

Children's Justice Initiative

Use of "Child 1" When Child is a Victim or Perpetrator of Alleged Sexual Assault

- **Presumption of access to records:** [Juv. Prot. Rule 8.01](#) establishes a presumption that all records in CHIPS and CHIPS permanency court files are accessible to the public.
- **Exceptions:** There are only a few exceptions to that rule, which are set out in [Rule 8.04, subdivision 2](#). That subdivision identifies *documents* that are not accessible to the public (e.g., psych, medical records, UA tests, etc.) and *information within documents* that is confidential (e.g., name/address of foster parent).
- **Child's identity if minor victim/perpetrator of sexual assault:** Under [Rule 8.04, subd. 2\(j\)](#), the "identity of a minor victim or a minor perpetrator of an alleged or adjudicated sexual assault" is confidential. "Identity" means that anything that can be used to identify the child is confidential and cannot be in the document, including the **child's name, initials, DOB, age, and race, as well as pronouns such as "he" or "she."**
- **Allegations of prior sexual assault:** Nothing in the rules limits the allegations of sexual assault to allegations in the present case or proceedings. This means that if the petition or other document contains allegations of prior sexual assaults regarding the child, then the child's identity must be confidential and the filer must use "child 1." The goal is to not "out" the child as a victim or perpetrator of sexual assault, regardless of whether it involves past or current/pending allegations.
- **Child's tribal status is not "race":** The child's tribal status as a member of an Indian tribe, and the name of the Indian tribe, is not confidential information and documents may include the child's Indian tribal status or the name of the tribe. This is because the child's Indian tribal status is not the child's race – status as an Indian child means the child is a member of a sovereign nation, not a race status. For example, the petition may state that "*the child is believed to be an Indian child and ICWA applies*" or it may state "*there is reason to believe the child is enrolled or eligible for membership in the Upper Sioux Indian Community.*" This language is NOT confidential and may be included in documents. The Comment to Rule 8.04 (pasted below) incorrectly states that "Indian tribal status" is confidential. However, that portion of the comment is not correct and the text noted below in red is being recommended for removal from the comments as part of the current proposed rules revisions that soon will be submitted to the supreme court.
 - *[If the child is an alleged victim or perpetrator of a sexual assault,] the child's name, date of birth, race, gender, and address, ~~and Indian tribal status~~ should be submitted on a Form 11.4. No Form 11.4 need be submitted if the child's identity has already been provided on a Form 11.4 in the same case. Instead, the public document may state "Child 1 is identified on Confidential Information Form 11.4, filed on [DATE]."*
- **When to use "child 1":** If the child is a victim or perpetrator of an alleged sexual assault, then every petition, motion, report to court, and other document filed with the court, except court orders (see below), must not use the child's identity. Instead, those documents must replace the child's name/identity with "child 1," and the child's identifying information (name, age, gender, race, date of birth) must be set forth in form 11.4 (see below), which is accessible to the parties but not to the public.

- **Multiple children:** If there are multiple children in a case and only one child's identity is confidential, all of the children should be given pseudonyms to avoid revealing the child's identity by process of elimination. For example, if there are three children (Suzy, Billy, and Linda) and only Billy is the victim of an alleged assault, if you only used "child 1" for Billy and kept in the names of Suzy and Linda then anyone who knows the family would be able to figure out which child (Billy) was the victim of assault. If child 1, child 2, and child 3 are used, it is less likely that the identity of the sole victim of assault will be identified.
- **Child's name in court orders:** Court orders are permitted to include the identity of child victims and perpetrators alleged sexual assaults. However, judges are cautioned to carefully consider whether to include the child's name or, instead, use "child 1" to avoid additional trauma to the child. An order that uses "child 1" for a child placed in foster care must include the child's identity in a confidential attachment which is incorporated by reference into the order. If this is not done, the foster placement may not be eligible for federal Title IV-E reimbursement.
- **Pronouns:** Use consistent pseudonyms for minor children within a juvenile protection matter and within related juvenile protection matters. Do not use gendered pronouns that identify the child, such as "she," "he," "his," or "her." Instead, use generic references such as "the child" or "the children."
- **Assault allegations midway through the case:** Sometimes, an allegation of sexual assault is made midway through a case. All new documents file on or after that date must use "child 1" and be accompanied by form 11.4. In such situations, the child's identity will be apparent from previously filed documents where the child's name, age, and other identifying information is included. The previously filed publicly accessible documents continue to be publicly accessible, even though they identify the child. However, under [Rule 8.07](#) a judge may, upon finding an exceptional circumstance, order that the prior documents (or the entire court file) be made confidential and not accessible to the public.
- **Confidential Information Form 11.4:** When the identity of a child is confidential, "child 1" must be used in the petition, report, motion, etc., and the filer must put the child's identifying information (name, age, DOB, gender, race) on [Confidential Information Form 11.4](#). That form needs to be filed only once in each case unless something on the form changes in which case an updated form must be filed. For example, on June 10 the county attorney may file a CHIPS petition stating "*Child 1 was allegedly sexually assaulted by child 2 (see confidential information form 11.4 filed June 10).*" On June 10 the county attorney would separately file form 11.4 stating the identifying information for both child 1 and child 2. If on August 17 the GAL or social worker files a report to court for a review hearing, the GAL or social worker report must also reference "child 1" and "child 2," but the GAL or social worker does not need to file a new form 11.4 and instead can reference the old form: "*Child 1 (see confidential information form 11.4 filed June 10) is experiencing nightmares.*"
- **Rejection of documents with confidential information:** If a petition, report, motion, or other document (except court orders) is filed that incorrectly includes the identity of a child victim or perpetrator of sexual assault, court staff are required to immediately change the status of that document from "public" to "confidential" and must send the filer a "notice of deficiency" directing the filer to fill a new document using "child 1" along with a form 11.4 (if such form has not been previously filed).
- **Sanctions:** If a filer repeatedly includes confidential information in documents filed with the court despite receipt of prior notices of deficiencies, the court may sanction the individual filer or the filer's organization/agency, including financial sanctions or deciding not to include the document in the court's review.