

# Patterns of Juvenile Record Confidentiality in the United States

Joint Legislative Task Force on Juvenile  
Record Sealing

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# Law enforcement records

- The general rule across most states is that law enforcement records regarding juvenile crime are not available for public inspection.
- All states have exceptions to this general rule; some exceptions are broader than others.
- What follows are the most common exceptions to the general rule followed by some state examples.

# Common exceptions

1. Law enforcement records are available to the following:
  - > Courts;
  - > Other law enforcement agencies;
  - > Agencies having custody of, or supervision responsibility for, a juvenile;
  - > Penal institutions;
  - > Probation departments;
  - > Parents or legal guardians;
  - > Schools (or certain officials within a school);
  - > Attorneys involved in the case

# Exceptions cont'd

- Examples of states following first exception: Alabama; Illinois; Kansas (if juvenile under 14); New Hampshire; New Mexico; Kentucky; North Carolina; N. Dakota; Oklahoma; Oregon; Tennessee; New York (but only to juvenile and parent or to judge of court in which juvenile subsequently convicted); Rhode Island; Vermont; West Virginia (only by order of the court)

# Exceptions cont'd

2. Can disclose information to the public regarding a crime committed by a juvenile as long as the juvenile is not identified. (Alaska, Mississippi, North Dakota, South Carolina)
3. Can disclose to school officials if necessary to protect safety of school students or staff. (Alaska)
4. Can disclose to the public if necessary to protect the public. (Alaska)
5. Can disclose the names of a juvenile 14 years or older who is taken into custody for committing a serious felony (specifically enumerated in some states). (**California, Louisiana, Pennsylvania** - also allows disclosure if juvenile is 12 or 13 and is alleged to have committed murder, manslaughter, aggravated assault, arson or sex offenses, **Virginia, Utah**).

# Exceptions cont'd

6. Can disclose juvenile records per court order. There are different criteria for issuing the court order: minor's interests in confidentiality and rehabilitation over moving party's interest in obtaining the information (Illinois); for good cause shown (Maryland); no specific statutory standards (Minnesota, Missouri, North Carolina); legitimate interest in the records (Nevada); interests of the child (Tennessee, Wisconsin).

# Exceptions cont'd

7. Records can be released to the public about juveniles who commit acts that would be considered crimes if committed by adults. (Indiana, Kansas – if over 14, New Jersey – if necessary to execute arrest warrant).
8. Many states have exceptions for research purposes.

# Confidentiality of Juvenile Court Records

- ◉ A number of states follow the general rule that juvenile court records are confidential and not available to the public.
- ◉ Even so, there are numerous professional entities that have access to the records. The following are the most common:
  - > Judges and court personnel
  - > Probation officers

# Court Records cont'd

- › Representatives of agencies with custody or supervision responsibility of the juvenile;
- › A parent, or legal guardian of the juvenile
- › The juvenile's attorney and/or guardian ad litem
- › School personnel
- › Victim of the crime
- › Prosecutor
- › Law enforcement
- › Research entities

# Court Records cont'd

- ◉ Examples of states using all of some of these exceptions:
  - > Alabama, California, Connecticut, Colorado, Illinois, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Virginia, West Virginia, Wisconsin, Wyoming

# Court Records cont'd

- In several states, the records are confidential, but the proceedings are open to the public: Colorado, Minnesota, Virginia
- 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.

# Court Records cont'd

## ◉ Examples of those states:

- > **Delaware** – proceedings for a crime classified as a felony are open to the public.
- > **Maine** – proceedings open for sex crimes or crimes against persons
- > **Massachusetts** – proceedings open for juveniles aged 14 to 17, who have been previously adjudicated delinquent 2 times for acts that would generate a prison sentence if committed by an adult and are currently charged with an act that would be punishable by a prison sentence if committed by an adult.
- > **New Jersey** – proceedings open for delinquent act that would constitute the crime of 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree murder or aggravated assault, destruction or damage to property of more than \$500 unless juvenile shows specific and extraordinary harm would result from disclosure.
- > **Idaho and Oklahoma** – proceedings open for any juvenile 14 or older charged with a felony

# Court Records cont'd

## ◉ In some states, the official court file is open to the public:

- > **Iowa** – official court record on delinquency filed after 1/07 is public record unless sealed.
- > **Kansas** – court record is open unless court decides it is not in the best interests of the juvenile under age 14. Social file only available to a limited few.
- > **Maine** – if the hearing is open to the public, the records are open to the public as well.
- > **Michigan** – juvenile diversion records open by court order to persons having legitimate interest
- > **Montana** – Formal juvenile records open; social, medical, psychological are not.

# Court Records cont'd

- Two states allow juvenile court hearings to be open to the public without exception:
  - > Colorado
  - > New Mexico

# Sealing or Expungement of Records

- States vary considerably on when and if they allow juvenile records to be sealed, expunged or destroyed.
- Some states allow law enforcement and agency records in addition to court records to be sealed.
- States seem to use the terms “seal” and “expunge” interchangeably.

# Sealing cont'd

- Several states do not provide for sealing of juvenile records because the records are kept confidential. Examples include Connecticut, New Hampshire.
- In most states, records of juveniles tried as adults cannot be sealed.

# Sealing cont'd

- In states that allow sealing, most require some version of the following factors to be met:
  - › The juvenile has attained a particular age;
  - › A certain number of years has elapsed since the juvenile's discharge from custody or supervision;
  - › The juvenile has not been subsequently convicted or adjudicated of any crime;
  - › The juvenile has been rehabilitated to the court's satisfaction; and
  - › Sealing is in the best interests of the juvenile.

# Sealing cont'd

## ◉ Some examples of states that follow these general requirements:

- > **Alabama** (2 years since final discharge);
- > **California** (5 years since final discharge);
- > **Colorado** (1 year from law enforcement contact not resulting in action or 4 years from termination of court jurisdiction);
- > **Idaho** (5 years if juvenile been held accountable, is developing life skills necessary to become a contributing member of society and expungement will not compromise public safety);
- > **Iowa and Kentucky** (2 years – time period can be waived if extraordinary circumstances exist);
- > **Louisiana** (misdemeanors – 2 years; felonies – 5 years);;
- > **Michigan** (5 years or age 24, whichever is later);
- > **New Mexico** (age 18 and 2 years elapsed)

# Sealing Cont'd

- ◉ A number of states do not allow adjudications for certain offenses to be sealed or expunged:
  - > **Delaware** – murder, arson, burglary
  - > **Illinois** – 1<sup>st</sup> degree murder and felony sex offenses
  - > **Kansas** – murder, manslaughter, sex offenses, endangering or abusing a child
  - > **Louisiana** – murder, manslaughter, sex crimes, kidnapping, armed robbery
  - > **Ohio** – murder, sex offenses
  - > **South Carolina** – adjudication for offense carrying a maximum term of 5 years or more if committed by an adult
  - > **Wyoming** – violent felony

# Records cont'd

- Two states allow juvenile records to be sealed if the juvenile has enlisted in the armed services – New Jersey and Oklahoma
- Some states have provisions providing for automatic sealing upon the occurrence of an event.
  - › **Minnesota** – If within 6 months of being arrested a juvenile has not been referred to a diversion program and a delinquency petition has not been filed, the record is to be sealed.

# Sealing cont'd

- › **Montana** – Law enforcement and court agency records eligible to be sealed as soon as the juvenile turns 18.
- › **Nevada** – sealing is automatic at age 21 for most offenses
- › **Rhode Island** – court records are automatically sealed upon the final disposition of a case if no information is filed, the case is dismissed, the juvenile is found not guilty or upon completion of the sentence, including probation or parole.
- › **Virginia** – On January 2<sup>nd</sup> of every year, the court clerk is to destroy files, papers and records connected with a juvenile proceeding if juvenile has attained 19 years and 5 years has elapsed since date of the last court hearing. Records are retained if the juvenile is guilty of a delinquent act which would be a felony if committed by an adult.

# Effect of a Sealing Order

- In most states, the effect of a sealing/expungement order is to render the underlying criminal conduct to not have occurred. The person whose records are sealed can respond, when asked, that no such records on the conduct in question exist.
- Courts, agencies and law enforcement, if asked, are to reply that no records exist.

# Effect of Sealing Order, cont'd

- ◉ The following states adhere to this general rule:
  - > Arkansas;
  - > Florida (unless seeking employment with CJ agency or agency with access to vulnerable children or adults, candidate for admission to the bar, seeking job with school or at a seaport);
  - > Georgia; Hawaii; Idaho; Illinois; Kansas; Kentucky; Louisiana; Maine; Michigan; Nebraska; Nevada; New Jersey; New Mexico; North Dakota; Ohio; Oklahoma; Oregon; Texas; Utah; Vermont; Virginia; West Virginia.

# Effect of Sealing Order, cont'd

- ◉ In some states, sealing the records has additional effects:
  - > Civil rights removed because of conviction are restored – Alaska, Alabama
  - > All records and indicia of arrest to be destroyed – Delaware
  - > Sealed records can later be destroyed or expunged, generally after a certain period of time has elapsed – Texas, Ohio
  - > Upon entry of sealing order, all agencies and persons with custody of records sealed must send records to the court – Indiana, Iowa
  - > Upon entry of sealing order, records held by officials, agencies, or law enforcement must be destroyed – Louisiana
  - > If the record is expunged, the juvenile and the juvenile's parent cannot be guilty of perjury or giving a false statement because he or she failed to acknowledge the expunged record – North Carolina, Oregon, South Carolina