

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 309

Short Title: Child Fatality Task Force Confidential Records.

(Public)

Sponsors: Senators Martin of Guilford; Allran, Cooper, and Martin of Pitt.

Referred to: Judiciary.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE CHILD FATALITY TASK FORCE TO
BROADEN THE ACCESS TO CONFIDENTIAL RECORDS FOR THE
PURPOSES OF CHILD FATALITY REVIEW AND PREVENTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-578 reads as rewritten:

"§ 143-578. Access to records.

(a) The Chair of the State Team, a Local Team, or the Task Force during its existence, may make a written demand for any information or reports, whether or not confidential, that may in the Chair's opinion be relevant to a review of a child's death or maltreatment pursuant to this Article. Upon the Chair's request, and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. Any public or private agency or individual acting in good faith in providing this access is immune from any civil or criminal liability that might otherwise be incurred or imposed. The State Team, the Local Teams, and the Task Force during its existence, shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this Article, including police investigations data, medical examiner investigative data, health records, mental health records, and social services

1 records. If a custodian of criminal investigative information or records believes that
2 release of the information will jeopardize the right of the State to prosecute a defendant
3 or the right of a defendant to receive a fair trial or will undermine an ongoing or future
4 investigation, it may seek an order from a court of competent jurisdiction to prevent
5 disclosure of the information. In such an action, the custodian of the records shall have
6 the burden of showing by a preponderance of the evidence that disclosure of the
7 information in question will jeopardize the right of the State to prosecute a defendant or
8 the right of a defendant to receive a fair trail or will undermine an ongoing or future
9 investigation. Actions brought pursuant to this paragraph shall be set down for
10 immediate hearing, and subsequent proceedings in the actions shall be accorded priority
11 by the trial and appellate courts. The State Team, the Task Force, and the Local Teams
12 shall not, as part of the reviews authorized under this Article, contact, question, or
13 interview the child, the parent of the child, or any other family member of the child
14 whose record is being reviewed. Any member of a Local Team may share, only in an
15 official meeting of that Local Team, any information available to that member that the
16 Local Team needs to carry out its duties.

17 (a1) The Chair of the State Team, a Local Team, or the Task Force during its
18 existence, may issue subpoenas for records authorized pursuant to subsection (a) of this
19 section. Subpoenas issued pursuant to this subsection shall be served in the manner and
20 for the same fees as provided by law. The superior court of the county in which the State
21 Team, a Local Team, or the Task Force meets shall, on application of its Chair or
22 executive director, enforce the production and examination of subpoenaed records.

23 (b) Meetings of the State Team and the Local Teams are not subject to the
24 provisions of Article 33C of Chapter 143 of the General Statutes. However, the Local
25 Teams may hold periodic public meetings to discuss, in a general manner not revealing
26 confidential information about children and families, the findings of their reviews and
27 their recommendations for preventive actions. Minutes of all public meetings, excluding
28 those of executive sessions, shall be kept in compliance with Article 33C of Chapter 143
29 of the General Statutes. Any minutes or any other information generated during any
30 executive session shall be sealed from public inspection.

31 (c) All otherwise confidential information and records acquired by the State Team,
32 the Local Teams, and the Task Force during its existence, in the exercise of their duties
33 are confidential; are not subject to discovery or introduction into evidence in any
34 proceedings; and may only be disclosed as necessary to carry out the purposes of the
35 State Team, the Local Teams, and the Task Force. In addition, all otherwise confidential
36 information and records created by a Local Team in the exercise of its duties are
37 confidential; are not subject to discovery or introduction into evidence in any
38 proceedings; and may only be disclosed as necessary to carry out the purposes of the
39 Local Team. No member of the State Team, a Local Team, nor any person who attends a
40 meeting of the State Team or a Local Team, may testify in any proceeding about what
41 transpired at the meeting, about information presented at the meeting, or about opinions
42 formed by the person as a result of the meetings. This subsection shall not, however,

1 prohibit a person from testifying in a civil or criminal action about matters within that
2 person's independent knowledge.

3 (d) Each member of a Local Team and invited participant shall sign a statement
4 indicating an understanding of and adherence to confidentiality requirements, including
5 the possible civil or criminal consequences of any breach of confidentiality.

6 (e) Cases receiving child protective services at the time of review by a Local Team
7 shall have an entry in the child's protective services record to indicate that the case was
8 received by that Team. Additional entry into the record shall be at the discretion of the
9 director of the county department of social services.

10 (f) The Social Services Commission shall adopt rules to implement this section in
11 connection with reviews conducted by Community Child Protection Teams. The Health
12 Services Commission shall adopt rules to implement this section in connection with
13 Local Teams that review additional child fatalities. In particular, these rules shall allow
14 information generated by an executive session of a Local Team to be accessible for
15 administrative or research purposes only.

16 (g) Any person or institution who knowingly and willfully fails to maintain the
17 confidentiality of information as required by this section shall be guilty of a Class 3
18 misdemeanor."

19 Section 2. G.S. 122C-54(h) reads as rewritten:

20 "(h) A facility shall disclose confidential information for purposes of complying
21 with Article 44 of Chapter 7A of the General Statutes and Statutes, Article 6 of Chapter
22 108A of the General Statutes, and Article 62 of Chapter 143 of the General Statutes, or as
23 required by other State or federal law."

24 Section 3. G.S. 7A-675(h) reads as rewritten:

25 "~~Nothing in this section shall preclude the necessary sharing of information among~~
26 ~~authorized agencies.~~ The chief district court judge in each district shall designate by
27 standing order certain agencies in the district as 'agencies authorized to share
28 information'. Agencies so designated shall share with one another information that is in
29 their possession that is relevant to any case in which a petition is filed alleging that a
30 juvenile is abused, neglected, dependent, delinquent, or undisciplined, and shall continue
31 to do so until the juvenile is no longer subject to the juvenile jurisdiction of the court.
32 Agencies that may be designated as 'agencies authorized to share information' include
33 local mental health facilities, local health departments, local departments of social
34 services, local law enforcement agencies, local school administrative units, the district's
35 district attorney's office, the Division of Juvenile Services of the Administrative Office of
36 the Courts, and the Office of Guardian ad Litem Services of the Administrative Office of
37 the Courts. Any information shared among agencies pursuant to this subsection shall
38 remain confidential and shall be withheld from public inspection. Nothing in this section
39 or any other provision of law shall preclude any other necessary sharing of information
40 among agencies."

41 Section 4. This act becomes effective October 1, 1997. Sections 1 and 2 of
42 this act apply to confidential records being accessed on or after that date. Section 3 of this
43 act applies to all juvenile cases pending or commenced on or after that date.