

IN THE SUPERIOR COURT OF CHATTOOGA COUNTY  
STATE OF GEORGIA

In RE: Pretrial Standing Discovery Order and Protective Orders in Criminal Cases

Standing Discovery Order and Protective Orders for Certain Records

It Appearing to the Court that defendants file the following discovery motions in virtually all felony criminal cases:

- 1) Notice of Defendant's Election to proceed under O.C.G.A. § 17-16-1 et seq.; and motions to invoke all the provisions set forth in under O.C.G.A. § 17-16-1 et seq.;
- 2) Motions to compel the disclosure of exculpatory material and information.
- 3) Demands for the live testimony of State expert witnesses pursuant to O.C.G.A. § 35-3-154.1(e).

It further appearing to the Court that in some cases the discovery material to be served by the State may include certain protected and or privileged documents such as medical records, CAC records, DFACS records, etc. These records require a protective order from the Court to protect the confidential material in these records but this often delays the service of discovery to obtain such orders.

It further appears to the Court that O.C.G.A. § 17-16-1 et seq., imposes certain obligations upon counsel for both sides in a criminal case where the defendant, or a co-defendant, has filed an election to proceed under that statute. In order to assist the Court and the parties in the expeditious handling of criminal matters and reduce costs and unnecessary paperwork, the Court enters this standing ORDER IN CRIMINAL CASES as follows:

In all criminal cases in which counsel for the Defendant files an entry of appearance, he/she may file a single pleading invoking the Standing Discovery Order. This notice must be timely served upon the State and filed with the Clerk. The notice shall reference that the Defendant opts into the Standing Discovery Order and will thus invokes all the discovery provisions of O.C.G.A. §

17-16-1 et seq. Furthermore, by invoking the Standing Discovery Order, the Defendant is making a demand for live testimony of expert witnesses pursuant to O.C.G.A. § 35-3-154.1(e).

By invoking the Standing Discovery Order, it shall be deemed that the State has made a proper demand for reciprocal discovery and alibi information that complies with the law.

Upon filing of the pleading invoking the Standing Discovery Order the Clerk shall note on the docket that the standing discovery motions have been filed.

In the event of any appeal in any case where this Standing Discovery Order has been opted into the Clerk Shall make this order a part of the record.

In the event that any records which would fall into the categories set forth below are part of the discovery materials then by opting into the Standing Discovery Order then the following protective orders shall apply to any such materials served in discovery:

### **ORDER TO PROTECT MEDICAL RECORDS FROM DISCLOSURE**

IT IS HEREBY ORDERED that the State shall, at the State's option, either provide copies of all medical exam records, photographs taken in a medical/clinical setting, and medical reports to defense counsel for the Defendant or permit defense counsel a reasonable opportunity to copy such records in accordance with O.C.G.A. Section 17-16-2, et seq. It is further Ordered that defense counsel is prohibited from providing hard, digital or any other kind of copies of the aforementioned documents to Defendant or any other person to prevent circulation and unlawful disclosure of such records, but defense counsel may review such records with Defendant. It is further Ordered that an exception will be made for an expert to review and copy said records in preparation for trial but the expert shall be similarly subject to this Order and it shall be the responsibility of defense counsel to provide a copy of this Order to such expert. No further disclosure shall be allowed without further order of the Court. Any violation of this Order shall subject the violator to sanction for contempt as well as possible liability and sanctions under the federal Health Insurance Portability and Accountability Act (HIPPA), 45 C.F.R. Parts 160 and 164.

**CAC and DFACS Records**

**CONSENT ORDER TO PERMIT ACCESS TO RECORDS**

It appearing to the Court that the Defendant in the above case is charged with offenses that involve child abuse or neglect; and

It further appearing that said Defendant has specifically requested to secure documents, medical reports, and/or audio and video recordings produced by the Children's Advocacy Center of the Lookout Mountain Judicial Circuit (CAC) (hereinafter CAC records) which the Court will treat as a request pursuant to O.C.G.A. § 49-5-41; and

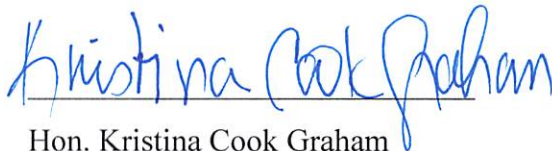
It further appearing that said records would be protected by the confidentiality provisions of O.C.G.A. § 49-5-40,

It is therefore ORDERED that the State shall provide such CAC records in its possession to counsel for the Defendant without the need for a subpoena or additional motions. If there are any video or audio recordings, defense counsel shall provide the appropriate recording medium and the State shall make a copy of the recorded interview as well as any related documents, subject to the following restrictions:

1. A copy of the CAC records shall be provided to the counsel of record as counsel for the Defendant and an officer of the Court;
2. The CAC records shall remain in the immediate custody and control of counsel for the Defendant at all times, or properly secured so as to protect and safeguard the confidential information therein, the public dissemination of which could be harmful to the alleged child victim, except as otherwise provided herein;
3. Only counsel for the Defendant, the Defendant, the Defendant's expert(s), if any, any other attorney within the same office/firm as counsel of record, and any investigator consulting with the defense may view the CAC records except upon further order of the Court or permission of the District Attorney's Office;

4. All persons identified in this protective order are to maintain the confidentiality of the CAC records;
5. No other reproduction or dissemination of the CAC records are allowed or authorized. However, if Defense Counsel consults with an expert witness, Defense counsel may transmit any CAC records to that expert utilizing a secure file-sharing platform pre-approved by both sides. Counsel for the defense must provide the expert with a copy of this protective order and the expert is bound by its terms. Otherwise, no other reproduction or dissemination of the CAC records is allowed without further order of this Court, or consent of the District Attorney's Office;
6. No reproductions of the CAC records shall be allowed, except to transmit them to an expert for review as detailed herein, or except upon further order of the Court or permission of the District Attorney's Office;
7. The medium containing the CAC records is not to be sent through the mail, except upon further order of the Court or permission of the District Attorney's Office;
8. Unless any CAC records are placed in evidence during the trial of the case, upon completion of the case the medium/media containing the CAC records is to be immediately returned to the State. Furthermore, items possessed by an expert pursuant to this protective order shall be irrevocably destroyed and obliterated once the case and/or any possible post-trial proceedings have concluded;
9. Any violation of these conditions may subject the offender to contempt of court; and
10. All the above terms shall also apply to any records produced by the Department of Family and Children's Services which are subject to O.C.G.A. § 49-5-40 and which are served in discovery or by the Court after an *in camera* inspection.

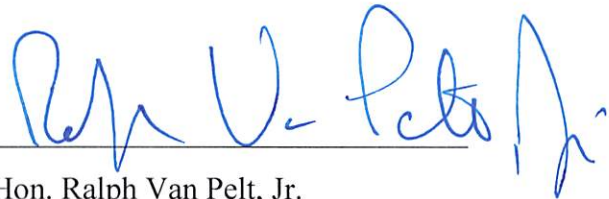
So Ordered this 30<sup>th</sup> day of Nov, 2021.



Hon. Kristina Cook Graham

Chief Superior Court Judge

Lookout Mountain Judicial Circuit



Hon. Ralph Van Pelt, Jr.

Superior Court Judge

Lookout Mountain Judicial Circuit



Hon. Brian M. House

Superior Court Judge

Lookout Mountain Judicial Circuit



Hon. Don W. Thompson

Superior Court Judge

Lookout Mountain Judicial Circuit