

JUVENILE REHABILITATION – DIVISION POLICY

Policy 1.40 – Managing JR Juvenile and Operations Records

Summary

- Establishes policy regarding confidentiality and authorization for releasing JR youth operations records.

Background:

The existing policy was updated following the four-year sunset review, to update references following the transition to DCYF, and add hyperlinks.

Policy Summary

This policy provides guidelines on how JR staff maintains confidentiality and security of the JR youth records, including who is allowed to release these records and the process used.

Changes from Current Practice

- There are no changes to current practice

Training Required: No

Policy Effective Date: 8/1/2019

*Staff are responsible for reading and understanding the information contained in the full policy.
Review of this summary is not sufficient for full understanding.*

POLICY 1.40 MANAGING JR JUVENILE AND OPERATIONS RECORDS

Policy Committee Chair

Lori Kesl
Regional Administrator, Regions 1 & 2
Juvenile Rehabilitation

Approved



Marybeth Queral, Assistant Secretary
Juvenile Rehabilitation
7/31/2019

Authorizing Sources

Code of Federal Regulations (CFR) Title 42
Part 2; Title 45 Parts 160 – 165 (HIPAA)
RCW 4.24.550
RCW Ch. 10.97
RCW Ch. 13.50
RCW Ch. 42.56
RCW Ch. 70.02
RCW Ch. 71.34
RCW 72.09.345
DCYF AP 12.01
DCYF AP 13.01
DCYF AP 13.02
DCYF AP 13.04
DCYF AP 13.05
DCYF AP 13.06

Information Contact

Andrea Ruiz
Policy, Planning & Lean Administrator
Juvenile Rehabilitation

Effective Date (*Technical Edit 5/19/2021*)
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Sunset Review Date
8/1/2023

I. PURPOSE AND SCOPE

This policy establishes guidelines regarding confidentiality and authorized release of juvenile records and Juvenile Rehabilitation (JR) operations records. Release of information from records to persons or entities outside of JR’s continuum of care depends upon the type of request received. Certain records are confidential and may be exempt from release. *Specific procedures for implementing this policy are outlined in the Juvenile Rehabilitation Confidentiality and Release of Information Operations Manual.*

All staff, contractors, volunteers, and interns working in or for Juvenile Rehabilitation (JR) are responsible for reviewing and complying with JR policies. Contracted providers must meet applicable requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) if they are covered entities.

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II. POLICY

1. JR must maintain confidentiality and security of juvenile and operations records as required by state and federal law.

- 1.1. Organizations, entities, and individuals managing programs operated by JR or who are contracted by JR to provide services should be made aware of their obligation to maintain the confidentiality of JR records. Communication will be documented and incorporated into contracts.
- 1.2. Personnel records may contain confidential information and must only be released consistent with the requirements of DCYF AP 13.05, *Public Records Requests and Disclosure*.
- 1.3. JR will not release original juvenile or JR operations records unless approved by the JR Records Administrator. On-site review of original records is allowed.
- 1.4. JR must use the DSHS Secure Messaging System whenever sending confidential information outside of the state government network (SGN) via email, as outlined in the DCYF AP 12.01, *Information Technology Security*. Additional information about what may be released via email is included in the JR Confidentiality and Release of Information Desk Manual.

2. JR has authority under RCW 13.50 to share juvenile and operations records and information within its continuum of care to address rehabilitative, security, or custody needs on a need-to-know basis.

- 2.1. Before release of records to organizations, entities, and individuals within the JR continuum of care, the Director, Superintendent, Regional Administrator, or designee must consider the purpose of the request.
 - 2.1.1. Release should be limited to only those juvenile records that will assist the requester in carrying out its responsibility.
 - 2.1.2. Special consideration should be given to limiting access to sensitive information that does not serve the purpose of the organization, entity, or individual.
 - 2.1.3. Records release or sharing between programs operated by JR or contracted by JR to provide assessment, residential, or parole services does not require this review.

3. Facility Records Coordinators and the JR Records Administrator will coordinate release of records under this policy.

- 3.1. Directors, Superintendents, and Regional Administrators must designate Records Coordinators at each JR institution and regional office.
- 3.2. Staff must notify the assigned Records Coordinator of juvenile records, operations records, or any other public records requests immediately.
- 3.3. Contracted providers will be responsible for release of their records in consultation with the JR Records Administrator.

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- 4. JR must establish standards to meet the requirements of this policy. *Specific procedures for implementing this policy are outlined in the JR Confidentiality and Release of Information Desk Manual.***
- 5. Requests for records may be denied if information contained in the record may cause psychological harm to the individual or others per RCW 70.02.090.**
- 6. JR must release records or information for youth who have been convicted of a sexual offense that requires registration pursuant to RCW 72.09.345 and RCW 4.24.550.**
- 7. JR is not considered a health care component in accordance with DCYF AP 13.01, *Use and Destruction of Health Care Information*, because JR does not perform any covered transactions as defined by HIPAA.**
 - 7.1. JR staff and health care staff must comply with the privacy protections of the State Uniform Health Care Information ACT (RCW 70.02) as it provides comparable requirements for managing confidential client health care information.
 - 7.2. A youth's transgender identity will be considered as Personal Health Information and will be protected by relevant patient privacy laws.
- 8. JR will charge requesters for the cost of providing copies of records in accordance with the requirements of DCYF AP 13.05, *Public Records Requests and Disclosure*. Charges may be waived on a case by case basis.**
- 9. All records are subject to the state records retention schedule and the requirements of DCYF AP 13.06, *Establishing DCYF Records Management and Retention Procedures*.**
- 10. Exceptions to provisions of this policy require approval of the JR Assistant Secretary or designee.**

AUTHORIZED RELEASE OF JUVENILE RECORDS

- 11. Pursuant to RCW 13.50, client records maintained by JR are confidential. Requests for juvenile records are not considered public records requests.**
- 12. Youth may review their records with their case manager upon request prior to release from the JR continuum.**
 - 12.1. Staff will safeguard personal information about staff or other youth where appropriate.
- 13. Client records may not be released without appropriate authorization or upon receipt of a valid court order in accordance with RCW 13.50 and RCW 70.02.030.**
 - 13.1. Any court order must include a Protection Order to be signed by the judge or court commissioner, prohibiting inappropriate, illegal or further release of confidential juvenile records.
- 14. JR will notify youth of JR's authority to release juvenile record information.**
 - 14.1. ITM Intake Specialists will provide this notification using the Notification and Legal Requirements form (DCYF Form 20-236).

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15. Information may be shared between Children’s Administration and JR and with service providers within the continuum of care without the consent of a youth. Information shared is subject to federal and state law to the extent needed for treatment, care or supervision. (CA MOU)

16. Youth may authorize release of information about themselves to their parents or legal guardians through the use of the JR Consent for Release form (DCYF Form 20-250).

16.1. Youth will sign the Consent for Release of Records form (DCYF Form 20-250) during the assessment process at intake to an institution, upon arrival at a community facility and prior to release to parole.

16.2. The Consent for Release of Records (DCYF Form 20-250) form may not be used for any other purpose other than releasing records to a youth’s parent, guardian or other involved individual.

16.3. The Consent for Release of Records form must be maintained in the youth’s case file per Policy 2.40, *Managing Youth Case Files*.

16.4. Youth above the age of consent may revoke their authorization at any time during their commitment using the JR Consent for Release of Records form (DCYF Form 20-250).

17. Youth may authorize release of their records to others using specific DCYF Forms.

17.1. Staff will have youth authorize records release using Consent (DCYF Form 14-012) for situations where records from administrations within DCYF but outside JR are being considered for release OR ongoing sharing of records with external partners for service coordination purposes is needed.

17.2. Staff will have youth authorize records release using Request for DCYF Records form (DCYF Form 17-041) when youth are requesting their own records or someone (parent, guardian or personal representative) is requesting the records on behalf of the youth.

17.3. Staff will have youth authorize records release using Authorization form (DCYF Form 17-063) when youth are requesting that their records be released to a designated individual or outside entity (such as an attorney or treatment provider).

17.4. Other agency authorization forms may be accepted, provided they contain appropriate authorization including HIPAA requirements.

18. JR records must be released or made available for inspection as required by state and federal law.

18.1. JR may encourage requests for records to be in writing. The Request for DCYF Records form (DCYF Form 17-041) may be used for this purpose.

18.2. Valid identification for the requester must be included with the completed request for records, if necessary due to confidentiality.

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18.3. Juvenile records may be released regardless of confidentiality restrictions pursuant to a valid court order signed by a judge and entered after prior notice to DCYF. A court order supersedes all other authorization requirements. Consult with the AAG prior to release.

18.3.1. When JR staff receive a court order for records, staff must contact and send an electronic copy or fax of the court order to the Records Administrator.

19. Release of JR juvenile records must be documented.

19.1. Records Coordinators must document authorized release of juvenile records on each youth in the DCYF agency record request system.

19.2. A copy of written requests and release forms must be placed in the youth's JR Case File per Policy 2.40, *Managing Youth Case Files*. Prior to any records transfer, documentation of releases must also be placed in the youth's Case File.

VERBAL RELEASE OF RECORDS

20. The verbal release of juvenile records information requires the same authorization that is required for the release of documents or other juvenile record information.

21. Authorized verbal releases of juvenile record information should be documented consistent with case management and incident reporting requirements.

SEALING RECORDS

22. ACT will apply the rules outlined in RCW 13.50.260 to identify youth who are eligible for records sealing.

22.1. Staff will identify the date of the automatically scheduled sealing hearing for eligible youth and will provide it to the youth.

22.2. Staff will provide information to youth about how to seal records if the youth is not automatically eligible for a sealed record.

23. If a youth's record has been sealed pursuant to RCW 13.50.260, and an inquiry is received concerning those records, JR staff will respond that records are confidential and no information will be given about the existence or nonexistence of records concerning that individual.

BREACH OF CONFIDENTIALITY

24. A breach or potential breach of confidential information regarding a youth must be handled in accordance with DCYF AP 13.04, *Protecting Privacy and Confidential Information*.

25. If a breach or potential breach is discovered, staff must report it to the JR Privacy Coordinator within one business day of the discovery.

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RELEASE OF VIDEO RECORDINGS**26. Surveillance video recordings are an essential element of effective control for the resident population, and it is essential for the safety of youth and staff that the angle, field of view and depth of view are protected.**

- 26.1. If a request for surveillance videos is received from a member of the public, report the request to the JR Public Records Administrator immediately.
- 26.2. The JR Public Records Administrator will respond within five business days to the request per RCW 42.56.
- 26.3. Surveillance videos will be retained in accordance with the state records retention schedules .
- 26.4. Employees, media, and former residents will be considered members of the public when requesting surveillance videos.

27. Video and audio recordings of counseling or therapy sessions which are used exclusively for training, research and program evaluation purposes are not considered part of the client record. These records remain confidential under RCW 70.02 and RCW 42.56. The AAG must be consulted prior to release.

- 27.1. These recordings must be kept in a secure location accessible only by authorized individuals, separate from a youth's case file and a staff person's personnel file.
- 27.2. These recordings may only be used by authorized personnel for the limited purpose of training and quality control in treatment.
- 27.3. Any youth or staff person who is subject to such recording must be informed in advance, provided information as to the purpose and limits of use of the recording, and provided the opportunity to decline or to accept by signing a standard consent form.
- 27.4. Recordings may not be retained over 90 days without youth consent and, if the youth is under age 18, consent of the youth's parent orguardian consent.

BIOMETRIC IDENTIFIERS**28. With the exception of fingerprints and DNA, JR will not obtain biometric identifiers from staff or youth without providing notice and obtaining the individual's consent unless authorized by law.**

- 28.1. Notice must clearly specify the purpose and use of the biometric identifier.
- 28.2. Consent must be specific to the terms of the notice, and must be recorded and maintained by JR for the duration of the retention of the biometric identifier.

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29.1. DNA samples are collected and sent to WSP for analysis in accordance with Policy 4.40, *Determining the Need for DNA and HIV Testing*.

29.2. If JR has a need to collect biometric identifiers other than fingerprints or DNA in order to fulfill a purpose authorized by law, JR may collect the information without individual consent as long as written notification is provided to the Washington chief privacy officer and to the appropriate legislative committees, stating the type of biometric identifier and the general circumstances requiring the waiver.

30. Biometric identifiers obtained by JR:

30.1. May not be sold.

30.2. May only be used consistent with the terms of the notice and consent obtained or as authorized by law,

30.3. May be shared with other state agencies or local governments only:

30.3.1. As needed to execute the purpose of the collection consistent with the purpose of the notice and consent or as authorized by law, or

30.3.2. If such sharing is specified within the original consent.

31. Biometric identifiers will be stored and maintained in alignment with Chapter 13 of DCYF Administrative Policies relating to records and privacy and with the DCYF Information Security Manual.**32. JR will retain only those biometric identifiers necessary to fulfill the original purpose and use as specified in the notice and consent or as authorized by law.**

32.1. If it is necessary to retain a biometric identifier, the identifier will be retained in alignment with DCYF and Washington State records retention policies tailored to the specific purpose of the collection.

33. JR's use and storage of biometric identifiers must comply with all state and federal laws and regulations.**34. This section of the policy must be reviewed annually by the JR Policy Committee to incorporate requirement based on new technology (as appropriate). At that time, the Committee will provide input on responses to any citizen complaints that have been received.**

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PUBLIC RECORDS

35. Every JR employee must comply with the Public Records Act in RCW 42.56, in accordance with DCYF AP 13.05, *Public Records Requests and Disclosure* and the procedures and timelines contained within.

35.1. Biometric identifiers are exempt from disclosure under the Public Records Act.

36. Public records requests regarding personnel records must be directed to the JR Public Records Administrator.

37. Upon receipt of a public records request that appears to impact other DCYF Administrations, Records Coordinators will forward a copy to the JR Public Records Administrator for response.

38. Client identifying or other confidential information in operations records must be redacted prior to release per RCW 42.56. Citation to the appropriate exemption is required and a brief explanation of how the exemption applies to the record.

39. A youth's JR Case File is exempt from disclosure under the Public Records Act under RCW Chapter 13.50.

39.1. Confidential client identifying information may be released if there is authorization per the Release of Juvenile Records section of this policy.

40. Some juvenile records, other than the JR Case File, may not be exempt from public disclosure.

40.1. Non-exempt records may include ACT system information, correspondence, email, or personal notes that may be released if all client-identifying and other confidential information is redacted.

41. Before information is produced, the JR Public Records Administrator may consult with the appropriate Assistant Attorney General (AAG) regarding possible redaction of confidential information and exemptions including privileged information such as attorney-client or patient-doctor information.

DISCOVERY

42. The JR Risk Administrator will be the JR central point of contact for litigation holds and discovery requests, in accordance with DCYF AP 13.02, *Management of the Litigation Discovery Process*.

43. Review of discovery requests, subpoenas, and court orders for release of information must be coordinated with the appropriate AAG when needed. The JR Risk Administrator will coordinate with the AAG.

44. If an employee receives documents related to litigation holds or discovery, actions should be taken in accordance with DCYF AP 13.03, *Employee Response to Litigation Discovery Process*.

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- 45. Every DCYF employee must comply with DCYF AP 3.01, *Media Policy* and the procedures and timelines contained within.**
- 46. Media requests for interviews or access to the facility must be in writing and directed to the Superintendent or Regional Administrator. (ACA 4-JCF-3A-15)**
- 47. The JR Public Records Administrator will ensure DCYF Communications and the DCYF Public Records Officer is apprised of the media contact per DCYF AP 3.01, *Media Policy* and DCYF AP 13.05, *Public Records Requests and Disclosure*.**
- 48. Release of any records to a media outlet must be coordinated with the DSHS Public Records Officer.**
- 49. When possible, before permitting media contact with JR youth, the Superintendent, Regional Administrator, or designee must ensure:**
 - 49.1. Media exposure is not likely to cause psychological or physical harm to the youth or youth's family;
 - 49.2. Information, if released, is not likely to cause significant security or safety risks;
 - 49.3. The JR Media Release form (DCYF Form 20-247) has been completed and signed by the youth and his or her parent or guardian if the youth is under 18 years of age.
- 50. Youth may only disclose information about themselves to the media.**
 - 50.1. When JR is aware that a youth under JR jurisdiction is going to communicate with the media, JR staff will inform the youth that information regarding other JR youth and those youths' families is confidential and must not be disclosed.

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III. DEFINITIONS

Agency records request tracking system: The tracking system or database maintained by the Department to document, monitor and track public records requests.

Biometric Identifiers: any information, regardless of how it is captured, converted, stored or shared, which is based on an individual's retina or iris scan, fingerprint, voiceprint, DNA, or scan of hand or face geometry, except when such information is derived from 1) writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color; 2) donated organ tissues or parts, or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency; 3) information captured from a patient in a health care setting or information collected, used or stored for health care treatment, payment or operations under the federal 1996 HIPAA law; or 4) x-ray, roentgen process, computed tomography, magnetic resonance imaging (MRI), positron emission tomography (PET) scan, mammography or other image or film of the human anatomy used to diagnose, develop a prognosis for, or treat an illness or other medical condition or to further validate scientific testing or screening.

Case File: The official client record containing commitment, assessment, health, education, case management, and treatment records for youth who are or have been under JR jurisdiction.

Client-Identifying Information: Facts or data that could reasonably identify a specific youth under past or present JR jurisdiction. This includes youth names, photographic or video images, birth dates, case and cause numbers, JR numbers, Social Security numbers, home addresses, phone numbers, family members' names, addresses or phone numbers and other personal information.

Continuum of Care: JR's continuum of care includes, but is not limited to, organizations, entities, and individuals who provide care, treatment, or other services to a youth as a result of or in connection with a youth's JR commitment or supervision.

Discovery: Requests for information related to an active court case or case in controversy in any legal forum. Types of discovery include: interrogatories, requests for production, requests for admissions, depositions and subpoenas.

Health Care: Care, services, and supplies related to the health of a client (medical, dental, mental illness or drug/alcohol treatment). It does not include standard JR case management and rehabilitative programming records or information unless those records include health care information as defined in RCW 70.02.010.

Health Information: Information which is created or received by JR which relates to the past, present, or future physical (medical or dental) or mental health (mental illness) condition of a youth; or which relates to provision of health care to youth, or to payment for the provision of health care to an individual.

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Health Care Component¹: A component or combination of components of a hybrid covered entity designated by the hybrid covered entity as a health plan, a covered health care provider, or both.

Juvenile Justice or Care Agency: An entity as defined in RCW 13.50.010, including law enforcement, diversion units, courts, prosecuting attorney, defense attorney, detention center, Attorney General, the Legislative Children’s Oversight Committee, the Office of the Family and Children’s Ombudsman, the Department of Children, Youth and Families and its contracting agencies, and schools, persons or public or private agencies having youth committed to their custody, and any placement oversight committee created under RCW 72.05.415.

Juvenile Record: Any form of documentation produced, maintained, or controlled for or by JR containing client identifying information. This includes the JR Case File, Automated Client Tracking (ACT) system information, correspondence, e-mail, personal notes, photographs, and video and audio recordings. The record does not include photographs or recordings made and used exclusively for training and quality assurance in counseling. The term “juvenile record” is considered equivalent to and interchangeable with the term “client record” as used in the DCYF AP 13.05, *Public Records Requests and Disclosure*.

Legal File: The "official juvenile court file" maintained by the court and containing the petition or information, motions, memorandums, briefs, court findings, and court orders.

Mental Health Records: Records relating to services provided to a youth for mental health care (RCW 70.02.230).

Operations Records: Documentation pertaining to operations of JR that are produced, maintained, or controlled by JR, regardless of physical form or characteristics.

Personal Representative: A person with authority to make decisions on behalf of an adult or a minor under Washington State law. A personal representative includes parents or guardians of minor children, guardians for persons declared to be incompetent by a court, and personal representatives for estates of deceased persons, but does not include legal representatives or attorneys unless granted this authority by the client or law.

Privacy Coordinator: A person assigned in JR Central Office to be responsible for assisting in the implementation of the DCYF Privacy Program in partnership with the DCYF Privacy Officer (DCYF AP 13.04, *Protecting Privacy and Confidential Information*).

Records Coordinator: A person assigned in each institution and region to be responsible for coordinating record requests and monitoring compliance with the facility or office records schedule.

Records Administrator: A person assigned in JR Central Office to be responsible for coordinating record requests and monitoring compliance with the facility or office records schedule. This includes retention and timely destruction of records. A separate person may be designated to coordinate personnel records requests and monitoring.

¹ 5/19/2021 Technical Edit: Updated per Risk Mgmt Office Chief following HIPAA designation exercise in 2020.

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Redacting: The process of editing out confidential information contained in juvenile or operations records removed electronically or by hand.

Risk Administrator: The person assigned in JR Central Office to coordinate and track litigation and potential litigation involving JR, including identification, retention, preservation, and discovery of records, per DCYF AP 13.02, *Management of the Litigation Discovery Process*.

IV. REFERENCES



Juvenile Rehabilitation Confidentiality and Release of Information Operations Manual

V. RELATED JR POLICIES

Policy 2.40 – Managing Youth Case Files

Policy 5.91 - Reporting Abuse and Neglect of JR Youth

VI. FORMS AND DOCUMENTS

Document Title	Available In ACT	Link to Paper form
Request for DCYF Records		DCYF Form 17-041
DCYF Authorization		DCYF Form 17-063
JR Notification and Legal Requirements JR		DCYF Form 20-236
Youth Media Release		DCYF Form 20-247
Consent for Release to Parent, Guardian or Involved Individual		DCYF Form 20-250
