

additional three months in addition to the automatic 90 day re-entry parole. However, although G.S. §15A-1380.2(a) vests a right to 90 day re-entry parole, no such right is vested by G.S. §148-4.1(c) and the Parole Commission has been delegated unrestricted discretion in choosing those inmates whom it would favor with early parole in order to reduce the prison population by that number of inmates determined by the Secretary of Correction required to reduce the prison population to a more manageable level.

Pursuant to G.S. 148-4.1(a), the Secretary of Correction is only authorized to direct the Parole Commission to release "a number of prisoners." This would indicate that the Commission is not authorized to release more than the number specified by the Secretary. If G.S. §148-4.1(c) were read to require automatic early parole of all fair sentence inmates who are within the eligibility pool (i.e., those within three months of the automatic ninety day re-entry parole), then the Parole Commission would be unable to limit the number of parolees to the number of prisoners specified by the Secretary.

In view of the foregoing, it is the opinion of this Office that no rights are vested in the eligible inmate population when the Secretary of Correction calls for the implementation of the authority granted to him by G.S. §148-4.1 and that the Parole Commission, in carrying out its responsibility to implement the Secretary's directive, has unfettered discretion in its choice of otherwise eligible inmates to be included in the pool of inmates being released in order to reduce the prison population.

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Subject: Social Services; Public Assistance;
Confidentiality of Records; Fraud
Investigations by Law Enforcement
Officers.

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Question: May law enforcement officers, without obtaining a subpoena, search warrant, or consent, obtain information from the files of county departments of social services concerning recipients of or applicants for public assistance or social services, in order to determine if any such person or member of his or her household or budget unit has obtained assistance or services through fraud?

Conclusion: Yes, law enforcement officers acting on reasonable suspicions may obtain this information for this purpose without a search warrant, subpoena, or the consent of the applicant or recipient.

In North Carolina, the programs of public assistance include Aid to Families with Dependent Children, Food Stamps, and Medicaid, among others. G.S. 108A-25. The records concerning the applicants for and recipients of these and other assistance and social services programs are highly confidential. However, our confidentiality statute makes certain limited exceptions. The most significant exception is the so-called "administration of the program" exception, which the confidentiality statute states as follows:

"Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose, or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal rules and regulations and the rules and regulations of the Social Services Commission or the Department."

G.S. 108A-80(a) (1983 Cumm. Supp.) [Emphasis added.]

This statute, G.S. 108A-80(a), complies with the federal regulations for the AFDC, Medicaid and Food Stamp programs. Moreover, only Medicaid has state regulations on point. For these reasons, we will confine our discussion of these programs to the federal regulations.

Food stamp information may be used or disclosed to "persons directly connected with the administration or enforcement" of the food stamp program and its regulations as well as other federal assistance programs. 7 C.F.R. §272.1(c)(1) (1984). Elsewhere, food stamp regulations say that county departments of social services "should" refer food stamp cases "for prosecution" when there is "sufficient evidence to substantiate" fraud. 7 C.F.R. §273.16(a) (1984). Yet, elsewhere, the regulations say the departments "shall refer cases of alleged intentional [food stamp] program violation for prosecution." 7 C.F.R. §273.16(g)(1)(i) (1984).

Medicaid regulations are to like effect. They permit disclosure of information for "purposes directly connected with the administration of the [Medicaid] plan." 42 C.F.R. §431.300 (1983). These purposes specifically include "conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan." 42 C.F.R. §431.302(d) (1983). See, also 10 N.C.A.C. 32S .0503 and 32S .0504.

AFDC regulations are almost identical to those for Medicaid. They, too, permit disclosure for "purposes directly connected with:(B) Any investigation, prosecution, or civil or criminal proceeding conducted in connection with the administration of [federal public assistance] plans or programs." 45 C.F.R. §205.50(a)(1)(i)(B) (1983).

We are aware of federal Medicaid and AFDC regulations which say that requests for information from law enforcement agencies are to be treated the same as requests from any other "outside source." 45 C.F.R. §204.50(a)(2)(2)(v) (1983) (AFDC); 42 C.F.R. §431.306(e) (1983) (Medicaid). This does not prevent a county department from providing information to law enforcement agencies if in the county department's judgment there is good reason to suspect fraud. It does mean that a county department has the right

and obligation to judge the reasonableness of a law enforcement agency's request. If the county department does not think there is reason to suspect fraud, then sound program administration does not permit--much less require--the county department to assist in or conduct a fraud investigation or provide information to those who are. However, where the county has reason to suspect fraud, it would be strange to believe it could not use law enforcement to help it. Nor does it make any difference that the law enforcement agency may have been the source of the county's suspicions.

Frankly, we think it is self-evident that criminal fraud investigations based on reasonable suspicions are "directly connected with the administration of the programs of public assistance." The federal regulations quoted above bear this out. Therefore, the answer to the question posed above is yes, law enforcement officers acting on reasonable suspicions may obtain information from the files of the county departments of social services concerning an applicant for or recipient of the leading public assistance programs in order to determine if this person or any member of his or her household or budget unit obtained assistance or services through fraud. No consent, nor subpoena, nor warrant is needed, but the county departments must judge the reasonableness of the law enforcement agencies' suspicions, and if the suspicions are unreasonable, information may not be disclosed.

Turning to other programs, we need to consider the state cash assistance program known as State County Special Assistance as well as various social services programs for families and the elderly. The special assistance program is covered by general state regulations promulgated by the North Carolina Division of Social Services. As with AFDC, Medicaid and Food Stamps, confidential information concerning applicants or recipients of special assistance may be disclosed for purposes "directly connected" with program administration. 10 N.C.A.C. 24B .0201. Other applicable state regulations say "client information may be disclosed without consent of the client to federal, state or county employees for the purpose of monitoring, auditing, evaluating ..." or "for purposes of complying with other state or federal statutes or regulations." 10 N.C.A.C. 24B .0503 and 24B .0504. See, also 10 N.C.A.C. 325.0503 and 325.0504 (Medicaid). Consistent with the foregoing analysis, we believe this language supports disclosure of confidential applicant or recipient

information to law enforcement officers when the county department is satisfied that there is good reason to suspect fraud.

Finally, we consider the social services programs for children, families and the elderly. (Of course, we recognize that the services programs do not pay cash and are not so valuable as to be a likely temptation to fraud, but the issue is raised by G.S. 108A-80(a), and we address it briefly in order to be thorough.) The state regulations just quoted also apply to services programs with the same effect, and federal regulations do not change the result. Federal regulations concerning children's services explicitly follow the AFDC regulations, 45 C.F.R. §205.50, supra. 45 C.F.R. §1355.30 (1983). Federal regulations concerning services to the elderly are more troublesome since they do not contain a program administration clause. See, 45 C.F.R. §1321.19(a) (1983). However, since the regulation does permit sharing of information for purposes of program "monitoring", id., we think it is probably that it, too, fits within our general conclusion. We would be hard pressed to say the federal regulations thwart the investigation of fraud against the state and federal government, and we will not do so absent an unmistakable and unavoidable regulation to the contrary.

We have stated our conclusion informally many times before, but since the question recurs perennially, we think it will be useful to publish our opinion.

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