosure.” The person who signs the release must give **informed consent** for the information to be disclosed. “Informed consent” means that the person consenting to the disclosure is aware of the confidentiality of the information, the reason for the information request, and how the information will be used. An attorney should be consulted during the informed consent process to ensure the person completely understands how the information could be used.

An “authorization to disclose records” or a “release of information” is a document that legally allows the disclosure of information by agencies and individuals. Any release form should clearly identify the specific information being sought so that the holder of the information is on notice as to what should be provided. Release forms must comply with the laws related to the type of information sought. For example, medical records require a form that is compliant with federal law (HIPAA¹). The release should also state that the individual has the right to revoke the release at any time; include an indication of whether the information may be re-disclosed; and specify the period of time for which the release is valid.

Who can Consent to Release of Information about a Child?

Ordinarily, a parent, guardian or custodian can consent to the release of confidential information about their child. However, there are exceptions to this rule depending upon the type of information, the age of the child, and whether the parents and child are parties to a court proceeding. In the case of a child who is 14 or older, or who has entered the ninth grade, the child or the parent may consent to the release of the child’s education records. *603 CMR 23.02*. In some limited situations, minors can consent to their own medical treatment. If this is the case, the minor alone has the right to consent to release of information concerning that treatment. *45 C.F.R. §164.502(g)(3)*. See the Health Care Section for examples of when a minor has the right to consent to release of their information.

Questions to Ask Yourself Before Disclosing Confidential Information:

- 1. Who is asking for the information?**
- 2. What specific information is the requestor asking for?**
- 3. If a release or consent is provided, does it comply with the applicable law?**
- 4. If there is no release, do I have the authority to disclose the information being requested?**
- 5. Have I reviewed the record to make sure I am only disclosing the information requested?**
- 6. Have I redacted or removed all information that I am not authorized to release?**

¹ The Privacy Rule of the Federal Health Insurance Portability and Accountability Act. See pp. 26-28.

This guide is not a substitute for legal advice and answers only basic questions regarding confidentiality and disclosure of information. To fully understand the laws that apply, review applicable law and professional guidelines, and/or consult your supervisor or legal counsel.

Disclosure of Confidential Information Quick Reference Grid

Agency or Department	Common Requests for Records or Information	General Rules for Disclosure <i>Consult Specific Sections of the Guide or Legal Counsel for More Information</i>
Department of Children and Families (DCF)	<ul style="list-style-type: none"> • Verification of open or previously open agency case • Current worker's name & contact info • Current placement • 51A and 51B reports • Service and treatment history • Screenings and assessments • Placement and family history, reason for agency involvement • School or medical information 	<p>General Rule: Information held by DCF is confidential and is not subject to public disclosure without a signed release or court order (G.L. c. 66A).</p> <p><u>Some Limited Exceptions:</u></p> <ul style="list-style-type: none"> • When DCF is a party to a court proceeding, providing the entire file to: attorney for a party; Juvenile Court Investigator; court-appointed guardian ad litem; Probation Officer for case, subject to redactions. (110 CMR 12.09). • When DCF has custody some information about the child is available to: child's delinquency attorney (110 CMR 12.10), DYS when child is committed or detained (110 CMR 12.15 ; G.L. c. 119, §69A), service providers and school personnel (110 CMR 12.06) • DCF must provide certain serious child abuse reports to the district attorney and police (110 CMR 4.50-51; G.L. c 119, §51B(k)).
Probation	<ul style="list-style-type: none"> • Verification of open cases • Verification of past cases • Status of compliance with terms of Probation 	<p>General Rule: Probation information is not subject to public disclosure without a signed release or court order (G.L. c. 276, §100).</p> <p><u>Some Limited Exceptions:</u></p> <ul style="list-style-type: none"> • To DCF in connection with a report of suspected child abuse or neglect (G.L. c. 119; §§51A, 51B). • To DYS when a youth is committed to DYS (G. L. c. 119, §69A). • To criminal justice agencies at the discretion of the Commissioner of Probation (G.L. c. 119, §69A). • To the child's delinquency or youthful offender attorney (G.L. c. 119, §60A).
Department of Youth Services (DYS)	<ul style="list-style-type: none"> • Verification of commitment • Youth behavior during placement • Placement history • Assessments and clinical records • Educational and medical records 	<p>General Rule: Information held by DYS is confidential and not subject to public disclosure without a signed release or court order (G.L. c. 66A and G.L. c. 120, §21).</p> <p><u>Some Limited Exceptions:</u></p> <ul style="list-style-type: none"> • For ongoing police investigations. • For certain verbal communications necessary for treatment or service provision.
Public Elementary and Secondary Schools	<ul style="list-style-type: none"> • School records including attendance and grades • Disciplinary records • Individualized Education Programs and other disability related information 	<p>General Rule: Public schools are prohibited from disclosing "personally identifiable information" from a student's education record without a signed release or a court order. (20 U.S.C. 1232g; 34 CFR Part 99, 603 CMR 23).</p> <p><u>Some Limited Exceptions:</u></p> <ul style="list-style-type: none"> • To comply with a subpoena if notice is first given to the parent and/or student 18 years or older (603 CMR 23.07 (4)(b)). • To authorized school personnel providing services to a student when needed to perform their official duties (603 CMR 23.07(3)). • Information that has been designated directory information (603 CMR 23.07(4)(a)). • To DCF in connection with a report of suspected child abuse or neglect (G.L. c. 119, §§51A, 51B; 603 CMR 23.07(4)(c),(e)). • To DCF when child is in DCF custody (603 CMR 23.02). • To Probation regarding a delinquency matter (G.L. c. 119, §57; 603 CMR 23.07(4)(c)). • To DYS with respect to committed youth (G.L. c. 119, §69A; 603 CMR 23.07(4)(c)). • To school health personnel, health department personnel, and to appropriate parties in a health and safety emergency (603 CMR 23.07(4)(h),(e)).
Juvenile Court and Court Clinic	<ul style="list-style-type: none"> • Case records and reports 	<p>General Rule: Juvenile Court case records and reports are confidential and the proceedings are closed to the public (G.L. c. 119, §§38, 65).</p> <p><u>Some Limited Exceptions:</u></p> <ul style="list-style-type: none"> • The individual seeking disclosure represents a party or has been appointed on the case. • Youthful Offender records are open to public inspection (G.L. c. 119, §60A). • Pursuant to a Juvenile Court order.

Agency or Department	Common Requests for Records or Information	General Rules for Disclosure <i>Consult Specific Sections of the Confidentiality and Information Sharing Guide or Legal Counsel for More Information</i>
Probate and Family Court	<ul style="list-style-type: none"> • Case records and reports 	<p>General Rule: Probate and Family Court proceedings and records are open to the public.</p> <p>Some Limited Exceptions: The following case types are confidential and the proceedings and records are not open to the public</p> <ul style="list-style-type: none"> • Child Protection Proceedings (G.L. c. 119). • Adoptions (G. L. c. 210, §5C). • Some paternity cases (G.L. c. 209C, §13). • Some abuse prevention actions (G.L. c. 209A, §8).
Health Care Information	<ul style="list-style-type: none"> • Information held by providers about a patient’s health conditions • Information held by providers about a patient’s health care treatment 	<p>General Rule: Doctors and other health care providers are subject to federal (HIPAA) and state laws prohibiting the disclosure of Protected Health Information (PHI) without the consent of the patient or the patient’s authorized representative or without a valid court order (45 C.F.R. §§ 160, 164; G.L. c. 111, §70; G.L. c. 123, §36). If DCF has custody, information about the child can be disclosed to DCF. However, in some situations, the minor, and not the parent (or custodian), has authority to consent to the disclosure of the minor’s health information to the parent, DCF or to others.</p> <p>Some Limited Exceptions:</p> <ul style="list-style-type: none"> • To respond to a subpoena, provided prior notice is given to the patient. • To DCF, in connection with a report of suspected child abuse or neglect (G.L. c. 119, §§51A, 51B).
Mental Health Treatment Information	<ul style="list-style-type: none"> • Mental health evaluations • Current and past treatment and medication • Information from psychological evaluations 	<p>General Rule: Mental health providers are subject to federal (HIPAA) and state laws prohibiting the disclosure of information without the consent of the patient or the patient’s authorized representative or without a valid court order. If DCF has custody, information about the child can be disclosed to DCF. However, in some situations, the minor, and not the parent or custodian, has authority to consent to the disclosure of the minor’s mental health information to the parent, DCF or to others (45 C.F.R. §§160, 164; G.L. c.112, §§129A, 135A, 172, 172A).</p> <p>Some Limited Exceptions:</p> <ul style="list-style-type: none"> • To DCF, in connection with a report of suspected child abuse or neglect (G.L. c. 119, §§51A, 51B). • To seek the involuntary hospitalization of a patient (G.L.c. 112, §§129A, 135A, 172A)
Substance Use Disorder Treatment Information	<ul style="list-style-type: none"> • Information from evaluations • Current and past treatment and medication • Test results 	<p>General Rule: Federal and state laws prohibit disclosure of any information about a patient's participation in treatment for a substance use disorder without specific consent by the patient (including a patient who is a minor) or a court order (42 C.F.R. §2.31; 42 C.F.R. §§2.11, 2.12(b), (e)(i); 42 USC 290dd; G.L .c. 111B, §11).</p> <p>Some Limited Exceptions:</p> <ul style="list-style-type: none"> • Medical emergency (42 U.S.C. §290dd-2(b)(2)(A); 42 C.F.R. §2.51). • To DCF to report child abuse or neglect, but not to provide information during a child abuse investigation. (42 U.S.C. 290dd-2 (e)(2); 42 C.F.R. §2.12(c)(6)).
Police and Prosecutors	<ul style="list-style-type: none"> • Investigation reports 	<p>General Rule: Records of Police and Prosecutors (including District Attorneys and Office of the Attorney General) may be disclosed to criminal justice and social service agencies, unless there is a law limiting disclosure of such information.</p>
Attorneys	<ul style="list-style-type: none"> • Information an attorney has about their client or the case 	<p>General Rule: All information that an attorney learns while representing a client is confidential including what is learned from the client and third parties unless the client gives informed consent (Mass. R. Prof. C. 1.6).</p> <p>Some Limited Exceptions:</p> <ul style="list-style-type: none"> • An attorney may reveal confidential information to prevent death or substantial bodily harm.

Department of Children and Families Information

The mission of the Department of Children and Families (“DCF”) is to strive to protect children from abuse and neglect, and in partnership with families and communities, ensure children are able to grow and thrive in a safe and nurturing environment. The information DCF holds pertains to the families with whom DCF works. As a general rule, information held by DCF is confidential and not subject to public disclosure. This includes both documents held by DCF and information that is disclosed orally. A written authorization or court order is required for disclosure. However, there are circumstances in which statutes and regulations allow for the disclosure of information to parties in a court proceeding or when necessary to provide services to children in DCF custody. These specific circumstances are addressed below. In addition, individuals are generally able to request the DCF records pertaining to themselves.

The DCF file includes documents generated by DCF, for instance: 51A reports, 51B documents, assessments, action plans (formerly known as “service plans”), social work dictation notes, releases of information, correspondence, service referrals and foster care review reports regarding the parents and children who are the subjects of the DCF clinical case. The DCF file may also include documents obtained by DCF regarding the subjects of the clinical case, including medical, dental and educational records, evaluations, vital records, and records from service providers. Information contained in the DCF file is subject to redactions as required by policy, regulation and/or state or federal statute. Information and records disclosed by DCF remain confidential and may not be further disclosed unless the subsequent requestor is authorized to obtain the information. *110 CMR 12.06*.

When can DCF disclose information to Probation?

In all court proceedings in which DCF is a party, a copy of the DCF file of the individuals who are the subjects of the proceeding shall be disclosed upon a request in writing by the Probation Officer indicating that the Probation Officer is assigned to the case. *110 CMR 12.09*. In any court proceedings in which DCF is not a party, a signed release by the individual, parent(s) or legal guardian or a court order is necessary to allow DCF to disclose information. The signed release or court order must specify the name of the person(s) about whom information can be disclosed. *110 CMR 12.07/12.10*. In the Probate and Family Court, Standing Order 2-11 is the standard order utilized by Probation to obtain information from DCF.

When can DCF disclose information to DYS?

If a child has been committed to DYS care or custody and is in the physical custody of DYS at the time of the request, any DCF documents, records or files pertaining to the child shall be made available to DYS. *G.L. c. 119, §69A, 110 CMR 12.15*. If the child is detained by DYS rather than committed, and the child is in DCF custody, DYS may be provided with the action plan for the child and any other relevant background information, including but not limited to the child’s medical and psychiatric history. If the child is detained by DYS rather than committed, and the child is not in DCF custody, a release from the child’s parent(s) or legal guardian is required, or there must be a court order authorizing the release of information from DCF. *110 CMR 12.10*.

When can DCF disclose information to a school?

If the child is in DCF custody, DCF can disclose information to school personnel as needed to obtain services for the child from the school. As with other service providers, schools are given as much information as, in the judgment of DCF, is necessary for them to provide needed services. *110 CMR 12.06*. If the child is not in DCF custody, then a signed release from the child’s parent(s) or legal guardian is required for DCF to disclose information to the school. *110 CMR 12.10*.

When can DCF disclose information to a Juvenile Court Investigator?

When DCF is a party to a Care and Protection petition, a copy of the DCF file of the individuals who are the subjects of the proceeding shall be disclosed upon written request by the court investigator, accompanied by a copy of their appointment. *110 CMR 12.09.*

When can DCF disclose information to Juvenile Court Clinicians?

If the child is in DCF custody, DCF can disclose information about that child to the court clinician upon receiving a request in writing accompanied by a court order or signed release by the parent/guardian. *110 CMR 12.07.* If the child is not in DCF custody, then a signed release from the parent or legal guardian or a court order is required. The court order or release must specify the names of the individuals about whom information is requested. *110 CMR 12.10.*

When can DCF disclose information to attorneys appointed or retained for the child, parent, or legal guardian in a Care & Protection case?

When DCF is a party to a Care and Protection petition, the DCF file of the individuals who are the subjects of the proceeding shall be disclosed upon written request by the attorney, accompanied by a copy of the attorney's appointment, or a letter from the attorney indicating they have been retained by a party to the Care and Protection case. *110 CMR 12.09.*

When can DCF disclose information to attorneys appointed or retained in a Child Requiring Assistance (CRA) case?

If the child is in DCF custody, a copy of the DCF file shall be disclosed upon written request by the attorney in a CRA case, accompanied by a copy of the attorney's appointment. *110 CMR 12.09.* If the child is not in DCF custody, then a signed release from the parent or legal guardian or a court order, along with a copy of the attorney's appointment, is required for the attorney to get the record of their client. The court order or release must specify the names of the individuals about whom information is requested. *110 CMR 12.10.*

When can DCF disclose information to a child's delinquency attorney or young adult's criminal defense attorney?

The attorney may obtain DCF information with a court order. If the child is in DCF custody, DCF has the discretion to disclose information to the delinquency attorney for that child. For a young adult (18 years or older) in DCF care, a signed release from the young adult is required. Any additional information regarding the child's or young adult's family members requires a signed release by the parent(s) or legal guardian or a court order authorizing the release of information from DCF about those persons.

When DCF does not have custody of the child who is the subject of a delinquency proceeding, the parent(s) or legal guardian must sign a release for the child's information, or there must be a court order authorizing the release of information. *110 CMR 12.10.*

When can DCF disclose information to a GAL or CASA?

In all court proceedings in which DCF is a party, a copy of the DCF file shall be disclosed upon a request in writing by the GAL or CASA along with a copy of their appointment by the Court. *110 CMR 12.09.* In any court proceeding in which DCF is not a party, a signed release by the parent(s) or legal guardian or a court order is necessary. The release or court order must specify which person(s) about whom information can be disclosed. *110 CMR 12.10/12.07.*

When can DCF disclose information to Probate and Family Court Probation Officers?

In all court proceedings in which DCF is a party, a copy of the DCF file of the individuals who are the subjects of the proceeding shall be disclosed upon a request in writing by the Probation Officer indicating that the Probation Officer is assigned to the case. *110 CMR 12.09.* In any court proceeding in which DCF is not a party, a signed release by the parent(s)

or legal guardian or a court order is necessary. The release or court order must specify which person(s) about whom information can be disclosed. *110 CMR 12.10/12.07*. In the Probate and Family Court, Standing Order 2-11 is the standard order used by Probation to obtain information from DCF.

When can DCF disclose information to attorneys appointed or retained in a Probate and Family Court proceeding?

In Probate and Family Court proceedings in which DCF is a party, a copy of the DCF file of the individuals who are the subjects of the proceeding shall be made available upon written request, accompanied by a copy of the attorney's appointment or a letter from the attorney indicating they have been retained by a party to the proceeding. *110 CMR 12.09*. If DCF is not a party, a signed release by the parent(s) or legal guardian or a court order is necessary. The release or court order must specify which person(s) about whom information can be disclosed. *110 CMR 12.07/12.10*.

When can DCF disclose information to the District Attorney's Office?

DCF is required by law to notify and provide certain information regarding child abuse and neglect to the District Attorney. *G.L. c. 119, §51B(k) and 110 CMR 4.51*. DCF, in the discretion of the Area Director in each office, is also permitted to notify the District Attorney of other matters involving possible criminal conduct. *110 CMR 4.52*. Other information not directly relevant to the investigation or prosecution of the matter referred to the District Attorney may be disclosed with a court order or signed release from a parent or guardian. *110 CMR 4.53*.

When can DCF disclose information to Police?

DCF is required by law to notify and provide certain information regarding child abuse and neglect to the local police in the city or town where the child resides and the city or town where the abuse or neglect is believed to have occurred. *G.L. c. 119, §51B(k) and 110 CMR 4.50, 4.51*. Other information may be disclosed with a court order or signed release from a parent or guardian.

When can DCF personnel disclose information as part of the Community Based Juvenile Justice Programs?

DCF is an invited participant to the Community Based Juvenile Justice Programs (roundtables) pursuant to *G.L. c. 12, §32*. Although the CBJ statute expressly speaks to agency collaboration with the District Attorney's office, the statute does not independently authorize DCF to release confidential information beyond the limits outlined in this section.

When can DCF disclose information to service providers?

If the child is in DCF custody, DCF can disclose information to the provider which is necessary for service delivery to the child. The provider is given as much information as is, in the Department's judgment, necessary to provide needed services. *110 CMR 12.06*. If the child is not in DCF custody, a signed release from the parent(s) or legal guardian is necessary for the Department to disclose information.

When can DCF disclose information to the Office of the Child Advocate (OCA)?

The OCA has unrestricted access to all electronic records, reports, materials and employees of DCF in order to better understand the needs of children in the custody of the Commonwealth or who are receiving services from DCF. *G.L. c. 18C, §6*. Additionally, DCF is required to inform OCA of certain "critical incidents." *G.L. c. 18C, §1*. Critical incidents are defined as "(i) a fatality, near fatality or serious bodily or emotional injury of a child who is in the custody of or receiving services from an executive agency or a constituent agency; or (ii) circumstances which result in a reasonable belief that an executive agency or a constituent agency failed in its duty to protect a child and, as a result, the child was at imminent risk of, or suffered serious bodily or emotional injury or death." The OCA is bound by any limitations on the use or release of information imposed by law upon the party furnishing such information. See also, *G.L. c. 119, §51E, 110 CMR 4.35(5), 110 CMR 4.38(6), 110 CMR 4.45(2)*.

Probation Information

The Massachusetts Probation Service is at the center in the delivery of justice through investigations, community supervision of offenders/litigants, reduction in crime, dispute resolution, service to victims, and the performance of other appropriate community service functions.

There are circumstances in which statutes and regulations allow Probation to disclose information to certain agencies. There are many instances in which Probation may not share information without a court order or detailed, signed release. (See Appendix E for release of information form). Probation reserves the right in certain matters where there is an adverse interest between the parent or legal guardian and the juvenile, to require a court order instead of a signed release. In addition, victims are entitled to some information by statute.

Youthful offender cases are open for public inspection to the same extent as adult cases. Probation files are still confidential except where release is authorized. However, the name of a child shall be made public by the Probation Officer if the child is charged with a felony delinquency offense that was allegedly committed between the ages of fourteen and eighteen AND the child was previously adjudicated delinquent on felony charges on at least two occasions. See *G.L. c. 119, §60A*.

When can Probation personnel disclose information to DCF?

Probation Officers are required to report cases of suspected child abuse and neglect to DCF and to disclose to DCF upon request, any information that may be relevant to an investigation of a case of suspected abuse or neglect. *G.L. c. 119 §§ 51A and 51B*. Probation shall disclose information to DCF with a court order or a detailed, signed release from the individual (if that individual is an adult) or the parent or legal guardian (if that individual is a child).

When can Probation personnel disclose information to DYS?

Probation shall disclose to DYS “all pertinent information in their possession in respect to the case” regarding youth committed to the care or custody of DYS. *G.L. c. 119, §69A*.

When can Probation personnel disclose information to school officials?

Probation may disclose information to schools under a court order or with a detailed, signed release from the individual (if that individual is an adult) or the parent or legal guardian (if that individual is a child).

When can Probation personnel disclose information to Juvenile Court Investigators?

Probation may disclose information to Juvenile Court Investigators under a court order or with a detailed, signed release from the individual (if that individual is an adult) or the parent or legal guardian (if that individual is a child).

When can Probation personnel disclose information to the child's delinquency attorney?

Probation may disclose information to the delinquency attorney. *G.L. c. 119, §60A*.

When can Probation personnel disclose information to a GAL or CASA?

Probation may disclose information to the GAL or CASA under a court order or with a detailed, signed release from the individual (if that individual is an adult) or parent or legal guardian (if that individual is a child).

When can Probation personnel disclose confidential information as part of the Community Based Juvenile Justice Programs?

Probation is an invited participant to the Community Based Juvenile Justice Programs (roundtables) pursuant to *G.L. c. 12, §32*. Although the CBJ statute expressly speaks to agency collaboration with the District Attorney's office, the statute does not independently authorize Probation to release confidential information beyond the limits outlined in this section.

When can Probation personnel disclose information to police/criminal justice agencies?

The Commissioner of Probation is authorized to share information to local and state law enforcement and other criminal justice agencies for criminal justice purposes. The Commissioner of Probation has discretion to share information with federal government agencies. *G.L. c. 276, §100*, but *see also G.L. c. 119, §60A*. Each request is analyzed by the keeper of records. Probation may disclose CRA or Care and Protection information to police/criminal justice agencies when Probation has a court order to release the information. In addition, Probation may disclose records to the District Attorneys pursuant to court orders under Trial Court Rule IX. Probation is required to provide a copy of any notice of Probation violation and hearing to the District Attorney. *Juvenile Court Standing Order 1-17 III, IV*.

When can Probation personnel disclose information to service providers?

Probation may disclose information to service providers under a court order or with a detailed, signed release from the individual (if that individual is an adult) or the parent or legal guardian (if that individual is a child). If the court orders an individual to participate in an Intimate Partner Abuse Education Program, Probation shall provide the individual's CARI to the provider.

When can Probation personnel disclose information to victims?

Probation Officers have the obligation to confer with victims prior to the filing of the full pre-sentence report. *G.L. c. 258B, §3(n)*. If restitution is ordered as part of a case disposition, the victim is entitled to receive a copy of the schedule of restitution payments and the name and phone number of the Probation Officer or other official who is responsible for supervising the defendant's payments. *G.L. c. 258B, §3(o)*.

Department of Youth Services Information

The Department of Youth Services (DYS) serves youth committed to its care (detained) or committed to its physical custody by the juvenile courts in delinquency and youthful offender matters. DYS never has legal custody of youth. The mission of DYS is to make communities safer by improving the life outcomes for youth in its care and custody. DYS achieves its mission through investing in highly qualified staff and a service continuum that engages youth, families and communities in strategies that support positive youth development.

DYS maintains files on each youth who enters its care or custody. These files also contain records obtained from other sources. Access to DYS records is governed by statute (*G.L. c. 120, §21*), regulation (*109 CMR 3.00, et seq*) and policy (*01.07.02, Confidentiality of Client Records and 01.03.01 Compulsory Legal Process*).²

Any person, agency or entity providing services to DYS youth may have access to the records of those being served by submitting a request in writing to the Keeper of the Records, accompanied by authorization from the youth and the youth's legal guardian, if the youth is under 18 at the time of the request. *109 CMR 3.04(4)*.

DYS shares **oral information** with any criminal justice agency (including Probation), state human services agencies (including DCF), local education authorities, and Juvenile Court Clinicians.

DYS provides **written information** to entities who have a contract with DYS to provide services and state human services agencies. Other entities or agencies requesting written information must provide DYS with a release from the youth and guardian or can obtain written information subject to written authorization from the Commissioner of DYS, designee or Keeper of the Records. *G.L. c. 120, §21, 109 CMR 3.04, DYS Policy 01.07.02*.

When can DYS personnel disclose information to Probation Officers?

Probation Officers may obtain a copy of a youth's records by submitting a written request to the DYS Keeper of the Records stating the reason for the request and what authority DYS has to release the records. *109 CMR 3.04(5)*. Where information is sought through a court order, the youth must be reasonably notified so that the youth may ask the court not to allow Probation to have access to the youth's files. *109 CMR 3.05, DYS Policy 01.03.01*.

Probation is entitled to DYS records concerning "prisoners under sentence or who have been released." *G.L. c. 276, §100*. When Probation is preparing a pre-sentence report for the court, Probation may have access to a youth's records after submitting a written request and a copy of any order to the Keeper of the Records. *109 CMR 3.04(7)*. DYS shares oral information with any criminal justice agency including Probation. DYS provides written information with a release from the youth and guardian or written authorization from the Commissioner, designee or Keeper of the Records. *DYS Policy 01.07.02*.

When can DYS personnel disclose information to DCF?

If DCF is the youth's legal custodian, DYS will disclose the same information to DCF that would be available to any legal guardian.

Where DCF is not the youth's legal custodian but is providing services to DYS youth, DCF may have access to youth records by submitting a request in writing to the Keeper of the Records, accompanied by authorization from the youth and the youth's legal guardian, if the youth is under 18 at the time of the request. *109 CMR 3.04(4)*.

² The DYS regulation has recently been amended and the policies governing access to confidential information are currently subject to revision to ensure compliance with the amended regulation as well as state and federal law.

Where information is sought through a court order, the youth must be reasonably notified so that the youth may ask the court not to allow DCF to have access to the youth's files. *109 CMR 3.04(6), 109 CMR 3.05, DYS Policy 01.03.01.*

Also, DCF may obtain a copy of a youth's records by submitting a written request to the DYS Keeper of the Records that sets forth the reason for the request and what authority DYS has to release the records requested. *G.L. c. 119, §51B, 109 CMR 3.04(5).*

DYS shall disclose information to DCF in accordance with §§51A and 51B of G.L. c. 119. Section 51A requires mandated reporters (including DYS) to report cases of suspected child abuse or neglect to DCF. Section 51B requires mandated reporters to disclose to DCF upon request, any information that may be relevant to an investigation of a case of suspected abuse or neglect. *G.L. c. 119, §§51A and 51B.*

DYS shares oral information with any state human services agency, and written information with a release from the youth and guardian or written authorization from the Commissioner, designee or Keeper of the Records. *DYS Policy 01.07.02.*

When can DYS personnel disclose information to school personnel?

School personnel providing services to DYS youth may have access to the records by submitting a request in writing to the Keeper of the Records, accompanied by authorization from the youth and the youth's legal guardian, if the youth is under 18 at the time of the request. *109 CMR 3.04(4).* Additionally, a school can obtain a court order. *109 CMR 3.04(6).* Where information is sought through a court order, the youth must be reasonably notified so that they may ask the court not to allow the school to have access to their files. *109 CMR 3.04(6), 109 CMR 3.05, DYS Policy 01.03.01.*

DYS shares oral information with any local educational authorities, and written information with a release from the youth and guardian or written authorization from the Commissioner, designee or Keeper of the Records. *DYS Policy 01.07.02.*

When can DYS personnel disclose information to Juvenile Court Investigators?

Juvenile Court Investigators appointed on a case involving a DYS youth may have access to the youth's records by submitting a request in writing to the Keeper of the Records, accompanied by authorization from the youth and the youth's legal guardian, if the youth is under 18 at the time of the request. *109 CMR 3.04(4).* Juvenile Court Investigators who present a court order may obtain a youth's records. *109 CMR 3.05.* Where information is sought through a court order, the youth must be reasonably notified so that the youth may ask the court not to allow the Juvenile Court Investigator to have access to the youth's files. *109 CMR 3.04(6), 109 CMR 3.05, DYS Policy 01.03.01.*

When can DYS personnel disclose information to Juvenile Court Clinicians?

If the Juvenile Court Clinician is providing services to a DYS youth they may have access to the youth's DYS records by submitting a request in writing to the Keeper of the Records, accompanied by authorization from the youth and the youth's legal guardian, if the youth is under 18 at the time of the request. *109 CMR 3.04(4).* Additionally, the Juvenile Court Clinician serving the youth may obtain a youth's records with a court order. *109 CMR 3.05.* Where information is sought through a court order, the youth must be reasonably notified so that the youth may ask the court not to allow the Juvenile Court Clinician to have access to the youth's own files. *109 CMR 3.04(6), 109 CMR 3.05, DYS Policy 01.03.01.*

DYS shares oral information with Juvenile Court Clinicians, and written information with a release from the youth and guardian or written authorization from the Commissioner, designee or Keeper of the Records. *DYS Policy 01.07.02.*

When can DYS personnel disclose information to a child or young adult's Care and Protection or CRA attorney?

DYS can disclose information to a child or young adult's Care and Protection attorney with a court order or release authorized by the youth. *109 CMR 3.04(3), DYS Policy 01.07.02.* Where information is sought through a court order, the

youth must be reasonably notified so that the youth may ask the court not to allow the Care and Protection attorney for the youth to have access to the youth's files. *109 CMR 3.04(6), 109 CMR 3.05, DYS Policy 01.03.01.*

When can DYS personnel disclose information to a parent's attorney?

DYS can disclose information to a parent's attorney with a court order or release authorized by the youth and the youth's legal guardian, if the youth is under the age of 18 at the time of the request. *109 CMR 3.04, DYS Policy 01.07.02.* Where information is sought through a court order, the youth must be reasonably notified so that the youth may ask the court not to allow the parent's attorney to have access to the youth's files. *109 CMR 3.05, DYS Policy 01.03.01.*

When can DYS personnel disclose information to a child's delinquency or young adult's criminal attorney?

DYS can disclose information to a child's delinquency attorney or young adult's criminal law attorney with a court order or release authorized by the youth or young adult. *109 CMR 3.04(2), DYS Policy 01.07.02.* Where information is sought through a court order, the client must be reasonably notified so that the youth or young adult may ask the court not to allow the attorney to have access to the files of the youth or young adult. *109 CMR 3.05, DYS Policy 01.03.01.*

When can DYS personnel disclose information to a GAL or CASA?

The GAL or CASA appointed for a DYS youth may have access to the records with a court order or by submitting a request in writing to the Keeper of the Records, accompanied by authorization from the youth and the youth's legal guardian, if the youth is under 18 at the time of the request. *109 CMR 3.04(4).* Where information is sought through a court order, the youth must be reasonably notified so that the youth may ask the court not to allow the GAL or CASA to have access to the youth's files. *109 CMR 3.05, DYS Policy 01.03.01.*

When can DYS personnel disclose information to Police and Prosecutors?

DYS shares oral information with any law enforcement agency, and written information with a release from the youth and guardian or written authorization from the Commissioner, designee or Keeper of the Records. *G.L. c 120, §21, 109 CMR 3.04(8), DYS Policy 01.07.02.* Law enforcement and prosecutors may obtain a copy of a youth's records with a court order or by submitting a written request to the DYS Keeper of the Records stating the reason for the request and what authority DYS has to release the records. *109 CMR 3.04(5).* Where information is sought through a court order, the client must be reasonably notified so that the youth may ask the court not to allow law enforcement or prosecutors to have access to the youth's files. *109 CMR 3.04(6), 109 CMR 3.05, DYS Policy 01.03.01.*

Law enforcement agencies, including district attorney offices, may have access to portions of youth records where the information is related to the investigation of a crime. *109 CMR 3.04(8).* DYS also shares information with law enforcement about specific threats to other persons.

For youth committed to DYS for certain serious crimes, DYS must notify the police in the town where the youth lives and the town where the offense occurred at least 7 days prior to a youth's release. *G.L. c. 120, §12.*

When can DYS personnel disclose confidential information to victims?

A victim of crime, witness, or family member of a victim who is deceased, may obtain all available criminal offender record information of the person accused or convicted of the crime. DYS may also disclose to such persons additional information, including, but not limited to, evaluative information, as DYS determines is reasonably necessary for the security and well-being of the victim, witness or family member of the victim who is deceased. *G.L. c. 6, §178A.*

Victims of crimes are notified by the DA's offices of their right to request a victim certification under the Victims' Rights Law. If certified by the Criminal History Systems Board, the victim can request that DYS notify them when a committed youth receives temporary, provisional or final release from custody. Victims are also notified of movement in the following circumstances: from a secure to a less secure facility, transfer to higher security, transfers to the house of corrections or

state prison, escapes, parole (GCL) violations, return to custody, court-ordered release, and discharge. *G.L. c. 258B, §3(t)*.

When can DYS personnel disclose confidential information as part of the Community Based Juvenile Justice Programs?

DYS is an invited participant to the Community Based Juvenile Justice Programs (roundtables) pursuant to *G.L. c. 12, §32*. Although the CBJ statute expressly speaks to agency collaboration with the District Attorney's office, the statute does not independently authorize DYS to release confidential information beyond the limits outlined in this section.

DYS Policy 01.07.02 dictates that DYS shall share oral information with state human services agencies, any law enforcement agency, and local educational authorities, and shall share written information with a release from the youth and guardian or written authorization from the Commissioner, designee or Keeper of the Records.

When can DYS disclose information to the Office of the Child Advocate (OCA)?

The OCA has unrestricted access to all electronic records, reports, and materials of DYS in order to better understand the needs of children in the custody of the Commonwealth or who are receiving services from DYS. *G.L. c. 18C, §6*. Additionally, DYS is required to inform OCA of certain "critical incidents." *G.L. c. 18C, §1*. Critical incidents are defined as "(i) a fatality, near fatality or serious bodily or emotional injury of a child who is in the custody of or receiving services from an executive agency or a constituent agency; or (ii) circumstances which result in a reasonable belief that an executive agency or a constituent agency failed in its duty to protect a child and, as a result, the child was at imminent risk of, or suffered serious bodily or emotional injury or death." The OCA is bound by any limitations on the use or release of information imposed by law upon the party furnishing such information.

Department of Elementary and Secondary Education

The Massachusetts Department of Elementary and Secondary Education is the administrative agency responsible for overseeing the state's system of K-12 education. The mission of the Department is to strengthen the Commonwealth of Massachusetts's public education system so that every student is prepared to succeed in postsecondary education, compete in the global economy, and understand the rights and responsibilities of an American citizen, and in so doing, to close all proficiency gaps.

Definitions

The following definitions from the state student records regulations, *603 CMR 23.00*, will be helpful to your understanding of this section:

Authorized school personnel: School administrators, teachers, counselors and other professionals who are employed by the school committee or who are providing services to the student under an agreement between the school committee and a service provider, and who are either working directly with the student in an administrative, teaching, counseling, and/or diagnostic capacity. Any such personnel who are not employed directly by the school committee shall have access only to the student record information that is required for them to perform their duties. Administrative office staff and clerical personnel who are either employed by the school committee or are employed under a school committee service contract whose duties require them to have access to student records for purposes of processing information for the student record. Such personnel shall have access only to the student record information that is required for them to perform their duties. The definition of authorized school personnel also includes the individualized education program (IEP) team for students with disabilities.

Directory information: A student's name, address, telephone listing, date and place of birth, major field of study, dates of attendance, weight and height of members of athletic teams, class, participation in officially recognized activities and sports, degrees, honors and awards, and post-high school plans.

Eligible student: Any student who is at least 14 years of age or older or who has entered the 9th grade, unless the school district designates students who are under the age of 14 or who have not yet entered 9th grade as eligible students.

Non-custodial parent: Any parent who by court order does not have physical custody of the student. This includes parents who by court order do not reside with or supervise the student, even for short periods of time.

Parent: A student's father or mother, or guardian, or person or agency authorized to act on behalf of the student in place of or in conjunction with the father, mother, or guardian.

Student: Any person enrolled or formerly enrolled in a public elementary or secondary school or any person age three or older about whom a school committee maintains information.

Student Record: All information concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified, and that is kept by the public schools. It includes all such information and materials regardless of where they are located, except for the personal files of school employees. Personal files of school employees are notes, memory aids and other similar information that is maintained in the personal files of a school employee and is not accessible or revealed to authorized school personnel or any third party. Such information may be shared with the student, parent or temporary substitute of the maker of the record, but if it is released to authorized school personnel it becomes part of the student record.

Third party: Any person, agency, authority or organization other than the eligible student, the student’s parent, or authorized school personnel.

Introduction

Education records maintained by public schools (and private schools that receive federal and state education funding) are governed by the federal Family Educational Rights and Privacy Act (FERPA), *20 U.S.C. §1232g* and its accompanying regulations, *34 C.F.R. Part 99*, as well as the Massachusetts Student Records Regulations, *603 CMR §23.00*. **Both FERPA and the Massachusetts Student Records Regulations protect the confidentiality of student records by prohibiting schools from disclosing, either orally or in writing, personally identifiable information from a student record to a third party without the written consent of the parent or eligible student, unless an exception to this general consent rule applies. Exceptions permitting schools to release personally identifiable information from a student record without consent are found in *34 C.F.R. §§99.30 and 99.31 and 602 CMR 23.07(4)*.**

Parents of students under age 18 can consent to the release of school records. The Massachusetts Student Records Regulations define a parent as “a student’s father or mother, or guardian, or person or agency legally authorized to act on behalf of the student in place of or in conjunction with the father, mother, or guardian.” *603 CMR 23.02*. This may include a person authorized to make educational decisions under a Caregiver Authorization. See Glossary and Appendix E. A student who is at least 14 years old or who has entered the 9th grade is an “eligible student” and shares with the parent the right to consent to the release of school records to a third party. Either the parent or eligible student in this situation acting alone can exercise these rights. *603 CMR 23.01*.

Schools are generally prohibited, with limited exceptions, from releasing personally identifiable information from a student’s record to a third party without the consent of the parent or eligible student. However, schools may release “directory Information” without the consent of the parent or eligible student, provided that the school gives public notice of the types of information it may release and allows eligible students and parents a reasonable time after such notice to request that this information not be released without prior consent. *603 CMR 23.07(4)(a)*.

Schools may release student record information to appropriate parties in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. This includes, but is not limited to, disclosures to the local police department and DCF under the provisions of *G.L. c. 71, §37L, G.L. c. 119, §51A, 603 CMR 23.07(4)(e)*.

Schools may release student records without consent in compliance with a lawfully issued subpoena or judicial order. *603 CMR 23.07(4)(b)*. However, the school must make a reasonable effort to notify the parent or student (if 18 years or older) of the subpoena or judicial order before complying with it to allow the parent or student the opportunity to seek protective action, unless certain exceptions apply. Prior notification is not required for the following: (1) a federal grand jury subpoena or other subpoena issued for a law enforcement purpose if the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; (2) an *ex parte* order obtained by the United States Attorney General (or designee not lower than Assistant Attorney General) concerning investigations or prosecutions of an act of terrorism or other specified offenses. *34 C.F.R. §99.31(a)(9)(ii)*. Additionally, when a parent is a party to a court proceeding involving child abuse and neglect, as defined in section 3 of the Child Abuse Prevention and Treatment Act (*42 U.S.C. 5101 note*), or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required. See *20 U.S.C. § 1232g (b)(2)(B)*.

In instances where the school initiates legal action against a parent or student, or a parent or student initiates legal action against a school, the school may disclose to the court student record information that is relevant to the proceeding, without a court order or subpoena. *34 C.F.R. §99.31(a)(9)(iii)*.

Written consent to release personally identifiable information from the student record to a third party, must:

- Specify the records to be released
- State the purpose of the release
- Identify the party or class of parties to whom the information may be released
- Be signed and dated by the parent or eligible student

Third parties who receive personally identifiable information from a student record are prohibited from releasing the information without the consent of the parent or the eligible student. *603 CMR 23.07(4)*.

When can school personnel disclose student record information to Probation Officers?

School personnel may disclose student record information upon receipt of a request from a Probation Officer for a delinquent child. *34 C.F.R. §99.31(a)(9), G.L. c. 119, §57, and 603 CMR 23.07(4)(c)*. A school would need a written release or court order to release information on a Care and Protection case. Separately, a school may release student record information in connection with a Child Requiring Assistance case if the school is a party to the case.

When can school personnel disclose student record information to DCF?

Schools shall disclose student record information to DCF in accordance with §§51A and 51B of G.L. c. 119, relating to reports of suspected child abuse or neglect. Section 51A requires mandated reporters (including teachers and other school personnel) to report cases of suspected child abuse or neglect to DCF. Section 51B requires mandated reporters to disclose to DCF upon request, any information that may be relevant to an investigation of a case of suspected abuse or neglect. *G.L. c. 119, §§51A and 51B and 603 CMR 23.07(4)(c) and (e)*.

If DCF has custody of the student, a school may disclose student records to DCF because DCF is acting as the parent. *603 CMR 23.02*. If DCF does not have custody, schools may disclose student record information to DCF only upon consent of the parent or eligible student, or with a court order provided that the school makes a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance. *34 C.F.R. §99.31(a)(9), 603 CMR 23.07(4)(b)*.

As required by Title I of the federal Every Student Succeeds Act, school staff may disclose to DCF student record information relevant to making “best interest” determinations for students in foster care and, as necessary, to facilitate immediate enrollment changes. *20 U.S.C. §6311(g)(1)(E)*.

When can school personnel disclose student record information to DYS?

School personnel may disclose student record information for a committed youth upon receipt of a request from DYS under the provisions of *G.L. c. 119, §69A and 603 CMR 23.07(4)(c)*, or with a court order or lawfully issued subpoena. Schools must make a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance unless explicitly prohibited in the court order. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*.

When can school personnel disclose student record information to Juvenile Court Investigators?

School personnel may disclose student record information to the Juvenile Court Investigator upon consent of the parent or eligible student, or with a court order or lawfully issued subpoena provided that the school makes a reasonable effort

to notify the parent (or student, if the student is 18 or older), in advance of compliance. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*.

When can school personnel disclose student record information to the Probate and Family Court?

School personnel may disclose student record information to the Probate and Family Court upon consent of the parent or eligible student, or with a court order or lawfully issued subpoena provided that the school makes a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*.

When can school personnel disclose student record information to Juvenile Court Clinicians?

School personnel may disclose student record information to the Juvenile Court clinician upon consent of the parent or eligible student, or with a court order or lawfully issued subpoena provided that the school makes a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*.

When can school personnel disclose student record information to a student's Care and Protection attorney?

School personnel may disclose student record information to a student's Care and Protection attorney upon consent of the parent or eligible student, or with a court order or lawfully issued subpoena, provided that the school makes a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*.

When can school personnel disclose student record information to a student's delinquency attorney?

School personnel may disclose student record information to a student's delinquency attorney upon consent of the parent or eligible student, or with a court order or lawfully issued subpoena provided that the school makes a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*.

When can school personnel disclose student record information to a parent's attorney?

School personnel may disclose student record information to a parent's attorney upon consent of the parent or eligible student, or with a court order or lawfully issued subpoena provided that the school makes a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*.

When can school personnel disclose student record information to a GAL or CASA?

School personnel may disclose student record information to a GAL or CASA upon consent of the parent or eligible student, or with a court order or lawfully issued subpoena provided that the school makes a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*.

When can school personnel disclose student record information to Police and Prosecutors?

Under state law, school personnel may report a crime, and may provide information about students to police related to the criminal incident. School superintendents are required to report to the local chief of police any incident involving a student's possession or use of a dangerous weapon on school premises. *G.L. c. 71, §37L*. School principals are required to notify local law enforcement regarding incidents of bullying or retaliation if the principal has a reasonable basis to believe that criminal charges may be pursued against the aggressor. *603 CMR 49.06(2)*.

Otherwise, except in an emergency, school personnel may disclose student record information to police and prosecutors only upon consent of the parent or eligible student, or with a judicial order or lawfully issued subpoena. Schools must make a reasonable effort to notify the parent (or student, if the student is 18 or older), in advance of compliance unless

explicitly prohibited in the court order. *34 C.F.R. §99.31(a)(9) and 603 CMR 23.07(4)(b)*. In a health or safety emergency, a school may disclose information regarding a student to appropriate parties if knowledge of the information is necessary to protect the health or safety of the student or other individuals. This includes, but is not limited to, disclosures to the local police department and the Department of Children and Families under the provisions of *G.L. c. 71, §37L, G.L. c. 119, §51A, and 603 CMR 23.07(4)(e)*.

When can school personnel disclose student record information to school resource officers?

School personnel may disclose student record information to school resource officers who are employees of the school district since they are considered authorized school personnel. School resource officers who are not employees of the school district are considered law enforcement and are governed by the regulations regarding disclosure to the police; see above.

When can school personnel disclose student record information as part of the Community Based Juvenile Justice Programs?

Schools are invited participants to the Community Based Juvenile Justice Programs (roundtables) pursuant to *G. L. c. 12, §32*. Although the CBJJ statute expressly speaks to agency collaboration with the District Attorney's office, the statute does not independently authorize school personnel to release student record information beyond the limits outlined in this section.

When can school personnel disclose student record information to other school officials?

School personnel may disclose student record information to authorized school personnel who are providing services to a student when such access is required in the performance of their official duties. *603 CMR 23.07(3)*. School personnel may also disclose school record information to authorized school personnel of the school to which the student seeks or intends to transfer, provided that the school gives notice that it forwards student records to schools in which the student seeks or intends to enroll. *603 CMR 23.07(4)(g)*.

Are there other situations where school personnel can disclose student record information without prior written consent?

Schools may disclose student record information without prior consent to local and state health department personnel when such access is required in the performance of their official duties and to appropriate parties in connection with a health and safety emergency in order to protect the health and safety of the student or others. See *603 CMR 23.07(4)(h) and 603 CMR 23.07(4)(e)*. Schools may also disclose student record information to federal, state, and local education officials in connection with the audit, evaluation, or enforcement of federal and state education laws. *34 C.F.R. §99.31 and 603 CMR 23.07(4)(d)*.

When can school personnel disclose information to the Office of the Child Advocate (OCA)?

The OCA has unrestricted access to all electronic records, reports, and materials of any program that is operated, licensed, or funded by an executive agency, in order to better understand the needs of children in the custody of the Commonwealth or who are receiving services from an executive agency. The OCA is bound by any limitations on the use or release of information imposed by law upon the party furnishing such information. *G.L. c. 18C, §6*.

Court Information - Juvenile Court

The Juvenile Court Department has general jurisdiction over delinquency and youthful offender cases, adoptions, guardianships, care and protection cases (including termination of parental rights proceedings), and children requiring assistance (CRA).

Proceedings in the Juvenile Court are closed to the public, with limited exceptions including youthful offender cases and those related to court orders to not resuscitate or to withdraw life-sustaining medical treatment for children in the custody of DCF under a Care and Protection order. *G.L. c. 119, §§38, 60A, 65 and Juvenile Court Standing Order 1-84*. Apart from these exceptions, Juvenile Court case records and reports are confidential and disclosure is permitted only by order of a Juvenile Court Judge, unless the individual seeking disclosure represents a party or has otherwise been appointed on the case regarding which they seek the disclosure. Reports that are released by the court as permitted or ordered shall not be further copied or released without permission of the court. Juvenile Court Standing Order 1-84. For purposes of this document, Juvenile Court personnel are defined as those employed in the clerk's office or in the court clinic.

Unique to Massachusetts, each Juvenile Court is served by a Juvenile Court Clinic consisting of specially trained and certified licensed mental health professionals who conduct court-ordered evaluations and/or consultations. The reports produced by the Juvenile Court Clinic belong to the Court and can only be released pursuant to a Juvenile Court order (see *Juvenile Court Standing Order 1-84*), except as noted below. In addition, a court clinic evaluation is only done following a court ordered referral and after a [Lamb warning](#) is provided. See *Commonwealth v. Lamb, 365 Mass. 265 (1974)*. This warning cautions the person(s) being referred that they are not in a psychotherapeutic relationship, that their participation is voluntary, and that the results of the evaluation belong to the court and will be given to the court. For informal court clinic consultations where a Lamb warning is not given, the clinicians are governed by statutes applicable to mental health professionals.

When can Juvenile Court Clinic Clinicians disclose information to Probation Officers?

Juvenile Court Clinicians may disclose information to Probation Officers on cases where the Juvenile Court Clinic has received a court referral for evaluation and a Probation Officer has been assigned responsibilities on the same case.

When can Juvenile Court personnel disclose information to DCF?

In the case on which they represent DCF, access to the court record by the DCF attorney is permitted except for any material that is impounded or otherwise protected. A Juvenile Court order is required to access records from a case in which DCF is not a party. Court personnel who are mandated reporters must disclose otherwise protected information to DCF in order to file a report of suspected abuse or neglect (*G.L. c. 119, §51A*) or in response to inquiry by DCF as part of an investigation conducted pursuant to *G.L. c. 119, §51B*.

When can Juvenile Court personnel disclose information to DYS?

Information pertaining to the basic health and safety of a youth committed to DYS' care or custody is shared with DYS in order to ensure the health and safety of the child.

When can Juvenile Court personnel disclose information to schools?

In cases where the school is a party, access to the court record is permitted except for any material that is impounded or otherwise protected. A Juvenile Court order is required to access records from any other case.

When can Juvenile Court personnel disclose information to Juvenile Court Investigators?

In the case on which they are appointed, the appointment authorizes the Court Investigator to access the court record, except for any material that is impounded or otherwise protected. *G.L. c. 119, §24, Juvenile Court Standing Order 1-84*. A Juvenile Court order is required to access records from any other case.

When can Juvenile Court personnel disclose information to the attorney for a child or young adult?

In the case on which they represent the child or young adult, access to the court record is permitted except for any material that is impounded or otherwise protected. For example, in Delinquency and Youthful Offender matters, Juvenile Court Clinic evaluations are released only by order of the Juvenile Court. A Juvenile Court order is required to access records from any other case.

When can Juvenile Court personnel disclose information to the attorney for a parent?

In the case on which the attorney represents the parent, access to the court record is permitted except for any material that is impounded or otherwise protected. A Juvenile Court order is required to access records from any other case.

When can Juvenile Court personnel disclose information to a GAL or CASA?

In the case on which the GAL or CASA is appointed, the appointment of a GAL or CASA authorizes access to the court record except for any material that is impounded or otherwise protected. A Juvenile Court order is required to access records from any other case.

When can Juvenile Court personnel disclose information to Police and Prosecutors?

In the case on which the prosecutor represents the Commonwealth, access to the court record is permitted except for any material that is impounded or otherwise protected. For example, in Delinquency and Youthful Offender matters, Juvenile Court Clinic evaluations are released only by order of the Juvenile Court.

When can Juvenile Court personnel disclose information to the Office of the Child Advocate?

The child advocate shall have access to relevant records held by the clerk of the Juvenile Court. *G.L. c. 18C, §6.*

Court Information - Probate and Family Court

The Probate and Family Court Department has jurisdiction over divorce, paternity, child support, custody, visitation, adoption, termination of parental rights, abuse prevention, wills, estates, trusts, guardianships, conservatorships, and change of name cases.

Probate and Family Court proceedings are generally open to the public and information in case files is generally open to public inspection, with the exception of cases that are confidential by statute. Cases that are confidential by statute can only be viewed by the parties and their attorneys.

Case types that are confidential and not open to public inspection include adoptions and child welfare. See *G.L. c. 210 §5C, and G.L. c. 119*. Paternity cases are confidential after an alleged father is found not to be the father and Abuse Prevention cases are confidential if the plaintiff or defendant is a minor. See *G.L. c. 209C, §13 and G.L. c. 209A, §8*. The child can ask for the guardianship proceeding to be closed under *G.L. 190B, §5-106(c)*.

Furthermore, there are documents within cases that are segregated from public inspection by statute, case law, Trial Court rule, or Probate and Family Court standing order. The following case documents are confidential by statute, rule or standing order and are not available to the public, or, in the case of the Affidavit of Indigency, not available to either the public or parties to the case:

Affidavit of indigency, financial statements, guardian ad litem reports, personal medical information, medical certificates and clinical team reports, qualified domestic relations orders, or a 209A plaintiff's residential address, residential telephone number and workplace name, address and telephone number. *G. L. c. 209A, §8, Supplemental Probate and Family Court Rule 401(d), Probate and Family Court Standing Order 1-09, and Probate and Family Court Standing Order 3-08*.

Access to information that is confidential or impounded by court order, rule or standing order can only be obtained with a court order. If you are neither a party to a case nor an attorney for a party in a case, any access to impounded or confidential case files or documents within the case files can only be obtained by order of the Court. See *Trial Court Rule VIII: Uniform Rules on Impoundment Procedure, Rule 6*. <http://www.mass.gov/courts/case-legal-res/rules-of-court/trial-court/tc-rule-8-impound/impoundment6.html>

For information on impoundment of specific documents in the Probate and Family Court, see the following:

- [Financial Statements: Supplemental Probate and Family Court Rule 401\(d\)](#)
- [Medical Certificates: Probate and Family Court Standing Order 1-09](#)
- [Qualified Domestic Relations Orders: Probate and Family Court Standing Order 3-08](#)
- [Guardian Ad Litem Reports: Probate and Family Court Standing Order 2-08](#)

When can court personnel disclose information to DCF?

When DCF is a party to the case, access to the court record of the case is permitted. In any court proceedings in which the case is confidential and in which DCF is not a party to a case, a court order is necessary to obtain information from the case. In all court proceedings of a case that is not confidential, DCF has access to a case for public inspection except for documents impounded by court order or rule. See *Trial Court Rule XIV Uniform Rules on Public Access to Court Records, Rule 1(c)*.

When can court personnel disclose information to Juvenile Court Investigators?

In all court proceedings in which the case is not confidential, any member of the public has access to the case for public inspection, except for documents impounded by court order, rule, standing order, or case law. In any court proceedings

in which the case is confidential, a court order is necessary to obtain case information. See *Trial Court Rule XIV Uniform Rules on Public Access to Court Records, Rule 1(c)*.

When can court personnel disclose information to an attorney for a child or young adult?

When an attorney represents the child or young adult, access to the court record of the case is permitted. In all court proceedings of a case that is not confidential, the attorney for the child or young adult has access to a case for public inspection except for documents impounded by court order or rule. See *Trial Court Rule XIV Uniform Rules on Public Access to Court Records, Rule 1(c)*.

When can court personnel disclose information to a parent's attorney?

When an attorney represents the parent, access to the court record of the case is permitted. In any court proceedings in which the case is confidential and in which the parent's attorney does not represent a party, a court order is necessary to obtain information from the case. In all court proceedings of a case that is not confidential, the parent's attorney has access to a case for public inspection except for documents impounded by court order or rule. See *Trial Court Rule XIV Uniform Rules on Public Access to Court Records, Rule 1(c)*.

When can court personnel disclose information to a GAL or CASA?

In any court proceedings in which the case is confidential the GAL or CASA will need a court order to obtain information from the case. In all court proceedings of a case that is not confidential, the case is available for public inspection except for documents impounded by court order or rule. See *Trial Court Rule XIV Uniform Rules on Public Access to Court Records, Rule 1(c)*.

When can court personnel disclose information to Police and Prosecutors?

In any court proceedings in which the case is confidential a court order is necessary to obtain information from the case. In all court proceedings of a case that is not confidential, the case is available for public inspection except for documents impounded by court order or rule.

When can court personnel disclose information to the Office of the Child Advocate?

The Child Advocate shall have access to relevant records held by the clerk of the Probate and Family Court. G.L. c. 18C, §6.

Health Care Information

All doctors and other health care providers are subject to state and federal law requiring them to maintain the confidentiality of their patients' health and medical information. The most well-known of such laws is the Privacy Rule of the federal Health Insurance Portability and Accountability Act (HIPAA), *45 C.F.R. Parts 160 and 164*.

Numerous state and other federal laws impose more stringent limitations on the disclosure of health information than HIPAA. In cases where state or federal law is more stringent than HIPAA, any disclosure of information must comply with both HIPAA and the more stringent law. *45 C.F.R. §§160.202 and 160.203(b)*.

Health Care Providers

Federal Confidentiality Law: HIPAA

HIPAA applies to physicians and other individual and institutional health care providers (e.g., dentists, psychologists, hospitals, clinics, pharmacies, etc.). It limits the circumstances under which these providers can disclose "protected health information" or "PHI." PHI is essentially any individually identifiable health information that relates to a patient's physical or mental health condition or treatment. PHI does not include health information contained in student records that are subject to FERPA. *45 C.F.R. §160.103*.

HIPAA permits providers to disclose PHI with the patient's written consent, provided that the Rule's particular content and other requirements are met. When the patient is a minor, ordinarily the parent, guardian, or custodian is authorized to give written consent to disclosure of the child's health information. However, there are certain situations where only the minor can consent to the disclosure of health information. See *Authorized Representatives and Special Considerations for Minor Patients, below and Appendix C and Appendix D*.

Disclosures of PHI without the patient's written consent are allowed under certain circumstances, most importantly:

- To prevent or lessen a serious and imminent threat to the health or safety of a person or to the public, if the disclosure is made to a person or entity able to prevent or lessen the threat;
- To report suspected victims of abuse to appropriate agencies;
- In response to a court or administrative order; and
- In response to a subpoena or other lawful process in a judicial or administrative proceeding if appropriate steps are taken to notify the individual or obtain a protective order with respect to the information.

45 C.F.R. §§164. 502(a), 506, and 512.

State Confidentiality Laws

Massachusetts laws applicable to institutional health care providers (hospitals and clinics) are, in general, not as stringent as HIPAA. *G.L. c. 111, §70*. Those that apply to hospitals and clinics operated by the Department of Mental Health (DMH), however, permit disclosure of a patient's health information without a patient's written consent only in very limited circumstances, including: at DMH's request, pursuant to a court order, or where the disclosure is determined to be in the patient's best interests and it is not possible or practicable to obtain the patient's written consent. *G.L. c. 123, §36; 104 CMR 27.17*.

There is no state confidentiality law that applies to physicians. However, Massachusetts courts have recognized a duty of confidentiality that all doctors in the Commonwealth owe to their patients. Physicians generally must not disclose a patient's health information without the patient's written consent, subject to limited exceptions (such as to meet a serious danger to the patient or to others or pursuant to a court order). *Alberts v. Devine, 395 Mass. 59, 68 (1985)*.

Heightened Duty of Confidentiality

Mental Health Treatment Information: Confidentiality Rules

Information obtained by mental health providers (e.g., psychologists, psychiatrists, social workers, mental health counselors and other mental health professionals) in connection with providing professional services to a patient is subject to a higher standard of confidentiality than is other types of health information.

These laws tend to fall into two categories – confidentiality laws, which impose an affirmative duty on the provider to maintain the confidentiality of protected information, and privilege laws, which establish an evidentiary privilege for such information that may be exercised by the patient.

Most confidentiality laws apply to information acquired by a mental health provider in connection with counseling or otherwise providing services to a patient. This includes the type of services provided, the dates and/or frequency of services, the results of clinical tests, and the patient’s symptoms, diagnosis, and treatment plan, as well as confidential communications between the patient and the provider. Mental health providers are permitted to disclose such information with the patient’s written consent and in limited other circumstances, including consulting with another provider about the patient’s treatment or pursuant to a court order.

Additionally, most confidentiality laws contain a so-called “safety” or similar exception, which allows (and in some instances, requires) a mental health provider to disclose confidential information to protect the patient or another person from serious harm. This includes disclosures made to seek the involuntary hospitalization of a patient or to otherwise prevent the patient from causing serious injury or death to himself or to another person, and mandated reports of suspected abuse or neglect of a child, elderly or disabled person. *G.L. c. 112, §§129A, 135A, 172, Commonwealth v. Vega, 449 Mass. 227 (2007), 251 CMR 1.11, 258 CMR 22.00, and 262 CMR 8.02.*

Mental Health Treatment Information: Evidentiary Privileges

Mental health privilege laws, on the other hand, apply in more limited circumstances and to a narrower scope of information. Specifically, most privilege laws apply to court and administrative proceedings in which confidential communications between a patient and a mental health provider may be introduced as evidence. Under these circumstances, the patient has the privilege of refusing to disclose, and of preventing the provider from disclosing, any such communication, subject to limited exceptions.

Under most mental health privilege laws, the patient’s privilege does not apply to communications made during a court-ordered examination (if the patient was warned that the communication was not privileged) or to cases where the patient has introduced his mental condition as an element of a claim or defense. In addition, most privilege laws permit a judge in child custody cases (including Care and Protection, CRA, guardianship cases, and termination of parental rights cases) to order the disclosure of communications between a provider and a patient (other than the child) if the judge determines that the information bears significantly on the patient’s ability to provide suitable care and custody and it is more important to the welfare of the child to permit the disclosure than it is to protect the patient-provider relationship. In termination of parental rights cases the patient must also have been warned that the communication is not privileged. *G.L. c. 112, §§135B, 172, 172A; G.L. c. 233, §20B; Commonwealth v. Vega, 449 Mass. 227 (2007).*

In the context of a legal proceeding in which a minor has the privilege to prevent the disclosure of confidential mental health information, the minor’s parent or guardian generally has the right to decide whether to exercise or waive such privilege. However, in cases involving child custody (e.g., Care and Protection, termination of parental rights, guardianship of minor, and CRA cases), where the child and parent or guardian may have conflicting interests, a parent or guardian may not waive the child’s privilege. Instead, the court may appoint a guardian ad litem to decide whether the privilege should

be waived. See *Adoption of Diane*, 400 Mass. 196 at 201–02. Legal authority for this practice is found in the statutes governing the psychotherapist and social worker privileges. See *G.L. c. 112, §135B*; *G.L. c. 233, §20B*. They provide that if the client is not competent to exercise or waive the privilege a guardian shall be appointed to act in the client’s behalf. See *G.L. c. 233, §20B*. Any party may file a motion for appointment of a guardian ad litem.

Substance Use Disorder Treatment Information

Providers that treat substance use disorders are also subject to a “heightened” duty of confidentiality under both federal and state law. 42 C.F.R. Part 2). See also 42 U.S.C. 290dd-2 and *G.L. c. 111B, §11*. Federal law limits the circumstances under which a provider in a federally assisted program can disclose information obtained in connection with treating a patient with a substance use disorder (or providing a diagnosis or referral for such treatment) if the information identifies, or could be used to identify, the patient as having a substance use disorder. Providers may disclose such information with the patient’s written consent, which must meet the detailed requirements of federal law. 42 C.F.R. §2.31 details the elements that must be in a release. See Appendix D: 42 CFR Part 2. Providers may disclose information without a patient’s consent, in certain limited circumstances, such as pursuant to a court order, 42 C.F.R. §2.61, in a medical emergency, 42 C.F.R. §2.51, or to report incidents of child abuse and neglect. 42 C.F.R. §2.12(c)(6). Those who receive information from a substance use disorder treatment program are prohibited from re-disclosing that information. 42 C.F.R. §2.32.

A minor's parent or guardian may never consent to the disclosure of the minor's substance use disorder treatment information. A covered substance use disorder treatment provider must obtain the minor's consent to disclose such information to the parent or guardian or to a third party. 42 C.F.R. §2.14, see also *Authorized Representatives and Special Considerations Regarding Consent for Minor Patients*, below. Disclosure is subject to 42 C.F.R. §§2.61, 2.63 and 2.67.

Other Information Subject to “Heightened” Protections: Genetic information, HIV and Venereal Test results.

Other types of health information subject to heightened restrictions under state law include genetic information and reports (*G.L. c. 111, §70G*), the fact and results of an HIV test (*G.L. c. 111, §70F*) and records pertaining to venereal disease (*G.L. c. 111, §119*). Providers subject to these laws are generally prohibited from disclosing such information without the patient’s “informed” written consent. A written consent is considered “informed” under these circumstances if it relates solely to the disclosure of the “extra sensitive” information (for example, an informed written consent to disclose genetic information cannot also authorize the disclosure of a patient’s entire medical history).

Authorized Representatives and Special Considerations Regarding Consent for Minor Patients

Under HIPAA, a patient’s authorized representative is anyone who is authorized under state law to act on the patient’s behalf in making health care related decisions. See 45 C.F.R. §164.502(g)(1). Where the patient is a minor, the minor’s parent, guardian, custodian or someone designated under a caregiver authorization affidavit (hereafter, “parent or guardian”) would typically be considered the minor’s authorized representative. (See Appendix E for a sample Caregiver Authorization Affidavit.) Accordingly, a minor’s parent or guardian can *generally* obtain, or consent to the disclosure of, the minor’s protected health information without the minor’s knowledge or consent. There are exceptions to this general rule. As discussed above, a minor’s parent or guardian is never treated as the minor’s authorized representative with respect to the minor’s substance use disorder treatment information. A covered substance use disorder treatment provider must obtain the minor’s consent to disclose such information to the parent or guardian or to a third party. 42 C.F.R. §2.14.

HIPAA uses the term “personal representative” to refer to what is commonly referred to as an authorized representative.

In addition, if under state law a minor can consent to their own medical treatment, then the minor alone has the right to consent to release of information concerning that treatment. *45 C.F.R. §164.502(g)(3)*. Under Massachusetts law, a minor can consent to their own medical treatment and therefore holds the authority to consent to release of information regarding medical treatment under the following circumstances:

- *Treatment for substance use disorder.* A child 12 or older may consent to treatment for substance use disorder (other than methadone maintenance therapy). See *G.L. c.112, §12E; 110 CMR 11.08(1)*.
- *Inpatient mental health treatment.* Youths 16 or older may commit themselves to a mental health facility. See *G.L. c. 123, §10; 104 CMR 27.06(1); 110 CMR 11.16(2)*.
- *Diseases dangerous to the public health and sexually transmitted diseases.* Children who believe they have contracted a dangerous, contagious disease, may consent to their own treatment. See *G.L. c. 112, §12F; 110 CMR 11.09*. Similarly, a child may consent to treatment for sexually transmitted diseases. See *110 CMR 11.10*.
- *Pregnant teens.* A minor who is pregnant or believes she is pregnant may consent to her own medical and dental treatment, except abortion which can be obtained with judicial approval. See *G.L. c. 112, §12F; 110 CMR 11.06*. This provision is not limited to pregnancy-related treatment but covers all medical and dental treatment during pregnancy.
- *Parenting teens.* Minor parents may consent to their own medical and dental treatment. See *G.L. c. 112, §12F*. Minor parents may also consent to medical and dental treatment for their children. See *G.L. c. 112, §12F*.
- *Family planning services.* A minor may consent to family planning services. See *G.L. c. 111, §24E; 110 CMR 11.05(3)*.

Under each of these circumstances, the minor's parent or guardian is not treated as the minor's authorized representative. Accordingly, the parent or guardian cannot authorize the disclosure of information related to the service on the minor's behalf. See *45 C.F.R. §164.502(g)(3)(i)*. Instead, the provider must obtain the minor's consent to disclose information to a third party.

When can a health care provider disclose information to DCF?

- **General providers:**
 - When DCF is the legal custodian of the patient (except where the minor has the right to consent). *45 C.F.R. §164.502(g) and §164.508 and G.L. c. 119, §21*.
 - When DCF is not the legal custodian, with the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *45 C.F.R. §164.508, 45 C.F.R. §164.502(g)*.
 - When the patient is an adult, with their written consent. *45 C.F.R. §164.508*.
 - To report incidents of suspected child abuse and neglect or to answer questions and provide information posed by DCF in connection with a response to any such report. *45 C.F.R. §164.512(b)(1)(ii), G.L. c. 119, §§51A, 51B*.
 - Pursuant to a subpoena or other lawful discovery request, with prior notice to the patient or the entry of a qualified protective order. *45 C.F.R. §164.512(e)*.
 - Pursuant to a valid court or administrative order. *45 C.F.R. §164.512(e)*.
- **Mental health providers:**

- When DCF is the legal custodian of the patient (except where the minor has the right to consent). 45 C.F.R. §164.502(g) and §164.508, and G.L. c. 112, §21.
- When DCF is not the legal custodian, with the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *G.L. c. 112, §§129A, 135A(b), 172.*
- When the patient is an adult, with their written consent. *G.L. c. 112, §§129A, 135A(b), 172.*
- To report incidents of suspected child abuse and neglect or to answer questions and provide information posed by DCF in connection with a response of any such report. 45 C.F.R. §164.512(b)(1)(ii), *G.L. c. 119, §§51A, 51B.*
- With a valid court or administrative order. *G.L. c. 112, §§135B(g), 172A(b)(7), 233, 208(e).*
- **Substance use disorder treatment providers:**
 - With the written consent of the patient. 42 U.S.C. §290dd-2(b)(1); 42 C.F.R. §2.14.
 - To report incidents of suspected child abuse and neglect. 42 U.S.C. §290dd-2(e); 42 C.F.R. §2.12(c)(6). *G.L. c. 119, §51A.*
 - Pursuant to a valid court order. 42 U.S.C. §290dd-2(b)(2)(C); 42 U.S.C. §290-2(c); 42 C.F.R. §2.61(a).

When can a health care provider disclose information to DYS?

- **General providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). 45 C.F.R. §164.502(g); 45 C.F.R. §164.508.
 - When the patient is an adult, with their written consent. 45 C.F.R. §164.508.
- **Mental health providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). 45 C.F.R. §164.502(g); 45 C.F.R. §164.508; *G.L. c. 112, §§129A(1), 135A(b).*
 - When the patient is an adult, with their written consent. *G.L. c. 112, §§129A(1), 135A(b).*
- **Substance use disorder treatment providers:**
 - With the written consent of the patient. 42 C.F.R. §2.14.

When can a health care provider disclose information to school personnel?

- **General providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). 45 C.F.R. §164.508.
 - When the patient is an adult, with their written consent. 45 C.F.R. §164.508.
 - Pursuant to a subpoena or other lawful discovery request, with prior notice to a patient or entry of a qualified protective order. 45 C.F.R. §164.512(e).
 - Pursuant to a valid court or administrative order. 45 C.F.R. §164.512(e).
- **Mental health providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *G.L. c. 112, §§129A(1), 135A(b).*
 - When the patient is an adult, with their written consent. *G.L. c. 112, §§129A(1), 135A(b).*
 - Pursuant to a valid court or administrative order. 42 U.S.C. §290(d)(d)-2c.
- **Substance use disorder treatment providers:**
 - With the written consent of the patient. 42 C.F.R. §2.14.
 - Pursuant to a valid court order. 42 C.F.R. §2.61; 42 U.S.C. §290-2(c).

When can a health care provider disclose information to the court or probation?

- **General providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *45 C.F.R. §164.508.*
 - When the patient is an adult, with their written consent. *45 C.F.R. §164.508.*
 - Pursuant to a valid court or administrative order. *45 C.F.R. §164.512(e).*
- **Mental health providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *G.L. c. 112, §§129A(1), 135A(b).*
 - When the patient is an adult, with their written consent. *G.L. c. 112, §§129A(1), 135A(b).*
 - Pursuant to a valid court or administrative order. *42 U.S.C. §290(d)(d)-2c.*
 - To seek involuntary commitment of a client who is a danger to himself or others or in need of hospitalization for mental or emotional issues. *G.L. c.112 §§129A (1) (2), 135A(1)(2); 135 (B)(a).*
- **Substance use disorder treatment providers:**
 - With the written consent of the patient. *42 C.F.R. §2.14.*
 - Pursuant to a valid court order. *42 C.F.R. §2.61.*

When can a health care provider disclose information to attorneys for parents or children?

- **General providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *45 C.F.R. §164.508.*
 - When the patient is an adult, with their written consent. *45 C.F.R. §164.508.*
 - Pursuant to a subpoena or other lawful discovery request, with prior notice to the patient or the entry of a qualified protective order. *45 C.F.R. §164.512(e).*
 - Pursuant to a valid court or administrative order. *45 C.F.R. §164.512(e).*
- **Mental health providers:**
 - With the written consent of the patient or the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *G.L. c. 112, §§129A(1), 135A(b).*
 - When the patient is an adult, with their written consent. *G.L. c. 112, §§129A(1), 135A(b).*
 - Pursuant to a valid court or administrative order. *42 U.S.C. §290(d)(d)-2.*
- **Substance use disorder treatment providers:**
 - With the written consent of the patient. *42 C.F.R. §2.14.*
 - Pursuant to a valid court order. *42 C.F.R. §2.61.*

When can a health care provider disclose information to Court Investigators?

- **General providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *45 C.F.R. §164.508.*
 - When the patient is an adult, with their written consent. *45 C.F.R. §164.508.*
 - Pursuant to a valid court order. *45 C.F.R. §164.512(e).*
- **Mental health providers:**
 - With the written consent of the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *G.L. c. 112, §§129A(1), 135A(b).*

- When the patient is an adult, with their written consent. *G.L. c. 112, §§129A(1), 135A(b)*.
- Pursuant to a valid court or administrative order. *42 U.S.C. §290(d)(d)-2*.
- **Substance use disorder treatment providers:**
 - With the written consent of the patient. *42 C.F.R. §2.14*.
 - Pursuant to a valid court order. *42 C.F.R. §2.61*.

When can a health care provider disclose information to Police or Prosecutors?

- **General providers:**
 - With the written consent of the patient or the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *45 C.F.R. §164.508*.
 - When the patient is an adult, with the adult patient's written consent. *45 C.F.R. §164.508*.
 - Pursuant to a subpoena or other lawful discovery request, with prior notice to the patient or the entry of a qualified protective order. *45 C.F.R. §164.512(e)*.
 - Pursuant to a valid court or administrative order. *45 C.F.R. §164.512(e)*.
- **Mental health providers:**
 - With the written consent of the patient or the parent, guardian, custodian or other authorized representative (except where the minor has the right to consent). *G.L. c. 112, §§129A(1), 135A(b)*.
 - When the patient is an adult, with the adult patient's written consent. *G.L. c. 112, §§129A(1), 135A(b)*.
 - Pursuant to a valid court or administrative order. *42 U.S.C. §290(d)(d)-2*.
 - To police when the patient has made an explicit threat to kill or inflict serious bodily injury on an identifiable person and the patient has the intent and means to carry out the threat. *G.L. c. 112,*
- **Substance use disorder treatment providers:**
 - With the written consent of the patient. *42 C.F.R. §2.14*.
 - Pursuant to a valid court order. *42 C.F.R. §2.61*.

Police and Prosecutor's Information

District Attorneys and police have discretion to share information they possess unless otherwise prohibited by statute, rule, or court order. When responding to requests for information about juveniles, police and prosecutors are guided by the intent of the legislature to provide broadly for the confidentiality of juvenile records. See *Police Comm'r of Boston v. Municipal Court of Dorchester Dist.*, 374 Mass. 640 (1978); G.L. c. 119, §§38, 60A.

District Attorneys are required to coordinate efforts of the criminal justice system in addressing juvenile justice through cooperation with the schools and local law enforcement representatives, probation and court representatives and, where appropriate, the Department of Children and Families, Department of Youth Services and the Department of Mental Health. *G.L. c. 12, §32(a)*. In this capacity the district attorney identifies "which juvenile offenders are among the most likely to pose a threat to their community." *G.L. c. 12, §32(b)* (Community Based Juvenile Justice Programs / Roundtables).

When can Police/Prosecutors disclose information to DCF?

Except where otherwise prohibited by statute, rule or court order, police and prosecutors may reveal components of their records when such disclosure is in the interests of justice. Police may release information to DCF in accordance with §§51A and 51B of *G.L. c. 119*. Section 51A requires police to report cases of suspected child abuse or neglect to DCF. Section 51B requires police to disclose to DCF upon request, any information that may be relevant to an investigation of a case of suspected abuse or neglect.

When can Police/Prosecutors disclose information to Probation?

Except where otherwise prohibited by statute, rule or court order, police and prosecutors may reveal components of their records.

When can Police/Prosecutors disclose information to DYS?

Except where otherwise prohibited by statute, rule or court order, police and prosecutors may reveal components of their records when such disclosure is in the interests of justice.

When can Police/Prosecutors disclose information to schools?

Except where otherwise prohibited by statute, rule or court order, police and prosecutors may reveal components of their records when such disclosure is in the interests of justice.

When can Police/Prosecutors disclose information to the Community Based Juvenile Justice programs?

Pursuant to *G.L. c. 12, §32*, the district attorneys are required to operate Community Based Juvenile Justice programs (CBJ) in order to coordinate efforts among schools, local law enforcement, Probation and court representatives, the Department of Children and Families, Department of Youth Services, and Department of Mental Health. The CBJ programs are designed to identify cases in which juvenile offenders are among those most likely to pose a threat to their community and to identify specific events and particular individuals whose conduct poses a threat to schools, neighborhoods and communities. In order to meet these mandates, police and prosecutors may share the names of individuals under investigation or charged with a delinquency offense as well as the nature of the allegations. Although the CBJ statute allows for the District Attorney's office to share specific information as stated above, all other information sharing by the invited members of the CBJ, including the school, probation, and agency personnel can only be disclosed in compliance with the rules that govern confidential information held by those entities.

When can Police/Prosecutors disclose information to Juvenile Court Investigators?

Except where otherwise prohibited by statute, rule or court order, police and prosecutors may reveal components of their records to Juvenile Court Investigators when such disclosure is in the interests of justice.

When can Police/Prosecutors disclose information to a child's or young adult's Care and Protection or CRA attorney?

Except where otherwise prohibited by statute, rule or court order, police and prosecutors may reveal components of their records to a Care and Protection attorney for a child or young adult when such disclosure is in the interests of justice.

When can Police/Prosecutors disclose information to a child's delinquency attorney?

Once a prosecution has been initiated against a juvenile or youthful offender, by either indictment or complaint, the prosecutor shall disclose to the attorney for the child all information in accordance with *Mass. R. Crim. P. 14*. The disclosure of identifying information of victims and witnesses may be restricted by court order. Information restricted by statute, such as the identity of a person who files a child abuse and neglect report with DCF pursuant to *G.L. c. 119, §51A*, will remain redacted from records disclosed. Agencies providing un-redacted records to the prosecutor may wish to include copies of any statutes that limit disclosure.

When can Police/Prosecutors disclose information to a parent's attorney?

Except where otherwise prohibited by statute, rule or court order, police and prosecutors may reveal components of their records when such disclosure is in the interests of justice.

When can Police/Prosecutors disclose information to a GAL or CASA?

Except where otherwise prohibited by statute, rule or court order, police and prosecutors may reveal components of their records when such disclosure is in the interests of justice.

When can Police/Prosecutors disclose information to victims?

G.L. c. 258B, §3, requires the prosecutor to notify victims (and families of deceased victims) of their rights in connection with a prosecution, which include the right to be present at all court proceedings, the right to be informed of the status of the case and for a prompt disposition of the case, as well as the right to confer with the prosecution before the start of trial. The prosecution must notify victims of their rights to be heard through an oral and written victim impact statement at sentencing or the disposition of the case. Prosecutors are also obligated to inform victims that they have the right to submit to or decline an interview by defense counsel or anyone acting on the defendant's behalf, and the right to impose reasonable conditions on the conduct of any interview. The Victim Bill of Rights applies to delinquency and youthful offender matters prosecuted in the Juvenile Court. *G.L. c. 258B, §1*.

In cases involving rape, sexual assault or domestic violence, the victim can request copies of all reports of the assault and all communications between police officers and victims. *G.L. c. 41, §97(d)*.

Attorney Information

Attorneys are appointed or retained to represent children and parents in cases in the Juvenile Court and Probate and Family Court. The types of cases include delinquency, youthful offender, Care and Protection, Child Requiring Assistance (CRA), adoption and guardianship of a minor cases as well as in contested private adoptions. The Committee for Public Counsel Services (CPCS) is responsible for paying and overseeing the work of attorneys who are appointed to represent indigent parents and children. These lawyers may be staff attorneys working in CPCS offices or they may be private lawyers, who are trained and certified to take cases. *G.L.c. 211D § 6*.

Attorneys for parents and children have many obligations to their clients. Included among them are zealous advocacy, undivided loyalty and confidentiality. These obligations are set out in the Massachusetts Rules of Professional Conduct. CPCS also maintains performance standards for attorneys in different practice areas. Additionally lawyers are bound by the attorney-client privilege. *Massachusetts Guide to Evidence §502*. A lawyer cannot disclose “confidential communications” with their client, made during the course of representation, unless the client provides written or oral waiver of the privilege. There are limited exceptions to the attorney-client privilege (these are similar to those set out in the Mass. Rules of Professional Conduct). The attorney-client privilege mostly applies to court proceedings, where an attorney may be called as a witness or required to produce documents. An attorney’s obligations under the Mass. Rules of Professional Conduct are broader than the attorney-client privilege and apply to situations outside the courtroom.

Lawyers for children must abide by the same rules of professional conduct as lawyers for adults, including representing their client’s express wishes. They do not represent the child's best interests. Attorneys for both parents and children play a vital role in explaining the legal process to their clients and providing legal counseling and advice, including the potential consequences of their decisions. Attorneys for children, youth, and parents also play an important role in protecting against the “free flow of information” about their clients, including protecting their client’s confidential relationships with mental health and other treatment providers.

NOTE: This guide should not be used as a substitute for a lawyer’s knowledge of the Rules of Professional Conduct.

When can an attorney for a child, young adult or parent share information with others?

Under the Rules of Professional Conduct, all information that an attorney learns during the course of representing a client is confidential. This includes information that the attorney learns from the client as well as information from third parties. With some very limited exceptions, attorneys cannot disclose any information unless the client gives informed consent. *Mass. R. Prof. C. 1.6(a)*.

Some of the most common exceptions are discussed below.

1) An attorney may disclose confidential information that is "impliedly authorized" by the client to carry out the representation. This simply means that the attorney in the course of his advocacy can disclose information that the client would agree is necessary to further the client’s goals in the case. For example, if a child in foster care tells his attorney that he wants to visit more with his mother, the lawyer can tell DCF that his client wants more frequent visitation, even though the lawyer's conversation with the client about visits is confidential. Another example is when the attorney is preparing for a bail argument and the information learned from the client will be helpful in persuading the court the client will return to court. If the lawyer has any doubt whether the client would want the information disclosed, he should ask the client for permission. *Mass. R. Prof. C. 1.6(a)*.

2) An attorney *may, but is not required,* to disclose confidential client information if it is necessary to prevent reasonably certain death or substantial bodily harm. *Mass. R. Prof. C. 1.6(b)(1).*

3) In certain limited circumstances, if the attorney determines that the client's ability to make decisions about the legal case is diminished, either because of age or disability, the attorney may reveal confidential information to the extent necessary to protect the client from substantial harm. *Mass. R. Prof. C. 1.14.*

Appendix A: Links to Laws, Regulations, Rules, Policies, and Agreements

[U.S. Code](#)

[Code of Federal Regulations](#)

[Massachusetts General Laws](#)

[Code of Massachusetts Regulations](#)

[Massachusetts Case Law](#)

[Massachusetts Guide to Evidence](#)

[Massachusetts Court Rules and Standing Orders](#)

[Massachusetts Rules of Professional Conduct](#)

[Massachusetts Rules of Criminal Procedure](#)

[Department of Children and Families Regulations and Policies](#)

[Department of Youth Services Regulations and Policies](#)

[Department of Elementary and Secondary Education](#)

Appendix B: Glossary

Acronyms / Abbreviations

CASA: Court Appointed Special Advocate

C&P: Care and Protection

CMR: Code of Massachusetts Regulations

CRA: Child Requiring Assistance

DA: District Attorney

FERPA: Family Educational Rights and Privacy Act

GAL: Guardian ad Litem

HIPAA: Federal Health Insurance Portability and Accountability Act

G.L.: Massachusetts General Laws

Mass. R. Prof. C.: Massachusetts Rules of Professional Conduct

SRO: School Resource Officer

Massachusetts Agencies Referred to in this Guide:

Committee for Public Counsel Services (CPCS): The state-funded organization that provides attorneys for indigent individuals in any cases where there is a right to counsel.

Department of Children and Families (DCF): The Massachusetts administrative agency charged with protecting children from abuse and neglect, and in partnership with families and communities, ensuring children are able to grow and thrive in a safe and nurturing environment. Formerly known as the Department of Social Services (DSS).

Department of Elementary and Secondary Education (ESE): The Massachusetts administrative agency responsible for overseeing the state's system of K-12 education. This includes strengthening standards, curriculum, instruction, and assessment; promoting educator development; supporting students' social-emotional learning, health, and safety; turning around the lowest performing districts and schools; and enhancing resource allocation and data use.

Department of Mental Health (DMH): The Massachusetts administrative agency responsible for setting the standards for the operation of mental health facilities and community residential programs and for providing clinical, rehabilitative and supportive services for adults with serious mental illness, and children and adolescents with serious mental illness or serious emotional disturbance. In addition, in collaboration with the Administrative Office of the Juvenile Court, DMH oversees the Juvenile Court Clinics providing behavioral health evaluation and consultation to each Juvenile Court division.

Department of Youth Services (DYS): The Massachusetts administrative agency responsible for providing delinquency prevention programming and services and facilities for the study, diagnosis, care, treatment, including physical and behavioral health and social services, education, training and rehabilitation of all children and youth referred or committed to the Department by the courts on delinquency or youthful offender matters.

Massachusetts Probation Service: Probation includes 105 Probation Departments in Boston Municipal, District, Superior, Juvenile, and Probate and Family Courts. In Juvenile Court, Probation Officers supervise children, adolescents, and young adults involved in delinquency, youthful offender and child requiring assistance matters, as well as, monitor the welfare of children who are before the Juvenile Court as subjects of parental abuse and neglect. In Probate and Family Court, Probation Officers assist the court, including by investigating custody issues, resolving disputes regarding visitation, and enforcing court orders regarding child support in a variety of civil matters such as divorce, paternity, guardianship and adoption.

Terms

51A report: Pursuant to G.L. c. 119, §51A, a report made to the Department of Children and Families alleging abuse or neglect of a child.

51B: Pursuant to G.L. c. 119, §51B, the investigation conducted by DCF of suspected child abuse or neglect that makes a written determination of the child's safety and risk and whether the report is substantiated.

Adjudication: The process of judicially deciding a case. In a delinquency or youthful offender case, the finding of "delinquent" or "not delinquent" or "youthful offender" or "not youthful offender" or "guilty" or "not guilty." In Care and Protection cases, the determination by the court whether a child is in need of care and protection.

Authorization for disclosure/Release of information (ROI): A document that legally authorizes entities to disclose protected information. An authorization/ROI may also be called a written consent. See also Signed Release.

Care and Protection Case (C&P): A court proceeding alleging abuse or neglect of a child in which a judge decides whether a child is in need of care and protection and whether to terminate parental rights.

Caregiver Authorization Affidavit: A document which allows the caregiver to make decisions and access records related to a child's education and health care, but the parent, legal guardian or legal custodian shares decision making authority. It must be signed by both the caregiver and the child's parent, legal guardian or legal custodian and notarized. The parent, legal guardian or legal custodian may cancel it at any time. (See Appendix E for sample).

Child: Any person under the age of 18.

Child Requiring Assistance (CRA): Child Requiring Assistance is a court case involving a child between the ages of 6 and 18 who repeatedly runs away from home and/or repeatedly fails to obey their parent or legal guardian or is a sexually exploited child; or a child between the ages of 6 and 16 who is alleged to be habitually truant from school or repeatedly fails to obey school rules. Previously called a "Child In Need of Services" or "CHINS."

Court Activity Record Information (CARI): A computerized database maintained by the Office of the Commissioner of Probation containing a record of all criminal, and some civil court actions related to a particular person, including delinquency and youthful offender cases. A CARI report lists a particular individual's involvement as a party in all of the courts of the Commonwealth.

Criminal Offender Record Information (CORI): Data maintained by the Department of Criminal Justice Information Services detailing an individual's criminal history, including charges and dispositions. A CORI report is a computer printout of an individual's CORI data.

Commitment (DYS): The order of a youth to either the care or the physical custody of the Department of Youth Services by a court in conjunction with a delinquency complaint, youthful offender indictment or probation violation. Youth committed to DYS care are detained awaiting resolution of their pending matters; youth are committed to DYS custody as a resolution to their pending delinquency, youthful offender or probation matters.

Confidential communication: Information exchanged between two people who have a relationship in which private communications are protected by law including between doctor and patient and between attorney and client.

Court Appointed Special Advocate (CASA): A trained volunteer who is appointed by a judge to promote the best interests of a child in a Care and Protection proceeding.

Court Investigator: A person appointed by the judge to investigate the conditions affecting the child and family in a Care and Protection proceeding and make a report to the court under oath.

Court order: A directive of the court.

Court records: The official report of the proceedings in a case, including the filed papers, docket entries, transcript, recordings and tangible exhibits.

DCF Custody: When DCF is given the responsibility to exercise the custodial powers enumerated in G.L. c. 119, §21.

Delinquency, delinquency case, delinquency matter: Proceedings to decide whether a child between the ages of 12 and 18 violated a law of the Commonwealth or a city ordinance or town by-law. Delinquency proceedings are usually conducted by the Juvenile Court, in a few instances, by the District Court.

Detention: The temporary physical care provided by the Department of Youth Services in lieu of bail for a youth awaiting resolution of a pending delinquency complaint, youthful offender indictment or Probation violation, upon order by a court. Detained youth are committed to the care of DYS, pursuant to *G.L. c. 119, §68*.

Disclosure: The release of information (oral or written) about a person or entity.

Due Process: A fundamental principle of fairness in all legal matters. The universal guarantee of due process is in the Fifth Amendment to the U.S. Constitution, and is applied to all states by the 14th Amendment. It tells us what process is due to an individual when the state seeks to interfere with a constitutionally protected liberty interest.

Eligible Student: A student who can consent to the release/disclosure of student record information by virtue of being at least either age 14 or in the 9th grade.

Guardian of a minor: A guardian is a person appointed by the court to make decisions for a child, just as a parent would. A person can be appointed guardian of a child if the child's parents are unable or unavailable to care for the child. *G.L. c. 190B 5-201 et seq.*

Guardian ad litem (GAL): An objective and independent professional, appointed by the court to participate in court proceedings on behalf of a child or incompetent person.

Individualized Education Program (IEP): A written statement, developed and approved in accordance with federal special education law in a form established by DESE that identifies a student's special education needs and describes the services a school district shall provide to meet those needs. For students with disabilities who do not require specialized instruction but need the assurance that they will receive equal access to public education and services, a 504 Plan is created to provide accommodations that the student needs.

Informed consent: Permission granted with the knowledge of the possible consequences, risks, and benefits.

Juvenile Court: The Juvenile Court Department is a statewide court with general jurisdiction over delinquency and youthful offender cases, adoptions, care and protection cases, termination of parental rights cases, and children requiring assistance (CRA).

Juvenile Court Clinician (JCC): A mental health professional who provides evaluations and consultations for the Juvenile Court.

Juvenile Court Probation Officer (PO): Juvenile Court Probation Officers supervise children, adolescents and young adults involved in youthful offender, delinquent, and Child Requiring Assistance (CRA) matters, as well as monitor the welfare of children who are before the Juvenile Court as subjects of Care and Protection cases.

Keeper of records: A unit or individual within an agency or entity that responds to requests for records.

Lamb Warning: A notification given to an individual by a clinician, prior to an evaluation, that the individual's participation is voluntary and may be terminated at any time, and that any communications made during the course of the evaluation will not be privileged and may be disclosed in court proceedings. A Lamb Warning is only valid if the individual knowingly and voluntarily agrees to waive the privilege upon receiving such notification. *Commonwealth v. Lamb*, 365 Mass. 265 (1974).

Mandated reporters: Individuals in certain professions who come in contact with a child who, in their professional capacity, have reasonable cause to believe that a child is suffering from abuse or neglect and therefore must file a report of abuse or neglect with the Department of Children and Families. *G.L. c. 119, §§ 21 and 51A*.

Mental health service providers: A person, partnership, or professional corporation comprised of appropriately licensed professionals such as social workers, counselors, psychologists, and psychiatrists.

Party: A participant in a legal proceeding.

Personal Representative (per HIPAA): A person authorized (under state or other applicable law, e.g., tribal or military law) to act on behalf of the individual in making health care related decisions.

Privilege: In legal proceedings, a person's right to refuse to disclose and to prevent other persons from disclosing confidential information.

Probate and Family Court: The Department of the Trial Court with jurisdiction over family-related matters such as divorce, separate support, paternity, child support, custody, visitation, adoption, termination of parental rights and abuse prevention and probate matters such as wills, trusts, administrations, guardianships, medical treatment cases, conservatorships and change of names.

Re-disclosure: Releasing information acquired from another to a third party. Also called disclosure of third party records.

Signed release (or written consent, written authorization, or release of information): A document that legally authorizes an entity or individual to disclose protected information.

Standing Order: A court order which is in force until specifically changed or withdrawn.

Student: A child or young adult attending a school.

Subpoena: A written request for the production of documents for court or for the appearance of a witness in court.

Third party record: A document or other record prepared by an individual or agency other than the record holder.

Waiver: A voluntary surrender of a claim, right or privilege.

Young Adult: DCF: A person between the ages of 18 and 23.

Youthful Offender proceedings: A class of cases where certain children between the ages of 14 and 18 can receive a juvenile, adult or combination sentence. *G.L. 119, §§ 54 & 58*.

Appendix C: HIPAA Requirements for Release of General Health Information

A patient's written consent to the disclosure of personal health or medical information must comply with HIPAA to be valid. This is true for all types of medical and mental health information, including psychotherapy notes, and other confidential mental health information. HIPAA requires that a covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of protected health information needed to accomplish the intended purpose of the use, disclosure, or request. If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization. Many doctors and hospitals have their own release forms to use which will expedite the process.

A valid authorization to release protected health information must include:

1. A description of the information to be disclosed that identifies the information in a specific and meaningful fashion. Psychotherapy notes, genetic testing, and HIV testing must be requested specifically and separately.
2. The name of the person authorized to disclose the information.
3. The name of the person to whom the information is being disclosed.
4. A description of the purpose of the requested disclosure. The statement "at the request of the individual" is sufficient when the individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.
5. The expiration date, or a condition or event upon which the authorization terminates.
6. Signature by the minor patient or the minor patient's parent, guardian, or other authorized representative and the date. However, only the minor can consent to the disclosure of information related to a service provided to a minor without the consent of the minor's parent, guardian or other authorized representative. See AUTHORIZED REPRESENTATIVE/MINOR SECTION on pp. 27-28).
7. When the patient is NOT a minor, signature by the patient or the patient's authorized representative and the date. If it is not signed by the patient, there must be a description of how the person signing is authorized to represent the patient.
8. A statement that the consent is subject to revocation at any time and how the individual may revoke the authorization.
9. A statement that the patient understands the terms of the consent and the patient's right to obtain information about to whom the information was disclosed.
10. A statement on the ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization.
11. A statement about the potential for information disclosed pursuant to the authorization to be subject to re-disclosure by the recipient and no longer be protected by HIPAA.
12. If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

Invalid Authorizations: If any one of the elements of the authorization is omitted, the release is invalid.

Check with your attorney on updates to this information which may happen at any time.

Appendix D: Requirements for Release of Substance Use Disorder Treatment Information Under 42 CFR Part 2

42 CFR Part 2 applies to records held by any individual or entity that is federally assisted and holds itself out as providing, and provides, alcohol or drug use diagnosis, treatment or referral for treatment. With limited exceptions, Part 2 requires patient consent to disclose protected health information even for the purposes of treatment, payment, or health care operations. Part 2 provides more stringent federal protections than other health privacy laws such as HIPAA and seeks to protect individuals with substance use disorders who could be subject to discrimination and legal consequences in the event that their information is improperly used or disclosed. *42 C.F.R. Part 2. Each disclosure of information made with the patient's written consent must include notice to the recipient that any further disclosure of information is prohibited unless expressly permitted by the written consent of the patient or as otherwise permitted by 42 CFR Part 2.*

A valid authorization to release protected health information under Part 2 must include:

1. Name of patient.
2. The specific name(s) or general designation of the Part 2 program(s), entity(ies), or individual(s) permitted to make the disclosure, i.e., the holder of the information.
3. How much and what kind of information is to be disclosed, including an explicit description of the substance use disorder information that may be disclosed (e.g., medications and dosages, lab tests, substance use history summaries). A patient consenting to disclose "all of my substance use disorder information" is acceptable as long as more granular options are included (so that the patient can choose to authorize disclosure of something less).
4. The name(s) of the individual(s) or entity(ies) to whom a disclosure is to be made.
5. The purpose of the disclosure which must be limited to the information which is necessary to carry out the stated purpose.
6. Signature of the patient, or other authorized representative. (Note that a parent or guardian cannot authorize disclosure of a minor's information.) If it is not signed by the patient, there must be a description of how the person signing is authorized to represent the patient.
7. The date on which the consent is signed.
8. The date, event, or condition upon which the consent will expire if not revoked before. This date, condition, or event must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is provided.
9. A statement that the consent is subject to revocation at any time except to the extent that the Part 2 program or other lawful holder of patient identifying information that is permitted to make the disclosure has already acted in reliance on it.
10. The consent form must contain a statement that the patient understands the terms of the consent and the patient's right to obtain information about to whom their information was disclosed.

Invalid Authorizations: If any one of the elements of the authorization is omitted, the release is invalid.

Check with your attorney on updates to this information which may happen at any time.

Appendix E: Caregiver Authorization Affidavit (2 page form)

CAREGIVER AUTHORIZATION AFFIDAVIT

Massachusetts General Laws Chapter 201F

1. AUTHORIZING PARTY (Parent/Guardian) I, _____, residing at _____ am: *(circle one)* the parent legal guardian legal custodian of the minor child(ren) listed below.

I do hereby authorize _____, residing at _____ to exercise concurrently the rights and responsibilities, except those prohibited below, that I possess relative to the education and health care of the minor children whose names and dates of birth are:

_____	_____	_____	_____
name	date of birth	name	date of birth
_____	_____	_____	_____
name	date of birth	name	date of birth

The caregiver may NOT do the following: (If there are any specific acts you do not want the caregiver to perform, please state those acts here.) _____

The following statements are true: *(Please read)*

- There are no court orders in effect that would prohibit me from exercising or conferring the rights and responsibilities that I wish to confer upon the caregiver. *(If you are the legal guardian or custodian, attach the court order appointing you.)*
- I am not using this affidavit to circumvent any state or federal law, for the purposes of attendance at a particular school, or to re-confer rights to a caregiver from whom those rights have been removed by a court of law.
- I confer these rights and responsibilities freely and knowingly in order to provide for the child(ren) and not as a result of pressure, threats or payments by any person or agency.
- I understand that, if the affidavit is amended or revoked, I must provide the amended affidavit or revocation to all parties to whom I have provided this affidavit.

This document shall remain in effect until _____ *(not more than two years from today)* or until I notify the caregiver in writing that I have amended or revoked it. I hereby affirm that the above statements are true, under pains and penalties of perjury.

Signature: _____ Printed name: _____

Telephone number: _____

2. WITNESSES TO AUTHORIZING PARTY SIGNATURE

(To be signed by persons over the age of 18 who are not the designated caregiver)

Witness #1 Signature

Witness #2 Signature

Printed Name, Address and Telephone

Printed Name, Address and Telephone

3. NOTARIZATION OF AUTHORIZING PARTY'S SIGNATURE

Commonwealth of Massachusetts

_____, SS

On this date, _____, before me, the undersigned notary public, personally appeared

_____, proved to me through satisfactory evidence of identification, which was

_____, to be the person whose name is signed on the preceding document, and swore under the pains and penalties of perjury that the foregoing statements are true.

Signature and seal of notary: _____

Printed name of notary: _____

My commission expires: _____

4. CAREGIVER ACKNOWLEDGMENT

I, _____, am at least 18 years of age and the above child(ren)

currently reside with me at _____. I am the children's (*state your relationship to the child*) _____.

I understand that I may, without obtaining further consent from a parent, legal custodian or legal guardian of the child(ren), exercise concurrent rights and responsibilities relative to the education and health care of the child(ren), except those rights and responsibilities prohibited above. However, I may not knowingly make a decision that conflicts with the decision of the child(ren)'s parent, legal guardian or legal custodian. I understand that, if the affidavit is amended or revoked, I must provide the amended affidavit or revocation to all parties to whom I have provided this affidavit prior to further exercising any rights or responsibilities under the affidavit. I hereby affirm that the above statements are true, under pains and penalties of perjury.

Signature of caregiver: _____

Printed name: _____

Telephone Number: _____

Date: _____

INSTRUCTIONS: Massachusetts Caregiver Authorization Affidavit

Who can use this form?

If a child is living with you, a parent may give you permission to make medical and educational decisions for the child. If the child is living with you and you are not a parent, you are called a “caregiver.”

Do I need to file anything in court if we use this form?

No. This form gives the caregiver the right to make decisions without a court order.

What does the caregiver do with this form?

You will need to give a copy of this form to the child’s school, doctor and dentist. You should keep a list of everyone to whom you gave the form, in case you have to let them know about changes. You should make copies for yourself and keep the original in a safe place.

Does this form give custody to the caregiver?

No, this form only gives the caregiver the right to make medical and educational decisions for the child.

If a parent signs this form, can the parent still make these decisions?

Yes, a parent keeps the right to make these decisions as well.

What happens if the caregiver and the parent disagree?

If there is a disagreement, the parent makes the final decision.

How long does this permission last?

It is good for up to 2 years. You will need a new one every 2 years.

Can a parent change his or her mind?

Yes. He or she needs to write a letter to the caregiver, saying that the caregiver no longer has permission to make these decisions. Please be sure to sign the letter and include the date. The parent and the caregiver each gives a copy of this letter to the child’s school, doctor and dentist.

HOW TO FILL OUT THE FORM

Parent

- The parent fills out the front page under the heading “Authorizing Party.”
- The parent must sign this form in front of two witnesses (who are not the caregiver) and a notary public. The witnesses and the notary sign on the back page.
- Notaries are often available at banks and courts. You can also find a notary in the yellow pages. Please note that you will need to show a picture I.D. to the notary. There may be a charge to have the form notarized.

Caregiver

- The caregiver fills out the last paragraph on the back page called “Caregiver Acknowledgment.”

Both the parent and the caregiver should carefully read the form before signing, since you are swearing that the information in it is true.

Appendix F: Probation Consent for Release of Confidential Information

CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION

The Massachusetts Probation Service is in possession of confidential information about

[PRINT name of individual]

I, or a person authorized to act on my behalf, consent to Probation's disclosure of confidential information about me or from my Probation file for the purposes of treatment, services, or other rehabilitative intervention to:

[PRINT name of individual(s) or business name of provider(s)]

Signature of Individual _____ Date _____

or

Signature of Person authorized to sign for Individual _____

Check one: Parent Guardian Other: [must specify] _____ Date _____

Probation witness signature: _____

Probation witness title: CPO FACPO ACPO PO APO

If you believe your confidential information includes references to substance abuse, HIV,* or other health information or treatment, please read and sign below:

I understand Probation may possess confidential information about my substance abuse, HIV, or other health information which is protected by federal and state law. By signing below, I consent to Probation's disclosure of any of this type of confidential information for the purposes stated above. I may revoke my consent at any time in writing to Probation for any future disclosures. My consent expires at the end of Probation's involvement in my case.

Signature of Individual _____ Date _____

OR

Signature of Person authorized to sign for Individual _____

Check one: Parent Guardian Other: [must specify] _____ Date _____

Probation witness signature: _____

Probation witness title: CPO FACPO ACPO PO APO

TO INDIVIDUAL OR PROVIDER RECEIVING THIS CONFIDENTIAL INFORMATION

This confidential information has been disclosed to you from records protected by federal confidentiality rules (42 CFR Part 2) and state confidentiality laws (G.L. c. 111, §§ 70E and 70F, G.L. c. 112 §§ 129A, 135A, 135B, 172A). These rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by law. A general authorization for the release of medical or other information is not sufficient for this purpose. The federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

12 - 24- 15

* Probation allows individuals to cross out categories of information (e.g., HIV/AIDS...) if they don't want to share that kind of information.

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This document is also available online at:

<https://www.mass.gov/service-details/massachusetts-court-improvement-program-masscip>.

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