

Office of the Attorney General
State of North Dakota

Opinion No. 84-31

Date Issued: August 17, 1984
Requested by: Tom P. Slorby
Ward County State's Attorney

--QUESTION PRESENTED--

Whether a prosecutor who provides child abuse reports to defense counsel as part of required discovery in criminal or juvenile court cases violates the confidentiality provisions of Section 50-25.1-11 of the North Dakota Century Code.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the prosecutor who provides child abuse reports to defense counsel as part of required discovery in criminal or juvenile court cases does not violate the confidentiality provisions of Section 50-25.1-11, N.D.C.C.

--ANALYSIS--

Chapter 50-25.1, N.D.C.C., promotes the reporting of suspected child abuse by making such reports confidential and by providing a criminal penalty for anyone who permits unauthorized disclosure of such reports. Sections 50-25.1-11 and 50-25.1-14, N.D.C.C. The confidential information must be made available to '[p]ublic officials . . . who require such information in connection with the discharge of their official duties.' Section 50-25.1-11(5), N.D.C.C. A prosecutor has a duty to provide the defendant, in criminal court actions, or the respondent, in juvenile court actions, with certain information. Once a criminal or juvenile court action is initiated and the criminal act, or the allegation of the petition in juvenile court, are denied the prosecution must provide defense counsel with the names of witnesses and copies of any statements by the witness or others regarding the alleged offense. Rule 16, N.D.R.Crim.P. Suppression of material evidence would be a violation of the defendant's right to due process. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The investigation reports, including the initial report of suspected child abuse, may be reports which would be required to be disclosed.

The purpose of Chapter 50-25.1, N.D.C.C., is to facilitate, not obstruct, court action as a method of continuing protection for abused and neglected children. In order to proceed with a court action, the prosecutor must be able to fulfill the requirements of discovery in that court. If discovery requires the release of information made confidential by Section 50-25.1-11(5), N.D.C.C., that release is a duty cognizable under that statute.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General

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