

TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 23 CONFIDENTIALITY OF CLIENT RECORDS

8.14.23.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.14.23.1 NMAC - N, 6/1/2010]

8.14.23.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.
[8.14.23.2 NMAC - N, 6/1/2010]

8.14.23.3 STATUTORY AUTHORITY: Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.
[8.14.23.3 NMAC - N, 6/1/2010]

8.14.23.4 DURATION: Permanent.
[8.14.23.4 NMAC - N, 6/1/2010]

8.14.23.5 EFFECTIVE DATE: June 1, 2010, unless a later date is cited at the end of a section.
[8.14.23.5 NMAC - N, 6/1/2010]

8.14.23.6 OBJECTIVE: To establish standards and guidelines for confidentiality of records of clients under the supervision or in the custody of the department.
[8.14.23.6 NMAC - N, 6/1/2010]

8.14.23.7 DEFINITIONS:

A. “Cambiar (Change) New Mexico” refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services’ staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old “correctional” model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

B. “Client” refers to a person who is committed to the custody of the CYFD’s juvenile justice services or who is receiving services from CYFD’s juvenile justice services.

C. “Department” refers to the New Mexico children, youth and families department.

D. “Director” refers to the juvenile justice service director.

E. “Facility” refers to a facility operated by, or on behalf of the CYFD’s juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD.

F. “HIPAA” is the Health Insurance Portability and Accountability Act of 1996 that governs the release of health information.

G. “Juvenile justice services” or “juvenile justice division” refers to the organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the Delinquency Act, NMSA 1978 section 32A-2-1 et seq.

H. “Juvenile probation office” or “JPO field office” refers to a CYFD department county or district office where JPO staff persons, who provide court ordered and informal supervision for clients, work from.

I. “Office of general counsel records custodian” or “OGC records custodian” is the person designated by the CYFD office of the secretary to respond to all requests from the public for information on CYFD clients, former clients, programs or services, including Inspection of Public Records Act requests.

J. “Secretary” refers to the cabinet secretary of CYFD.

K. “Staff” refers to employee(s) of CYFD.

[8.14.23.7 NMAC - N, 6/1/2010]

8.14.23.8 DEPARTMENTAL CLIENT RECORDS: Records held by the department that concern juvenile justice services clients may be disclosed to employees within the department pursuant to the informed consent of the client who is the subject of the records and according to federal or state laws, rules, and regulations. Departmental employees shall maintain the confidentiality of the information disclosed, shall adhere to all state and

federal laws, rules and regulations and the departmental code of conduct, and shall not release the information outside CYFD operations and their responsibilities for the identification, placement or management of youth involved in the juvenile justice system. Anyone who intentionally or otherwise unlawfully releases confidential information is subject to disciplinary action and/or criminal prosecution.

[8.14.23.8 NMAC - N, 6/1/2010]

8.14.23.9 DELINQUENCY RECORDS REQUESTS: Juvenile justice services client records are confidential and can only be disclosed pursuant to a valid court order, except to those entities specifically entitled to access under the New Mexico Children's Code Delinquency Act. Any time a request for juvenile justice services client records is received by a facility, JPO field office, or any other departmental entity, the request is immediately forwarded to the OGC records custodian.

A. Once received by the OGC records custodian, the request is forwarded to an assistant general counsel in the office of general counsel for review. If the assistant general counsel approves the request, the OGC records custodian corresponds with the requester and asks them to complete and return a juvenile justice services request for disclosure of confidential information form and any required HIPAA or other release forms, as below.

B. If the forms are returned, the OGC records custodian requests copies of the client records from the appropriate facility for review by the OGC assistant general counsel. The OGC assistant general counsel is responsible for ensuring that records are released only as allowed by the Children's Code Delinquency Act, including types of records, the manner of release, and the person(s) released to.

C. When allowing access to an authorized entity, all attorney-client privileged information and all internal records of the department found within client records, including case narrative notes, email correspondence, and other internal correspondence, shall be stricken or otherwise not included in the disclosure.

D. Juvenile justice services records or information shall not be released pursuant to a subpoena, because subpoenas do not reflect a determination by a children's court judge that the requesting party has a legitimate interest in the case or the work of the court, as required by the New Mexico Children's Code Delinquency Act.

[8.14.23.9 NMAC - N, 6/1/2010]

8.14.23.10 REQUESTS FOR MEDICAL OR BEHAVIORAL HEALTH RECORDS: When a request for medical or behavioral health records is received by the OGC records custodian, it must be accompanied by a current and valid signed HIPAA release. An access to records request form is also required if the disclosure is to be made to the person who is the subject of the records, signed by the person making the request. These forms are in addition to the request for disclosure of confidential information form required for all records requests. Juvenile justice services clients over fourteen years of age must sign their own release forms for behavioral health records, pursuant to the New Mexico mental health and developmental disabilities code.

[8.14.23.10 NMAC - N, 6/1/2010]

8.14.23.11 PROCEDURES: The juvenile justice services director will make appropriate procedures available to the public but reserves the right to add, delete or modify procedures under the confidentiality of client records policy without notice or comment in furtherance of the mission and goals of the department or service area.

[8.14.23.11 NMAC - N, 6/1/2010]

HISTORY OF 8.14.23 NMAC: [RESERVED]