

**WASHINGTON STATE  
PARTNERSHIP COUNCIL ON  
JUVENILE JUSTICE**  

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**WA-PCJJ**

**Juvenile Record Sealing Workgroup**

**Meeting Summary  
Tuesday, March 19, 2024  
3-5 PM | Via Teams**

**Welcome**

Workgroup Co-Leads Jimmy Hung and Heidi Sadri welcomed the group and attendees shared introductions via chat.

Attendees: Heidi Sadri, Jimmy Hung, Stephanie Hinshaw, Dave Reynolds, Jack Murphy, Kristina Davis, Norrie Gregoire, Denise Carlson, Frank Thomas, Jenny Young, Andrew Keats, Brad Benfield, Prachi Dave, Karen Pillar, Kimberly Ambrose, George Yeannakis, Julissa Sanchez, Giannina Ferrara, Megan Allen, Xaxira Velasco Ponce De Leon, Kelsy-anne Fung, Roxana Gomez, Katherine Hurley, Stephanie Budrus, Izzy Eads

January meeting recap

- Presentation by Andrew Keats of Juvenile Law Center on analysis post-2019 juvenile records legislation
- Discussion regarding the relationship between record sealing and confidentiality

Timeline

Heidi provided a timeline for workgroup-related dates and deadlines for the remainder of the project:

|                           |  |
|---------------------------|--|
| 3/19 Workgroup Meeting    | Decide recommendations for confidentiality and access to sealed records  |
| 5/21 Workgroup Meeting    | Decide recommendations regarding Department of Licensing, federal background checks, audits, and accountability                              |
| 5/29                      | Heidi will send an outline of recommendations to the workgroup for review  |
| 6/6 Presentation to PCJJ  | Presentation of preliminary recommendations to Partnership Council on Juvenile Justice, workgroup member attendance welcome but not required |
| <b>6/7</b>                | <b>Deadline for feedback on recommendations outline. After this point, we are not able to make substantive changes to recommendations.</b>   |
| 6/14                      | Heidi will send a first full draft of the report to the workgroup for review   |
| <b>6/21</b>               | <b>Deadline for feedback on first full draft</b>   |
| 7/16 Workgroup Meeting    | Approve final draft  |
| Late July through October | Reviews by Partnership Council on Juvenile Justice and DCYF  |

## Youth Input from [CHOOSE 180 Youth & Young Adult Advocacy Program](#) Members

### Background

- Feedback was contributed by 9 youth between the ages of 12 and 25 who live in King County and are training to be community advocates. Most are BIPOC youth, have been personally impacted by the juvenile or adult legal systems, and have experienced harm.
- Izzy Eads leads this group. Izzy and Heidi co-wrote an interview tool that provided background information on public juvenile records, record sealing, and racial disparities in the impact of having a juvenile record; and then asked youth for their input on this topic. Izzy did one-on-one interviews with the Advocacy Program youth who wanted to participate.

Please refer to the attached slides for the summarized feedback.

### **Juvenile Law Center Presentation: Cross-State Comparison**

Andrew Keats of Juvenile Law Center (JLC) provided a presentation comparing California, Oregon, Wyoming, and Idaho's juvenile records laws to Washington's. Please refer to the attachments for JLC's slides.

### Questions & Discussion

- How does California define law enforcement? Andrew: Statutes are in reference to state and local, not federal. Same with Oregon.
- How do these other states handle criminal protection orders that are available to law enforcement and that victims are advised to keep for their records? Often there are exceptions that give victims access to confidential and sealed records, sometimes by court order.
- Would confidentiality create barriers that prevent a victim from knowing who the perpetrator is? Usually there are exceptions to confidentiality so that the information can be shared with the victim via the prosecutor or law enforcement. Andrew will add statute citations to slides.
- Currently in Washington, a person who is a victim and has a protection order is advised to keep a copy of the protection order so that they can show it to law enforcement. People usually get copies of protection orders or no-contact orders through victims' advocates. They are also part of the official court record and available to the public.
- Nonpublic records outside of the official court record are generally confidential and prosecutors are limited in what they can share. One existing exception to confidentiality is that the identity of the respondent will be disclosed to victims upon their request.
- It's important that victims can access information to know what is going on through basic information – charges being filed, etc.
- Especially in circumstances of sexual violence, people often come forward with reporting in order to create a record so that if others come forward in the future, there being a record encourages the system to respond.
- In states that allow some public access to court records, are they available online? JLC analysis doesn't distinguish between public and online vs. public but not online.
- In states that allow making records public if it's in the interest of justice, how often does that happen? Andrew: Don't have data, but likely only in more serious cases. Idaho and others lay out criteria that establish how a court would assess whether making a record public is in the interest of justice.

- Regarding healthcare records and what a victim can vs. cannot access: In practice, something like a sex offender evaluation or mental health evaluation should not be in the official court file and would not be disclosable to victims or anyone. Human error may result in someone including an evaluation that should have been confidential into an official court file and accidentally making it public.
- Has JLC looked into these other states' constitutional provisions regarding open courts? Andrew: Generally, the constitutional right to public trial is a criminal defense right, and those (and other) due process rights don't extend fully into the juvenile system. There are questions about the first amendment and public right to know what's going on in judicial proceedings. JLC's view is that public access contributes to the collateral consequences that come with public records, and that it is in the best interest of the youth who is served by the system to have confidentiality in place. It is a balancing act between right to access vs. harm it causes to the youth in the system.
- Washington's constitution has an expansive open courts provision, especially through case law. However, at one point we had records destruction, and there wasn't a constitutional tension at that point.
- Do sanctions for leaks seem to have a deterring effect on leaks? Andrew: Hard to know, don't have data, but we do consistently hear that impacted youth care about this. It mostly comes down to how organized the data and access is.
- The FBI does not have its own expungement process, but Washington State Patrol can and does adjust FBI records. WSP removes records from FBI after they are sealed.

### **Public vs. Sealed Juvenile Court Records**

Heidi provided an overview of the below. Please refer to attached slides for accompanying information.

- The pathways through with juvenile records travel during the time they are public, and to whom that grants access
- What happens when a record gets sealed (or what is intended to happen, absent human error). Sealing closes off some pathways, but note that many pathways to access are left intact despite sealing.
- Current access to sealed records
- An overview of what criteria must be true in order for a record to be eligible for sealing:
  - Case must have been kept in juvenile court (not declined to adult court)
  - Sealing eligibility takes into consideration seriousness, time that has passed since the offense, completion of obligations, individual consideration by a judge
  - Unsealings for new offenses
- When we talk about access to sealed records, we are talking about access to a record that has already gone through a series of "tests" meant to determine that it is something a person should be allowed to move on from as if it never occurred.

### Discussion

- Heidi will follow up with Kevin Cottingham of AOC to confirm that public juvenile records are excluded from AOC's quarterly data transfers to contractors.
- Regarding Department of Licensing (DOL): Juvenile courts don't send all juvenile records, just motor vehicle-related adjudications or adjudications where a motor vehicle was an element. Sealing is tricky because juvenile courts often fail to send sealing orders to DOL. DOL has a

workaround where they have AOC send recent sealing orders for all juvenile records, and DOL seals in their systems where applicable.

- Court records go directly to schools.

## **Discussion & Recommendations**

### Confidential/Nonpublic Juvenile Records

Heidi provided an overview of the below. Please refer to attached slides for accompanying information.

- Overview of the intended effects of making juvenile records confidential
- Overview of what confidentiality does *not* address, outstanding issues

### Access to Sealed Records

- The group is supportive of a recommendation to automate communication of sealings to WSP via AOC, and to require WSP to act upon the sealing without an order from a court. AOC and WSP are also supportive.
- History of access to sealed records via WSP
  - Prior to 2015, sealed juvenile records were not in WASIS (WSP database for criminal justice agencies that includes nonconviction data).
  - After the YEAR Act of 2015 ([SB 5564](#)), sealed juvenile records were brought into WASIS and made available to criminal justice agencies.
  - There have been legislative attempts to remove sealed records from WASIS: one attempt to remove pre-2015 sealed records, another to remove all sealed records, both unsuccessful.
- We have some agreement that the availability of sealed records in WASIS is an issue, at least to some degree.

### Discussion

- Confidentiality of records would not close courts.
- One interpretation of the goal of confidentiality is to make records effectively sealed unless unsealed (in contrast to current public until sealed). Reverse the current presumption
- Regarding state agencies with a law enforcement arm having access to sealed records:
  - They are only supposed to access those sealed records for law enforcement purposes. For example, DSHS is not supposed to be doing licensure-related background checks and seeing sealed records.
  - WSP audits agencies to check if agencies are using appropriate purposes for background checks. Should not be using law enforcement access to decide on a licensing purpose.
- How long is info about felonies and arrests under one year old available on WATCH (public WSP database)? Until a person is 120 years old.
  - Comparison to Federal Credit Reporting Act, which has a 7 year limitation. Convictions older than that don't show up on credit reports.
  - Criminal history is kept public unless expunged by court or until person is 120 years old.
- Why is info on diverted cases going to WSP? Because WSP has fingerprints from arrests and that arrest info will be up for one year unless WSP gets expungement order associated with completed diversion. WSP destroys criminal history but keeps fingerprints with no RAPsheet attached.

- How are in-state criminal justice agencies supposed to be using their access to sealed records?
  - LE arm should only be running criminal inquiries through ACCESS (system that searches WASIS). An arrest is a criminal justice purpose, a license or a volunteer background check. They have to use the reasons they are authorized to use through RCW and FBI.
- There is an inconsistency between the access we grant to out-of-state criminal justice vs. in-state. Washington allows out-of-state criminal justice agencies to know about sealed juvenile records only if for the purpose of a firearm background check, but we allow in-state criminal justice agencies to access sealed juvenile records for any criminal justice purpose. We need more understanding on what is a criminal justice purpose.
- We are discussing reducing access to sealed records, but we should also talk about getting to sealing faster and/or that juvenile records should not be available to criminal justice agencies at any point, including prior to sealing.
- Support for limiting the distribution of sealed records
- Important to talk about why agencies were given this access – do they have a legitimate reason for that access? Licensure or anything else. Example of a young person who was denied home health care through DSHS for grandfather because of a theft 3 when he was 13.
- The point of a sealed record is that it shouldn't exist, with the exception of firearms.
- If we have a provision saying that a person with a sealed record can respond that it doesn't exist, we should make that true and make sure it applies broadly.
- Washington Association of Sheriffs & Police Chiefs (WASPC) would have input into why law enforcement has access to nonconviction information, they oppose bills that would limit access to sealed records for law enforcement. Their position is that for officer safety, law enforcement should know complete criminal history.
- WSP gets very few unseal orders from courts, they often don't come through.
- There is an issue of certain places asking for disclosure of sealed records (WSBA, military).

### **Next Steps**

- We will schedule an optional meeting prior to our May meeting to discuss and come to agreement regarding access to sealed records.
- May meeting
  - Youth input from youth at Echo Glen
  - Decide outstanding recommendations
- The group agreed to extend our remaining meetings to 2 hours.

**Next Meeting: May 21 at 3 PM**