



A Review of Juvenile Records Laws in Washington State

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WASHINGTON STATE
PARTNERSHIP COUNCIL ON
JUVENILE JUSTICE
WA-PCJJ

Juvenile Law Center
Fighting for the rights
and well-being of youth



Washington State Department of
CHILDREN, YOUTH & FAMILIES

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I. Introduction

The following report was prepared by Juvenile Law Center at the request of the Washington State Partnership Council on Juvenile Justice and provides Juvenile Law Center’s analysis of Washington’s laws governing juvenile record confidentiality, sealing, and expungement. Specifically, Juvenile Law Center analyzed a series of recent legislative proposals based on criteria --the Core Principles¹-- established in connection with its research and publication of a national juvenile record scorecard in 2014, and updated in 2020. The 2020 [scorecard](#) identified Washington as having some of the weakest protections for juvenile records in the country, particularly with respect to confidentiality. Based on our analysis and the application of the Core Principles, it is clear that recent legislative proposals would improve existing record protections and put Washington more in line with national averages and in some instances exceed them. Juvenile Law Center also performed a cross-state analysis comparing Washington’s current laws to those of other Western and neighboring states to show areas for improvement and help to identify opportunities and examples for how to design more protective laws.

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center’s legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential amicus briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children’s unique developmental characteristics and human dignity. Juvenile Law Center is a national leader on juvenile records issues and has worked on records related issues for almost two decades. Given our commitment to ensuring young people a future free from the stigma of their juvenile court involvement, our work has centered providing utmost protection to juvenile records – confidentiality of court and law enforcement records during the course of proceedings and automatic expungement upon discharge from court supervision.

1. See Section III *infra* for full description.

II. Background

The foundation of the juvenile legal system in the United States, from its inception, was that youthful misconduct is different from adult criminal conduct and youth should be spared the criminal consequences of adult court, from sentencing through the stigma of being branded criminal.² To protect youth from being branded as criminal, confidentiality historically played a critical role in this system. It was understood that keeping children’s records shielded from public scrutiny was essential to the goal of rehabilitation. Juvenile proceedings were generally closed to the public, and records of juvenile crime were not disseminated or disclosed any more than necessary to provide supervision and rehabilitation to the child. Without confidentiality, the stigma of criminality might derail a child’s readjustment into the community.³

This commitment to confidentiality began to fade in the 1980’s and 1990’s as a wave of violent crime swept the country and gave birth to a racist myth about a new generation of child “super-predators,” children – mostly Black and Brown children – who were inherently dangerous and were immune to all attempts at rehabilitation.⁴ In the years that followed, new laws were passed to make it easier to try young people as adults and subject them to extreme sentences.⁵ Meanwhile, confidentiality came to be seen as an impediment to public safety and laws to protect juvenile records were increasingly rolled back.

2. Riya Saha Shah, Lauren Fine, and Jaime Gullen, *Juvenile Records: A National Review of State Confidentiality, Sealing and Expungement Laws*, JUVENILE LAW CENTER and COMMUNITY LEGAL SERVICES 8 (2014)

3. The Washington Supreme Court has recognized the historic and central role of confidentiality for juvenile court proceedings and records in Washington’s own juvenile legal system. See *State v. S.J.C.*, 352 P.3d 749, 754 (Wash. 2015) (“While the specificity and content of this guidance has varied, the legislature has always made some provision to limit public access to juvenile court records in recognition of the unique purpose of juvenile courts to rehabilitate and reintegrate youth into society.”); see also *In re Lewis*, 316 P.2d 907, 910 (Wash. 1957) (“The purpose of excluding the public from proceedings such as these is, of course, to protect the child from notoriety and its ill effects.”) .

4. Carroll Boger and Lynnell Hancock, *Superpredator: The Media Myth that Demonized a Generation of Black Youth*, THE MARSHALL PROJECT (2020).

5. Washington’s lawmakers adopted new laws for transferring youth to adult court in 1994 and made its transfer law more expansive in 1997, at the height of the over-criminalization of Black youth. See *Laws of 1997*, ch. 338, § 20; *Laws of 1994*, 1st Spec. Sess., ch. 7, § 519. Indeed, youth of color have historically been, and remain, disproportionately prosecuted as adults in Washington. See Heather D. Evans & Steven Herbert, *Juveniles Sentenced as Adults in Washington State, 2009–2019* 4 (2021), https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf.

The loss of confidentiality protection over juvenile records leads to real and serious collateral consequences that harm young people long after their juvenile cases are closed and they attempt to move on with their lives. The proliferation and technological sophistication of background check systems to identify and access available juvenile record information impacts young people's ability to access education, housing, employment, and other opportunities for social, civic and economic advancement.⁶ Securing greater protection for juvenile records is therefore critical to providing young people the second chances necessary to lead the productive law-abiding lives that the juvenile legal system was created to ensure.

6. Riya Saha Shah, Jean Strout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, JUVENILE LAW CENTER (February 2016), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf>

III. Juvenile Law Center’s Core Principles for Optimal Record Protection

In 2014, in an effort to encourage states to provide greater protection for juvenile record information, Juvenile Law Center undertook an extensive national review of state juvenile record laws. That work culminated in the publication of [Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records](#), which contains an interactive scorecard rating, and ranks states’ laws against a set of best practices or Core Principles for the provision of confidentiality and the expungement (or sealing) of juvenile records.

CORE PRINCIPLES FOR RECORD PROTECTION

Ideal systems will ensure that:

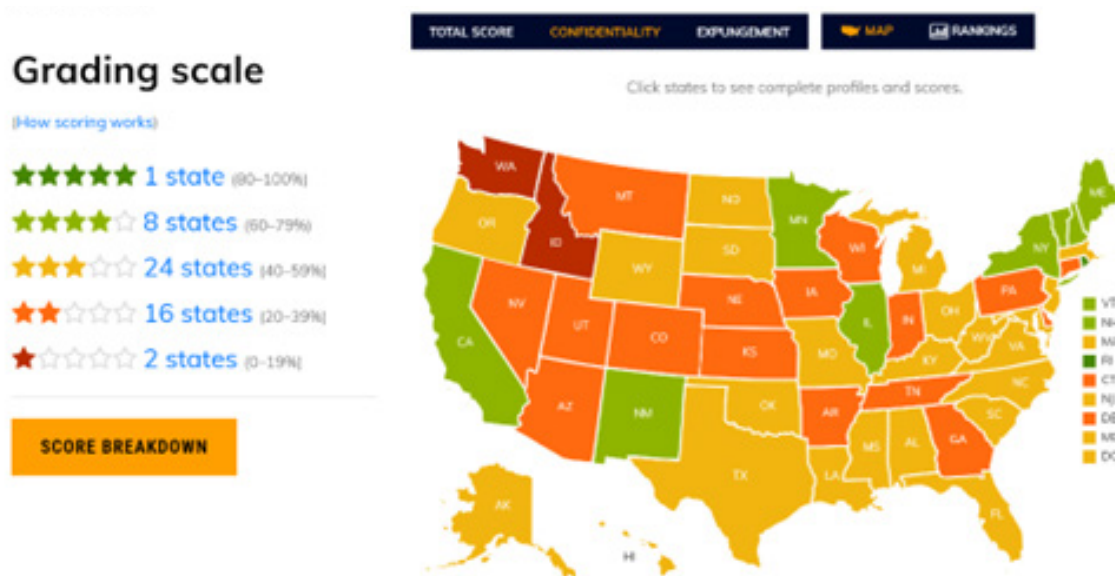
Youths' law enforcement and court records are not widely available and never available online	Youth are eligible for expungement at the time their cases are closed	Sanctions are imposed on individuals and agencies that unlawfully share confidential or expunged juvenile record information or fail to comply with expungement orders
Sealed records are completely closed to the general public	There are no costs or fees associated with the expungement process	Juvenile delinquency adjudications [should] not be considered the same as criminal convictions as a matter of law, nor should they be used as evidence in any subsequent delinquency or criminal proceeding
Expungement means that records are electronically deleted and physically destroyed	The sealing and expunging of records are automatic—i.e., youth need not do anything to initiate the process and youth are notified when the process is completed	The public should never have access to juvenile courtrooms during a juvenile proceeding
At least one designated entity or individual is responsible for informing youth about the availability of sealing or expungement; eligibility criteria; and how the process works	If sealing or expungement is not automatic, the process for obtaining expungement includes youth-friendly forms and is simple enough for youth to complete without the assistance of an attorney	
Records of any offense may be eligible for expungement		

The results of the 2014 study demonstrated that over 50% of the country was failing to adequately protect juvenile records. Six years later, Juvenile Law Center updated its analysis and core principles and repeated its 50-state survey to publish a new 2020 juvenile record Scorecard report.⁷ Hoping to identify meaningful progress, the 2020 scorecard found very little, instead once again recognizing widespread deficiencies in the legal protections necessary to keep juvenile records secured in far too many states.

7. Andrew Keats, *Failed Policies, Forfeited Futures: Revisiting Nationwide Scorecard on Juvenile Records*, JUVENILE LAW CENTER (July 2020).

Overall, the national average was 47% (46% in 2014), with over 60% of states receiving 3 stars. There were no states that received a 5-star rating, nor any states that received only 1 star. California topped the overall rankings with a score of 70% (in 2014 the #1 spot went to New Mexico at 74%), while Arizona (at 24%) took over the bottom position from Idaho, which still remained in the bottom 20% of all states. The state with the most improvement in scores was Oregon, which in 2014 was below the national average at 43% and by 2020 appeared to be one of only seven states to receive 4 stars (at 60%). Confidentiality scores continued to reflect the greatest variance among states. Rhode Island remained at the top, with the only 5-star score and a perfect 100% score. Aligned fully with our Core Principles, states like Washington can use Rhode Island’s confidentiality law as a model. Two states received 1 star with Idaho still at the bottom at 12%. With respect to sealing and expungement practices, California, Oregon and Oklahoma were at the top (70%, 68%, and 67% respectively) while Arizona, Utah and South Dakota were at the bottom (with 27%, 27%, and 25% respectively).

One of the states identified by the scorecard as having some of the weakest protections for juvenile records, particularly with respect to confidentiality, was **Washington**.



When evaluated against the Core Principles, Washington’s juvenile record scores, with a total score of 35% (vs a 47% national average), a confidentiality score of 15% (vs a 46% national average), and an expungement score of 38% (vs a 47% national average), are near the bottom of all states.⁸ A brief review of the key features of Washington’s record laws demonstrates clear and obvious weaknesses in juvenile record confidentiality:

8. A full breakdown of Washington and all state scores, as well as the scoring criteria, and other metrics can be found on the Juvenile Law Center website at <https://juvenilerecords.jlc.org/juvenilerecords/#!/map>.

- Juvenile Court hearings are open to the public. (Wash Rev. Code § 13.40.140)
- Juvenile Court records are not confidential and are open to the public unless and until sealed. (Wash Rev. Code § 13.50.050)

While law enforcement and prosecution records are confidential, there are a number of exceptions where access is permitted, ranging from narrow to quite broad, including (see Wash Rev. Code § 13.50.050):

- Juvenile and their attorney pursuant to rules of discovery (narrow).
- Victim and victim's family (narrow)
- School (broader)
- The public so long as no identifying information (very broad)

While Washington allows for sealing of juvenile records, sealing is not as effective as expungement because records remain accessible and can erect barriers to young people's future opportunities. The Core Principles define expungement as requiring the destruction or deletion of juvenile record information from wherever it is stored, whereas sealing is merely separating and restricting access. While sealing offers meaningful protection it requires ongoing compliance and risks of inadvertent sharing, exposure, and access and therefore offers less protection than effective expungement. As an example of the risks inherent in sealing, just this year a computer error by a Cook County court clerk led to the exposure of [5,000](#) juvenile court records for a period of weeks before the error was discovered and corrected. During that window, the public had access to those records.

- Sealing of Court records is automatic at close of case or age 18 for non-serious offenses (except for drug offenses). (Wash Rev. Code § 13.50.250)
 - ◇ Class A Serious and/or drug offenses can be sealed along with social file and other records by petition after 5 years.
 - ◇ Class B, C and gross misdemeanor offenses by petition after 2 years.
 - ◇ Subsequent adjudications and felony convictions negates sealing order unless/ until become eligible again.
 - ◇ Identifying info held by state patrol is not subject to sealing or expungement.
- Expungement/destruction of all records reserved solely for diversion cases. (Wash Rev. Code § 13.50.270)

IV. Recent Legislative Proposals Would Strengthen Juvenile Record Protections

Over the last five years, there have been a series of legislative proposals that would have strengthened Washington's juvenile records laws. However, none of these Bills were passed through the Legislature to become law.

Senate Bill 6444 (2020)

The key feature of this bill was the substantial expansion of record expungement well beyond the existing law and makes expungement automatic for sealed records. If this bill had become law it would have increased Washington's sealing & expungement score to 61%, earning a rare 4 stars, and placing Washington among the top ten states in the country for sealing & expungement.

- Eliminated provision that excluded drug offenses from automatic administrative sealing.
- Ensured Washington State Patrol removes all sealed records from identification system and eliminates requirement to provide sealed records to criminal justice agencies.
- Expanded availability of expungement (currently only available for diversion cases, by petition, at age 23) to apply to all law enforcement, court, and prosecutor records that have previously been sealed, so long as person doesn't have subsequent felony offense and no case pending.

Senate Bill 5339 (2021)

The key feature of this bill, like SB 6444, was to expand the availability of expungement. However, unlike the prior bill, it would make expungement available by individual petition only, which limits its effectiveness as, particularly without robust notice provisions, it was unclear how individuals with qualifying records would know or be capable of navigating the petition process to secure the expungement of their records. While this bill would have improved Washington's sealing & expungement score, it would be a more modest improvement than the one proposed by SB 6444.

- Defines Expungement as destruction of documents and removal of all connection of the individual to case; clarifies that any findings are nonexistent and invalid.
- Eliminates provision that excluded drug offenses from automatic administrative sealing.
- Removal of all records sealed prior to 2015 from Washington State Patrol identification system.

- Expands availability of expungement to anyone with sealed records, and applies to records from all relevant agencies:

- ◇ Immediately if only one offense.
- ◇ After additional two years for two offenses.
- ◇ Additional two years for each additional case.

- Provides that Washington State Patrol expunge all relevant record information from systems.

Senate Bill 2034 (2022)

The key feature of this bill was once again the expanded expungement availability. However, unlike in the prior bills, SB 2034 clarified that records will not be destroyed or deleted. Under the Core Principles, this is treated as sealing and therefore would have limited impact on Washington's score. Another key feature was the inclusion of sanctions for violation of records laws. If the bill actually provided for true expungement, the changes proposed would have made this one of the strongest bills in the country.

- New provision providing for right of civil action for dissemination of protected records information (\$100/day of violation, attorneys fees, injunction, additional relief as court deems appropriate). [Previously law expressly stated no right of civil action for violation of records laws.]
- Expands availability of expungement – by petition - to anyone with sealed records, and applies to records from all relevant agencies, once person reaches age 23 (so long as no restitution owing, no serious violent offense or registerable offense).
- Provides extensive criteria for court to consider for expungement of serious violent offense records, including age at offense, rehabilitation, extent of criminal culpability, time since offense.
 - However, this bill defines Expungement as making records permanently irretrievable [pursuant to the Core Principles, this is the equivalent of sealing]

- Creates a Juvenile destruction docket with no identifying information, solely identifies case #, offense, date of destruction.

Senate Bill 5644 (2023)

The key feature of this bill was in making juvenile court records confidential, which would address the primary weakness in Washington’s current record laws. That one change would have increased Washington’s confidentiality score to a 4-star rating at 68%, a greater than 40% improvement.

- Makes all juvenile court files and record information with any source/agency automatically confidential.
- Provides right of civil action against any entity that violates records laws and disseminates/accesses sealed juvenile records/record information. (New Provision)
- Provides for notice of sealing eligibility at disposition hearing, and requires court notify individual of upcoming sealing hearing 6 months before hearing. Provides draft notice language that offers meaning and significance of sealing.
- Provides that any inquiry into sealed record can respond that they do not have a record.
- Provides right to counsel in connection with sealing (if necessary).

The following table offers a breakdown of how these proposals each score against the Core Principles as compared to current Washington state records laws and national averages. The color code is consistent with the Juvenile Law Center scoring matrix and map above.

National Average	Washington ACTUAL 2020	2020 SB 6444	2021 SB 5339	2022 HB 2034	2023 SB 5644
Total: 57/121 (47%)	Total: 47/133(35%)	Total: 68/139 (49%)	Total: 57/139 (42%)	Total: 49/139 (35%)	Total: 79/139 (57%)
Confidential: 21/45 (46%)	Confidential: 12/47 (26%)	Confidential: 12/47 (26%)	Confidential: 12/47 (26%)	Confidential: 12/47 (26%)	Confidential: 32/47 (68%)
Seal/Expunge: 36/77 (47%)	Seal/Expunge: 35/86 (44%)	Seal/Expunge: 56/92 (61%)	Seal/Expunge: 45/92 (49%)	Seal/Expunge: 43/92 (47%)	Seal/Expunge: 47/92 (51%)

V. Cross-State Comparison of Juvenile Record Laws

Nearby states such as Oregon, California, and Wyoming have stronger juvenile records laws and offer a useful comparison, while Idaho has similarly lower scores.

A. Oregon Juvenile Records Laws Summary

Or. Rev. Stat. Ann. §§ 419A.255, 419A.257 (law enforcement and court records); § 419A.250 (fingerprints and photographs); §§ 419A.260, 262 (expungement); § 419C.610 (sealing)

Oregon has some of the strongest juvenile records laws in the country (total score: 60%), particularly with respect to sealing & expungement (68%). However, Oregon, like Washington, maintains open juvenile court proceedings, and accordingly has a lower confidentiality score (40%). Where Oregon's laws offer strong guidance is in the requirements for notifying individuals of the availability, opportunity, and impact of record expungement. These notice provisions should be a national model. Key provisions include:

- Juvenile Court hearings are open to the public.
- Juvenile file is confidential except to judge and court personnel, youth and parent/guardian, state social service agencies, attorney, prosecutor, school personnel
 - ◇ anyone else by motion and pursuant to a hearing based on specified criteria.
- Law enforcement photograph/fingerprint records and files are confidential with exceptions for LE and prosecutors on case, court, victim, case workers, youth, counsel, state police.
- Expunction (defined as destruction for court files, sealing and redaction for LE and other agency records) of all juvenile records at age 18 by petition of youth or by juvenile department, except for serious violent offenses.
 - ◇ Court records not destroyed until 3 years after case closed.
- Strong notice provisions regarding availability and process for expunction.

- Sanctions: Private right of action for violation incl. punitive damages up to \$1000.

B. California Juvenile Records Laws Summary

Cal. Welf. & Inst. Code §§ 827, 827.12 (court records); § 828 (law enforcement records); § 781 (sealing); § 826 (destruction)

California, as noted previously, has the highest scores in the country (total score: 70%). All records and hearings are confidential (66%), sealing is available by petition, and ultimately, after a number of years have passed, all records are fully expunged and destroyed (70%). California has room for improvement though. Sealing should be automatic when the case closes, not by petition five years after; and expungement should happen sooner. Key provisions include:

- Juvenile Court hearings closed to public.
- All records, court and LE, are confidential, except:
 - ◇ For research purposes without identifying info by/between LE, probation department, court, DOJ personnel.
 - ◇ Court, prosecutors, minor and parent/guardian, attorneys, law enforcement involved in case, relevant school personnel, relevant social services agencies/ personnel, probation services, DOJ for SORNA purposes.
 - ◇ LE can circulate internally related to commission of felony.
 - ◇ Misdemeanor punishable by up to \$500 fine for intentional violation of confidentiality.
- All records may be sealed upon petition by minor or probation dept after 5 years from case being closed, limited access to sealed records permitted.
 - ◇ Limited access to sealed records for research purposes.
- Juvenile records automatically expunged/destroyed at age 38, sooner for motor vehicle infractions (age 21), truancy (28).

C. Wyoming Juvenile Records Laws Summary

Wyo. Stat. § 14-6-203 (court and law enforcement records); § 14-6-224 (courtroom access); § 14-6-241 (expungement)

Wyoming also has very good records laws (total score: 58%), and does well with both confidentiality (53%) and sealing & expungement (61%). While records are automatically sealed when the case is closed, however, individuals must petition to secure expungement. As previously mentioned, expungement offers much stronger protection, but if these protections are not made automatic, reporting confirms that only a small percentage of those eligible to have their records sealed and expunged actually secure the available protection. This is why the Core Principles makes automatic expungement a priority. Key provisions include:

- Juvenile Court hearings are closed to the public.
- All records (court and law enforcement) are confidential, except:
 - ◇ Authorized by youth or parents (if under 18)
 - ◇ Shared w/ victim of felony
 - ◇ Can be shared by/between LE, court personnel, prosecutors office, school admin/board, probation services, social services agencies
 - ◇ By Court order finding public interest/safety served by public release.
- All records automatically sealed once case is closed with narrow exceptions
 - ◇ By Court order finding public interest/safety served by public release.
- Sanctions available: contempt w/ fine up to \$500 or imprisonment up to 90 days.
- Youth may petition for expungement of all records, unless violent felony offense, at age of majority. Results in destruction of all records. No ability to even retain identifying info for LE, court, or other purposes.

D. Idaho Juvenile Records Summary

Idaho Code § 20-525 (courtroom access, law enforcement and court records); Idaho Court Administration Rule 32 (exceptions); § 20-525A (Expungement); Idaho Juvenile Rule 28 (expungement)

Idaho was included to show a comparison with a neighboring state that actually has really weak juvenile records laws (total score 28%). Like Washington, juvenile hearings and court records are open to the public (confidentiality score: 27%). While youth can petition to have their records expunged, the records are actually sealed rather than destroyed so it is not a true expungement statute (32%). Key provisions include:

- Juvenile court hearings and records open to public for felony level offenses for those over 14. For non-felony offenses, court can order records to be made confidential at hearing. Exceptions to confidentiality include:
 - ◇ Public, by court order on finding of best interests of the public served.
 - ◇ Probation, LE, Dept. Corrections, Dept. Health & Wellness, victim, school officials upon request.
- No confidentiality limitations on LE records specified.
- Expungement of all court and LE records upon petition available.
 - ◇ Expungement = records are sealed, not destroyed.
 - ◇ By petition:
 - * 3 years after case termination or age 18, whichever later for felonies.
 - * 1 year after case termination or age 18, for misdemeanors and diversion cases.
 - ◇ Access to sealed records only by court order by petition of individual.
- Sanctions: Finding of contempt for violation.

	National Average	Washington	California	Oregon	Wyoming	Idaho
Total	47% (57/121)	30% (36/120)	70% (80/117)	60% (72/121)	58% (77/132)	30% (34/114)
Confidentiality	46% (22/45)	15% (6/41)	66% (31/47)	40% (14/35)	53% (25/47)	27% (11/41)
Expungement	47% (36/77)	38% (30/79)	70% (49/70)	68% (58/85)	61% (52/85)	32% (23/73)

VI. Additional Challenges and Considerations for Reform

In addition to the cross-state comparisons and analyzing prior legislative proposals, Juvenile Law Center was asked to provide its expert opinion on a number of specific issues, and incorporates them here.

A. Who is Excluded from Confidentiality

Central to the Core Principles is that all juvenile records, both court and law enforcement records, be treated as confidential unless and until they are sealed and/or expunged. While Juvenile Law Center strongly encourages the Partnership Committee to adopt reform proposals to make Washington's currently publicly available juvenile court records confidential, we recognize that confidentiality does not have to be and almost never is absolute. There are always exceptions to even the strongest confidentiality laws, as can be seen in the cross-state analysis in Section IV. Allowances for specific and need-based law enforcement⁹ and court-personnel¹⁰ access is common, as is the fairly narrow access that should be afforded to the individual child as well as the victim and victim's family. Any allowances for access by or sharing with school personnel should be narrowly tailored and only in limited circumstances when necessary to further the educational needs of the child or for public safety. Broader access, including by media and the public, should require a court order and be limited to situations where such access is necessary for public safety.

By contrast, while most states afford certain exceptions to confidentiality for certain agencies, officers, and individuals who may need access to an individual's record while they are under supervision, once records are sealed most states cut off such access and provide far fewer if any exceptions. Typically a judicial order is necessary to access a sealed record.¹¹

B. Closed Courts and Constitutionality Concerns About the Open Administration of Justice

Consistent with making court records confidential, juvenile court hearings should also be closed to the public. It has been suggested that one of the strongest and most consistent objections to both making juvenile court records confidential and closing court hearings involves citizens'

9. California, for example, allows narrowly limited access to juvenile records only for "law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor." CA WEL & INST § 827.

10. In Maryland, court personnel can only access a confidential juvenile record "in a proceeding in the court involving the child, by personnel of the court." Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27.

11. However, it is important that an individual with a juvenile record should always be able to gain access to their own record and secure a copy as needed.

right to the open administration of justice. While, in Juvenile Law Center's experience, there are always arguments and tension between the history and centrality of confidentiality in juvenile court proceedings and the First Amendment rights of the public to court and records access, Washington's argument is somewhat unique and worthy of further discussion.

Washington's state constitution provides in Article 1, Section 10, that "Justice in all cases shall be administered openly, and without unnecessary delay."¹² This constitutional right to the open administration of justice appears on its face to stand squarely in the way of efforts to seal court rooms and records and provide confidentiality from public scrutiny. However, this is not a new issue. Washington has had juvenile record sealing protections in its laws for years now and they have withstood constitutional scrutiny. Indeed, the Washington Supreme Court has already weighed in on this issue and come down definitively on the side of the constitution's support for the confidential protection of juvenile records.

In *State v. S.J.C.*, the Supreme Court addressed a challenge to current juvenile records sealing laws pursuant to Article 1, Section 10. In rejecting the challenge, the Supreme Court recounted the history of the juvenile legal system and the state's long commitment to confidentiality for juvenile records, recognizing that the juvenile legal system was not subject to Article 1, Section 10 protection because its rehabilitative purpose distinguished it from the adult criminal legal system. *S.J.C.*, 352 P.3d at 756 (Wash. 2015) ("We have repeatedly cited the juvenile court as an example of a situation in which the constitutional presumption of openness does not apply.") This same legal analysis would support closing juvenile court hearings and treating court records as confidential. That does not mean such confidentiality must be absolute. As with sealing laws, there can be reasonable exceptions and the ability for any party to petition the court to open the hearing, but the law in Washington is clear: there is no legal right of public access to juvenile court proceedings or records.

C. Reporting to the FBI and Handling Sealed or Expunged Records While Maintaining Compliance with the BSCA

The Bipartisan Safer Communities Act ("BSCA") was passed by Congress and signed into law by the President in June 2022 in an effort to address gun violence. One of its key provisions was subjecting gun purchasers under 21 to background checks that for the first time included juvenile records. This law has caused a lot of confusion and concern among state lawmakers, court personnel, and advocates, alike because little guidance was issued about how the law should be interpreted and implemented. A couple of states, including Washington, amended their records laws to ensure that juvenile records could be shared with federal law enforcement authorities to comply with the BSCA, though the law does not and cannot require states to change their own records laws.

12. WA CONST Art. 1, § 10

A recent report by the National Center for State Courts, *Disclosure of Juvenile Records under the Bipartisan Safer Communities Act: Considerations for Courts*, National Center for State Courts (NCSC) (2023), identifies the challenges the new law poses for states and state courts trying to comply with the new background check mandate, including: identifying whether existing state confidentiality and expungement laws allow for the sharing of juvenile record information with federal law enforcement officials; which records or information could or should be shared; how that information will be maintained and by whom; and how that information will be disposed of or preserved once it is shared. While the BSCA was meant to work within the framework of existing state juvenile records laws and respect existing protections, absent Congressional guidance, states are largely on their own in answering these questions.

Among states like Washington that permit the sharing of records with the FBI's National Instant Background Check System, there is no consensus on what information should be shared. According to discussions with NCSC, not even the FBI can offer a clear answer to this question. Nor can they answer what will happen to those records when cases are closed and records are sealed or expunged. That is because NICS is set up to keep records forever.¹³ Until more guidance is issued from Congress on how states and federal agencies should interpret the BSCA, Juvenile Law Center has advocated for states to simply follow their own records laws and to the extent they permit sharing record information, only share the bare minimum of information necessary to comply with the background check inquiry from the FBI. No actual records need to be shared, when yes or no questions are asked about red flag offenses.

D. Accountability & Sanctions for Leaked Records

One of the Core Principles is that sanctions should be imposed on individuals and agencies who unlawfully share confidential, sealed, or expunged record information or violate expungement orders. While Juvenile Law Center is not aware of data that specifically tracks the impact of sanctions and enforcement on a state and its agencies' effective compliance with records laws, the ability to enforce compliance and to hold those who are non-compliant accountable is important for effective implementation. More importantly, the young people who have been held accountable themselves by the juvenile legal system and who face severe collateral consequences when their records are unlawfully exposed or accessed, repeatedly demand that some means of accountability be put in place to ensure they are protected. Currently, Washington does not provide for sanctions for violation of its records laws. As the Partnership Council wishes to center the voices of impacted youth in its reform efforts and adopt best practices, it should consider incorporating some form of sanctions in its proposed reforms, while ensuring that impacted youth are able to access their own records when and as needed.

13. In the March 19, 2024 Partnership Council meeting, it was indicated that Washington now has a system in place for sharing information with NICS and for ensuring that sealed information is removed.

VII. Conclusion

Juvenile Law Center urges states like Washington to update their juvenile records laws to comport with the best practices identified by the Core Principles. However, we also recognize that meeting those standards can be challenging when legislatures are faced with a multitude of constituencies whose interests are not always perfectly in line. The stakeholders that make up the Partnership Council are well positioned to understand the unique possibilities and challenges for improving Washington's juvenile records laws. Juvenile Law Center supports these efforts and is at the ready to provide continued guidance and advocacy to ensure Washington's youth a barrier-free future.

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. We work to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive.