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## Office of the Child Advocate



## ISSUE BRIEFING

Case Number 2022 - 01-ISO1

# Critical Incident Review: Process & Obligations

A response to multiple inquiries in the case of a missing child

February 2, 2022

## **OFFICE OF THE CHILD ADVOCATE: MISSION**

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The mission of the Office of the Child Advocate (OCA) is to promote equitable and effective reforms that meet the best interests of all New Hampshire children and strengthen public confidence and accountability in the State's systems that support children and families. To achieve our mission, we:

Bring children's voices and lived experience to the table

- Respect the importance of every person in a child's life
- Build collaborative relationships for reform
- Promote practices that are proven to be effective to help children and families
- Use data and safety science to examine child deaths, other critical incidents, and systemic processes
- Provide information and referral services to the public
- Listen to all concerns about child serving agencies (public and private) and, if necessary, respond to complaints with a credible review process
- Maintain independence and impartiality in all aspects of children's services oversight

## **BRIEFINGS**

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The OCA is an independent and impartial state agency statutorily mandated to oversee State-provided and arranged services for children to assure protection of their best interests and to promote effective reforms.<sup>1</sup> The OCA was established in response to tragedies involving child deaths and calls for accountability and transparency in State systems responsible for protecting children.

To ensure transparency of government and build trust with citizens, the OCA will periodically release issue briefings to inform state child-serving systems and/or the public on activities of the office and/or to provide information and educational outreach on relevant issues in furtherance of the OCA mission and responsibilities.

## **RELEVANT JURISDICTION**

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RSA chapter 21-V is the OCA's guiding statute. Under RSA 21-V:2, the OCA shall

*II. Provide independent oversight of executive agencies to:*

*(a) Ensure that children involved with an agency, and in particular, children served by the child welfare or juvenile justice systems, receive timely, safe, and effective services and that their best interests are being protected.*

*(b) Strengthen the state by working in collaboration with agencies and other necessary parties on cases under review.*

...

*(f) Periodically review and investigate any aspect of an agency's policies, procedures, and practices and work collaboratively with the agency to improve policies, procedures, practices, and programs affecting children.*

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<sup>1</sup> NH RSA 21-V:2, II(a)

**III. Upon its own initiative or upon receipt of a complaint, review and if deemed necessary:**

**(a) Investigate the actions of any agency and make appropriate referrals; provided that department of health and human services specific complaints shall be handled by the ombudsman pursuant to RSA 126-A:4, III.**

**(b) Investigate those complaints in which the child advocate determines that a child or family may be in need of assistance from the office or a systemic issue in the state's provision of services is raised by the complaint.**

...

**V. Provide information and referral services to the public regarding all child-serving state services, particularly child protection and juvenile justice services.**

...

RSA 21-V:7, I provides that the Division for Children, Youth and Families (DCYF) ***“shall provide the office with a copy of all critical incident reports or other reports related to actual physical injury to children or a significant risk of such harm, as well as other incidents which may affect the safety and well-being of children in the custody or control of the department of health and human services, including but not limited to reports related to the restraint and seclusion of any child under the care and protection of the division, not later than 48 hours after the occurrence.”*** DCYF shall also *“provide the office with notice of any child fatality or serious injury of a child under its care or supervision or whose safety and the safety of the child's siblings has been or is being assessed, immediately by telephone. The division shall further provide the office with written report of such fatality or serious injury not later than 48 hours after the occurrence and protection of the division, not later than 48 hours after the occurrence.”*

## **ISSUE**

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In December 2021, seven-year-old Harmony Montgomery was reported missing for two years. Police and statements by family members made available to the public indicated that the child was known to the Division for Children, Youth, and Families (DCYF), New Hampshire's child protection agency. While any potentially tragic human story draws interest from the public, the potential of State involvement in the life of a child prompts demands for information and accountability by the public. Frustration is understandable when information is not readily available.

Federal and state laws mandate confidentiality of child welfare and juvenile justice records. They limit the sharing of information generated from child protection or juvenile justice services, with good reason.<sup>2</sup> Public disclosure is permissible only when child abuse or neglect results in a child fatality or near fatality and even then, disclosure is limited to findings or information about the case resulting in fatality or near fatality.<sup>3</sup> While people often believe that this confidentiality is designed to protect state systems, it is really designed to protect the rights and privacy of the child and child's family. Public exposure of information about children's personal and family history can be traumatizing to children.

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<sup>2</sup> NH RSA 169-B:35, RSA 169-C:25, RSA 169-D:25, RSA 170-G:8-a; 42 U.S.C.A. § 5106a(b)(2)(B)(viii)-(ix)

<sup>3</sup> Nh RSA 126-A:5, XII; 42 U.S.C.A. § 5106a(b)(2)(B)(x)

The circumstances surrounding Harmony's disappearance have caught people's emotions and spurred significant media attention. The OCA has received calls from the public and the media with questions about any potential system involvement of the missing child's family and system processes in place to review such involvement and critical incidents. While there are several different established critical incident review processes, they take time and are subject to statutory confidentiality requirements. This Issue Briefing lays out the various child-serving state system processes in place to examine critical incidents and the confines around those processes.

## ***CRITICAL INCIDENT REVIEW PROCESSES***

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### **DCYF Critical Incidents**

A media report about a missing child who has or recently was involved with DCYF constitutes a "critical incident."<sup>4</sup> Critical incidents also include, among other incidents, the death of a child or parent involved with DCYF, abducted children, serious injury due to abuse or neglect of a child already involved with DCYF, or trafficking of a child.<sup>5</sup> When DCYF receives notice of a child's circumstance that rises to the level of critical incident, they immediately begin a review process culminating in a Critical Incident Report (DCYF Form 1099). The report describes what the critical incident was and DCYF's immediate response or plan that includes ensuring:

- The subject child, if alive, is safe
- Siblings and family are safe
- Resources have been activated and immediate needs are understood and met

The report then outlines next steps and records who is responsible.

#### *Assessment of current or prior DCYF involvement*

The Critical Incident Report reflects a review of any current or prior DCYF involvement with an analysis of that history. If necessary, this process alerts and informs the system of an urgent need for attention and a full understanding of past needs and actions of the agency, along with response from the family. Completed Critical Incident Reports are forwarded to a series of DCYF and Department of Health and Human Service administrators and investigators to ensure all are aware and prepared to direct response as needed. According to law, the report is also forwarded to the OCA within 48 hours.<sup>6</sup> In the case of a child death or serious injury of a child in DCYF's care or supervision or whose safety and the safety of the child's siblings has been or is being assessed, DCYF must immediately notify the OCA by telephone, and provide a written report of such fatality or serious injury not later than 48 hours after the occurrence.<sup>7</sup>

#### *Office of the Child Advocate*

Upon receipt of a Critical Case Incident Report, the OCA initiates our own review process. With immediate access to DCYF electronic records, the OCA reviews any current or past DCYF history

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<sup>4</sup> [DCYF Policy 1099 Critical Incident Reporting-Case Specific](#)

<sup>5</sup> *Ibid.*

<sup>6</sup> NH RSA 21-V:7, I

<sup>7</sup> NH RSA 21-V:7, II

of the involved child or family in addition to the current assessment. Our review has an eye towards immediate protective factors in place, practice standards, identification of needs, and available resources. In the coming days, the OCA monitors ongoing actions of the agency. In some cases, the critical incident is resolved, and cases are closed. In others, more time is needed for police investigations, medical examiner autopsies, or basic case work to get a family back on track or, when necessary, a new home found for the child. Throughout, we monitor the child's record to ensure his or her best interests are being protected and watch for learning opportunities. If concerns persist, the OCA may open a case for further in-depth review.

### **Law Enforcement & Child Protection**

If there is a police investigation, DCYF collaborates with the police providing all available information as needed. This relationship is governed by the *Model Protocol for the Multidisciplinary Response to Child Abuse and Neglect* formulated by the Attorney General's Task Force on Abuse and Neglect. The protocols provide for, among others, the roles of law enforcement, DCYF, Child Advocacy Centers, and medical and mental health practitioners, with an emphasis on protecting the integrity of police investigations.<sup>8</sup>

### **DCYF Quality Assurance Specific Case Review**

In some cases, DCYF also employs a Quality Assurance Specific Case Review (QASC Review) of their case work to review ongoing system mechanisms, evaluate the appropriateness of services provided to those served by DCYF and ensure their practice promotes safety of children.<sup>9</sup> A QASC Review is conducted when certain criteria are met, including, but not limited to injuries, deaths, human trafficking, and abductions.<sup>10</sup> These reviews are attended by prescribed individuals, including quality assurance staff, legal counsel, administrators, directly involved DCYF staff, an attorney from the Attorney General's Office, the OCA and certain other relevant staff as applicable. The QASC Review was recently adjusted to be grounded in safety science, an evaluative science that creates a safe space for open contemplation of practice and error with focus on systemic influences on decision making rather than individual blame. Remember, while the police investigate for criminal acts, DCYF is looking for ways to improve practice and ensure child safety.

### *Confidentiality*

The QASC reviews are statutorily confidential and privileged pursuant to NH RSA 126-A:4.<sup>11</sup> Any notes or materials are destroyed. Each review is summarized on a confidential Form 2850 Quality Assurance Specific Case Review Log to be integrated in the continuous quality improvement system of monitoring and planning.

### *Office of the Child Advocate*

The OCA is a standing member of the QASC Review team and observes these reviews to monitor DCYF's process and learning. The OCA then meets with the Bureau of Professional and Strategic

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<sup>8</sup> [Model Protocol for the Multidisciplinary Response to Child Abuse and Neglect](#)

<sup>9</sup> [DCYF Policy 2850 Quality Assurance Specific Case Review](#); NH RSA 126-A:4, IV

<sup>10</sup> [DCYF Policy 2850 Quality Assurance Specific Case Review](#)

<sup>11</sup> NH RSA 126-A:4, IV

Development to follow any recommendations made from these reviews and learn about opportunities for support.

The OCA, as an independent agency with oversight of child-serving state systems is the eyes and ears of the public. Our unique authority to access information and records, and to be present at QASC Reviews situates us to monitor the system, shine light on system weaknesses and strengths, and help the agency improve.

If the OCA believes there is more to learn from a case after a QASC Review, or if a case is not subject to a QASC Review and we have identified concerns, system trends, or learning points, we conduct our own system focused review. The OCA may conduct a System Review Mapping, an evidence-based process grounded in safety science. The OCA's Mapping process incorporates input from individuals with first-hand knowledge of a case and produces a visual map of influences on case decision making that assists in identifying obstacles and areas for system reform.

Because a primary factor in establishing the OCA was an identified need for transparency in the State's actions with vulnerable children and families, the OCA has the authority to share information when it is in the interest of a child or the public.<sup>12</sup> This information cannot be shared publicly until any law enforcement investigation or prosecution is completed<sup>13</sup> – again, to protect the integrity of police investigations. We can, however, share findings with the agency to prompt practice or policy change when our findings indicate the need for improvements. Were the OCA to encounter behavior of any party that appears to be child abuse, child neglect, or criminal in nature, the OCA would refer that finding to DCYF Central Intake and/or the police forthwith.

## CONCLUSION

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Harmony Montgomery's disappearance has captured attention across the country. It is normal for people to experience an emotional discomfort to such circumstance. As part of that people search for blame to discharge that discomfort through understanding of what happened. However, patience with law enforcement is the immediate priority while investigations are underway to determine what happened and where the child is.

The laws of confidentiality in child protection are essential both to protect the child and to protect the integrity of the police investigation. If there was a crime, untarnished evidence and unbiased jury pools will require diligent protection of information to prosecute successfully.

The Office of the Child Advocate advises the governor, legislature, and the public to have patience and trust in the system and to abide by the laws requiring confidentiality. There are multiple layers of scrutiny underway. Demands of information about past system involvement or calls for extra investigations are not a means for finding Harmony, the priority task at hand. They only serve to interrupt investigations in process, overburden agency staff with information requests, and most importantly, undermine confidence in the system of protection and oversight. When Harmony is found and what happened to her is understood, the Office of the Child Advocate will

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<sup>12</sup> NH RSA 21-V:5, III-V

<sup>13</sup> NH RSA 21-V:5, V(b)

examine any involvement with State services and any State actions or inactions that may have effected Harmony's care and safety.

The OCA has grounded all its review work in safety science, an evaluative science that teaches us to remain calm, project confidence, and be open to examining error from a systems perspective. This approach allows for the creation of a safe space for people to come forward and share their experiences with system pressures and obstacles that may impede good case practice and leave children in harm's way. When agency and court officials are publicly accused and blamed for critical incidents, it diminishes the likelihood that others, including caseworkers and other field staff, will come forward to share concerns about the system in which he or she is struggling to help vulnerable children.

## RESOURCES

## Statutory Resources

**The federal Child Abuse Prevention and Treatment Act, (CAPTA).** CAPTA requires that a State preserve the confidentiality of all child abuse and neglect reports and records to protect the rights and privacy of the child and the child's parents or guardians. *See* 42 U.S.C.A. § 5106a(b)(2)(B)(viii). Authorized recipients of confidential child abuse and neglect information, such as individuals who are the subject of the report, Federal, State, or local government entities having a need of such information to carry out responsibilities of protecting children from abuse and neglect, or courts, are all bound by the same confidentiality restrictions. *See id.*

**The State of New Hampshire Child Protection Act.** RSA chapter 169-C requires all case records, as defined in RSA 170-G:8-a, relative to abuse and neglect, be confidential. *See* RSA 169-C:25, III. “It shall be unlawful for any person entrusted with information from case records to disclose such records or information contained in them ... It shall be unlawful for any person who receives case records or the information contained in them from a parent or a child to disclose such records or information. Any person who knowingly discloses case records or information contained in them in violation of this paragraph shall be guilty of a misdemeanor.” RSA 170-G:8-a, V.

**The State of New Hampshire Quality Assurance Specific Case Review Confidentiality.** Under RSA 126-A:4, IV, “Records of the department's quality assurance program including records of interviews, internal reviews or investigations, reports, statements, minutes, and other documentation except for individual client medical records, shall be confidential and privileged and shall be protected from direct or indirect discovery, subpoena, or admission into evidence in any judicial or administrative proceeding, except as provided in subparagraphs IV(c) or (d).

(c) In a case of legal action brought by the department against a contract service provider or in a proceeding alleging repetitive malicious action and personal injury brought against a contract service provider, the quality assurance program's records may be discoverable.

(d) The department may refer any evidence of fraudulent or other criminal behavior gathered by the quality assurance program to the appropriate law enforcement authority.”

**Office of the Child Advocate Confidentiality Provisions.** RSA 21-V:5 provides:

I. The office shall maintain the confidentiality of all case records, third party records, and court records pursuant to RSA 169-C:25 and RSA 170-G:8-a, and all other related confidentiality laws.

II. The office investigations and oversight activities, and the information gathered in such investigations and oversight activities, including the identity of any complainant, shall be exempt from the public disclosure provisions of RSA 91-A. Such investigations, oversight activities, and information shall be privileged and exempt from use or disclosure in any criminal or civil matter or administrative proceeding.

III. The child advocate of the office may disclose confidential information about a child to any individual or entity responsible for, or providing services to, the child. Any disclosures of confidential information shall be the minimum necessary to ensure proper care and treatment for the child or to identify, prevent, or treat the abuse or neglect of a child.

IV. The child advocate shall have the same authority as the commissioner of the department of health and human services to publicly release information pursuant to RSA 126-A:5, XII in furtherance of the mission and responsibilities of the office.

V. Notwithstanding any provision of law to the contrary, if the child advocate determines that the health, safety, and welfare of children are at risk, the child advocate may publicly disclose the details of investigation findings, subject to the following limitations:

(a) Names, addresses, or other identifying information of individuals who are the subject of any confidential proceeding or statutory confidential provision shall not be released to the public.

(b) Investigation findings shall not be released if there is a pending law enforcement investigation or prosecution, except as provided in paragraph III.

## Important Phone Numbers

Manchester Police  
Department 24/7 Tip  
Line on Harmony  
Montgomery

- Call or text: **603-203-6060**

Report suspected  
Child Abuse to DCYF  
Central Intake

- Call: **800-894-5533 (In-state only)**  
**603-271-6562**

Contact the Office of  
the Child Advocate  
for concerns about  
State care of children

- Call: **603-271-7773**  
**833-NHCHILD**
- Email: **childadvocate@nh.gov**