

ALL ABOUT THE KIDS

- MINORS AND PARKS AND RECREATION
- RECREATION RESOURCES TELECONFERENCE
 - November 5, 2008
 - GRAINGER BARRETT
 - CUMBERLAND COUNTY ATTORNEY

PERSONAL INFORMATION ABOUT MINORS

- **SESSION LAW 2008-126**
- GS 132-1.12. Limited access to identifying information of minors participating in local government parks and recreation programs.

- As to minor participating in park or recreation program sponsored by local government, public record does not include specified identifying information.

- Question: What is “sponsored”?
- Dictionary: “One who assumes responsibility for another, such as for instruction, or provides financial support”

- name,
- address,
- age,
- date of birth,
- telephone number,
- name or address of that minor participant's parent or legal guardian, or
- any other identifying information on an application to participate in program or other records related to that program.

- Although not a public record, none of this information is “*confidential*” —
- So, no *right* of public access, but unit *may* disclose it. No prohibition on disclosure!!

• County, municipality, and zip code of residence of each participating minor IS a public record

• Portions of public record *other than* the specified identifying information may still be a “public record”

• If so, must disclose

• Redact the specified identifying information [i.e., “white out”]

• Copy original document; do not redact original document

• Return original to custodial location

• Make copy of copy

• Redact the second copy

• Copy redacted document

• Provide requesting party redacted copy

• Keep copy of original and copy of redacted document

- Have written policy that addresses information unit will protect, and what information it will release, when, and to whom.
- Be consistent.
- Be cautious.

- Security: have reasonable safeguards in place to protect identifying information of minors
- Include reasonable steps to deter intrusion into computer systems
- Recognize problem of “migration” of data– laptops, PDAs, thumb drives...

- What about:
- Names and addresses of league participants to commercial sponsors?
- Photos of teams or players in program guides?
- Names in box scores?

- Names of players or parents involved in rules infraction hearing?
- Press release announcing tournament champions and MVPs?

- Recommend parents or guardians sign "waiver form" as part of registration
- May help protect department
- ___ I grant my permission to allow my child's name, photo, video recording and/or (other item(s)) to be used in the discretion of the _____ Parks and Recreation Department for promoting programs operated or sponsored by the department.

- What if parent will not sign?
- Can department force parent to sign?
- If does not sign, do you need "tracking system" for child?
- Whether or not signs, does not change "law"

- Penalty?
- None in law.
- Public Records Law provides action to person denied access "to public records"

PERSONAL IDENTIFYING INFORMATION

- SSN
- Checking account numbers
- Credit card numbers
- Debit card numbers
- G.S. 132-1.10(b)(5)

- Do you collect any of these types of personal identifying information when participants pay fees? SSNs are a whole different ballgame
- Do you retain copies of checks? Don't.
- Do your credit and debit receipts only show last four numbers?
- How do you assure security of the information?

- If you get a public records request for a record with personal identifying information, you must redact the personal identifying information
- Document is not protected from disclosure just because it contains personal identifying information

Electronic mail names and addresses, Internet account numbers, and Internet identification names are NOT personal identifying information and ARE a public record

- IF YOU COLLECT EMAIL ADDRESSES, YOU MUST DISCLOSE THEM IF YOU RECEIVE A PUBLIC RECORDS REQUEST FOR THEM
- If your registration form asks for email address, consider a disclaimer:
- “** By state law, email addresses may be subject to disclosure under the Public Records Law”

BACKGROUND CHECKS

- More and more statutes require-- or authorize-- background checks for an increasing number of occupations

- Examples**
- Child care providers
 - Adult care providers
 - Fire department applicants
 - Home care agencies
 - Nurses
 - Real estate brokers
 - School employees
 - Law enforcement
 - Doctors
 - Private protective agencies
 - Substance abuse professionals
 - Structural pest control
 - Pharmacists
 - Mortgage bankers

AND: City Council or Board of Commissioners may adopt or provide rules, regulations or ordinances that applicants for employment be subject to criminal history records check
G.S. 160A-164.2; G.S. 153A-94.2; G.S. 14-19.14

- Most part-time Parks and Recreation personnel are “employees”
- Have *authority* to conduct state and national records checks for “employees”
- Governing board authorization of some sort

• BACKGROUND CHECKS FOR COACHES?

• Grainger's answer: Yes!

• As more employers routinely conduct background checks, tends to establish a "standard of care"– an "industry" practice

• More "reasonable" employers get background checks

WHY?

• Heightened social concern about protecting minors

• Incidents involving quasi-custodial personnel

• More falsification of qualifications

• More societal mobility– easier to "lose track" of adverse history

• Parks and Recreation personnel work a lot with vulnerable populations!!

• General Assembly may eliminate sovereign and governmental immunity defenses of local governments in next couple of years

• Local Government Tort Claims Act a real possibility

• Open up lawsuits for negligent hiring and/or retention

• ARGUMENT: Negligent, that is, a lack of due care, if do not conduct background check

• Expense involved, but less than one verdict against a unit

- Probably reasonable to rely on state and national depository criminal history background check from SBI, for criminal check
- Check your County Sheriff's Sex Offender Registry
- National Sex Offender Registry
<http://www12.familywatchdog.us/>

- Don't forget to check prior employment references
- Be alert to gaps in resume or employment history (prison?)

- What if criminal record check comes back with convictions?
- Need prior written policy in place, and be consistent
- Policy should not be too specific (straightjacket) or too general (vague and probably unenforceable)

- Any violent felony
- Violent sex offenses
- Misdemeanor crimes against women or children?
- Fraud, embezzlement?
- DWIs?
- Prostitution?
- Drug offenses?
- Cruelty to animals?
- Gambling?
- Burglary?
- Obscenity?
- Materials harmful to minors?
- Ethnic intimidation?
- Tattooing a person under age 18?
- Age of offense?
- Etc., etc.

MEDICAL RELEASES

- Many departments include a standard sentence authorizing medical care for youth

- "I grant permission to managing personnel or other department representatives to authorize and obtain medical care from any licensed physician, hospital or medical clinic should participant become ill while participating in activities when neither parent/guardian is available to grant authorization for emergency treatment."

- Who is “managing” personnel?
- Who is “representative”?
- Participating in what “activities”?

- Does this authorize ONLY emergency care?
- Does this authorize treatment by EMT?
- Who is responsible for payment?
 - Do you require insurance?

Statutory Consent To Minor Health Care

See G.S. 32A-34

• "Authorization to Consent to Health Care for Minor."

I, _____, of _____ County, N.C., am the custodial parent having legal custody of _____, a minor child, age _____, born _____. I authorize any field official or supervisor, of the _____ Parks and Recreation Department to do any acts which may be necessary or proper to provide for the health care of the minor child, including, but not limited to, the power (i) to provide for such health care at any hospital or other institution, or the employing of any physician, dentist, nurse, or other person whose services may be needed for such health care, and (ii) to consent to and authorize any health care, including administration of anesthesia, X-ray examination, performance of operations, and other procedures by physicians, dentists, and other medical personnel except the withholding or withdrawal of life sustaining procedures. I agree to be responsible for and pay all charges for any such care.

- This consent shall be effective from the date of execution to and including [the end of the _____ recreation program season] [OR] [Insert Date].
- By signing here, I indicate that I have the understanding and capacity to communicate health care decisions and that I am fully informed as to the contents of this document and understand the full import of this grant of powers to the agent named herein.
- (SEAL)
- Custodial Parent _____ Date _____

- NOTE: P & R Departments are not "covered entities" under HIPAA (unless entire local government unit is, which is unlikely).
- So not subject to HIPAA regs about Private Health Information ("PHI")
- Treat and protect as extremely confidential anyway!!!

G.S. 90-21.1

- When physician may treat minor without parent/guardian's (or any person standing in loco parentis) consent

- Parent, guardian or *person acting in loco parentis* cannot be located
- OR
- the necessity for immediate treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the life of said minor

- Or
- an effort to contact a parent, guardian, or person standing in loco parentis would result in a delay that would seriously worsen the physical condition of said minor
- OR
- Where the parents refuse to consent to a procedure, and the necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen the physical condition of the child

- BUT
- No treatment shall be administered to a child over the parent's objection as herein authorized unless the physician shall first obtain the opinion of another physician licensed to practice medicine in the State that such procedure is necessary to prevent immediate harm to the child

- The word "treatment" used in *G.S. 90-21.1* means a medical procedure or treatment, including X rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or diagnostic procedures used by **or ordered** by a physician licensed to practice medicine in N.C. that is commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where the physician administers treatment.
- G.S. 90-21.2

SEX OFFENDERS IN PARKS

• DAVID STANDLEY v. TOWN OF WOODFIN,
•
• SUPREME COURT OF NORTH CAROLINA
•
• 362 N.C. 328; 661 S.E.2d 728; 2008 N.C. LEXIS
496
•
• June 12, 2008, Filed

• In 1987 Standley pleaded no contest to attempted sexual battery and aggravated assault in Florida. After serving an active sentence, he was released and placed on supervised probation. He violated the terms of his probation in 1995, when he was convicted of solicitation of an undercover policewoman posing as a prostitute. As a result of the probation violation, plaintiff was again imprisoned, but in 1999 he was unconditionally released from prison in Florida.

• In 2004 He moved to Buncombe County, where he lives in Woodfin with his mother. Because of his prior sex offenses, he registered with the North Carolina Sex Offender Registry. *N.C.G.S. § 14-208.7* (2007).
• In 1998 he suffered a stroke, and as a result, he is disabled and never travels without being accompanied by his mother or another adult who can assist him. He would frequently visit Woodfin Riverside Park with his mother before enactment of the ordinance at issue.

• Before 19 April 2005, two incidents involving sexual offenses occurred in or near two of three public parks owned, operated, or maintained by Woodfin. Following these incidents, the Mayor and Board of Aldermen requested that the Town Administrator recommend action to best protect the children and residents of Woodfin. Based on that recommendation, the Board enacted an ordinance on 19 April 2005.

Woodfin, N.C., Ordinance § 130.03(2)(A) (Apr. 19, 2005).

It shall constitute a general offense against the regulations of the Town of Woodfin for any person or persons registered as a sex offender with the state of North Carolina and or any other state or federal agency to knowingly enter into or on any public park owned, operated, or maintained by the Town of Woodfin.

• NC Supreme Court this ordinance does not violate Constitutional right to intrastate travel. It does not affect a right of function needed to carry on daily life activities.

• Nor did he have a “fundamental liberty interest in access to park. “We cannot conclude that plaintiff’s asserted liberty interest is so ‘deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it] were sacrificed.’”

• General Assembly has recognized "sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest." *N.C.G.S. § 14-208.7*. Released sex offenders are four times more likely to be rearrested for subsequent sex crimes than other offenders.

• Woodfin did not have "vague, undifferentiated fears" of sex offenders, but concerns founded on fact. Goal to decrease and eliminate sexual crimes in parks is legitimate government interest, and prohibiting those most likely to commit criminal sexual acts--persons previously convicted of such conduct--from town parks is a rational way to further goal.

NC Sex Offender Registry

- Anyone convicted of “reportable conviction” must register with Sheriff.
- GS 14-208.7
- Registration effective for 10 or 30 years

- Reportable conviction means
- Kidnapping, abduction or felonious restraint of minor
- Secretly peeping
- Sexually violent offenses (listed in statute)
- GS 14-208.6(4)

Jessica Lunsford Act

- Effective December 1, 2008

- Certain sex offenders may not be on premises of any school or playground (among other places)
- Or within 300 feet of place intended primarily for use, care or supervision of minors if within a larger facility, i.e. shopping center
- Or at any place where minors gather for regularly scheduled educational, recreational or social programs

- Applies to:
- If offense was rape or sexual offense or sexual battery
- Any offense if victim under age 16

- **BIG, BIG ISSUE:**

Records of juvenile sex offenders only available to law enforcement and boards of education
