

Confidentiality of Juvenile Delinquency Records in Iowa

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning
Statistical Analysis Center

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I. Introduction

The Governor's Working Group on Criminal Justice Policy Reform submitted final recommendations to the Governor on November 06, 2015 on four specific areas of criminal justice policy:

- drug courts and mental health courts
- increasing the diversity of jury pools
- confidentiality of juvenile delinquency records
- prison and jail phone calls.¹

Members of the Governor's Working Group were chosen from a diverse, bi-partisan group of agencies and organizations and held four public meetings between September and October, 2015. The purpose of the working group was to study the four issues related to criminal justice policy and discuss potential solutions. Meetings involved not only members, but other stakeholders who were given the opportunity to present and provide information and feedback concerning issues within the criminal justice system.

In November of 2015, the Juvenile Justice Advisory Council (JJAC), a Governor-appointed council for the Division of Criminal and Juvenile Justice Planning (CJJP), submitted a letter to the Governor's Working Group on Criminal Justice Policy Reform supporting the confidentiality of all juvenile arrest and court records. The JJAC believes public access of juvenile court and law enforcement records can cause long term negative consequences for youth including restricted access to education, housing, employment and military service (See Attachment A).

This report seeks to review existing juvenile confidentiality laws in Iowa, those enacted across the nation, as well as provide a framework by which a structure for developing changes to Iowa's current laws, that are in the best interest of juvenile offenders and protect public safety and victims of crimes.

¹ See the Office of the Governor of Iowa Terry Branstad. Governor's Working Group on Criminal Justice Policy Reform Submits Final Strategy Recommendations <https://governor.iowa.gov/2015/11/governor%E2%80%99s-working-group-on-criminal-justice-policy-reform-submits-final-strategy>

II. History and Background

In the late 1980's juvenile arrest rates for violent crime began to increase and spiked in 1994. In response, states began enacting sweeping legislation aimed at curbing this increase. An analysis by the Office of Juvenile Justice and Delinquency Prevention of all legislation enacted in 1992–1995 targeting violent or other serious crime by juveniles showed five common themes:

- *Jurisdictional authority*: More serious and violent juvenile offenders are being removed from the juvenile justice system in favor of criminal court prosecution.
- *Judicial disposition/sentencing authority*: More State legislatures are experimenting with new disposition/sentencing options.
- *Correctional programming*: Correctional administrators are under pressure to develop programs as a result of new transfer and sentencing laws.
- *Confidentiality of juvenile court records and proceedings*: Traditional confidentiality provisions are being revised in favor of more open proceedings and records.
- *Victims of juvenile crime*: Victims of juvenile crime are being included as “active participants” in the juvenile justice process.

They concluded, “These trends represent both a reaction to the increasingly serious nature of juvenile crime and a fundamental shift in juvenile justice philosophy. Traditional notions of individualized dispositions based on the best interests of the juvenile are being diminished by interests in punishing criminal behavior.”²

This radical change reversed the long standing tradition of the juvenile court in which rehabilitation and reform was the goal. The guiding principles within this system held juveniles lacked criminal culpability and could be treated, rehabilitated and reformed. This was because they were not yet fully responsible for their actions in the same way as adults. The system also regarded confidentiality as extremely important because it was believed children should be protected from the stigma of criminality.³

Iowa responded by passing legislation allowing greater access to juvenile records.

In 1997, two changes to section 232 of the Code increased the release of juvenile records.

Subsection 4 was added to section 232.19 and explicitly states, “Information pertaining to a child who is at least ten years of age and who is taken into custody for a delinquent act which would be a public offense is a public record and is not confidential under section 232.147” and

² Torbet, P., et al. (1996). *State Responses to Serious and Violent Juvenile Crime*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. <https://www.ncjrs.gov/pdffiles/statresp.pdf>

³ U.S. Department of Justice, Bureau of Justice Statistics. (1997, May). *Privacy and Juvenile Justice Records: A Mid-Decade Status Report*. (Publication No. NCJ-161255). <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=161255>

Section 232.28, subsection 10, was amended to include lower level offenses. Before this, the subsection specified offenses ranging from aggravated misdemeanors to felonies would be made public record.

The most recent legislation, provided by the Governor's Working Group, applies to the "automatic" sealing of juvenile delinquency records directed in SF383 and confidentiality protection for records containing a dismissal of a juvenile delinquency complaint or informal adjustment of a complaint in SF292 (See Attachment B).

III. Juvenile Record Confidentiality Laws and Public Safety

No studies were found demonstrating a correlation between juvenile record confidentiality laws and public safety. A review of the issue, as outlined above, indicates changes to juvenile record confidentiality laws have been part of other larger juvenile justice system changes. Additionally, and possibly more importantly, the impetus for larger changes to the juvenile justice system in the 1990s have either been seriously challenged or retracted by the proponents themselves. In particular, the prediction about an increase of violent juvenile offenders ("superpredators") was incorrect.

The political scientist, John J. Dilulio Jr., who coined the term "superpredator" and projected a mass increase in violent juvenile crime recently joined several criminologists filing an amicus brief in support of the petitioners in *Miller v. Alabama*.⁴ The brief summarized extensive research data demonstrating predictions of the juvenile superpredator theory were wrong and concluded it "contributed to the dismantling of transfer restrictions, the lowering of the minimum age for adult prosecution of children, and it threw thousands of children into an ill-suited and excessive punishment regime."⁵

IV. Consequences Associated with a Conviction

Unanticipated penalties beyond a court's sentence are commonly referred to as "collateral consequences." These can range from restrictions on housing and employment to exclusion from engagement in civic life such as voting or volunteering. While certain sanctions and restrictions serve an important public safety function or are directly related to a particular crime, the consequences of a criminal conviction can alter opportunities in almost every sector of life.

⁴ Fagan, F., et al. as Amici Curiae Supporting Respondents, *Jackson v. Hobbes* and *Miller v. Alabama*. (2012, January 12). (No. 10-9647 & No. 10-9646)., from <http://eji.org/files/10-9647,%2010-9646%20tsac%20Jeffrey%20Fagan,%20et%20al..pdf>

⁵ Ibid.

Depending on the level and/or severity of the offense some or all of these areas may be affected:

- Credit Rating
- Driving privileges
- Education
- Employment/Licensing
- Firearms
- Government Benefits
- Housing
- Immigration
- Jury Duty
- Parental Rights including adoption or foster parenting
- Travel
- Volunteer Activities
- Voting

An inventory by the American Bar Association shows Iowa has over 600 sanctions and restrictions associated with a criminal conviction.⁶ The American Bar Association (ABA) argues, “While collateral consequences have been a familiar feature of the American justice system since colonial times, they have become more important and more problematic in the past 20 years for three reasons: they are more numerous and more severe, they affect more people, and they are harder to avoid or mitigate. As a result, millions of Americans are consigned to a kind of legal limbo because at one point in their past they committed a crime.”⁷

Recently, Governor Branstad voiced concerns about the effects of delinquency records as public records in the Condition of the State Address on January 13, 2016.

“That means that a juvenile with even a minor theft or minor drug possession can be haunted by that mistake for the rest of their life – when they apply for college, for a job, for an apartment or for the military. Some of our friends and neighbors, who have made poor decisions when they were young, continue to face significant roadblocks to success throughout their entire life. We must examine whether these policies are truly protecting the public, or simply blocking a path to future career success for impacted Iowans. A minor crime should not be a lifelong barrier to a successful career.”⁸

Employment

The repercussions of a criminal history record on employment opportunities have especially generated attention. Recently, the Council of State Governments Justice Center released a factsheet discussing the importance of fair-chance hiring policies. They cite studies showing a criminal record can reduce, on average, job callbacks by 50 percent (and up to 60 percent for black males). They believe increasing access to employment is an important element of keeping

⁶ American Bar Association National Inventory of Collateral Consequences of Conviction.
<http://www.abacollateralconsequences.org/map/>

⁷ Ibid.

⁸ Iowa Public Television. (2016, January, 12). Condition of the State 2016, Transcript.
<http://site.iptv.org/iowapress/story/4884/condition-state-2016>

people out of the criminal justice system.⁹ Campaigns to “Ban the Box” and guidelines on the consideration of arrest and conviction records in employment decisions by the U.S. Equal Employment Opportunity Commission (EEOC) have also tried to limit its impact.

“Ban the Box” campaigns call for removing the question and check box, “Have you been convicted by a court?” from applications for employment, housing, public benefits, insurance, loans and other services. In the area of employment, they urge any background check required by law to be conducted after an employee has been found otherwise qualified, or after a conditional offer of employment has been made.¹⁰

The EEOC offers guidelines for employer's use of criminal history records in making employment decisions because, even though having a criminal record is not listed as a protected basis in Title VII, in some instances, its use may result in "disparate treatment" and "disparate impact" of protected classes.¹¹ In Iowa, there does not appear to be any code or policy defining what employers can or cannot ask on employment applications beyond considerations outlined by the EEOC that would apply under the Iowa Civil Rights Act.

During the 2015 legislative session, SF84 was introduced prohibiting employers from obtaining criminal background information until an offer for employment is extended. The bill did not pass last session but was discussed again on January 19, 2016 by a three-member panel of the Senate Judiciary Committee. The Committee took no action but will meet again to decide whether to advance the legislation to a full committee.

Education

According to the U.S. Department of Education, Federal Student Aid, a juvenile record should not interfere with student aid eligibility. The restrictions to Pell grants and student aid are limited to persons incarcerated and in a federal or state institution. However, once released most of those eligibility limitations are removed. Eligibility for federal student aid can be suspended if the student has a drug conviction during the time when he/she was receiving federal grants, loans or work-study.¹²

⁹ Council of State Governments Justice Center. (November 2015). The Consideration of Criminal Records in Hiring Decisions. <https://csgjusticecenter.org/wp-content/uploads/2015/10/TheConsiderationofCriminalRecordsinHiringDecisions.pdf>

¹⁰ For more information see <http://bantheboxcampaign.org/>

¹¹ U.S. Equal Employment Opportunity Commission. (2012). Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964. (No. 915.002). http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

¹² See: <https://studentaid.ed.gov/sa/eligibility/criminal-convictions>

Housing

The Iowa Finance Authority reports, there are federally mandated disqualifiers for federal Housing and Urban Development (HUD) programs. Under 24 CFR 960.204 and 24 CFR 982.553, HUD requires that all Public Housing Authorities (PHAs) establish lifetime bans for some offenses (i.e. methamphetamine production on the premises of federally assisted housing and sex offenses subject to a lifetime registration requirement). In addition, PHAs must also prohibit admission if any household member is currently engaged in illegal drug use, if there is reasonable cause to believe that a household member's illegal drug use, alcohol use, or pattern of abuse threatens the health, safety, peaceful enjoyment of the premises by other residents, or if a household member of the applicant was evicted from federally assisted housing for drug-related criminal activity in the past three years. In this case, however, PHAs have the discretion to consider the circumstances and may admit households if the evicted household member has successfully completed a supervised drug rehabilitation program or that the circumstances that led to the eviction no longer exist (e.g. the household member is now in prison).

The federal restrictions are limited to specific criminal activity and in some cases have conditions for reconsideration, however; individual local Public Housing Agencies may establish additional screening criteria which may further limit access. The Iowa Housing Authority notes, there are dozens of different individual PHAs in Iowa, so the rules can vary across the state. In addition, access to private housing depends on individual landlords and many landlords do background checks on applicants.

V. Areas of Juvenile Record Confidentiality

Providing adequate confidentiality of juvenile records may be complex as justice systems records are diverse and contain different kinds of sensitive information. Areas of consideration should include:

Law enforcement records: any documents created by or stored by any law enforcement agency. Specifically, records designating an arrest, the taking into custody, detention, formal charges, fingerprints, DNA information, photographs and other police notes.

Court records: including youth's social, psychological, educational and family information, the results of assessments or evaluations, and offense-related information.

Sealing or expungement: limited access to juvenile court records vs. physical destruction and complete erasure of the record. Should the process be automatic or initiated. Time requirements for eligibility or any excluded offenses. Notification of the availability of sealing or expungement and any fees associated with the process.

VI. Status of Confidentiality of Juvenile Records Across the U.S.

A 2014 review and rating of state laws on confidentiality, sealing, and expungement of juvenile records by the Juvenile Law Center shows that the vast majority of states fail to provide adequate confidentiality of juvenile records.¹³ The Juvenile Law Center created a five star rating system based on confidentiality of records during and after juvenile court proceedings and availability of and process for sealing or expungement (See Attachment C for the criteria used for the scoring system).

Their assessment showed no state received the highest rating (five stars) for protecting the confidentiality of juvenile records. The average rating across all 50 states and the District of Columbia was three stars, with Iowa scoring two stars. Based on these ratings it does not appear there is any particular state that has comprehensive protection for juveniles (For a state-by-state comparison of key confidentiality and sealing and expungement components from the Juvenile Law Center see Attachment D).

Iowa is one of seven states that allow public access to juvenile records. Iowa's rating was lowest (one star) for components associated with confidentiality. The reasons were due to public availability of law enforcement and court records and access prior to delinquency adjudication by other parties such as victim and school personnel. The rating was better (three stars) for components associated with availability of, and process for, sealing or expungement. The reasons for a higher rating were because court and law enforcement records may be sealed, with records treated as though never existed (but without physical destruction), sealing allowed for all juvenile offenses, and the process is considered automatic (See Attachment E for ratings by confidentiality and sealing or expungement components).¹⁴

VII. Current Iowa Laws for Confidentiality of Juvenile Cases

Up until the 1990's the sealing of juvenile court records was thought to be a good practice that protected youth from collateral consequences later in life. Major changes took place, not only allowing for public access to records, but juvenile records were now easily accessed through the internet. While youth are provided the right to petition to have their records sealed, the information has long been public and can still be accessed. The long-term collateral effects on both the youth, and society as a whole, are unmeasurable.

¹³ Shah, R. S., Fine, L., & Gullen, J. (2014). Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement. *The Juvenile Law Center*.

<http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf>

¹⁴ Shah, R. S. & Fine, L. (2014). Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records. *The Juvenile Law Center*. <http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/scorecard.pdf>

Current Access

Juvenile records may be available to the public or any governmental agency through the internet or in an electronic customized data report *if the child has been adjudicated delinquent* per Iowa Code § 232.147. If the complaint was dismissed or informally adjusted with no petition filed relating to the complaint, then the record is to remain confidential.

However, there are certain parties granted access to records *prior* to a delinquency adjudication and/or in the case of dismissed or informally adjusted charges. These exceptions provide full access, in both cases, to court and judicial staff, attorneys, law enforcement, state public defender, parents/legal guardians, designated school staff, members of the armed forces (conducting background investigations) and the state statistical analysis center (for research purposes).

Confidentiality Orders

In response to a petition submitted by the juvenile taken into custody for a delinquent act, or upon the court's own motion, the court may, after a hearing, order that the records be kept confidential if: (a) the case has been dismissed and the person is no longer subject to the jurisdiction of the juvenile court; and (b) making the records confidential is in the best interests of the person and the public. Iowa Code § 232.149(A). However, records ordered confidential can be disclosed, without court order, to court and judicial staff, attorneys, state public defender, parents/legal guardians, and law enforcement. Research staff may petition the courts for disclosure of confidential records.

Sealing and Expungement

Under Iowa Code § 232.150, an individual who has a juvenile delinquency record can file an application for sealing, or the court upon its own motion, shall schedule a hearing two years after closure of the case or by the date the child turns age eighteen. The record will be sealed if, after a hearing, the court finds all of the following:

- The applicant is at least 18 years of age;
- At least two years have passed since the last official action on the person's case;
- The person has not subsequently been convicted of a felony or an aggravated misdemeanor;
- The person was not granted youthful offender status, transferred back to district court after his or her 18th birthday, and subsequently sentenced for the offense which precipitated the youthful offender placement; and
- The applicant has not been adjudicated delinquent for an offense which, if committed by an adult, would be an aggravated misdemeanor or felony.

If the applicant has been adjudicated delinquent for an offense which, if committed by an adult, would be an aggravated misdemeanor or a felony, the court shall not order the record sealed unless, upon application of the person or upon the court's own motion and after a hearing, the court finds that the sealing is in the best interests of the person and the public. Iowa Code § 232.150(1)(3)(b).

Application and Court Process

If the above conditions are met, a person may apply for sealing of their juvenile record(s). While notification is not required by the courts, nine counties in Iowa provide juveniles with an informational packet on sealing, which includes the applicable law and blank copies of forms required to apply.

If the court grants the petition for the sealing of the applicant's juvenile records, the court will send notice and copies of a sealing order to each agency or person having custody of the records named therein, who are then to send the records to the court issuing the order. Iowa Code § 232.150. At this point, the sealed records shall no longer be deemed to exist as a matter of law, and the juvenile court and any other agency or person who received notice and a copy of the sealing order shall reply to an inquiry that no such records exist, except when such reply is made to an inquiry pursuant to subsection 6. Iowa Code § 232.150(5).

Inspection of sealed records and disclosure of their contents thereafter may be permitted only pursuant to an order of the court upon application of the person who is the subject of such records except that the court in its discretion may permit reports to be inspected by or their contents to be disclosed for research purposes to a person conducting bona fide research under whatever conditions the court deems proper. Iowa Code § 232.150(6). Note, that even if a person's petition for sealing of his or her juvenile records is granted, all automated fingerprints will remain in the identification system. Iowa Code § 692.17 (See Attachment F for applicable Iowa code sections discussed above).

VIII. Core Principles of Juvenile Record Confidentiality and Sealing and Expungement

The Juvenile Law Center has developed a set of “core principles” (listed below) to guide states in the development of policies on the confidentiality of juvenile arrest and court records.

Confidentiality and Access to Juvenile Record Information¹⁵

State statutes should:

- List the documents or information contained in law enforcement and juvenile court records;
- Specifically state that confidentiality protections apply to all information contained within law enforcement and court records.
- Be clear that anything contained in a law enforcement record pertaining to a case in juvenile court, or in a juvenile court record, should be filed separately from adult law enforcement files or records of the court.
- Prohibit inspection by the public of juvenile court records and law enforcement records pertaining to juvenile cases.
- Ensure that access to juvenile record information is limited to individuals connected to the case. This may include:
 - juvenile court personnel, including the judge, Juvenile probation officers and other court professional staff ordered by the juvenile court to provide services to the juvenile
 - public or private agencies or departments providing supervision by court order
 - the juvenile and his or her attorney
 - the parent (except when parental rights have been terminated), the legal guardian of the juvenile, and the legal custodian of the juvenile
 - the prosecutor
- Provide for limited access to juvenile record information to specified individuals conducting research
- Permit exceptions to confidentiality by court order
- Safeguard juvenile record information released to government agencies and schools
 - Because schools often receive juvenile record information that is unrelated to conduct occurring on school property, schools should take measures to limit access to the information. Schools should have provisions mandating that juvenile record information is shared with additional school staff only on a need to know basis
 - When juvenile justice information is released to other service providers to assist in planning for youth, it must be done responsibly and in a way that ensures

¹⁵ Provided by The Juvenile Law Center. See

<http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf>

enhanced care and not increased stigma or risk of the youth's deeper involvement in the juvenile justice system

SANCTIONS FOR SHARING CONFIDENTIAL INFORMATION

State statutes should:

- Require courts to impose a fine (but not incarceration) on individuals or agencies that intentionally disseminate, share, or otherwise disclose confidential information contained in a juvenile court or law enforcement record
- Prohibit imposing a penalty on youth who share their own confidential information

EFFECT OF SEALING AND EXPUNGEMENT

Effective sealing and expungement policies must limit access to the records they govern.

Sealing policies that completely close records to public viewing provide the strongest protection of juvenile records. Similarly, expungement policies should provide for complete destruction of a juvenile record and expressly state that the record is to be treated as though it never existed.

After sealing:

- All references to the juvenile's arrest, detention, adjudication, disposition, and probation must be physically or electronically segregated so that only persons or agencies with statutory authority can gain access.

After expungement:

- All references to the juvenile's arrest, detention, adjudication, disposition, and probation must be deleted from the files of the court, law enforcement, and of any other person or agency that has provided services to a child under a court order; and
- When asked about the individual, any representative of the court, law enforcement, or related governmental departments should respond that no record exists

NOTIFICATION OF SEALING AND EXPUNGEMENT RIGHTS

State statutes should require notification by the:

- child's attorney throughout the course of the representation;
- Court at the final hearing (e.g., at the time of dismissal of the case, at disposition, or at discharge from supervision)
- juvenile probation department or its equivalent when juvenile court supervision is discharged
- child's attorney and the court at the time the child is eligible to apply for expungement
- Clerk of Court or its equivalent via mail (or email or text message) when the expungement has been completed

Specifically, notification should include:

- the consequences of being adjudicated delinquent

- information about the child's expungement rights
- the difference between a sealed and expunged record and
- timeline for automatic expungement or expungement upon application

EXPUNGEMENT ELIGIBILITY AND PROCESS

State Statutes should provide:

- A tiered system in which:
 - Juvenile court and law enforcement records are automatically sealed upon discharge from court supervision; and
 - can be automatically expunged if the person has no subsequent or pending adjudications or convictions for the following five years; or
 - can be expunged if the juvenile applies and after a hearing a court grants the expungement prior to the passage of five years
- Automatic expungement of juvenile court and law enforcement records in dismissed cases, unsubstantiated cases, cases where the youth was found to be not involved, and informal adjustments
- The youth has the opportunity to file an expungement petition at any time after the youth's juvenile records have been sealed but prior to automatic expungement eligibility. The prosecutor should receive notice and be given the opportunity to present evidence at a hearing at which the juvenile court will rule on the expungement upon consideration of the following:
 - the best interests of the youth;
 - the age of the youth at the time of the offense;
 - the nature of the offense;
 - the disposition of the case;
 - the youth's participation in any court ordered rehabilitative programming or supervised services;
 - the entirety of the youth's juvenile court record;
 - subsequent contact with the juvenile court or with any law enforcement agency;
 - whether the youth has any subsequent criminal involvement; and the adverse consequences the youth will suffer as a result of retention of his or her record

SANCTIONS FOR SHARING EXPUNGED RECORD INFORMATION

In order to ensure that orders of expungement or sealing are carried out and to deter individuals from disclosing information that is by statute barred to the public by reason of expungement or sealing, a monetary sanction should be imposed. This sanction should not apply to the individual who is the subject of the record.

State statutes should:

- Require courts to impose a fine (but not incarceration) on individuals or agencies that intentionally disseminate, share, or otherwise disclose confidential information contained in an expunged juvenile court or law enforcement record
- Require courts to impose a fine on individuals or agencies that intentionally fail to carry out expungement orders
- Prohibit imposing a penalty on youth who share their own expunged juvenile record information

FEE FOR SEALING OR EXPUNGEMENT

State statutes should state:

- There are no fees or costs associated with sealing and expungement.

Juvenile Justice Advisory Council

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning

October 15, 2015

To: Governor's Working Group on Justice Policy Reform

The Iowa Juvenile Justice Advisory Council (JJAC) supports the confidentiality of all juvenile court records and juvenile arrest reports in Iowa.

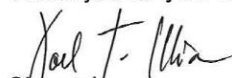
The JJAC agrees with the U.S. Supreme Court in a number of decisions (*Roper v. Simons*, *Graham v. Florida*, *Miller v. Alabama*) recognizing that youth are different than adults, are more malleable, and amenable to treatment. When this is coupled with the original goal of the juvenile court to rehabilitate and reintegrate youth into society, it is vital that Iowa stop allowing public access to juvenile court records. Even when a youth's juvenile court records are sealed or expunged, in the electronic age of the internet and data mining, those juvenile court records are still accessible. The negative effects include restricting their access to:

- education,
- housing,
- employment,
- military service.


Each of these restrictions limits the opportunities for youth to become successful members of society.

It is the belief of the JJAC that public access of juvenile court records and law enforcement records relating to the arrest of a youth create long term consequences for the youth. Members of the JJAC support cross-agency sharing of juvenile records between court, law enforcement, schools, treatment providers and designated research agencies to provide the necessary supports, services and research for youth.

Thank you for your support and interest in juvenile justice issues.


Sincerely,

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Attachment B.

Recent Legislative Changes

2014—SF 383

In 2014, the 85th General Assembly passed SF383, relating to the sealing of juvenile delinquency records. The legislation provides that court, on its own motion, will schedule a hearing two years after the date of the last official action in the juvenile delinquency case, or on the date the child becomes 18, whichever is later, to determine whether the records should be sealed pursuant to section 232.150(1)(a).⁵

This eliminates the requirement that the juvenile adjudicated delinquent must file an application with the court to initiate a formal action in order to seal juvenile records. In essence, the sealing of juvenile records is automatic post-adjudication, provided the juvenile has not committed subsequent criminal violations greater than a simple misdemeanor and they have completed any youthful offender placement.

The legislation also accelerates the removal of juvenile records stored within the computer data storage system of the Department of Public Safety (DPS). DPS is now required to remove the records from the computer data storage system of the department that relate to a juvenile arrest or the taking of a juvenile into custody *if no disposition data has been recorded within two years of the arrest or taking into custody*, unless there is an outstanding arrest warrant or detainer for the juvenile.⁶ Current

2015—SF 292

In 2015, the 86th General Assembly passed SF292, relating to confidentiality of juvenile records. A new section was added to 232.147, which establishes that records containing a dismissal of juvenile delinquency complaint or an informal adjustment of a juvenile delinquency complaint—when no petition is filed relating to the complaint—should not be available to the public and may only be inspected by certain parties, i.e. judge and court staff, child's counsel or guardian ad litem, county attorney, superintendent or designee, member of armed forces conducting investigation, the state public defender. This legislation extends the protections of 232.147A regarding dismissed complaints and affords confidentiality to those juveniles who have entered into an informal adjustment with Juvenile Court Services.

The legislation also specifies that the records of a defendant transferred to juvenile court from adult court under Code section 803.6 may be sealed under Code section 232.150.

(1) non-judicial probation in which the child is to abide by conditions of behavior imposed under the probation or (2) treatment services. Typically, if a child obeys the conditions of the informal adjustment a petition is not filed and the child is released from the oversight of the juvenile court.

⁵ Prior to SF 383, the law allowed for the court to order the official juvenile court records in the case sealed after a hearing upon the court's own motion. SF 383 added language to section 232.150 that the court shall schedule a hearing upon its own motion.

⁶ Prior to 383, the law required law required that the arrest or taking into custody information for a juvenile information be removed from the computer data storage system of the department of public safety *if no disposition data has been recorded within four years of the arrest or taking into custody*.

Appendix A

How We Scored The States

Juvenile Law Center extensively researched state laws governing juvenile court and law enforcement records. We identified key factors relevant to confidentiality and sealing or expungement to protect youth as they move in and out of the juvenile justice system. State research and legislative developments on these issues are current through June 30, 2014.

Juvenile Law Center has also published a companion document, *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing, and Expungement*, available at www.jlc.org/juvenilerecords. The National Review provides an in-depth analysis of state laws relating to the confidentiality, sealing and expungement of juvenile records. It sets forth best practices and Core Principles⁶ for effective record protection. The National Review is designed to provide legislators, practitioners, stakeholders and youth with a summary of their state laws and practices concerning juvenile records, and to assist them in assessing gaps and implementing suggested model policies. This Scorecard evaluates the state laws according to Core Principles developed by Juvenile Law Center.

This set of principles takes account of research on adolescent development, the harmful consequences of disclosure and dissemination of juvenile records information for adjudicated youth, and the limited benefits to public safety in retaining records. The Core Principles are designed to ensure that juvenile arrest and court histories will be appropriately expunged and that the records will remain confidential.

The final composite score for each state is based on a maximum of 100 points that could be earned based upon the state's performance in response to 14 questions. The

most comprehensive confidentiality and expungement schemes with the fewest exceptions were scored highest, ranging from six to ten points. Higher maximum values reflected greater importance of the factor being scored. Some criteria scored individually either zero or a specific number; the state either complied with the criteria or it didn't. In other categories, states could receive a cumulative score based on having a combination of the criteria.

States obtained the highest score if the state policy or practice matched the core principle for record protection. Policies that fell short received less than the maximum score. The absence of any expungement practices and confidentiality safeguards resulted in a score of zero for each category. At least two attorneys reviewed each state's law.

Some states were not rated on questions for which we had insufficient information. In those circumstances, we did not rate the state for that particular question and the unrated question was not factored into the total composite score, (i.e., the total possible point value was less than 100 for that state). For example, in some states the costs or fees associated with expungement are set by local jurisdictions; the state statute is silent. In these circumstances, the state was not rated on the question related to fees for sealing or expungement; we deducted the fee point value from the total possible points.

In reporting the confidentiality scores, we combined the questions related to confidentiality of records and exceptions to confidentiality to reflect a broader understanding of the law as it related to the accessibility of records.

The scoring criteria for each question is as follows:

1. ARE LAW ENFORCEMENT RECORDS CONFIDENTIAL?

Maximum of seven (7) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|----------------------------------------------------------------------------------|-----------------|
| Completely confidential (no access except by law enforcement or court personnel) | 7 |
| Available to others only by court order | 4 |
| Available to school or other government agencies | 2 |
| Available to any others (media, employers, etc.) | 0 |

⁶ The National Review addresses the same policy areas as the Scorecard. However, the Core Principles as set forth in the National Review provide a more detailed set of criteria and considerations that states should consider in amending or adopting legislation concerning the protection or release of juvenile record information. In the Scorecard, these Core Principles were integrated into our questions to account for the variances among states.

Appendix A

How We Scored The States

2. ARE THERE OFFENSE OR AGE-BASED EXCEPTIONS TO THE CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS?

Maximum of six (6) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|-----------------|-----------------|
| No exceptions | 6 |
| Any exceptions | 0 |

3. ARE COURT RECORDS CONFIDENTIAL?

Maximum of seven (7) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|----------------------------------------------------------------------------|-----------------|
| Completely confidential (other than to court or law enforcement personnel) | 7 |
| Available to others only by court order | 4 |
| Available to school or other government agencies | 2 |
| Available to any others (media, employers, etc.) | 0 |

4. ARE THERE OFFENSE OR AGE-BASED EXCEPTIONS TO THE CONFIDENTIALITY OF COURT RECORDS?

Maximum of six (6) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|-----------------|-----------------|
| No exceptions | 6 |
| Any exceptions | 0 |

5. ARE RECORDS MADE AVAILABLE TO THE PUBLIC?

Maximum of six (6) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|----------------------------------------------------------------------------------------|-----------------|
| Not Available to the public in any form | 6 |
| Law enforcement or court records available to the public, but are not available online | 3 |
| Law enforcement or court records available to the public and are available online | 0 |

6. ARE THERE SANCTIONS FOR UNLAWFULLY SHARING CONFIDENTIAL INFORMATION?

Maximum of six (6) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|-----------------------|-----------------|
| A sanction is imposed | 6 |
| No sanction imposed | 0 |

Appendix A How We Scored The States

7. IS SEALING OR EXPUNGEMENT AVAILABLE?

Maximum of fourteen (14) points (cumulative)

| POLICY CRITERIA | POSSIBLE POINTS |
|---------------------------------------------------------------------|-----------------|
| No expungement or sealing of records | 0 |
| Limited sealing; available to certain individuals or entities OR | 3 |
| Completely sealed but not physically destroyed | 5 |
| Expungement (records destroyed) | 9 |

8. WHAT RECORDS ARE SUBJECT TO SEALING OR EXPUNGEMENT?

Maximum of six (6) points (cumulative)

| POLICY CRITERIA | POSSIBLE POINTS |
|-----------------------------------------------------------------------------------------|-----------------|
| No records are sealed or expunged | 0 |
| Juvenile delinquency court records are sealed or expunged | 3 |
| Law enforcement records, including fingerprints and DNA samples, are sealed or expunged | 3 |

9. WHAT OFFENSES ARE EXCLUDED FROM SEALING OR EXPUNGEMENT?

Maximum seven (7) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|------------------------------------------------------------------------------------------|-----------------|
| Excludes all offenses | 0 |
| Excludes property offenses as well as offenses against persons and registerable offenses | 1 |
| Excludes offenses against persons or felony offenses as well as registerable offenses | 2 |
| Excludes only registerable offenses | 3 |
| No offenses are excluded | 7 |

10. IS SEALING OR EXPUNGEMENT AUTOMATIC OR MUST THE YOUTH OR SOME OTHER ENTITY FILE A PETITION TO INITIATE THE PROCESS?

Maximum of seven (7) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|----------------------------------------------------------------------------------|-----------------|
| Youth must initiate the process | 0 |
| Court or justice system entity can initiate the process | 2 |
| Expungement or sealing is automatic; no action on the part of the youth required | 7 |

Appendix A

How We Scored The States

11. HOW AND WHEN IS THE YOUTH NOTIFIED OF THE AVAILABILITY OF SEALING OR EXPUNGEMENT, THE PROCESS FOR SEALING OR EXPUNGEMENT, AND ELIGIBILITY?

Maximum of ten (10) points (cumulative)

| POLICY CRITERIA | POSSIBLE POINTS |
|---------------------------------------------------------------------------------------|-----------------|
| No notification requirement | 0 |
| Youth must be notified of the availability of sealing or expungement | 1 |
| Youth must be notified of his/her eligibility for sealing or expungement | 2 |
| Youth must be notified of the process for sealing or expungement | 3 |
| Notification takes place at the time that the sealing or expungement is completed | 1 |
| Notification takes place at the time of case closure | 1 |
| Notification takes place at the time the youth is eligible for sealing or expungement | 2 |

12. WHEN MAY A YOUTH'S RECORDS BE SEALED OR EXPUNGED?

Maximum of six (6) points (average of the two hypothetical scores; mutually exclusive for each hypothetical)

| POLICY CRITERIA | POSSIBLE POINTS |
|------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| <i>13-year old adjudicated delinquent of felony aggravated assault. Case closed and discharged from court supervision at age 15.</i> | |
| Never eligible for sealing or expungement | 0 |
| Eligible for sealing at case closing/discharge | 4 |
| Eligible for expungement at case closing/discharge | 6 |
| Eligible for sealing or expungement within one year of case closing/discharge | 4 |
| Eligible for sealing or expungement within five years of case closing/discharge | 2 |
| Eligible for sealing or expungement after more than five years from case closing/discharge | 1 |

| POLICY CRITERIA | POSSIBLE POINTS |
|------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| <i>17-year old adjudicated delinquent of felony aggravated assault. Case closed and discharged from court supervision at age 19.</i> | |
| Never eligible for sealing or expungement | 0 |
| Eligible for sealing at case closing/discharge | 4 |
| Eligible for expungement at case closing/discharge | 6 |
| Eligible for sealing or expungement within one year of case closing/discharge | 4 |
| Eligible for sealing or expungement within five years of case closing/discharge | 2 |
| Eligible for sealing or expungement after more than five years from case closing/discharge | 1 |

Appendix A How We Scored The States

13. MUST THE YOUTH PAY A FEE FOR SEALING OR EXPUNGEMENT?

Maximum six (6) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|-----------------------|-----------------|
| Fee of more than \$50 | 0 |
| Fee of \$50 or less | 3 |
| No fee | 6 |
| Unrated | |

14. ARE SANCTIONS IMPOSED FOR FAILURE TO COMPLY WITH SEALING AND/OR EXPUNGEMENT LAW?

Maximum of six (6) points (mutually exclusive)

| POLICY CRITERIA | POSSIBLE POINTS |
|-----------------------|-----------------|
| A sanction is imposed | 6 |
| No sanction imposed | 0 |
| Unrated | |

Total scores for each state, reflecting their impact on sealing or expungement and confidentiality for 14 (or slightly fewer) questions were calculated according to the following formula:

$$\frac{(\text{Sum of scores for included questions}) - (\text{Sum of maximum scores for excluded questions})}{(\text{Sum of maximum scores for included questions})}$$

Because the total point values differed from state to state, the resulting total state score is expressed as a percentage of the maximum possible total score for the policies and practices included for the individual state. For example, if a state received a total score of 60 points out of a possible 90 because the state was not rated on a question that offered a maximum score of 10 points, the total score for that hypothetical state would be 67% (i.e., 60 divided by 90), not 60%. The percentage scores were rounded to the nearest whole number and then assigned stars using the following rating system:

| | | |
|---------|---------|-------|
| 80-100% | 5 stars | ★★★★★ |
| 60-79% | 4 stars | ★★★★☆ |
| 40-59% | 3 stars | ★★★☆☆ |
| 20-39% | 2 stars | ★★☆☆☆ |
| 0-19% | 1 star | ★☆☆☆☆ |

Aggregate scores per state were calculated for each of the two major categories of policies and practices: expungement or sealing and confidentiality. As with the aggregate score calculations for all policies and practices, these calculations were based on a maximum aggregate score of 100 percentage points. If, for example, a state scored 45 points out of maximum score of 60 points for all expungement or sealing issues combined, then the state would receive a 75% performance score, or a 4-star rating for expungement or sealing.

An example of this scoring follows at Appendix B.

Attachment D.

Confidentiality Components by State from the Juvenile Law Center

| Fully protect juvenile records information from the public | Allow certain types of juvenile record information to be publicly available | Give complete public access to juvenile records | Release juvenile record information to school personnel | Victims of juvenile crime may access some juvenile record information |
|------------------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------|-----------------------------------------------------------------------|
| California | Alabama | Arizona | Alabama | Alabama |
| Nebraska | Alaska | Idaho | Alaska | Alaska |
| New Mexico | Arkansas | Iowa | Arkansas | Arkansas |
| New York | Colorado | Michigan | Colorado | Colorado |
| North Carolina | Connecticut | Montana | Connecticut | Connecticut |
| North Dakota | Delaware | Oregon | D.C. | D.C. |
| Ohio | D.C. | Washington | Florida | Idaho |
| Rhode Island | Florida | | Georgia | Illinois |
| Vermont | Georgia | | Illinois | Indiana |
| | Hawaii | | Indiana | Iowa |
| | Idaho | | Iowa | Kentucky |
| | Indiana | | Kansas | Louisiana |
| | Kansas | | Kentucky | Maine |
| | Kentucky | | Louisiana | Maryland |
| | Louisiana | | Maine | Minnesota |
| | Maine | | Maryland | Mississippi |
| | Maryland | | Minnesota | Missouri |
| | Massachusetts | | Mississippi | Montana |
| | Minnesota | | Missouri | Nevada |
| | Mississippi | | Montana | New Hampshire |
| | Missouri | | New Jersey | New Jersey |
| | Nevada | | New Mexico | Oregon |
| | New Hampshire | | New York | Rhode Island |
| | New Jersey | | North Carolina | South Carolina |
| | Oklahoma | | North Dakota | Vermont |
| | Pennsylvania | | Oklahoma | Washington |
| | South Carolina | | Oregon | Wisconsin |
| | South Dakota | | South Carolina | Wyoming |
| | Tennessee | | Tennessee | |
| | Texas | | Texas | |
| | Utah | | Virginia | |
| | Virginia | | Washington | |
| | West Virginia | | Wisconsin | |
| | Wisconsin | | Wyoming | |

Sealing and Expungement Components by State from the Juvenile Law Center

| Records can be sealed | Statute that specifically requires physical destruction of expunged records | Expunged records treated as though never existed (but no physical destruction) | Permit expungement of both law enforcement and court records | Limit expungement to court records |
|-----------------------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------|------------------------------------|
| Alabama | Alabama | Colorado | Alabama | Alaska |
| Alaska | Arizona | Connecticut | Connecticut | Arkansas |
| Arizona | Florida | Idaho | D.C. | Colorado |
| California | Hawaii | Iowa | Florida | Delaware |
| D.C. | Idaho | Kansas | Idaho | Georgia |
| Georgia | Illinois | Louisiana | Illinois | Maryland |
| Illinois | Indiana | Maryland | Indiana | Massachusetts |
| Indiana | Michigan | Minnesota | Kansas | Minnesota |
| Kentucky | Mississippi | New Jersey | Kentucky | Mississippi |
| Maine | Missouri | New York | Louisiana | Montana |
| Maryland | Montana | North Carolina | Maryland | New Jersey |
| Massachusetts | North Dakota | Oklahoma | Missouri | New York |
| Mississippi | Oregon | Rhode Island | New Jersey | Ohio |
| Missouri | South Carolina | Utah | New Mexico | South Dakota |
| Montana | Tennessee | Wyoming | North Carolina | Wisconsin |
| Nebraska | Texas | | North Dakota | |
| Nevada | Washington | | Oklahoma | |
| New Hampshire | Wisconsin | | Oregon | |
| New Jersey | | | Pennsylvania | |
| New Mexico | | | Rhode Island | |
| New York | | | Texas | |
| North Carolina | | | Utah | |
| North Dakota | | | Vermont | |
| Ohio | | | Washington | |
| Oklahoma | | | West Virginia | |
| South Dakota | | | Wyoming | |
| Texas | | | | |
| Vermont | | | | |
| Washington | | | | |
| West Virginia | | | | |
| Wisconsin | | | | |

Sealing and Expungement Components by State from the Juvenile Law Center, Continued

| Require some notification of sealing or expungement rights | Provide notification of actual process for sealing or expungement | Expungement eligibility based upon age | Categorically exclude offenses against persons or felony offenses from expungement eligibility | Offenses that require sex offender registration are ineligible for expungement |
|------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Alabama | California | Alabama | Alabama | Florida |
| Arizona | Illinois | Alaska | Alaska | Kansas |
| California | Nebraska | Arizona | Arizona | Minnesota |
| Colorado | Nevada | Arkansas | Colorado | Montana |
| D.C. | New Mexico | California | Delaware | North Dakota |
| Illinois | Oregon | Connecticut | Idaho | Oregon |
| Kansas | Texas | Delaware | Illinois | Pennsylvania |
| Kentucky | | Florida | Kansas | Tennessee |
| Nebraska | | Hawaii | Kentucky | Texas |
| Nevada | | Idaho | Louisiana | |
| New Mexico | | Illinois | Michigan | |
| New York | | Iowa | Minnesota | |
| Ohio | | Kansas | Nevada | |
| Oregon | | Louisiana | New Jersey | |
| Texas | | Maryland | New York | |
| Washington | | Michigan | North Carolina | |
| | | Minnesota | Ohio | |
| | | Mississippi | Oregon | |
| | | Missouri | Rhode Island | |
| | | Montana | South Carolina | |
| | | Nebraska | Texas | |
| | | Nevada | Utah | |
| | | New Hampshire | Vermont | |
| | | New Mexico | Virginia | |
| | | New York | Washington | |
| | | North Carolina | Wyoming | |
| | | North Dakota | | |
| | | Oklahoma | | |
| | | Oregon | | |
| | | Pennsylvania | | |
| | | South Carolina | | |
| | | Tennessee | | |
| | | Texas | | |
| | | Utah | | |
| | | Vermont | | |
| | | Virginia | | |
| | | Washington | | |
| | | West Virginia | | |
| | | Wisconsin | | |
| | | Wyoming | | |

Sealing and Expungement Components by State from the Juvenile Law Center, Continued

| Allow expungement for all juvenile offenses | Describe process as automatic because court or administrative agency may commence the process | Juvenile must file petition | Hearing held on sealing or expungement | Impose sanctions for failing to carry out expungement or sharing expunged information | Charge an expungement fee greater than \$50 |
|---------------------------------------------|-----------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------|
| Arkansas | D.C. | Alabama | California | Alabama | Florida |
| California | Georgia | Arizona | Colorado | Delaware | Illinois |
| Connecticut | Indiana | California | Connecticut | D.C. | Kansas |
| D.C. | Iowa | Colorado | D.C. | Florida | Minnesota |
| Georgia | Kentucky | Connecticut | Georgia | Kansas | Oregon |
| Hawaii | Maryland | Hawaii | Idaho | Michigan | Rhode Island |
| Indiana | Missouri | Idaho | Illinois | Missouri | South Carolina |
| Iowa | Nebraska | Illinois | Kansas | Montana | Utah |
| Maine | New York | Kansas | Kentucky | Nebraska | |
| Maryland | Oklahoma | Louisiana | Louisiana | New Hampshire | |
| Massachusetts | Oregon | Maine | Maryland | New Jersey | |
| Mississippi | Pennsylvania | Massachusetts | Michigan | Ohio | |
| Missouri | South Dakota | Michigan | Missouri | Oklahoma | |
| Nebraska | West Virginia | Minnesota | Nebraska | Oregon | |
| New Hampshire | | Mississippi | Nevada | Tennessee | |
| New Mexico | | New Jersey | New Jersey | Virginia | |
| Oklahoma | | North Carolina | North Carolina | West Virginia | |
| South Dakota | | Rhode Island | Ohio | Wyoming | |
| West Virginia | | South Carolina | Oklahoma | | |
| Wisconsin | | Tennessee | Oregon | | |
| | | Texas | Rhode Island | | |
| | | Utah | Texas | | |
| | | Wisconsin | Vermont | | |
| | | Wyoming | Washington | | |
| | | | Wisconsin | | |

Attachment E.

Iowa's Score Card- Confidentiality

Confidentiality: ★☆☆☆☆

Juvenile records are available to the public on an online database. All states »

❶ **Are law enforcement records confidential?**

Law enforcement records typically contain information regarding arrests, victim and witness statements, photographs, fingerprints and DNA samples. States that restrict availability of law enforcement records to law enforcement or court personnel only and do not provide exceptions to their general rules of confidentiality received the highest score. All states »

0% (0 OF 13 PTS)

NATL AVG: 34% (4.4 OF 13 PTS)

❷ **Are court records confidential?**

Juvenile court records contain a youth's social, psychological, educational and family information, the results of assessments or evaluations, and other offense-related information to assist the court in planning for the child's supervision, treatment, and rehabilitation upon adjudication. States that restrict availability of court records to law enforcement or court personnel only and do not provide exceptions to their general rules of confidentiality received the highest score. All states »

0% (0 OF 13 PTS)

NATL AVG: 28% (3.6 OF 13 PTS)

❸ **Are records made available to the public?**

Publicly available records can be placed on a searchable online database, or simply made available if an individual requests the record through the state police or the juvenile court. States that make it more difficult for the public to gain access to records received the highest score. All states »

0% (0 OF 6 PTS)

NATL AVG: 58% (3.5 OF 6 PTS)

❹ **Are there sanctions for unlawfully sharing confidential information?**

To be effective, state policies providing for confidentiality of juvenile records must be enforced. States that provide for sanctions received the highest score. All states »

100% (6 OF 6 PTS)

NATL AVG: 100% (6 OF 6 PTS)

Iowa's Score Card- Expungement

Expungement: ★★☆☆☆

52% [26 OF 50 PTS]

NATL AVG: 49% (27.2 OF 55.6 PTS)

Although there are no exceptions to what records can be expunged in Iowa youth must initiate the process on their own and are given no information about their expungement rights either during their case or after it has been closed. All states »

❶ **Is sealing or expungement available?**

64% [9 OF 14 PTS]

NATL AVG: 59% (8.3 OF 14 PTS)

Sealing records alone can be ineffective because even if a record is technically sealed to everyone, it is physically still accessible and therefore can interfere with the youth's future plans. States that provide for complete sealing and expungement of juvenile records received the highest score, ensuring that youth can put their past behind them and focus on their futures. All states »

❷ **What records are subject to sealing and/or expungement?**

100% [6 OF 6 PTS]

NATL AVG: 83% (5 OF 6 PTS)

Even where juvenile records are eligible for sealing or expungement, many jurisdictions limit the mechanisms to certain records. States where all court and law enforcement records can be sealed or expunged, without exception, provide the most effective protection and received the highest score. All states »

❸ **What offenses are excluded from sealing or expungement?**

100% [7 OF 7 PTS]

NATL AVG: 54% (3.8 OF 7 PTS)

Many states limit sealing or expungement to records of certain offenses. States where records of all juvenile adjudications, regardless of the nature or grading of the offense, are eligible for either sealing or expungement received the highest score. All states »

❹ **Is sealing or expungement automatic or must the youth or some other individual or entity file a petition to initiate the process?**

29% [2 OF 7 PTS]

NATL AVG: 31% (2.2 OF 7 PTS)

To facilitate a more streamlined process to destroy juvenile records, many states have implemented automatic expungement procedures. States that provide for automatic sealing or expungement received the highest score. Still other states provide for a third party or agency to initiate the process. These states scored higher than states that require youth themselves to initiate the sealing or expungement process. All states »

❺ **How and when is the youth notified of the availability of sealing or expungement, the process for sealing or expungement, and eligibility?**

0% [0 OF 10 PTS]

NATL AVG: 15% (1.5 OF 10 PTS)

Many youth are not advised that juvenile records carry long-term consequences, or that expungement or sealing of their records is not automatic but requires the juvenile to initiate the process (if available at all). States that provide notice about availability, eligibility and process throughout the proceeding and thereafter received the highest score. All states »

❻ **When may a juvenile's records be sealed or expunged?**

33% [2 OF 6 PTS]

NATL AVG: 35% (2.1 OF 6 PTS)

Eligibility for expungement can be tied to the individual's age at the time of the offense or discharge from court; the nature of the offense for which the youth was adjudicated; or the amount of time that has passed since the case was closed. States that provide for expungement eligibility earlier, at discharge or case closing, regardless of the youth's age, received the highest score. All states »

❼ **Must the youth pay a fee for sealing or expungement?**

NOT RATED [EXPLAIN]

NATL AVG: 60% (3.6 OF 6 PTS)

Fees can deter young people from seeking to have their records sealed or expunged. States that assess no fee received the highest score. All states »

❽ **Are sanctions imposed for failure to comply with sealing or expungement law?**

NOT RATED [EXPLAIN]

NATL AVG: 100% (6 OF 6 PTS)

To be effective, state sealing and expungement policies must be enforced. States that impose sanctions received the highest score. All states »

Juvenile Delinquency Records

Applicable Iowa Code Sections

- 232.147 *Confidentiality of Juvenile Court Records*
- 232.149 *Records of Criminal or Juvenile Justice Agencies*
- 232.149A *Confidentiality Orders*
- 232.150 *Sealing of Records*

Overview

In the majority of states, information about ongoing juvenile delinquency proceedings is generally protected from public view, but is available to court staff, law enforcement officials, and others directly involved in the proceedings, including attorneys, the juvenile, and the juvenile's parent or guardian. Once juveniles are adjudicated delinquent, many states allow that information to be more widely disseminated.

Iowa is one of seven states that categorically make all juvenile delinquency records public¹, with some exception². In Iowa, all law enforcement and juvenile delinquency records are public records *unless* a confidentiality or sealed order is issued, see Iowa Code section 232.149(2) "Records and files of a criminal or juvenile justice agency concerning a child involved in a delinquent act are public records ..."³

Confidentiality: Section 232.149A affords protection to those juveniles who were taken into custody for a delinquent act or were the subject of a complaint alleging delinquency, *only if* the case had been dismissed and the person was no longer subject to the jurisdiction of the juvenile court, see Iowa Code section 232.149A(1)(a), (b). The "Confidential Orders" provision of Chapter 232 provides no protection to those juveniles who are adjudicated delinquent or those that juveniles that enter into informal adjustments through Juvenile Court Services.

Sealing: Prior to 2014, Section 232.150 provided an opportunity for the sealing of official juvenile court records post-adjudication, though the juvenile was required to submit an application to the court commencing a formal action to determine if the juvenile qualified to have their records sealed. This provided only some protection to those juveniles who were adjudicated delinquent, post-adjudication; and provided no protection to those juveniles who entered into an informal adjustment with Juvenile Court Services.⁴

¹ Arizona (Ariz. Rev. Stat. § 8-208(G), Ariz. Const. Article IV, §22); Idaho (Idaho Code § 20-525A); Iowa (Iowa Code § 232.147); Michigan (Mich. Comp. Laws §§ 712A.28); Montana (Mont. Code §§ 41-5-216); Oregon (Or. Rev. Stat. § 419A.255); Washington (Wash. Rev. Code §§ 13.50.050(14)-(16)).

² Juvenile court social records, as defined in 232.2(31), are always kept confidential, per IA Code § 232.147(1), § 232.48, and § 232.97. Additional exceptions during pendency of proceedings, see IA Code § 232.147(1)(c) The official records shall not be available to the public or any governmental agency through the internet or in an electronic customized data report unless the child has been adjudicated delinquent. However, the following shall have access to official juvenile court records through the internet or in an electronic customized data report prior to the child being adjudicated delinquent: (1) The judge and professional court staff, including juvenile court officers. (2) The child's counsel or guardian ad litem. (3) The county attorney and the county attorney's assistants. (4) A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding. (5) A state or local law enforcement agency. (6) The state public defender. (7) The division of criminal and juvenile justice planning of the department of human rights.

³ IA Code § 232.149(2); see also IA Code § 232.147 (b) Official juvenile court records containing a petition or complaint alleging delinquency filed prior to January 1, 2007, shall be public records subject to a confidentiality order under section 232.149A or sealing under section 232.150. (c) Official juvenile court records containing a petition or complaint alleging delinquency filed on or after January 1, 2007, shall be public records subject to a confidentiality order under section 232.149A or sealing under section 232.150.

⁴ If informal adjustment is selected by the juvenile court officer as the appropriate disposition, the child and the child's parents must agree to the terms required in an informal adjustment agreement. The agreement always requires that the child admit the charges. In addition, the typical agreement requires

CHAPTER 58

JUVENILE COURT RECORDS — CONFIDENTIALITY

S.F. 292

AN ACT relating to the confidentiality of certain juvenile court records.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 232.147, subsections 1, 2, 3, and 8, Code 2015, are amended to read as follows:

1. Juvenile court social records shall be confidential. They shall not be inspected and their contents shall not be disclosed except as provided in this section or as authorized by other provisions in this chapter.

2. Official juvenile court records in cases alleging delinquency, including complaints under section 232.28, shall be public records, subject to the following restrictions:

a. Records containing a dismissal of a complaint or an informal adjustment of a complaint when no petition is filed relating to the complaint, shall not be available to the public and may only be inspected by or disclosed to the following:

(1) The judge and professional court staff, including juvenile court officers.

(2) The child's counsel or guardian ad litem.

(3) The county attorney and county attorney's assistants.

(4) The superintendent or the superintendent's designee of the school district for the school attended by the child or the authorities in charge of an accredited nonpublic school attended by the child.

(5) A member of the armed forces of the United States who is conducting a background investigation of an individual pursuant to federal law.

(6) The statistical analysis center for the purposes stated in section 216A.136.

(7) The state public defender.

a. b. Official juvenile court records containing a petition or complaint alleging delinquency filed prior to January 1, 2007, shall be public records subject to a confidentiality order under section 232.149A or sealing under section 232.150.

b. c. Official juvenile court records containing a petition or complaint alleging delinquency filed on or after January 1, 2007, shall be public records subject to a confidentiality order under section 232.149A or sealing under section 232.150. The official records shall not be available to the public or any governmental agency through the internet or in an electronic customized data report unless the child has been adjudicated delinquent. However, the following shall have access to official juvenile court records through the internet or in an electronic customized data report prior to the child being adjudicated delinquent:

(1) The judge and professional court staff, including juvenile court officers.

(2) The child's counsel or guardian ad litem.

(3) The county attorney and the county attorney's assistants.

(4) A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.

(5) A state or local law enforcement agency.

(6) The state public defender.

(7) The division of criminal and juvenile justice planning of the department of human rights.

c. d. If the court has excluded the public from a hearing under division II of this chapter, the transcript of the proceedings shall not be deemed a public record and inspection and disclosure of the contents of the transcript shall not be permitted except pursuant to court order or unless otherwise provided in this chapter.

d. e. Complaints under section 232.28 shall be released in accordance with section 915.25. Other official juvenile court records may be released under this section by a juvenile court officer.

3. Official juvenile court records in all cases except those alleging delinquency shall be confidential and are not public records but may be inspected and their contents shall be disclosed to the following without court order:

- a. The judge and professional court staff, including juvenile court officers.
- b. The child and the child's counsel.
- c. The child's parent, guardian or custodian, court appointed special advocate, and guardian ad litem, and the members of the child advocacy board created in section 237.16 or a local citizen foster care review board created in accordance with section 237.19 who are assigning or reviewing the child's case.
- d. The county attorney and the county attorney's assistants.
- e. An agency, association, facility or institution which has custody of the child, or is legally responsible for the care, treatment or supervision of the child.
- f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.
- g. The child's foster parent or an individual providing preadoptive care to the child.
- h. The state public defender.

8. All Subject to restrictions imposed by sections 232.48, subsection 4, and 232.97, subsection 3, all juvenile court records shall be made available for inspection and their contents shall be disclosed to any party to the case and the party's counsel and to any trial or appellate court in connection with an appeal pursuant to division VI of this chapter.

Sec. 2. Section 232.149, Code 2015, is amended by adding the following new subsection:
NEW SUBSECTION. 2A. Records and files of a criminal or juvenile justice agency concerning a defendant transferred under section 803.6 to the juvenile court for the alleged commission of a public offense are public records, except that release of criminal history data, intelligence data, and law enforcement investigatory files is subject to the provisions of section 22.7 and chapter 692, and juvenile court social records shall be deemed confidential criminal identification files under section 22.7, subsection 9. The records are subject to sealing under section 232.150.

Approved April 24, 2015

CHAPTER 1105
JUVENILE DELINQUENCY RECORDS
S.F. 383

AN ACT relating to the sealing of juvenile delinquency records.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 232.150, subsection 1, paragraph a, unnumbered paragraph 1, Code 2014, is amended to read as follows:

Upon In the case of an adjudication of delinquency, the court, upon its own motion, shall schedule a hearing to be held two years after the date of the last official action, or the date the child becomes eighteen years of age, whichever is later, or upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court's own motion, the court, after hearing, shall order the official juvenile court records in the case including those specified in sections 232.147 and 232.149 sealed if the court finds all of the following:

Sec. 2. Section 692.16, Code 2014, is amended to read as follows:

692.16 Review and removal.

At least every year the division shall review and determine the current status of all Iowa arrests or takings into custody reported, which are at least four years old with no disposition data.

1. Any Iowa arrest or taking of a juvenile into custody of a person eighteen years of age or older recorded within a computer data storage system which has no disposition data after four years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

2. Any arrest or taking of a juvenile into custody recorded within a computer data storage system which has no disposition data after two years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

Approved May 23, 2014

232.147 Confidentiality of juvenile court records.

1. Juvenile court records shall be confidential. They shall not be inspected and their contents shall not be disclosed except as provided in this section.

2. Official juvenile court records in cases alleging delinquency, including complaints under section 232.28, shall be public records, subject to the following restrictions:

a. Official juvenile court records containing a petition or complaint alleging delinquency filed prior to January 1, 2007, shall be public records subject to a confidentiality order under section 232.149A or sealing under section 232.150.

b. Official juvenile court records containing a petition or complaint alleging delinquency filed on or after January 1, 2007, shall be public records subject to a confidentiality order under section 232.149A or sealing under section 232.150. The official records shall not be available to the public or any governmental agency through the internet or in an electronic customized data report unless the child has been adjudicated delinquent. However, the following shall have access to official juvenile court records through the internet or in an electronic customized data report prior to the child being adjudicated delinquent:

- (1) The judge and professional court staff, including juvenile court officers.
- (2) The child's counsel or guardian ad litem.
- (3) The county attorney and the county attorney's assistants.
- (4) A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.
- (5) A state or local law enforcement agency.
- (6) The state public defender.
- (7) The division of criminal and juvenile justice planning of the department of human rights.

c. If the court has excluded the public from a hearing under division II of this chapter, the transcript of the proceedings shall not be deemed a public record and inspection and disclosure of the contents of the transcript shall not be permitted except pursuant to court order or unless otherwise provided in this chapter.

d. Complaints under section 232.28 shall be released in accordance with section 915.25. Other official juvenile court records may be released under this section by a juvenile court officer.

3. Official juvenile court records in all cases except those alleging delinquency may be inspected and their contents shall be disclosed to the following without court order:

- a. The judge and professional court staff, including juvenile court officers.
- b. The child and the child's counsel.
- c. The child's parent, guardian or custodian, court appointed special advocate, and guardian ad litem, and the members of the child advocacy board created in section 237.16 or a local citizen foster care review board created in accordance with section 237.19 who are assigning or reviewing the child's case.
- d. The county attorney and the county attorney's assistants.
- e. An agency, association, facility or institution which has custody of the child, or is legally responsible for the care, treatment or supervision of the child.
- f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.
- g. The child's foster parent or an individual providing preadoptive care to the child.
- h. The state public defender.

4. Official juvenile court records enumerated in section 232.2, subsection 38, paragraph "e", relating to paternity, support, or the termination of parental rights, shall be disclosed, upon request, to the child support recovery unit without court order.

5. Pursuant to court order official records may be inspected by and their contents may be disclosed to:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

- b. Persons who have a direct interest in a proceeding or in the work of the court.
6. a. Inspection of social records and disclosure of their contents shall not be permitted except pursuant to court order or unless otherwise provided in this subsection or chapter.
- b. If an informal adjustment of a complaint is made pursuant to section 232.29, the intake officer shall disclose to the victim of the delinquent act, upon the request of the victim, the name and address of the child who committed the delinquent act.
7. Social records prior to adjudication may be disclosed without court order to the superintendent or superintendent's designee of a school district, authorities in charge of an accredited nonpublic school, or any other state or local agency that is part of the juvenile justice system, in accordance with an interagency agreement established under section 280.25. The disclosure shall only include identifying information that is necessary to fulfill the purpose of the disclosure. The social records disclosed shall be used solely for the purpose of determining the programs and services appropriate to the needs of the child or the family of the child and shall not be disclosed for any other purpose unless otherwise provided by law.
8. All juvenile court records shall be made available for inspection and their contents shall be disclosed to any party to the case and the party's counsel and to any trial or appellate court in connection with an appeal pursuant to division VI of this chapter.
9. The clerk of the district court shall enter information from the juvenile record on the judgment docket and lien index, but only as necessary to record support judgments.
10. The state agency designated to enforce support obligations may release information as necessary in order to meet statutory responsibilities.
11. Release of official juvenile court records to a victim of a delinquent act is subject to the provisions of section 915.24, notwithstanding contrary provisions of this chapter.
[C66, 71, 73, 75, 77, §232.54, 232.57; C79, 81, §232.147; 82 Acts, ch 1209, §16]
83 Acts, ch 186, §10057, 10201; 84 Acts, ch 1208, §2; 90 Acts, ch 1271, §1508; 92 Acts, ch 1195, §301; 93 Acts, ch 172, §35, 56; 95 Acts, ch 191, §15; 96 Acts, ch 1110, §3; 97 Acts, ch 164, §4; 98 Acts, ch 1090, §63, 83, 84; 2000 Acts, ch 1123, §2; 2001 Acts, ch 79, §1; 2005 Acts, ch 55, §2; 2006 Acts, ch 1164, §1; 2006 Acts, ch 1185, §76; 2009 Acts, ch 41, §263; 2013 Acts, ch 116, §3
Referred to in §13B.4B, §135L.3, §216A.136, §228.6, §232.19, §232.91, §232.101A, §232.104, §232.149A, §232.150, §232.151, §232C.4, §235A.17, §280.25, §892A.121, §915.10A, §915.25

232.149 Records of criminal or juvenile justice agencies.

1. The taking of a child into custody under the provisions of section 232.19 shall not be considered an arrest.

2. Records and files of a criminal or juvenile justice agency concerning a child involved in a delinquent act are public records, except that release of criminal history data, intelligence data, and law enforcement investigatory files is subject to the provisions of section 22.7 and chapter 692, and juvenile court social records, as defined in section 232.2, subsection 31, shall be deemed confidential criminal identification files under section 22.7, subsection 9. The records are subject to sealing under section 232.150 unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for a public offense.

3. Notwithstanding subsection 2, if a juvenile who has been placed in detention under section 232.22 escapes from the facility, the criminal or juvenile justice agency may release the name of the juvenile, the facts surrounding the escape, and the offense or alleged offense which resulted in the placement of the juvenile in the facility.

[C66, 71, 73, 75, 77, §232.15; C79, 81, §232.149]

83 Acts, ch 186, §10057, 10201; 85 Acts, ch 173, §15; 94 Acts, ch 1172, §26; 95 Acts, ch 191, §18, 19; 97 Acts, ch 126, §34, 35

Referred to in §13B.4B, §216A.136, §232.91, §232.149A, §232.150, §232.151, §232C.4, §692A.121

232.149A Confidentiality orders.

1. Notwithstanding any other provision of the Code to the contrary, upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court's own motion, the court after hearing, shall order official juvenile court records in the case to be kept confidential and no longer public records under sections 232.147 and 232.149, if the court finds both of the following apply:

a. The case has been dismissed and the person is no longer subject to the jurisdiction of the juvenile court.

b. Making the records confidential is in the best interests of the person and the public.

2. The records subject to a confidentiality order may be sealed at a later date if section 232.150 applies.

3. Official juvenile court records subject to a confidentiality order may be inspected and their contents shall be disclosed to the following without court order:

a. The judge and professional court staff, including juvenile court officers.

b. The child and the child's counsel.

c. The child's parent, guardian or custodian, court appointed special advocate, and guardian ad litem, and the members of the child advocacy board created in section 237.16 or a local citizen foster care review board created in accordance with section 237.19 who are assigning or reviewing the child's case.

d. The county attorney and the county attorney's assistants.

e. An agency, association, facility, or institution which has custody of the child, or is legally responsible for the care, treatment, or supervision of the child, including but not limited to the department of human services.

f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who had been the subject of a juvenile court proceeding.

g. The child's foster parent or an individual providing preadoptive care to the child.

h. A state or local law enforcement agency.

i. The state public defender.

4. If the child has been discharged from the jurisdiction of the juvenile court due to reaching the age of eighteen and restitution remains unpaid, the name of the court, the title of the action, and the court's file number shall not be kept confidential, and the restitution amount shall be a judgment and lien as provided in sections 910.7A, 910.8, 910.10, and 915.28 until the restitution is paid.

5. Pursuant to court order, official juvenile court records subject to a confidentiality order may be inspected by and their contents may be disclosed to:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

2006 Acts, ch 1164, §2; 2006 Acts, ch 1185, §77

Referred to in §13B.4B, §216A.136, §232.91, §232.147, §232.151, §232C.4, §692A.121

232.150 Sealing of records.

1. a. In the case of an adjudication of delinquency, the court, upon its own motion, shall schedule a hearing to be held two years after the date of the last official action, or the date the child becomes eighteen years of age, whichever is later, or upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court's own motion, the court, after hearing, shall order the official juvenile court records in the case including those specified in sections 232.147 and 232.149 sealed if the court finds all of the following:

(1) The person is eighteen years of age or older and two years have elapsed since the last official action in the person's case.

(2) The person has not been subsequently convicted of a felony or an aggravated or serious misdemeanor or adjudicated a delinquent child for an act which if committed by an adult would be a felony, an aggravated misdemeanor, or a serious misdemeanor and no proceeding is pending seeking such conviction or adjudication.

(3) The person was not placed on youthful offender status, transferred back to district court after the youthful offender's eighteenth birthday, and sentenced for the offense which precipitated the youthful offender placement.

b. If the person was adjudicated delinquent for an offense which if committed by an adult would be an aggravated misdemeanor or a felony, the court shall not order the records in the case sealed unless, upon application of the person or upon the court's own motion and after hearing, the court finds that paragraph "a", subparagraphs (1) and (2), apply and that the sealing is in the best interests of the person and the public.

c. If the person is required to pay monetary restitution to a victim due to a delinquent act and the restitution is unpaid, the records in the case may be sealed, but the name of the court, the title of the action, and the court's file number shall remain unsealed as provided in section 910.10 and the restitution amount shall be a judgment and lien as provided in sections 910.7A, 910.8, 910.10, and 915.28 until the restitution is paid in full.

2. Reasonable notice of the hearing shall be given to the person who is the subject of the records named in the motion, the county attorney, and the agencies having custody of the records named in the application or motion.

3. Notice and copies of a sealing order shall be sent to each agency or person having custody of the records named therein.

4. On entry of a sealing order:

a. All agencies and persons having custody of records which are named therein, shall send such records to the court issuing the order.

b. All index references to sealed records shall be deleted.

5. The sealed records shall no longer be deemed to exist as a matter of law, and the juvenile court and any other agency or person who received notice and a copy of the sealing order shall reply to an inquiry that no such records exist, except when such reply is made to an inquiry pursuant to subsection 6.

6. Inspection of sealed records and disclosure of their contents thereafter may be permitted only pursuant to an order of the court upon application of the person who is the subject of such records except that the court in its discretion may permit reports to be inspected by or their contents to be disclosed for research purposes to a person conducting bona fide research under whatever conditions the court deems proper.

[C79, 81, §232.150; 82 Acts, ch 1209, §18]

97 Acts, ch 126, §36; 2006 Acts, ch 1164, §3; 2014 Acts, ch 1105, §1

Referred to in §13B.4B, §216A.136, §228A.2, §232.55, §232.91, §232.147, §232.149, §232.149A, §232.151, §232C.4, §682A.101, §692A.121

Subsection 1, paragraph a, unnumbered paragraph 1 amended