

# Washington State Partnership Council on Juvenile Justice

January 2013

BULLETIN

## The Public Access of Juvenile Criminal History Records in Washington State and Collateral Consequences

### Record Sealing

The Washington State Partnership Council on Juvenile Justice supports reform efforts that increase a youth's chance of successful reentry and transition to their local communities, and selected Reentry and Transitional Support for Youth as one of the top juvenile justice priority areas for the state in the 2012 three year juvenile justice plan.

To further these efforts, the Council's guiding principles for Washington's juvenile justice system include to -- Support policies on juvenile adjudication and arrest record dissemination that minimize the stigma associated with juvenile offender status, provide protections for youth against disparate treatment in access to support and provide for dissemination only as necessary to support public safety missions.

This Bulletin was developed by the Council to share information with policy-makers and stakeholders in the juvenile justice system as they consider state-wide system improvement strategies for Washington that will improve outcomes for youth and increase their chances for successful rehabilitation.

### Access to juvenile offender records in WA:

In 1977 the Washington State Legislature passed HB 371, which made juvenile offender records accessible to the public.

The following information remains publically available:

- Juvenile Arrest information
- Any filed charges
- Guilty findings
- Not guilty findings and dismissals
- Appellate records and briefs
- Diversion information is not public unless charges are filed with the court.

### What does "public access" mean?

Public access means that:

- The general public can attend court hearings and look at court records;
- Any private individual or entity is permitted to view a person's juvenile court records, either by going in person to the court clerk's office/courthouse, or (with the advent of electronic records and digital technology) by doing a simple search online; and
- In Washington, public access also means the availability and dissemination of large data files including juvenile records, which are sold by the WA State Administrative Office of the Courts (AOC) to private consumer reporting agencies (like Intellius, Equifax, "SafeRent," and "CriminalSearch.com"). Some of these companies have agreements to obtain these records for a cost directly from AOC, while others may obtain them through the reselling of the data.

### Where is juvenile criminal history found?

- At the court clerk's office in each county where an offense occurred (files at the courthouse)
- On the Washington State Courts website maintained by AOC (online via a "name search")
- Subscription (online) to the WA Courts Judicial Information System (JIS) database
- Washington State Patrol website
- Law enforcement agencies (via requests)
- Private consumer reporting agencies (such as those listed above)

## Recent Legislative Efforts

### The Joint Legislative Task Force on Sealing Juvenile Records:

During the 2011 regular session, the Washington State Legislature established the **Joint Legislative Task Force on Juvenile Record Sealing**. The purpose of the Task Force was to “determine how to cost-effectively restrict public access to juvenile records when an individual has met the statutory requirements of RCW 13.50.050(12) and without requiring individuals who are the subject of those records to file a motion to seal the records in juvenile court; whether and how to restrict access to diversion records; and other juvenile criminal records access issues that may arise during the work of the task force.”

The January 2012 *Report to the Legislature* from the Task Force summarized that while the members did not reach consensus regarding recommendations to the legislature, members of the group offered proposals and ideas, which were examined thoroughly by all members of the group. **The Task Force came close to reaching consensus on the following proposal** – which would restrict access to most records (language proposed by Judge Wynne, a representative from the Judicial Information Systems (JIS) Data Dissemination Committee).

**This proposal would allow public access if a juvenile is charged with a serious violent crime, and provide the flexibility for the court to order that other certain cases be open to public inspection:**

*“The official juvenile court file of any alleged or proven juvenile offender shall be confidential, except as provided by RCW 13.50.010(8), unless:* (a) *The juvenile has been charged by information with a serious violent offense, as defined by RCW 9.94A.030, in which case, the official juvenile court file shall be open to the public; or* (b) *The juvenile court has ordered that the official juvenile court file be open to public inspection, either in its entirety, or in part, as provided in subsection (6) of this section.* (30) *No confidential juvenile offense records maintained by any court, law enforcement agency or state agency, including the juvenile court, local law enforcement, the Washington State Patrol, and the county prosecutor’s offices, may be published, distributed, or sold.”*

Making juvenile court records presumptively confidential is consistent with the position of the National Association of Counsel for Children (NACC) on the confidentiality of juvenile court proceedings and records. The NACC “concludes that neither absolute confidentiality nor total opening of juvenile court records and proceedings would be appropriate.”<sup>1</sup>

### What is happening in other states?

The WA State Joint Legislative Task Force on Sealing Juvenile Records (January 2012 Report to the Legislature) also examined the statutes that govern juvenile records in other states, and found there is considerable variation across the states: “A number of states consider juvenile court records to be confidential and not available to the public.” Nonetheless, numerous professional entities have access to the records in these states, including: judges and court personnel, prosecutors, law enforcement, agencies with custody or supervision responsibilities; certain school personnel, and parents or legal guardians of the juvenile. (Thus, while the records are considered confidential, the court, key agencies and individuals do have access to these records.)

Also, according to the Report: “In several states, while the records are confidential, the proceedings are open to the public” (Colorado, Minnesota and Virginia). Also, “a number of states allow public access to juvenile court records if the juvenile is accused or adjudicated of specific crimes and/or is of a specific age (Delaware, Maine, Massachusetts, New Jersey).” Further, the Report summarizes there are some states similar to Washington, where the official juvenile court record is open to the public. “In these states that permit public access to juvenile court records, there are generally procedures that allow for sealing or expunging those records provided the juvenile meets certain criteria.”

1. With regard to delinquency cases, the NACC policy statement provides: “Finally, identifying records of adjudication of juvenile delinquency should be made available to juvenile and criminal courts and law enforcement officials, to ensure appropriate decision making with regard to subsequent delinquent or criminal offenses; such information shall not, however, be disseminated beyond those courts and law enforcement officials.” It is summarized this position “ensures that the major benefits of confidentiality are retained, while the major benefits of opening juvenile court records and proceedings are also realized—especially the benefits of promoting accountability in the system, and promoting public understanding of the system.”

# The Sealing of Juvenile Records

In summary, it appears **Washington is one of only a few states that allows full public access to juvenile records.**<sup>2</sup> And while the state does allow for the sealing of records (per the chart below), the process is costly and lengthy, and difficult to navigate without an attorney. It has been estimated that on average sealing a record takes 3 to 5 hours of an attorney's time.

Furthermore, the ability to erase or remove the records from the data files of private agencies that maintain and distribute them, or from other public media sources, is extremely difficult. Thus, a court sealing order cannot guarantee that the records will actually be protected. This creates ongoing issues and collateral consequences for youth -- even if the charges were dismissed or the youth was not adjudicated (convicted). Youth who have completed their sentence in secure juvenile facilities and are returning to the community face many barriers as they transition that are exacerbated due to public access of their records.

A juvenile record can be sealed if the case meets the eligibility criteria<sup>3</sup>, per the following steps: a motion is filed to vacate or seal the conviction in juvenile court; the court grants the motion; the youth serves the court order that seals his/her records to all of the applicable agencies (public and private) that might have their record. This is not a simple process for youth to navigate, and public defenders do not assist youth with this process. To have their records sealed, youth must have been crime free for two to five years (depending on the nature of their offense), and must have paid off all of their outstanding restitution.

Young people with unsealed juvenile criminal history face long-term and negative consequences because of the ease with which records can be accessed by the public. For these individuals, and for those who have sealed their record, there is a high likelihood of incorrect and sealed information to continue to be available electronically because of the batch dissemination and reselling of Washington's court records.

## When Can I Seal My Record?

Offense Type	Pre-1977	1977-1997	1998-2004	2004-2010	Present
Sex Offenses	Not Public	2 years	Never	Never	After relief from registration and waiting period
Class A felony	Not Public	2 years	Never	Never	5 years
Class B felony	Not Public	2 years	10 years	5 years	2 years
Class C felony	Not Public	2 years	5 years	2 years	2 years
Gross Misd.	Not Public	2 years	3 years	2 years	2 years

Chart Source: *Kimberly Ambrose, University of Washington School of Law (from October 4, 2012, presentation to the WA-PCJJ)*

## Collateral Consequences:

A report ("Think Before You Plead: Juvenile Collateral Consequences in the United States") providing state-to-state and national information summarizes that for Washington State: "Juveniles adjudicated in Washington courts suffer many collateral consequences due primarily to two aspects of the state's laws. First, the Washington criminal code makes little distinction between juveniles and adults when imposing and allowing collateral consequences. *Second, Washington State law makes court*

*records, detailing both arrests and convictions, publicly available, regardless of the offender's age."*

Public distribution of juvenile records impacts a youth's ability to succeed - to secure jobs and other employment opportunities, as well as housing and schooling, while excluding youth from military service and citizenship. The additional cost and current process to seal a youth's record is compounded by these many other collateral consequences. Without these opportunities, youth are more likely to reoffend.

2. A recent review of state statutes on this topic found there are **eight states** (including Washington) that allow juvenile offense records to be entirely open to the public. These states are: Arizona, Idaho, Iowa, Kansas, Michigan, New Mexico, Oregon and Washington (Children & Youth Legislative Advocacy Clinic, U of W School of Law J.D. Candidates).

3. According to current state law, a person is not eligible to have their juvenile record sealed if they committed one of the following three offenses: Rape in the 1st degree, Rape in the 2nd degree, or Indecent Liberties by Forcible Compulsion; or if their case was transferred to adult criminal court jurisdiction when they were a juvenile (under age 18).

# Collateral Consequences (continued) and Conclusion

## Youth of color are disproportionately impacted by the unforeseen consequences of juvenile adjudication:

Approximately 56% of the 2011 Juvenile Rehabilitation Administration (JRA) youth population were youth of color (according to a one-day snapshot in June 2011), and approximately 41% of juvenile admissions to Washington's local juvenile detention facilities statewide in 2010 were minority youth. By comparison, Washington's statewide age 10-17 minority youth population was approximately 33% in 2010. There is a disproportionate number of minority youth transitioning from secure confinement who are impacted by the current record sealing process, public dissemination of records, and the collateral consequences of these practices in our state, which includes recidivism.

Additionally, minority youth represented 67% of juvenile cases transferred to adult criminal court jurisdiction in 2010. These youth are not given an opportunity to seal their records, even when they have been fully rehabilitated.

## Conclusion:

Washington has invested significant resources towards a juvenile justice system that aims to rehabilitate young people and ensure community and public safety. Most youth who successfully navigate the juvenile justice system and remain crime free have an opportunity to have their juvenile criminal history sealed. While this process is available, it is not a simple process to navigate -- and when youth are able to successfully seal their record, the court and juvenile justice system also incur costs.

Sealing also does not guarantee that the information is removed from public availability, as described in this Bulletin, and some youth with more serious offenses are not given an opportunity to seal their records, even when they have been fully rehabilitated.

The Council supports efforts and changes to statutorily restrict public access to juvenile records, without requiring individuals who are the subject of those records to file a motion to seal, and that would specifically restrict data files that include juvenile records to be sold to outside consumer reporting agencies -- with the option that flexibility be allowed for the court to order that certain cases be open to public inspection, as necessary to ensure and support public safety.

## Sources:

*"Confidentiality of Juvenile Court Proceedings and Records Policy Statement," National Association of Counsel for Children, April 1998, available at: [http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/policy/policy\\_statement\\_-\\_confident.pdf](http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/policy/policy_statement_-_confident.pdf).*

*"Joint Legislative Task Force on Sealing Juvenile Records: Report to Legislature," January 2012; available at: <http://www.leg.wa.gov/JointCommittees/JRS/Documents/FinalReport.pdf>.*

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*"Public Juvenile Records in Washington State," Kimberly Ambrose, University of Washington School of Law, presentation to the Washington State Partnership Council on Juvenile Justice, October 2012.*

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*The preparation of this report was aided by the Washington State Partnership Council on Juvenile Justice through a federal Title II Formula Grants Program award from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.*