

JUVENILE RECORDS

A National Review of State Laws on Confidentiality, Sealing and Expungement



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Juvenile Law Center is a national public interest law firm that works to ensure that the child welfare, juvenile justice and other public systems provide vulnerable children with the protection and services they need to become healthy and productive adults.



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Introduction

Public access to records of juvenile arrests, court proceedings and dispositions can impede successful transitions to adulthood for many youth, especially when these records remain available long after the youth's involvement with the juvenile justice system has ended. These records can create obstacles for youth seeking employment, education, housing and other opportunities.

The common belief that juvenile records are confidential because of the juvenile justice system's historic goal of protecting children from the traditional consequences of criminal behavior is false. Many states disclose information about youth involvement with the juvenile justice system and fail to provide opportunities for sealing or expungement. Sealing refers to closing records to the public but keeping them accessible to a limited number of court or law enforcement personnel connected to a child's case, while expungement involves the physical destruction and erasure of a juvenile record.

A growing number of states no longer limit access to records or prohibit the use of juvenile adjudications in subsequent proceedings.¹ While many states have laws that limit the exposure of a juvenile record through sealing or expungement, they are ineffective if they provide access to juvenile records beyond the time of juvenile court involvement, carve out exceptions or include onerous requirements that hamper the ability of young people to take advantage of their protections.

In this National Review, we provide an overview of state laws and policies on confidentiality, sealing and expungement, and note how many of these state laws and policies fail to adequately protect children. Our Review is guided by certain **Core Principles**, which are essential to advancing youths' opportunities for successful transitions to adulthood. We highlight these principles throughout the Review.

A Guide to this National Review

This Review provides an overview of how juvenile records are treated nationwide. In order to provide a comprehensive review, we surveyed state statutes, court rules, and case law governing the treatment of juvenile records in each jurisdiction. Because we recognize that what is codified in law does not always reflect practice, we supplemented our research, when possible, with interviews with practitioners.

We are aware that the landscape of legislation addressing any issue changes dramatically over time. Although we attempted to ensure that our research was current, there will be circumstances in which new legislation is enacted prior to publication. The research is current as of the summer of 2014.

Finally, it is important to note that based upon the severity of the offense, the individual's age, or other reasons set forth in law, children can be treated as adults. Although youth can be charged, tried, and convicted as adults in the criminal justice system, the records created in that system are adult criminal records and in most states enjoy fewer protections than juvenile records. This Review is limited to juvenile records.

Terminology

Language used to describe juvenile records and the mechanisms for limiting their exposure differs from state to state. When describing the expungement of juvenile records, a state statute may refer to the practice as expunction, expungement,

The juvenile court planners envisaged a system that would practically immunize juveniles from "punishment" for "crimes" in an effort to save them from youthful indiscretions and stigmas due to criminal charges or convictions.

—*In re Gault*,
387 U.S. 1, 60 (1967)
(J. Black concurring)

¹ See Katherine H. Federle and Paul Skendelas, *Thinking Like a Child: Legal Implications of Recent Developments in Brain Research for Juvenile Offenders*, in *Law, Mind and Brain* (Michael Freeman and Oliver R. Goodenough, eds., 2009).

destruction, erasure, or something else. When appropriate, we used the state's language. However, in many cases, we deduced the meaning of a term and used more commonly understood language to describe concepts.

Thus, throughout the guide we refer to **expungement** and **sealing** as the two mechanisms for limiting the exposure of a juvenile record. In Part II, we describe in more detail these terms and the differences between them.

For purposes of this Review, **confidentiality** of juvenile records refers to preventing access to, dissemination or use of a juvenile record outside of juvenile court, unless it is intended to further the youth's case planning and services.

Throughout the Review, we refer to **law enforcement records** and **court records**. In most cases, unless otherwise noted, law enforcement records include records created or stored by any law enforcement agency. They include files or documents designating an arrest, the taking into custody, detention, formal charges, fingerprints, DNA information, and police records of a young person. Court records include, unless otherwise noted, records created by or stored by the juvenile court or the juvenile probation office.

Finally, while the sealing or expungement of a record may occur after the juvenile turns 18, we refer to the individual as a **child, youth, young person, or juvenile**.

The terms used throughout this Review are further defined in the **Glossary** at the end of this publication.

Organization

This National Review is divided into two sections: Part I examines the **Confidentiality of Juvenile Records** during the course of proceedings and prior to expungement or sealing eligibility. It provides an overview of state laws that address how records are treated while court proceedings are pending and immediately thereafter. Part I also explores the range of public access and availability across the 50 states and District of Columbia.

Part II examines the **Sealing and Expungement of Juvenile Records**, looking at the various provisions nationwide to limit the exposure of juvenile records through closure or eradication after cases are closed. In some states, sealing or expungement provisions are automatic, requiring no action on the part of the youth; in other states, youth must first obtain information about their eligibility and then undertake the process themselves.

In each area we set forth an analysis of the best and worst practices across the country. At the conclusion of our overview and analysis of each policy area, we set forth our **Core Principles**, which incorporate the best practices we have identified from our national research. We encourage policymakers to review the Core Principles and implement legislative or policy changes at the state or local level that will give young people a greater opportunity to succeed.

In concert with this National Review of state laws, we also have published *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records*, which rates states against each other and in light of our Core Principles. Finally, we have developed Fact Sheets for each of the 50 states and the District of Columbia. These State Fact Sheets provide state-specific information in each category described in Parts I and II. The State Fact Sheets, the Scorecard, and more information about juvenile records are available at www.jlc.org/juvenilerecords.

Juvenile Records: A Historical Perspective

It is well settled that children are different from adults.² This is “more than a chronological fact”—it is established by scientific research.³ Social science research demonstrates that children have “greater prospects for reform” than adults.⁴ The United States Supreme Court has relied upon this research and more recent neuroscientific research in applying this commonsense principle to laws affecting youth in a variety of contexts.⁵ However, even though adolescents are generally less culpable and more capable of change than adults, their records are not automatically expunged. The justice system’s retention of juvenile court records advances neither public safety concerns nor the important goal of giving youth room to reform. Overwhelmingly, juvenile justice experts agree that a finding of delinquency today differs little from a conviction of guilt, in light of the resulting stigma and punishment, and the barriers it erects.⁶

Confidentiality of Juvenile Records

The first juvenile court was established in Cook County, Illinois in 1899.⁷ Grounded in the belief that juvenile misconduct differed from adult criminal conduct, the court sought to “spare juveniles from the harsh proceedings in adult court” and “the stigma of being branded criminal.”⁸ The court adopted a less punitive and more therapeutic approach: keeping children’s records confidential was essential to the goal of rehabilitation.⁹ Juvenile proceedings were generally closed to the public, records of juvenile crime were not disseminated or disclosed any more than necessary to provide supervision and rehabilitation to the child, and the child could be released from court without the stigma of a criminal conviction. Without confidentiality, the stigma of criminality might derail a child’s readjustment in the community.¹⁰

The juvenile court’s early commitment to confidentiality was largely unchallenged until the 1990’s, when increases in violent crime, among both juveniles and adults, ushered in an era of “just deserts” and a much greater emphasis on public safety. These developments moved the court away from its core focus on rehabilitation and toward

2 *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

3 *Miller*, 132 S.Ct. at 2467 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)); see also *J.D.B. v. N. Carolina*, 131 S.Ct. 2394, 2403 (2011) (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)); *Gall v. United States*, 552 U.S. 38, 58 (2007); *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Johnson v. Texas*, 509 U.S. 350, 367 (1993).

4 *Miller*, 132 S.Ct. at 2458.

5 See *J.D.B.*, 131 S.Ct. at 2403 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)); see also *Graham*, 560 U.S. 68; *Roper*, 543 U.S., at 569.

6 See, e.g., Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 Psychol. Pub. Pol’y & L. 3, 5 (1997) (discussing trend among states to develop laws which extend juvenile punishment into adulthood); see also Linda E. Frost & Robert E. Shepherd, Jr., *Mental Health Issues in Juvenile Delinquency Proceedings*, 11 Crim. Just. 52, 59 (1996) (“Juvenile delinquency proceedings have far more serious consequences now than at any other point in the history of the juvenile or family court.”).

7 *Juvenile Justice History*, Center on Juvenile and Criminal Justice, <http://www.cjci.org/Education1/Juvenile-Justice-History.html> (“First established in 1899 in Cook County, Illinois and then rapidly spread across the country, the juvenile court became the unifying entity that led to a juvenile justice system.”).

8 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Reform Initiatives in the States: 1994-1996*, at 36 (1997), available at <https://www.ncjrs.gov/pdffiles/reform.pdf>.

9 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Reform Initiatives in the States: 1994-1996*, at 36 (1997), available at <https://www.ncjrs.gov/pdffiles/reform.pdf>; see also *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring) (“It is a hallmark of our juvenile justice system in the United States that virtually from its inception at the end of the last century its proceedings have been conducted outside of the public’s full gaze and the youths brought before our juvenile courts have been shielded from publicity”).

10 Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. Rev. 520, 526-27 (2004); see also *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 107-08 (1979) (Rehnquist, J., concurring).

criminalization of juvenile offending.¹¹ States amended the preambles and purpose clauses of their juvenile codes to reflect a greater emphasis on accountability and punishment.¹² As public safety came to overshadow rehabilitation as the guiding principle of juvenile court, confidentiality lost its critical role in the juvenile justice system.¹³ States began to open juvenile proceedings to the public and roll back the expansive confidentiality protections once enjoyed by youth in juvenile court.¹⁴

Juvenile Record Sealing and Expungement

The juvenile court's central goal of rehabilitation provided the framework for today's expungement statutes.¹⁵ By 1970, although "more than half the states had barred persons with criminal convictions from public employment," they understood that juvenile adjudications should be treated differently.¹⁶ Policymakers recognized that absent special protections, a juvenile record would "act like a symbolic millstone around a youngster's neck."¹⁷ They created avenues for expungement to enable children to "enter adulthood without the stigma of a criminal conviction"; a youth could avoid "an eternal blot on [the] youth's record because of an immature, impulsive act."¹⁸ Thus, the 1960s and 1970s saw "virtually nationwide enactment of expungement statutes"¹⁹ as legislators "attempted . . . to combat the harmful effects of a delinquency adjudication by providing for concealment of juvenile records, on the grounds that such concealment will aid the child's reintegration into society."²⁰

Furthermore, as the developmental differences between youth and adults have moved front and center in the national dialogue, there has been a growing interest in providing greater protection to young people by limiting access to juvenile delinquency records.

11 Kara E. Nelson, *The Release of Juvenile Records Under Wisconsin's Juvenile Justice Code: A New System of False Promises*, 81 Marq. L. Rev. 1101, 1125 (1998) (describing the "just deserts" revolution as stemming from public pressure on state legislators "to get tough on juvenile crime"); Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. Rev. 520, 533 (2004) ("The second major attack on the presumption of confidentiality in juvenile court began in the late 1980s and early 1990s, when concerns about deteriorating public safety and the need for accountability became rampant.")

12 Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference it Makes*, 68 B.U. L. Rev. 821, 841-44 (1988) (noting that between 1980 and 1990, ten state legislatures amended the juvenile code preambles to reflect the departure from rehabilitation).

13 Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. Rev. 520, 533, 536 (2004) ("Preserving confidentiality has become less popular, as it appears to frustrate society's increasing desire to hold delinquents accountable for their actions.")

14 Between 1992 and 1995, ten states modified or enacted legislation to open juvenile proceedings to the public. Office of Juvenile Justice and Delinquency Prevention, *State Responses to Serious and Violent Juvenile Crime: Research Report*, at 36 (1996), available at <https://www.ncjrs.gov/pdffiles/statresp.pdf>. By 2004, only four states had absolute mandatory closure statutes; fourteen gave the judge discretion to close upon petition; sixteen closed cases for young children or minor offenses but opened them otherwise; and seventeen presumptively closed cases but considered opening upon petition. See Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. Rev. 520, 547 (2004).

15 T. Markus Funk, *A Mere Youthful Indiscretion? Reexamining the Policy of Expunging Juvenile Delinquency Records*, 29 U. Mich. J.L. Ref. 885, 901 (1996) ("[T]he present-day ideal of rehabilitation . . . provides the foundation for expungement")

16 Carlton J. Snow, *Expungement and Employment Law: The Conflict Between an Employer's Need to Know About Juvenile Misdeeds and an Employee's Need to Keep Them Secret*, 41 Wash. U. J. Urb. & Contemp. L. 3, 19 (1992).

17 Carlton J. Snow, *Expungement and Employment Law: The Conflict Between an Employer's Need to Know About Juvenile Misdeeds and an Employee's Need to Keep Them Secret*, 41 Wash. U. J. Urb. & Contemp. L. 3, 18 (1992).

18 Carlton J. Snow, *Expungement and Employment Law: The Conflict Between an Employer's Need to Know About Juvenile Misdeeds and an Employee's Need to Keep Them Secret*, 41 Wash. U. J. Urb. & Contemp. L. 3, 16 (1992).

19 Carlton J. Snow, *Expungement and Employment Law: The Conflict Between an Employer's Need to Know About Juvenile Misdeeds and an Employee's Need to Keep Them Secret*, 41 Wash. U. J. Urb. & Contemp. L. 3, 19 (1992).

20 Adrienne Volenick, *Juvenile Court and Arrest Records*, 9 Clearinghouse Rev. 169, 169 (1975).

For example, in 2010, the American Bar Association adopted a policy²¹ addressing the collateral consequences facing individuals adjudicated delinquent:

Laws, rules, regulations and policies that require disclosure of juvenile adjudications can lead to numerous individuals being denied opportunities as an adult based upon a mistake(s) made when they were a child. The ABA recognizes the language used by the United States Supreme Court in *Roper v. Simmons*, 543 U.S. 551, that children are different than adults because of: “A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” Therefore, the ABA is recommending that the collateral consequences of committing a crime as a youth be severely reduced by reducing barriers to education and vocational opportunities because of a juvenile incident. Furthermore there should be limited exceptions that only exist when the incident is directly relevant to the position sought or a concern of a school.²²

Juvenile Adjudications vs. Criminal Convictions

Further complicating the effect and implementation of confidentiality and expungement or sealing laws is the fact that a majority of states also have laws that state that juvenile adjudications should not be treated as criminal convictions. Many of these provisions are modeled on the Uniform Juvenile Court Act, drafted by the National Conference of Commissioners on Uniform State Laws in 1968, which states:

An order of disposition or other adjudication in a proceeding under this Act is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.²³

21 This policy is consistent with the ABA’s former efforts to keep juvenile records confidential and offer more opportunities for juvenile record expungement. Several years before this policy was adopted, the ABA adopted juvenile justice standards that provided, in part, that

[a]ccess to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention.

IJA-ABA Standards Relating to Juvenile Records and Information Services, Part XV: Access to Juvenile Records (1980). Moreover, acknowledging the barriers a juvenile or criminal record creates to employment, cities and counties in 25 states have implemented “ban-the-box” initiatives prohibiting employers from asking about an adjudication or conviction prior to the candidate demonstrating his or her qualifications for the job. *Ban the Box Resource Guide*, National Employment Law Project, available at <http://www.nelp.org/page/-/SCLP/Ban-the-Box.Current.pdf?nocdn=1>. And, the Equal Employment Opportunity Coalition (EEOC) has issued guidance on the limited use of records in assessing candidates and several states have followed suit by enacting laws that prevent employers from considering juvenile records.

22 Report to the House of Delegates. Am. Bar Ass’n, Criminal Justice Section, Committee on Homelessness and Poverty, Standing Committee on Legal Aid and Indigent Defense, at 14 (2010) available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102a.authcheckdam.pdf.

23 Uniform Juvenile Court Act, *Rights of Juveniles* Appendix A (2013 Ed.).

State legislatures have adopted versions of this statutory language, and state courts have noted the distinctions between the juvenile and adult criminal justice systems. A Pennsylvania appellate court, for example, has stated:

In terms of process, the juvenile defendant in Pennsylvania cannot elect a jury trial; the juvenile cannot take advantage of the panoply of procedural safeguards afforded by our rules of criminal procedure; and, moreover, juvenile proceedings are closed to the public. In terms of purpose, juvenile court systems exist primarily “to facilitate the identification and treatment of children in need of protective or therapeutic services,” while criminal processes exist more to assess “responsibility and blameworthiness.”²⁴

The original rehabilitative goal of the juvenile justice system continues to be reflected in both state statutes and case law, which draw a sharp distinction between the impact of a “juvenile adjudication” and a “criminal conviction.” However, as juvenile records become increasingly more accessible to the general public, what was once a sharp distinction is now a blur.

²⁴ *Commonwealth v. Lyons*, 530 A.2d 1345, 1347 (Pa. Super. Ct. 1987).

PART I

Confidentiality of Juvenile Records

As soon as a juvenile is arrested, paper or electronic records are created. This includes police reports and charging documents, witness and victim statements, court-ordered evaluations, fingerprints, and sometimes even DNA samples. In this section, we explore the protections afforded to juvenile records that enable youth to enter adulthood unencumbered by their past.

Juvenile records can contain sensitive and personal information, including information about a child's family, his social history, behavioral health history, education, and prior involvement with the law. This information may be necessary for the court to develop an individualized plan for the child's supervision and rehabilitation. However, when information contained in these records is available outside of the juvenile court process, it can stigmatize the youth and erect barriers to community reintegration.

Because most states allow juvenile record information to be released or accessible in some form during and after juvenile proceedings, it is important to consider confidentiality of juvenile records as a separate issue from sealing or expungement. There are many ways in which states provide for the legal sharing of juvenile record information before, during, and after a court case.²⁵ Therefore, maintaining confidentiality throughout the pendency of the court's involvement in a child's life is critical.

While many states have eroded the confidentiality protections provided to juveniles in adjudicatory proceedings, only a few states have provisions stating that juvenile adjudications should be treated the same as criminal convictions.²⁶ One example is Iowa, where the definition of a "conviction" includes a delinquent adjudication.²⁷ In Idaho, too, youth are considered to have been convicted of a criminal offense if an adjudication has been entered against them, there has been a finding of guilt, or a plea of guilty or *nolo contendere* by them has been accepted by any court.²⁸ In Colorado, a more limited approach treats delinquency adjudications as convictions when past convictions are deemed relevant in newer cases or during sentencing.²⁹

Even in the majority of states that clearly distinguish between juvenile adjudications and adult criminal convictions, the confidentiality of juvenile records is not fully protected. While youth are generally spared the stigma associated with adult criminal records, some juvenile record information is publicly accessible by employers and landlords, for example, who often use this information to deny young people access to employment or housing.

25 For example, the only states that fully protect juvenile record information from public accessibility are California (Cal. Rules of Court, Rule 5.552); Nebraska (Neb. Rev. Stat. § 43-2,108); New Mexico (N.M. Stat. § 32A-2-32); New York (N.Y. Fam. Ct. § 381.3); North Carolina (N.C. Gen. Stat. § 7B-3000); North Dakota (N.D. Cent. Code § 27-20-52); Ohio (Ohio Rev. Code Ann. § 2151.18); Rhode Island (R.I. Gen. Laws § 14-1-64; R.I. Gen. Laws § 14-1-30); and Vermont (Vt. Stat. tit. 33 § 5117). See also *Models for Change* Information Sharing Toolkit, Child Welfare League of America and Juvenile Law Center, Dec, 1, 2008, available at: <http://www.modelsforchange.net/publications/282> ("The *Models for Change* Information Sharing Tool Kit provides guidance to jurisdictions seeking to improve their information and data sharing practices in the handling of juveniles and reach the ultimate goal of improving the outcomes for those youths.").

26 Iowa Admin. Code r.491-6.5(c); Idaho Admin. Code r. 16.05.06.010; Colo. Rev Stat §19-1-103(2).

27 Iowa Admin. Code r. 491-6.5(c).

28 Idaho Admin. Code r. 16.05.06.010.

29 Colo. Rev Stat §19-1-103(2).

The vast majority of states provide some basic protections to keep juvenile record information confidential while court proceedings are ongoing. However, once youth are adjudicated delinquent, many states permit broader access to information about juvenile records. In this section, we look at the various ways in which juvenile court and law enforcement information is either protected by confidentiality statutes, or accessible to authorized individuals, agencies, or the public at large. We also highlight **Core Principles** that we believe should guide confidentiality laws and policies, and which allow youth a real “second chance.”

Exceptions to Confidentiality

In the majority of states, information about ongoing juvenile 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. Similar to policies governing ongoing proceedings, most states allow information regarding delinquency adjudications to be released to individuals and agencies directly responsible for providing supervision or services to juveniles.

Public Availability

State laws vary widely in affording protection to juvenile records. The majority of states allow some juvenile record information to be publicly accessible; accessibility frequently turns on the age of the juvenile, the type of offense, or the number of offenses. While all states allow juvenile record information to be shared and exchanged between certain authorized individuals and agencies, such as law enforcement and court personnel, the most protective states do not extend availability beyond this group. Nine states completely prohibit public access to juvenile records, regardless of the seriousness of the offense, the number of offenses, or the age of the juvenile.³⁰ One state, North Dakota, allows juvenile record information to be released only in the very narrow circumstance of a juvenile escaping from a facility or where there is a threat to national security.³¹ Alaska has a ‘public safety’ exception: “a state or municipal law enforcement agency may disclose to the public information regarding a case as may be necessary to protect the safety of the public.”³² The statute is silent as to how “public safety” is determined, or by whom.

States that fully protect juvenile records information from the public

California

Nebraska

New Mexico

New York

North Carolina

North Dakota

Ohio

Rhode Island

Vermont

30 For example, the only states that fully protect juvenile record information from public accessibility are California (Cal. Rules of Court, Rule 5.552); Nebraska (Neb. Rev. Stat. § 43-2,108); New Mexico (N.M. Stat. § 32A-2-32); New York (N.Y. Fam. Ct. § 381.3); North Carolina (N.C. Gen. Stat. § 7B-3000); North Dakota (N.D. Cent. Code § 27-20-52); Ohio (Ohio Rev. Code Ann. § 2151.18); Rhode Island (R.I. Gen. Laws § 14-1-64; R.I. Gen. Laws § 14-1-30); and Vermont (Vt. Stat. tit. 33 § 5117).

31 N.D. Cent. Code § 27-20-52; N.D. Cent. Code § 27-20-51.1.

32 Alaska Stat. § 47.12.310(c).

States that allow certain types of juvenile record information to be publicly available

- Alabama
- Alaska
- Arkansas
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida
- Georgia
- Hawaii
- Idaho
- Indiana
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Minnesota
- Mississippi
- Missouri
- Nevada
- New Hampshire
- New Jersey
- Oklahoma
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Virginia
- West Virginia
- Wisconsin

Thirty-three states and the District of Columbia make certain types of juvenile record information publicly available.³³ Some of these states' policies are quite broad. In Connecticut, for example, juvenile records lose confidential status if a youth is arrested for or charged with a felony.³⁴ In Kansas, records of all juveniles aged fourteen and older are publicly available.³⁵

Massachusetts provides for public access only when a juvenile between the ages of fourteen and eighteen has previously been adjudicated delinquent on at least two occasions for acts which would have been punishable by imprisonment if the juvenile were an adult, and the juvenile is currently charged with delinquency for an act which would be punishable by imprisonment if the juvenile were an adult.³⁶ Similarly, in Nevada, the court may authorize the release and broadcast of a juvenile's name and charges if the juvenile is charged with a felony offense and has previously been adjudicated for a felony offense resulting in death or serious bodily injury or has two prior felony adjudications.³⁷

Protections like those in Massachusetts and Nevada are diluted in states that permit access in violent or felony cases without prior adjudications.³⁸ Tennessee, for example, makes juvenile records open to public inspection when a child is charged with offenses such as first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, kidnapping, and aggravated kidnapping.³⁹ Other states permit access in all felony cases or for all "violent offenses."⁴⁰ For example, in Minnesota, records pertaining to youth who are sixteen and older at the time of a felony offense are open to public inspection; however they are not available online.⁴¹ In Louisiana, records will not be kept confidential if the youth is charged with or adjudicated delinquent for a felony or a crime of violence and the youth is at least fourteen years of age at the time of the offense.⁴²

Still other states provide broad public access even in misdemeanor cases.⁴³ For example, in Florida, any felony offense or three misdemeanor offenses will result in the juvenile's

33 Alabama (Ala. Code § 12-15-136, Ala. Code § 12-15-137); Alaska (Alaska Stat. §§ 47.12.300(d)-(f)); Arkansas (Ark. Code §9-27-309); Colorado (Colo. Rev. Stat. §§ 19-1-304); Connecticut (Conn. Gen. Stat. § 46b-124); Delaware (Del. Code tit. 10, §§ 1063(b)); District of Columbia (D.C. Code § 16-2331(e)); Florida (Fla. Stat. §§ 985.045); Georgia (Ga. Code Ann. §§ 15-11-83); Hawaii (Haw. Rev. Stat. § 571-84); Idaho (Idaho Code § 20-525-1, *Jensen v State*, 72 P3d 897, 903 (Idaho 2003)); Indiana (Ind. Code § 31-39-2-10, Ind. Code § 31-39-2-11); Kansas (Kan. Stat. §§ 38-2310); Kentucky (Ky. Rev. Stat. § 610.340); Louisiana (La. Child Code art. 412); Maine (Me. Rev. Stat. tit. 15, §§ 3308); Maryland (Md. Code, Courts and Judicial Proceedings §3-8A-27); Massachusetts (Mass. Gen. Laws ch. 119, § 60A); Minnesota (Minn. Stat. § 260B.171); Mississippi (Miss. Code § 43-21-255); Missouri (Mo. Rev. Stat. § 211.321, Mo. S. Ct. Op. R. 4.26, Mo. S. Ct. Op. R. 4.25(3)); Nevada (Nev. Rev. Stat. § 62H.020, Nev. Rev. Stat. § 62H.025); New Hampshire (N.H. Rev. Stat. § 169-B:35); New Jersey (N.J. Stat. §§ 2A:4A-60, *State v. D.L.C.*, 2013 WL 322491 (N.J. Super. Ct. App. Div. 2013)); Oklahoma (Okla. Stat. tit. 10A, §§ 2-6-108(D), (E) (2), (F)-(H), Okla. Stat. tit. 10A, § 2-6-102); Pennsylvania (42 Pa. Const. Stat. §6307); South Carolina (S.C. Code § 63-19-2010); South Dakota (S.D. Codified Laws §26-7A-29, 27, 39)); Tennessee (Tenn. Code 37-1-153); Texas (Tex. Fam. Code § 58.005; Utah (Utah Code § 78A-6-209); Virginia (Va. Code § 16.1-301); West Virginia (W. Va. Code § 49-7-1); Wisconsin (Wis. Stat. §938.396).

34 Conn. Gen. Stat. § 46b-124.

35 Kan. Stat. §38-2309(b).

36 Mass. Gen. Laws. ch. 119, § 60A.

37 Nev. Rev. Stat. § 62H.020.

38 *See, e.g.*, Hawaii (Haw. Rev. Stat. § 571-84.6); Kentucky (Ky. Rev. Stat. § 610.340); Tennessee (Tenn. Code § 37-1-153).

39 Tenn. Code Ann. § 37-1-153.

40 *See, e.g.*, West Virginia (W. Va. Code § 49-7-1(g)); Minnesota (Minn. Stat. § 260B.171, Minn. Stat. § 260B.163); Louisiana (La. Child. Code art. 412).

41 Minn. Stat. § 260B.171; Minn. Stat. § 260B.163.

42 La. Child. Code art. 412

43 *See* Florida (Fla. Stat. § 985.04); Indiana (Ind. Code § 31-39-2-8).

records becoming publicly available.⁴⁴ In Indiana, any felony offense, two misdemeanor offenses if the juvenile is twelve or older, or five misdemeanor offenses if the juvenile is under twelve will result in the juvenile's records becoming publicly available.⁴⁵

One state, Kansas, limits confidentiality solely by the age of the juvenile.⁴⁶ If a juvenile in Kansas is fourteen or older, all of his or her records are made available to the public.⁴⁷

Finally, seven states categorically make all juvenile records public⁴⁸ though there are exceptions even within these states. In Arizona, for example, all juvenile records are public unless a court order is issued to protect a particular record.⁴⁹ Idaho is similar, but if the juvenile is fourteen or older, only extraordinary circumstances can justify a court order of confidentiality.⁵⁰ In Montana, juvenile records are publicly available, but all such records are sealed when the juvenile reaches eighteen and then can no longer be accessed by the public.⁵¹ Oregon and Washington distinguish between types of juvenile record information. Information considered part of the juvenile's "social file," including psychological evaluations and medical records, are protected from public access.⁵² However, basic information, such as the juvenile's name, date of birth, and the charges against him, is publicly available.⁵³

Availability to Agencies or Individuals

Even when the general public is prohibited from seeing juvenile records, they may nevertheless be accessible to certain agencies and individuals, whether or not they have any connection to the child's case.

Access by Law Enforcement

Almost all states permit law enforcement officers to have access to juvenile records—even records that are not created by law enforcement.⁵⁴ Indeed, some states place no limits on access to juvenile records by law enforcement and only have general and vague provisions providing for such access.⁵⁵ In Wisconsin, for example, the statute merely states that "confidentiality does not apply between law enforcement agencies."⁵⁶ A few states, though, have limited law enforcement's access to records. West Virginia, for example, provides that records and information concerning a juvenile "shall not be released or disclosed to anyone, including any federal or state agency."⁵⁷ However, such

44 Fla. Stat. § 985.04.

45 Ind. Code § 31-39-2-8.

46 See Kan. Stat. § 38-2309(b).

47 Kan. Stat. § 38-2309(b).

48 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)).

49 Ariz. Const. art. IV, § 22; Ariz. Rev Stat. § 8-208(G).

50 Idaho Code § 20-525(1).

51 Mont. Code § 41-5-215, Mont. Code § 41-5-216.

52 Oregon (Or. Rev Stat. § 419A.255); Washington (Wash. Rev Code § 13.50.050).

53 Oregon (Or. Rev Stat. § 419A.255); Washington (Wash. Rev Code § 13.50.050).

54 Only Massachusetts, Louisiana, West Virginia, Utah, Ohio, and Rhode Island do not explicitly authorize law enforcement officers to access information about juvenile adjudications. See Massachusetts (Mass Gen. Laws 119 § 60A.); Louisiana (La. Child. Code art. 412.); West Virginia (W Va. Code § 49-7-1(a).); Utah: (Utah Code Ann. § 78A-6-209); Ohio (Ohio Rev Code Ann. §2151.14); Rhode Island (R.I. Gen. Laws § 14-1-30.).

55 See, e.g., California (Ca. St. Fam. Rule 5.552); Wisconsin (Wis. Stat. § 938.396); Oklahoma (Okla. Stat. tit. 10A, § 2-7-902).

56 Wis. Stat. § 938.396.

57 W Va. Code § 49-7-1(a).

States that give complete public access to juvenile records

Arizona

Idaho

Iowa

Michigan

Montana

Oregon

Washington

States that release juvenile record information to school personnel

Alabama

Alaska

Arkansas

Colorado

Connecticut

District of Columbia

Florida

Georgia

Illinois

Indiana

Iowa

Kansas

Kentucky

Louisiana

Maine

Maryland

Minnesota

Mississippi

Missouri

Montana

New Jersey

New Mexico

New York

North Carolina

North Dakota

Oklahoma

Oregon

South Carolina

Tennessee

Texas

Virginia

Washington

Wisconsin

Wyoming

records are available by a court order.⁵⁸ Similarly, in Ohio, law enforcement officers may access confidential juvenile records only upon a court order and after a hearing has been held to demonstrate need.⁵⁹ Rhode Island is the only state that completely prohibits access by law enforcement, with no exception made for court-ordered access.⁶⁰

Additionally, some states permit access only when it is deemed necessary for law enforcement officials to fulfill their official duties. These include investigative purposes or determining eligibility for a first-time offender program.⁶¹ In Kansas, for example, if law enforcement officers want to access the confidential court file of a juvenile, they must show it is necessary to discharge their official duties.⁶² In Pennsylvania, juvenile records are generally available to law enforcement officers within the particular jurisdiction; however, law enforcement officers from other jurisdictions must show that access to the information is necessary for the discharge of their official duties.⁶³

Access by Schools

One of the most common exceptions to confidentiality is the release of information regarding the arrest or adjudication of a juvenile to school personnel. At least thirty-three states and the District of Columbia have statutory provisions allowing for the release of otherwise confidential juvenile record information to school personnel.⁶⁴ The criteria for release vary among states.

Some states, like Vermont,⁶⁵ require the school to obtain permission from the court prior to accessing any juvenile record information.⁶⁶ Similarly, in Indiana, juvenile records may be released to the superintendent or school administrator when a written request establishes that the records are necessary for the school to serve the educational needs of the juvenile or to protect the safety or health of a student, an employee, or a volunteer at the school.⁶⁷

58 W Va. Code § 49-7-1(a).

59 Ohio Rev Code § 2151.14.

60 R.I. Gen. Laws § 14-1-64.

61 See, e.g., Kansas (Kan. Stat. § 38-2310); Pennsylvania (42 Pa. Cons. Stat. § 6308).

62 Kan. Stat. § 38-2310.

63 42 Pa. Cons. Stat. § 6308.

64 Alabama (Ala. Code § 12-15-134, Ala. Code § 12-15-133); Alaska (Alaska Stat. § 47.12.310(c)); Arkansas (Ark. Code. §§ 9-27-309(k)-(1)); Colorado (Colo. Rev Stat. § 19-1-304); Connecticut (Conn. Gen. Stat. § 10-233h); District of Columbia (D.C. Code § 16-2331(c)); Florida (Fla. Stat. § 985.04 (1)); Georgia (Ga. Code § 15-11-82(e)); Illinois (705 Ill. Comp. Stat. 405/1-7); Indiana (Ind. Code 31-39-2-13.8.); Iowa (Iowa Code § 232.147); Kansas (Kan. Stat. § 38-2310); Kentucky (Ky. Rev Stat. § 610.340); Louisiana (La. Child. Code. art. 412); Maine (Me. Rev Stat. tit. 15, § 3308); Maryland (Md. Educ. Code § 7-303); Minnesota (Minn. Stat. § 260B.171); Mississippi (Miss. Code § 43-21-255); Missouri (Mo. Rev Stat. § 211.321); Montana (Mont. Code § 41-5-215); New Jersey (N.J. Stat. § 2A:4A-60); New Mexico (N.M. Stat. § 32A-2-32); New York (N.Y. Crim. Proc. § 720.35); North Carolina (N.C. Gen. Stat. § 7B-3101); North Dakota (N.D. Cent. Code. § 27-20-51, N.D. Cent. Code § 27-20-52); Oklahoma (Okla. Stat. tit. 10A, § 2-6-102); Oregon (Or. Rev Stat. § 419A.255); South Carolina (S.C. Code § 63-19-2020, S.C. Code § 63-19-2030); Tennessee (Tenn. Code. § 49-6-3051); Texas (Tex. Fam. Code § 58.0051); Virginia (Va. Code § 16.1-300, Va. Code § 16.1-301); Washington (Wash. Rev Code § 13.50.050); Wisconsin (Wis. Stat. § 938.396, Wis. Stat. § 938.396(1) (a)(2)); Wyoming (Wyo. Stat. § 14-6-203).

65 Vt. Stat. tit. 33, § 5117.

66 Vermont (Vt. Stat. tit. 33, § 5117); Indiana (Ind. Code 31-39-2-13.8); Alabama (Ala. Code § 12-15-133).

67 Ind. Code 31-39-2-13.8.

Other states require that the information be relevant to the school serving the juvenile before it can be released.⁶⁸ In Louisiana, juvenile record information is only available to school personnel when the information is relevant and necessary to the performance of duties and enhances services to the juvenile or his family.⁶⁹ Similarly, New Mexico law provides that school personnel may only access confidential juvenile records when the records concern the juvenile's educational needs, and can only access information that is necessary to provide for the juvenile's educational planning.⁷⁰ In New York, confidential juvenile record information can only be used by a designated educational official for purposes related to the execution of the student's educational plan or successful school adjustment and reentry into the community.⁷¹

Some states allow only certain categories of information to be available to school officials. In Maryland, law enforcement can only notify school officials of the offense for which a juvenile was arrested if it was a reportable offense or an offense related to membership in a gang.⁷² The information can only be used to provide appropriate educational programming and related services to the student and to maintain a safe and secure school environment.⁷³ In Connecticut, if a juvenile is arrested for a Class A misdemeanor or a felony, the police department must notify the superintendent of the school district.⁷⁴ In Minnesota, law enforcement must notify the superintendent of the school district if the juvenile has been adjudicated delinquent for committing an act on the school's property or an act that would be a violation of various violent or drug-related offenses.⁷⁵

Some states that permit schools to access juvenile record information, such as Maryland and New York, exclude notification or information relating to a juvenile record from a student's permanent school record — the information must be destroyed when the student graduates or leaves the school or district.⁷⁶ Such provisions ensure that otherwise confidential juvenile record information does not follow the students when they leave school. New Jersey allows a principal to obtain information about a juvenile's record; however, such information cannot be maintained by the principal or the school in the child's education record.⁷⁷

Unfortunately, a few states allow or even require notification of school officials by law enforcement or court personnel, but do not provide for any additional protections on how such information can be used.⁷⁸ For example, in Mississippi, juvenile arrest information may be made available to school personnel upon request, or in the case of arrest for felony or weapons offenses.⁷⁹ In Kentucky, a juvenile's adjudication record must be made available to public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher to whose class the student has been assigned.⁸⁰ These states do not specify the circumstances under which this information can be used, or for how long and in what manner such information may be stored.

68 Louisiana (La. Child. Code art. 412); New Mexico (N.M. Stat. § 32A-2-32); New York (N.Y. Crim. Proc. § 720.35).

69 La. Child. Code art. 412.

70 N.M. Stat. § 32A-2-32.

71 N.Y. Crim. Proc. § 720.35.

72 Md. Educ. Code § 7-303.

73 Md. Educ. Code § 7-303.

74 Conn. Gen. Stat. § 10-233h.

75 Minn. Stat. § 260B.171.

76 Minnesota (Minn. Stat. § 260B.171.); New York (N.Y. Crim. Proc. § 720.35).

77 N.J. Stat. § 2A:4A-60.

78 *See, e.g.*, Minnesota (Minn. Stat. § 43-21-255); Kentucky (Ky. Rev. Stat. § 610.340).

79 Minn. Stat. § 43-21-255.

80 Ky. Rev. Stat. § 610.340.

Access by Government Agencies

In addition to law enforcement, court personnel, and school officials, thirty-three states allow confidential juvenile record information to be accessed by other government agencies or individuals.⁸¹ Typically, this includes child welfare and other human service agencies, state child advocacy offices, or state and local agencies charged with planning and providing services to court-involved youth. These agencies are allowed access to confidential juvenile record information solely for the purpose of supervising or providing care for the juvenile. For example, in North Dakota, juvenile court files and records are available to the staff of the Division of Children and Family Services and the Department of Human Services when needed to carry out other legal obligations.⁸² In New Jersey, juvenile records are available to the Department of Human Services or Department of Children and Families, if they are providing care or custody to a juvenile.⁸³

Other government agencies commonly afforded access include victims' groups, boards of pardon and parole, and juvenile justice agencies.⁸⁴ For example, New Jersey provides access to the state's Juvenile Justice Commission and the Victims of Crimes Compensation Agency.⁸⁵ In Mississippi, juvenile records may be reviewed by the Division of Victim Compensation and the State Parole Board.⁸⁶

Many states have determined that some government agencies will require access to confidential records to comply with legal obligations, provide care, or fulfill job requirements. Some of those states have additional protections for confidentiality while others do not. In New Jersey, for example, any individual or agency asserting a direct interest in the matter who shows good cause for disclosure may access confidential records.⁸⁷ To safeguard against widespread disclosure, some states, like Texas, require confidentiality agreements when confidential juvenile record information is being shared with additional agencies for the purpose of treatment or services.⁸⁸

Access by Victims, Researchers and Media

In addition to law enforcement, school personnel, and other government agencies, many states also provide access to otherwise confidential information to the crime victim, the media, or those conducting research.

Twenty-seven states and the District of Columbia explicitly provide that a victim of a crime by a juvenile may access at least some information about the juvenile under certain

81 Alabama (Ala. Code § 12-15-134, Ala. Code § 12-15-133); California (CA ST FAM JUV Rule 5.552); Colorado (Colo. Rev. Stat. § 19-1-304); Connecticut (Conn. Gen. Stat. § 46b-124); Delaware (Del. Code tit. 11, § 8513); District of Columbia (D.C. Code § 16-2331(c)); Georgia (Ga. Code § 15-11-82(e)); Hawaii (Haw. Rev. Stat. § 571-84); Illinois (705 Ill. Comp. Stat. 405/1-7); Indiana (Ind. Code § 31-39-2-6); Iowa (Iowa Code § 232.147); Kansas (Kan. Stat. § 38-2310; Kan. Stat. § 38-2309(b)); Kentucky (Ky. Rev. Stat. § 610.320); Louisiana (La. Child. Code art. 412); Maine (Me. Rev. Stat. tit. 15, § 3308); Mississippi (Miss. Code § 43-21-261); Nevada (Nev. Rev. Stat. § 62H.025); New Jersey (N.J. Stat. § 2A:4A-60); New Mexico (N.M. Stat. § 32A-2-32); New York (N.Y. Fam. Ct. Act § 380.1); North Carolina (N.C. Gen. Stat. § 7B-3100); North Dakota (N.D. Cent. Code § 27-20-52, N.D. Cent. Code § 27-20-51); Oklahoma (Okla. Stat. tit. 10A, § 2-7-902); Pennsylvania (42 Pa. Cons. Stat. § 6307); South Carolina (S.C. Code § 63-19-2030); Tennessee (Tenn. Code § 37-1-153); Texas (Tex. Fam. Code § 58.005); Utah (Utah Code § 78A-6-209); Virginia (Va. Code § 16.1-300); Wisconsin (Wis. Stat. § 938.396); Wyoming (Wyo. Stat. § 14-6-203).

82 N.D. Cent. Code § 27-20-51.

83 N.J. Stat. § 2A:4A-60.

84 N.J. Stat. § 2A:4A-60.

85 N.J. Stat. Ann. § 2A:4A-60.

86 Miss. Code § 43-21-261.

87 N.J. Stat. § 2A:4A-60.

88 Tex. Fam. Code § 58.005

circumstances.⁸⁹ In four states, law enforcement officers may provide information about a young person to the alleged victim before any adjudication.⁹⁰ In Rhode Island, the victim must request such information and a court must issue an order before confidential juvenile record information is provided to the victim.⁹¹ Rhode Island, like several other states, also only allows the name and address of the juvenile to be provided to a victim, but only for the purpose of instituting a civil suit.⁹²

Juvenile record information may also be shared with researchers. Any information obtained by researchers should be de-identified. While making juvenile record information available for research purposes can advance the delivery of services or promote needed reforms of the juvenile justice system, it cannot be at the expense of the individual youth. As such, some states adopt safeguards by allowing access to confidential information only with a court order, while other states permit access to researchers absent court permission. In Louisiana, for example, non-identifying information of a general nature, including statistics, is not confidential and may be released without a court order. However, if researchers want to access confidential records and reports for the purpose of collecting non-identifying general information, including statistics, there must be a court order specifying the type of information authorized for review. Importantly, the reviewer is bound to preserve the confidentiality of any identifying information reviewed.⁹³ In Indiana, by contrast, the court must grant access to confidential records to any person involved in a legitimate research activity as long as such a person provides sufficient written information to the court.⁹⁴

Six states also provide media access to juvenile record information in certain circumstances.⁹⁵ In Delaware, for example, whenever a juvenile aged thirteen to seventeen is in the system for a crime classified as a felony, or a class A misdemeanor, the court or police must release the name and address of the juvenile and the name of the juvenile's parents upon a request by a "responsible representative of public information media."⁹⁶ The request can come at any time in the juvenile court process following arrest, and must be honored even if the juvenile is acquitted.

In Georgia, the media can request and expect to receive such information. The name or picture of any juvenile under the jurisdiction of the juvenile court *must* be provided to the news media upon request, when a petition is filed alleging the juvenile committed a designated felony or alleging that the child committed a delinquent act if the child has previously been adjudicated delinquent or if the child has previously been before the court on a delinquency charge.⁹⁷

89 Alabama (Ala. Code § 12-15-134); Alaska (Alaska Stat. § 47.12.310(c)(5)); Arkansas (Ark. Code 9-27-309); Colorado (Colo. Rev. Stat. § 19-1-304); Connecticut (Conn. Gen. Stat. § 46b-124); District of Columbia (D.C. Code § 16-2331(c)(2)(D)); Idaho (Idaho Code § 20-525(5)); Illinois (705 Ill. Comp Stat. 405/1-7(D)); Indiana (Ind. Code § 31-39-2-13); Iowa (Iowa Code § 232.147); Kentucky (Ky. Rev. Stat. § 610.340); Louisiana (La. Child. Code art. 412); Maine (Me. Rev. Stat. tit. 15, § 3308); Maryland (Md. Code Cts. & Jud. Proc. § 3-8A-27); Minnesota (Minn. Stat. § 260B.171); Mississippi (Miss. Code § 43-21-261); Missouri (Mo. Rev. Stat. § 211.321); Montana (Mont. Code § 41-5-215); Nevada (Nev. Rev. Stat. § 62H.040); New Hampshire (N.H. Rev. Stat. § 169-B:35); New Jersey (N.J. Stat. § 2A:4A-60); Oregon (Or. Rev. Stat. § 419A.250); Rhode Island (R.I. Gen. Laws § 14-1-66); South Carolina (S.C. Code § 63-19-2030); Vermont (Vt. Stat. tit. 33, § 5117); Washington (Wash. Rev. Code § 13.50.050); Wisconsin (Wis. Stat. § 938.396); Wyoming (Wyo. Stat. § 14-6-203).

90 Alabama (Ala. Code § 12-15-134); Alaska (Alaska Stat. § 47.12.310(c)(5)); South Carolina (S.C. Code § 63-19-2030); Wisconsin (Wis. Stat. § 938.396).

91 R.I. Gen. Laws § 14-1-66.

92 R.I. Gen. Laws § 14-1-66.

93 La. Child. Code art. 412.

94 Ind. Code § 31-39-2-11.

95 Delaware (Del. Code tit. 10, § 1063(b)); Georgia (Ga. Code § 15-11-83); Nevada (Nev. Rev. Stat. § 62H.020); South Carolina (S.C. Code § 63-19-2020); South Dakota (S.D. Codified Laws § 26-7A-38); Wyoming (Wyo. Stat. § 14-6-240).

96 Del. Code tit. 10, § 1063(b).

97 Ga. Code § 15-11-83(f).

States where victims of juvenile crime may access some juvenile record information

Alabama

Alaska

Arkansas

Colorado

Connecticut

District of Columbia

Idaho

Illinois

Indiana

Iowa

Kentucky

Louisiana

Maine

Maryland

Minnesota

Mississippi

Missouri

Montana

Nevada

New Hampshire

New Jersey

Oregon

Rhode Island

South Carolina

Vermont

Washington

Wisconsin

Wyoming

CORE PRINCIPLES: CONFIDENTIALITY AND ACCESS TO JUVENILE RECORD INFORMATION

Juvenile Law Center has developed a set of Core Principles, which serve as benchmarks for how jurisdictions should structure their policies governing the confidentiality, sealing and expungement of juvenile records.

These first Core Principles support policies that limit access to juvenile records maintained by law enforcement and the court system.

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 enhanced care and not increased stigma or risk of the youth's deeper involvement in the juvenile justice system.⁹⁸

98 See, e.g., *Models for Change* Information Sharing Toolkit, Child Welfare League of America and Juvenile Law Center, Dec, 1, 2008, available at: <http://www.modelsforchange.net/publications/282> (“The *Models for Change* Information Sharing Tool Kit provides guidance to jurisdictions seeking to improve their information and data sharing practices in the handling of juveniles and reach the ultimate goal of improving the outcomes for those youths.”).

Sanctions for Releasing Confidential Record Information

Confidentiality provisions are only effective if they are enforced. In order to further protect juvenile record information, states can impose sanctions on the improper use of juvenile record information. While some states actually provide for criminal sanctions that include the possibility of incarceration, Juvenile Law Center recommends that improper use of confidential information should be punishable by no more than a fine.

Seventeen states and the District of Columbia have laws imposing criminal sanctions on those who unlawfully share confidential juvenile record information.⁹⁹ In most states, the offense of unlawfully sharing confidential juvenile record information is classified as a misdemeanor.¹⁰⁰ Alabama, for example, provides that anyone who is convicted of using or sharing confidential information is guilty of a class A misdemeanor.¹⁰¹ In Alaska, a person who discloses confidential information is guilty of a class B misdemeanor.¹⁰² In New Jersey, unlawful disclosure is graded as a more minor “disorderly persons” offense.¹⁰³

Some states also specify that the criminal sanction may be a fine or a fine in combination with other sanctions. In Montana and Wyoming, for example, a person who discloses confidential juvenile record information is guilty of a misdemeanor and can be fined \$500.¹⁰⁴ In West Virginia, the offense is a misdemeanor and the punishment can either be a fine or confinement in county jail.¹⁰⁵ In Vermont, the level of offense is not specified, but unlawful dissemination of juvenile record information is a crime punishable by a fine of up to \$2,000.00.¹⁰⁶

Louisiana and Tennessee also do not specify an offense level or a sentence, but rather state that violations of juvenile records confidentiality will be punished as criminal contempt of court.¹⁰⁷ Indiana and the District of Columbia appear to permit, but not require sanctions, stating that unlawful disclosure “may be prosecuted” or that there is “potential criminal liability.”¹⁰⁸

Two states, Colorado and South Dakota, provide for civil remedies for violations of confidentiality. In Colorado, “anyone who wrongfully distributes juvenile records in knowing violation of the confidentiality provisions faces a fine of up to \$1,000.00.”¹⁰⁹ In South Dakota, a violation of confidentiality “creates a cause of action for civil damages.”¹¹⁰ The remaining thirty-two states do not appear to impose sanctions for improperly revealing confidential information.

99 Alabama (Ala. Code § 12-15-134); Alaska (Alaska Stat. § 47.12.310(k)); Colorado (Colo. Rev Stat. § 19-1-303(4.7)); District of Columbia (D.C. Code § 16-2331(c), D.C. Code §§ 16-2331(c), (h)(4)); Indiana (Ind. Code § 31-39-2-11); Iowa (Iowa Code § 232.151); Louisiana (La. Child. Code art. 412); Maine (Me. Rev Stat. tit.16, § 619); Montana (Mont. Code § 41-5-221); New Hampshire (N.H. Rev Stat. § 169-B:36); New Jersey (N.J. Stat. § 2A:4A-60(h)); New Mexico (N.M. Stat. § 32A-2-32); Oklahoma (Okla. Stat. tit.10, § 7005-1.3); South Carolina (S.C. Code § 63-7-940); Tennessee (Tenn. Code § 37-1-153); Vermont (Vt. Stat. tit. 33, § 5117); West Virginia (W Va. Code § 49-7-1(f)); Wyoming (Wyo. Stat. § 7-19-504).

100 Iowa (Iowa Code § 232.151); Maine (Me. Rev Stat. tit.16, § 619); New Hampshire (N.H. Rev Stat. § 169-B:36); New Mexico (N.M. Stat. § 32A-2-32); Oklahoma (Okla. Stat. tit.10, § 7005-1.3); South Carolina (S.C. Code § 63-7-940).

101 Ala. Code § 12-15-134.

102 Alaska Stat. § 47.12.310(k).

103 N.J. Stat. § 2A:4A-60.

104 Montana (Mont. Code § 41-5-221); Wyoming (Wyo. Stat. § 7-19-504).

105 W Va. Code § 49-7-1(f).

106 Vt. Stat. tit. 33, § 5117.

107 Louisiana (La. Child. Code art. 412); Tennessee (Tenn. Code § 37-1-153).

108 District of Columbia (D.C. Code § 16-2331); Indiana (Ind. Code § 31-39-2-11).

109 Colo. Rev Stat. § 19-1-303(4.7).

110 S.D. Codified Laws § 26-7A-38.

CORE PRINCIPLES: 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.

PART II

Sealing and Expungement

Defining Sealing and Expungement

Sealing: Limited Access to Juvenile Records

In most jurisdictions, sealing a juvenile record means that the record is unavailable to the public, but remains accessible to select individuals or agencies.

In Nebraska, for example, once a juvenile record is sealed, no information contained in that record may be disclosed to potential employers, licensing agencies, landlords, or educational institutions. However, as in most jurisdictions—although criteria for access will differ—the record in Nebraska remains accessible to law enforcement officers, prosecutors, and sentencing judges in the investigation of crimes and in the prosecution and sentencing of criminal defendants.¹¹¹ In Massachusetts, for example, records of juvenile adjudications sealed more than three years prior to the request may not be released to law enforcement.¹¹²

The manner of sealing and accessibility varies among the states that provide for sealing of juvenile records.¹¹³ In Vermont, sealing is defined as “physically and electronically segregating the record in a manner that ensures confidentiality” of the record and limits access only to a person authorized by law. The record is retained and not destroyed unless a court issues an order to expunge.”¹¹⁴

Some states use terms other than ‘sealing’ to describe the closing of records to the public. In three states, juvenile records can be “set aside” after a certain amount of time, limiting their accessibility to most but not all individuals.¹¹⁵ In Arizona, even if the adjudication is set aside, it can be used for certain law enforcement purposes, including for driver’s license revocation or suspension or other motor vehicle related requirements.¹¹⁶ In Texas, juvenile records can be subject to automatic “restriction of access” following a case’s closure so long as certain criteria are met.¹¹⁷

111 Neb. Rev. Stat. § 43-2,108.05(2, 3). *See also* Alaska Stat. § 47.12.300(d)-(f); Mass. Gen. Laws Ann. ch. 276, § 100B; Neb. Rev. Stat. § 43-2,108.05; Nev. Rev. Stat. § 62H.170; N.H. Rev. Stat. Ann. § 169-B:35(II); N.J. Stat. Ann. § 2A:4A-62(d); S.D. Codified Laws §26-7A-116.

112 Mass. Gen. Laws ch. 276, § 100B.

113 Alabama (Ala. Code § 12-15-136); Alaska (Alaska Stat. § 47.12.300(d)); California (Cal. Welf. & Inst. Code § 781); Washington, D.C. (D.C. Code § 16-2335); Georgia (Ga. Code Ann. § 15-11-79.2); Illinois (75 Ill. Comp. Stat. 405/5-915(5)); Indiana (Ind. Code Ann. § 10-13-4-13); Kentucky (Ky. Rev. Stat. § 610.330); Maine (Me. Rev. Stat. 15, § 3308(8)); Maryland (Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(c)); Massachusetts (Mass. Gen. Laws Ann. ch. 276, § 100B-100C); Mississippi (Miss. Code Ann. § 43-21-263); Missouri (Mo. Rev. Stat. § 211.321(5)); Montana (Mont. Code Ann. § 41-5-216; Mont. Admin. R. 23.12.204); Nebraska (Neb. Rev. Stat. §§ 43-2,108.01, -.03, -.05); Nevada (Nev. Rev. Stat. Ann. §§ 62H.130, .140, .150, .170; New Hampshire (N.H. Rev. Stat. Ann. § 169-B:35(II)); New Jersey (N.J. Stat. Ann. § 2A:4A-62(b); N.J. Admin. Code § 10A:22-4.3); New Mexico (N.M. Stat. § 32A-2-26); New York (N.Y. Fam. Ct. Act §§ 375.1 to .3; *See also* N.Y. Crim. Proc. Law § 720.15); North Carolina (N.C. Gen. Stat. § 7B-3000(e)); North Dakota (N.D. Cent. Code §§ 27-20-54(1), 54-23.4-17(5)); Ohio (Ohio Rev. Code Ann. §§ 2151.355(B)-.357); Oklahoma (Okla. Stat. tit. 10A, § 2-6-108; 2013 Okla. Sess. Laws ch. 404 (S.B. 679)); South Dakota (S.D. Codified Laws §§ 26-7A-105, -114 to -116; Texas (Tex. Fam. Code Ann. §§ 54.04, 58.003, 58.201-211); Vermont (Vt. Stat. Ann. tit. 33, § 5119(j)); Washington (Wash. Rev. Code Ann. § 13.50.050; Wash. Gen. R. 15(c)(1) (B)); State v. C.R.H., 27 P3d 660, 663 (Wash. Ct. App, 2001)); West Virginia (W. Va. Code § 49-5-18; 2013 W. Va. Acts (S.B. 601)); Wisconsin (*State v. Salentine*, 557 N.W.2d 439, 447 (Wis. Ct. App. 1996); *State v. Moore*, 721 N.W.2d 725, 726 (Wis. Ct. App. 2006)).

114 Vt. Stat. Ann. tit. 33, § 5119(j).

115 Ariz. Rev. Stat. § 8-348; Mich. Comp. Laws Ann. § 712A.18e; Or. Rev. Stat. § 419C.610.

116 Ariz. Rev. Stat. Ann. § 8-348.

117 Tex. Fam. Code Ann. § 58.203.

States where records can be sealed

Alabama
Alaska
Arizona
California
District of Columbia
Georgia
Illinois
Indiana
Kentucky
Maine
Maryland
Massachusetts
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
South Dakota
Texas
Vermont
Washington
West Virginia
Wisconsin

Some jurisdictions specify that sealed records cannot be accessed by employers.¹¹⁸ In other jurisdictions, sealed records can be accessed only upon the issuance of a court order.¹¹⁹ Some jurisdictions permit access only to the individual who is the subject of the proceeding.¹²⁰ Finally, in many jurisdictions sealed records may be accessed for research purposes.¹²¹

Expungement: Varieties of Destruction and Access

Expungement typically refers to the physical destruction and erasure of a juvenile record, as if it never existed. Physical destruction is the most effective means of limiting disclosure of juvenile records. Unlike sealing, which leaves the record physically intact, physical destruction means that the record no longer exists in paper or electronic form. For example, Oregon, which provides for both sealing (“set aside”) and expungement, specifies that when juvenile records are expunged, they “retroactively cease to exist,” but when an order sets aside the records, “nothing in the set-aside order signified that youth’s adjudication never occurred or that it was nullified retroactively.”¹²²

Thirty-five states use the terms *expungement* or *expunction* to define the physical destruction of records.¹²³ Four other states refer to this procedure as *destruction*.¹²⁴ Although expungement or destruction implies physical destruction, many states do

118 Okla. Stat. tit. 10A, § 2-6-108(D); Tex. Fam. Code 58.003(g)(j); Neb. Rev. Stat. § 43-2,108.05(2).

119 Alaska Stat. § 47.12.300(d); Me. Rev. Stat. tit. 15, § 3308(8); N.M. Stat. § 32A-2-26(D); N.C. Gen. Stat. § 7B-3000(c); Vt. Stat. tit. 33, § 5119(f)(1).

120 Ind. Code § 10-13-4-13.

121 See, e.g., Ariz. Rev. Stat. Ann. § 8-349.

122 Or. Rev. Stat. § 419C.610.

123 Arkansas (Ark. Code Ann. § 9-27-309(a)); Colorado (Colo. Rev. Stat. Ann. §§ 19-1-303, -306); Connecticut (Conn. Gen. Stat. Ann. §§ 46b-146); Delaware (Del. Code tit. 10, §§ 1013-1015, § 1018; Del. Code tit. 10, §§ 1017, 1019); Florida (Fla. Stat. Ann. §§ 943.045(1), (16), .0515(1)(a)); Hawaii (Haw. Rev. Stat. Ann. §§ 571-88); Idaho (Idaho Code Ann. § 20-525A); Illinois (705 Ill. Comp. Stat. 405/1-9, /5-915); Indiana (Ind. Code Ann. §§ 31-39-1-1, -8-2, -8-3); Iowa (Iowa Code Ann. §§ 232.150, 692.17); Kansas (Kan. Stat. § 38-2312); Louisiana (La. Child. Code Ann. art. 917, 918-922; La. Rev. Stat. Ann. § 18:918-922); Maryland (Md. Code, Crim. Proc. § 10-106; Md. Code, Cts. & Jud. Proc. § 3-8A-27(c)); Michigan (Mich. Ct. R. 3.936(D); Mich. Comp. Laws § 28.243(8), (12)); Minnesota (Minn. Stat. § 260B.198 (subdiv 6); *In re J.J.P.*, 831 N.W2d 260, 270, 266 (Minn. 2013)); Mississippi (Miss. Code Ann. § 43-21-265, -159); Missouri (Mo. Rev. Stat. §§ 211.151(3), .321, Mo. Rev. Stat. §§ 311.325-326, Mo. Rev. Stat. §§ 610.122-.125); *State v. Radi*, 604 P2d 318 (Mont., 1979)); New Jersey (N.J. Stat. Ann. §§ 2C:52-1 to -4.1, -5; *In re J.B.*, 426 N.J. Super. 496 (N.J. Super. 2012)); New York (*In re Daniel P.P.*, 638 N.Y.S.2d 797 (N.Y. App. Div. 1996)); *In re Dorothy D.*, 49 N.Y.2d 212 (N.Y. 1980); *In re A.B.*, 831 N.Y.S.2d 351 (N.Y. Fam. Ct. 2006); *Matter of Todd H.*, 49 N.Y.2d 1022 (N.Y. 1980); N.Y. Fam. Ct. Act §§ 354.1, 355.1); North Carolina (N.C. Gen. Stat. §§ 15A-151, 7B-2102, 7B-3200(h), 7B-3201); North Dakota (N.D. Cent. Code §§ 12.1-20-03, -04, -07; N.D. Cent. Code §§ 25-03.3-04, 27-20-54); Ohio (Ohio Rev. Code Ann. § 2151.355-358(b)); Oklahoma (Okla. Stat. tit. 22, § 18, Okla. Stat. tit. 10A, §§ 2-6-102(F)-(G), 2-6-109(A)); Oregon (Or. Rev. Stat. §§ 419A.250, 419A.260, 419A.262); Pennsylvania (18 Pa. Cons. Stat. Ann. § 9123); Rhode Island (R.I. Gen. Laws § 12-1.3-2); South Carolina (S.C. Code Ann. § 63-19-2050(A)); Tennessee (Tenn. Code Ann. §§ 37-1-153, 40-32-101(a)(1)(A)); Texas (Tex. Fam. Code Ann. § 58.003, .006); Utah (Utah R. Juv P 56, Utah Code Ann. § 77-40-102; Utah Code Ann. 78A-6-1104 to -1105); Vermont (Vt. Stat. Ann. tit. 13, § 2802b); Virginia (Va. Code Ann. § 16.1-306); Washington (Wash. Rev. Code Ann. § 13.50.050(17) (a)(i)-(b), (23); Wash. Gen. R. 15); Wisconsin (Wis. Stat. § 355(4m), 938; Wis. Sup. Ct. R. 72.06); Wyoming (Wyo. Stat. Ann. §§ 7-13-1401, 14-6-241; 1977 Wyo. Sess. Laws § 7-19-504, 14-6-440).

124 Alabama (Ala. Code § 12-15-137); Arizona (Ariz. Rev. Stat. § 8-349); District of Columbia (D.C. Code § 16-2331(h) (5)); Montana (Mont. Code. § 41-5-216).

not actually physically destroy the juvenile records.¹²⁵ Of the states that provide for expungement, eighteen states statutorily require physical destruction.¹²⁶ In Illinois, expungement means physically destroying the records and removing the minor’s name from any official index or public record, or both.¹²⁷ In Colorado, after expungement, basic identification information on the juvenile and a list of any state and local agencies and officials having contact with the juvenile shall not be open to the public, but shall be available to a district attorney, local law enforcement agency, the department of human services, the state judicial department, and the victim.¹²⁸ Similarly, in Delaware, expunged records can be disclosed to law enforcement officers for investigative purposes or for the purpose of an employment application as an employee of a law-enforcement agency.¹²⁹

Fifteen states provide that parties can treat the expunged record as if it never existed, but do not require that the record is physically destroyed.¹³⁰ In North Carolina, expungement allows the juvenile to say that the adjudication never occurred; however, the administrative office of the court keeps a confidential file with the names of those who have had their records expunged.¹³¹ While many states authorize expungement of records, the actual treatment of records is more like sealing, with records remaining accessible to select individuals. In Florida, the statute provides for physical destruction but state law carves out numerous exceptions to the prohibition against revealing information in expunged records. Exceptions include when the juvenile is seeking employment with a

125 Conversely, in many jurisdictions, “sealing” a record is more akin to complete destruction. Kentucky, for example uses the terms “expunge” and “seal” interchangeably, but an expungement in Kentucky means that records will be sealed but the records will not be destroyed. Ky. Rev. Stat. § 610.330. In Idaho, seal and expunge are used interchangeably within the juvenile statute. Idaho Code Ann. § 20-525A. Similarly, many states that use the term sealing, afford it the same legal effect as what is commonly understood for expungement. For example, after sealing, Illinois and Ohio provide that a person shall not be required to disclose that he or she had a juvenile record. 705 Ill. Comp. Stat. 405/5-915; Ohio Rev Code Ann. § 2151.358. In California, after sealing or expungement, juvenile adjudications will be considered never to have occurred, and the juvenile can “answer accordingly any question relating to their occurrence.” Cal. Penal Code § 1203.45(a). Similarly, in Georgia, once a record is sealed, the proceeding shall be treated as if it never occurred. All references must be deleted and the person, the court, the law enforcement officers, and the departments “shall properly respond that no record exists” with respect to that person. Ga. Code Ann. § 15-11-79.2(d).

126 Alabama (Ala. Code § 12-15-137); Arizona (Ariz. Rev Stat. § 8-349); Florida (Fla. Stat. Ann. §§ 943.045(16), 985.045(1), Fla. Stat. § 943.0515(1)(a)); Hawaii (Haw Rev Code Ann. § 571-72, -88); Idaho (Idaho Code Ann. § 20-525A); Illinois (705 Ill. Comp. Stat. 405/1-9, /5-915); Indiana (Ind. Code Ann. § 31-39-1-1; Ind. Code § 31-39-8-2 to -3); Michigan (Mich. Ct. R. 3.936(D), 28.243(12); Mich. Comp. Laws § 28.243(8)); Mississippi (Miss. Code Ann. §§ 43-21-265, -159); Missouri (Mo. Rev Stat. §§ 211.151(3), .321, .325-.326, 610.122-125); Montana (Mont. Code Ann. § 41-5-216; *State v Radi*, 604 P.2d 318 (Mont. 1979)); North Dakota (N.D. Cent. Code §§ 12.1-20-03, -04, 25-03.3-04, 27-20-54); Oregon (Or. Rev Stat. §§ 419A.260(1)(b)(A), .260(1)(d), .262, .250(6)); South Carolina (S.C. Code Ann. § 63-19-2050(A)); Tennessee (Tenn. Code Ann. §§ 37-1-153, 40-32-101(a)(1)(A)); Texas (Tex. Fam. Code Ann. §§ 58.003, .006); Washington (Wash. Rev Code Ann. § 13.50.050(17)(a)(i), (b), (23); Mich. Gen. R. 15); Wisconsin (Wis. Stat. § 938.355(4m); Wis. Sup. Ct. R. 72.06).

127 705 Ill. Comp. Stat. 405/5-915.

128 Colo. Rev Stat. § 19-1-306(1)-(5a.5).

129 Del. Code tit. 10, § 1019(a)-(b).

130 Colorado (Colo. Rev Stat. Ann. §§ 19-1-303, -306); Connecticut (Conn. Gen. Stat. Ann. § 46b-146); Idaho (Idaho Code Ann. § 20-525A); Iowa (Iowa Code Ann. §§ 232.150, 692.17); Kansas (Kan. Stat. § 38-2312); Louisiana (La. Child. Code Ann. art. 917, 918, 920-922; La. Rev Stat. Ann. §§ 18: 918, 919-22); Maryland (Md. Code, Crim. Proc. § 10-106; Md. Code, Cts. & Jud. Proc. §3-8A-27(c)); Minnesota (Minn. Stat. § 260B.198 (6); *State v Radi*, 831 N.W2d 260, 270, 266 (Minn. 2013)); New Jersey (N.J. Stat. Ann. §§ 2C:52-1, -3, -4.1, -5; N.J. Stat. Ann. 2C:52-2; *In re J.B.*, 426 N.J. Super. 496 (N.J. Super. 2012)); New York (*In re Daniel P.P.*, 638 N.Y.S.2d 797 (N.Y. App. Div. 1996); *In re Dorothy D.*, 49 N.Y.2d 212 (N.Y. 1980); *In re A.B.*, 831 N.Y.S.2d 351 (N.Y. Fam. Ct. 2006); *Matter of Todd H.*, 49 N.Y.2d 1022 (N.Y. 1980); N.Y. Fam. Ct. Act §§ 354.1, 355.1); North Carolina (N.C. Gen. Stat. §§ 15A-151, 7B-2102, 7B-3200(h), 7B-3201); Oklahoma (Okla. Stat. tit. 22, § 18; Okla. Stat. tit. 10A, §§ 2-6-102(F), (G), § 2-6-109(A)); Rhode Island (R.I. Gen. Laws § 12-1.3-2); Utah (Utah R. Juv P 56, Utah Code Ann. § 77-40-102, 78A-6-1104, 78A-6-1105; *Id.* at (6)(a)); Wyoming (Wyo. Stat. § 14-6-440; Wyo. Stat. Ann. §§ 7-13-1401, 7-19-504, 14-6-241).

131 N.C. Gen Stat. §§ 7B-3000(i), 15A-151(a).

States with a statute that specifically requires physical destruction of expunged records

Alabama
Arizona
Florida
Hawaii
Idaho
Illinois
Indiana
Michigan
Mississippi
Missouri
Montana
North Dakota
Oregon
South Carolina
Tennessee
Texas
Washington
Wisconsin

States where expunged records treated as though never existed (but no physical destruction)

Colorado
Connecticut
Idaho
Iowa
Kansas
Louisiana
Maryland
Minnesota
New Jersey
New York
North Carolina
Oklahoma
Rhode Island
Utah
Wyoming

States that permit expungement of both law enforcement and court records

Alabama
Connecticut
District of Columbia
Florida
Idaho
Illinois
Indiana
Kansas
Kentucky
Louisiana
Maryland
Missouri
New Jersey
New Mexico
North Carolina
North Dakota
Oklahoma
Oregon
Pennsylvania
Rhode Island
Texas
Utah
Vermont
Washington
West Virginia
Wyoming

criminal justice agency, is a defendant in a criminal prosecution, petitions for the sealing of adult criminal records, applies for admission to the Florida Bar, or seeks to work with an agency that serves children, the disabled, or the elderly.¹³²

Finally, some jurisdictions, especially those that automatically seal juvenile records, provide for the expungement of sealed records after a certain amount of time. In North Dakota, juvenile records are automatically sealed when the proceedings conclude, and then destroyed at a specified time depending on the offense for which the child was adjudicated.¹³³ Similarly, in Montana, juvenile court records are automatically sealed on the juvenile's eighteenth birthday, and then destroyed after ten years if the juvenile court judge or county attorney consents to the destruction.¹³⁴

Records Eligible for Expungement or Sealing

In twenty-five states and the District of Columbia, both juvenile court records and law enforcement records are eligible for sealing or expungement.¹³⁵ Florida provides for the expungement of a record or portion of a record by “any criminal justice agency in possession of the record, or as prescribed by the court issuing the order.”¹³⁶ Idaho's expungement statute specifically refers to the expungement of juvenile fingerprints and DNA information.¹³⁷ Michigan similarly provides for sealing of arrest and fingerprint records in certain circumstances.¹³⁸ And in Indiana, a child can petition for expungement of court records, law enforcement records, and the files of any other person or agency who has provided services to the child under a court order.¹³⁹ In Kansas, too, youth may have “personal records,” including both arrest and court records, expunged.¹⁴⁰

Some states detail which specific records may be sealed or expunged. Kentucky provides for the segregation of all records in the youth's case that are in the custody of the court, as well as any records in the custody of any other agency or official, including law enforcement and public or private elementary and secondary school records.¹⁴¹ In Oregon, the “record” that can be expunged includes a fingerprint or photograph file, report, exhibit or other material which contains information relating to a person's contact with any law enforcement agency or juvenile court or juvenile department—this applies

132 Fla. Stat. § 943.0585(4)(a).

133 N.D. Cent. Code § 54-23.4-17(5).

134 Mont. Code Ann. § 41-5-216.

135 Alabama (Ala. Code § 12-15-137); Connecticut (Conn. Gen. Stat. Ann. § 46b-146); Washington, DC (D.C. Code § 16-2331(h)(5)); Florida (Fla. Stat. Ann. §§ 943.045(16), .0515(1)(a), 985.045(1)); Idaho (Idaho Code Ann. § 20-525A); Illinois (705 Ill. Comp. Stat. 405/5-915, /1-9); Indiana (Ind. Code Ann. § 31-39-1-1; Ind. Code §§ 31-39-8-3, -2); Kansas (Kan. Stat. § 38-2312); Kentucky (Ky. Rev. Stat. § 610.330); Louisiana (La. Child. Code Ann. art. 917-18, 920-22; La. Rev. Stat. Ann. § 18: 918-22); Maryland (Md. Code, Crim. Proc., § 10-106; Missouri (Mo. Rev. Stat. §§ 211.151(3), 211.321, 311.325-26, 610.122-125); New Jersey (N.J. Stat. Ann. §§ 2C:52-1, -2, -3, -4.1, -5; *In re J.B.*, 426 N.J. Super. 496 (N.J. Super. 2012); New Mexico (N.M. Stat. § 32A-2-26); North Carolina (N.C. Gen. Stat. §§ 15A-151, 7B-2102, 7B-3200(h), 7B-3201); North Dakota (N.D. Cent. Code, §§ 27-20-54); Oklahoma (Okla. Stat. tit. 22, § 18, Okla. Stat. tit. 10A, §§ 2-6-102(F), (G), 2-6-109(A)); Oregon (Or. Rev. Stat. §§ 419A.250(6), .260(1)(b)(A), .260(1)(d), .262); Pennsylvania (18 Pa. Cons. Stat. Ann. § 9123); Rhode Island (R.I. Gen. Laws § 12-1.3-2); Texas (Tex. Fam. Code Ann. §§ 58.003, .006); Utah (Utah R. Juv P 56, Utah Code Ann. §§ 77-40-102, 78A-6-1104, 78A-6-1105); Vermont (Vt. Stat. Ann. tit. 13, § 2802b); Washington (Wash. Rev. Code Ann. § 13.50.050(17)(a)(i), (b), (23); Wash. Gen. R. 15; West Virginia (W Va. Code § 49-5-18; 2013 W Va. Acts (S.B. 601)); Wyoming (Wyo. Stat. Ann. §§ 7-13-1401, 14-6-241; 1977 Wyo. Sess. Laws §§ 7-19-504, 14-6-440).

136 Fla. Stat. Ann. § 943.045.

137 Idaho Code Ann. § 20-525A.

138 Mich. Ct. R. 3.936(D); Mich. Comp. Laws § 28.243(8), (12).

139 Ind. Code § 31-39-8-2.

140 Kan. Stat. § 38-2312.

141 Ky. Rev. Stat. § 610.330.

to any information that is kept manually, through the use of electronic data processing equipment, or by any other means by a law enforcement or public investigative agency, a juvenile court or juvenile department, or an agency of the State of Oregon.¹⁴² Texas also has a comprehensive list of records that may be sealed, including all law enforcement, prosecuting attorney, clerk of court, and juvenile court records, as well as records of any public or private agency or institution.¹⁴³ Washington provides that expungement or destruction applies to all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office. However, Washington prohibits expungement of identifying information including photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birth date or address. Information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior will be destroyed.¹⁴⁴

In a number of states, such as Wisconsin, expungement applies only to juvenile court records.¹⁴⁵ The Wisconsin Supreme Court has ruled that for purposes of expungement, juvenile court records do not include juvenile police records. Wisconsin "[c]ourts do not have inherent authority to expunge juvenile police records which are under the authority of a police chief." They also do not include the "records of the District Attorney, other law enforcement records, the Department of Transportation and other" agencies.¹⁴⁶

Finally, Hawaii, permits expungement only of arrest records;¹⁴⁷ court records, or other records that result from adjudications of delinquency, are not eligible for expungement.¹⁴⁸

142 Or. Rev. Stat. § 419A.260(1)(d). Expunction in Oregon is defined as the removal and destruction or sealing of a judgment or order and all records and references related to any instance in which a person's act or behavior, or alleged act or behavior, resulted in a juvenile court's jurisdiction. Or. Rev. Stat. § 419A.260(1)(b)(A). For purposes of expungement, records also include fingerprint and photograph files and records. Or. Rev. Stat. § 419A.250(6). However, a juvenile "record" does not include: (A) A transcript of a student's Youth Corrections Education Program academic record; (B) Material on file with a public agency which is necessary for obtaining federal financial participation regarding financial assistance or services on behalf of a person who has had a contact; (C) Records kept or disseminated by the Department of Transportation, State Marine Board and State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation; (D) Police and court records related to an order of waiver where the matter is still pending in the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order; (E) Records related to a support obligation; (F) Medical records; (G) Records of a proposed or adjudicated termination of parental rights and adoptions; (H) Any law enforcement record of a person who currently does not qualify for expunction or of current investigations or cases waived to the adult court; (I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals; (J) Any records in cases in which the crime charged is not expugnable (see below for list of offenses). Or. Rev. Stat. § 419A.260(1)(d); Oregon State Bar, *Clearing Your Record*, at http://www.osbar.org/public/legalinfo/1081_clearingrecord.htm.

143 Tex. Fam. Code Ann. §§ 54.04, 58.003, 58.201-211.

144 Wash. Rev. Code Ann. § 13.50.050 (23).

145 Alaska (Alaska Stat. § 47.12.300(d)); Arkansas (Ark. Code Ann. § 9-27-309); Colorado (Colo. Rev. Stat. Ann. §§ 19-1-303, -306); Delaware (Del. Code tit. 10, §§ 1017-18); Georgia (Ga. Code Ann. § 15-11-79.2); Maryland (Md. Code, Cts. & Jud. Proc. §§ 3-8A-27(c)); Massachusetts (Mass. Gen. Laws Ann. ch. 276, § 100B-C); Minnesota (Minn. Stat. § 260B.198); Mississippi (Miss. Code Ann. § 43-21-263); Montana (Mont. Code Ann. § 41-5-216; Mont. Admin. R. 23.12.204); New Jersey (N.J. Stat. Ann. § 2A:4A-62); New York (N.Y. Crim. Proc. Law § 720.15); Ohio (Ohio Rev. Code Ann. §§ 2151.355(B), .356-.357); South Dakota (S.D. Codified Laws §§ 26-7A-105, -114 to -116); Wisconsin (Wis. Stat. § 938.355(4m)).

146 *City of Sun Prairie v. Davis*, 595 N.W2d 635, 641 (citing *In Interest of E.C.*, 387 N.W2d 72 at 76), *Flynn v. Department of Admin.*, 576 N.W2d 245 (Wis. 1998) (same).

147 Haw Rev Code Ann. § 571-88.

148 Haw Rev Code Ann. § 571-72; Haw Rev Code Ann. § 571-88.

States that limit expungement to court records

Alaska

Arkansas

Colorado

Delaware

Georgia

Maryland

Massachusetts

Minnesota

Mississippi

Montana

New Jersey

New York

Ohio

South Dakota

Wisconsin

**States that require
some notification
of sealing or
expungement rights**

Alabama

Arizona

California

Colorado

District of Columbia

Illinois

Kansas

Kentucky

Nebraska

Nevada

New Mexico

New York

Ohio

Oregon

Texas

Washington

**CORE PRINCIPLES:
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.

State statutes should provide that:

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 or Expungement Eligibility

Expungement and sealing, even when available, are typically not automatic. Notification to youth of their rights is critical so that youth can take advantage of the sealing or expungement opportunities in their jurisdiction. Effective notice must be timely and informative. The majority of states do not meet this standard. In states that require notice, its content and timing vary widely.

Content of Notification

Among the states¹⁴⁹ that require some notification of sealing or expungement rights, there is little consistency with respect to the content of that notice. In Kansas, the statute requires that the court shall inform any young person who has been adjudicated a juvenile offender of the “provisions of the expungement statute.”¹⁵⁰ A number of states requiring notification of sealing or expungement simply require that the court or another agency must advise juvenile offenders of their “right to expungement” at some stage of the proceedings.

149 Alabama (Ala. Code § 12-15-137); Arizona (Ariz. Rev. Stat. § 8-348); California (Cal. Welf. & Inst. Code § 781(g)(1)); Colorado (Colo. Rev. Stat. § 19-1-306(2)(a)); DC (D.C. Code § 16-2331(f)); Illinois (705 Ill. Comp. Stat. 405/5-615, -915(2.5) to (2.6)); Kansas (Kan. Stat. § 38-2312(h)); Kentucky (Ky. Rev. Stat. § 610.330); Nebraska (Neb. Rev. Stat. § 43-2,108.02); Nevada (Nev. Rev. Stat. §§ 62H.100 to .170, .260.); New Mexico (N.M. Stat. § 32A-2-26 (F)); New York (N.Y. Fam. Ct. Act § 375.1); Ohio (R. Juv. Proc. 34(J)); *In re Carrie A.O.*, 2006 Ohio App. LEXIS 787 (Ohio Ct. App. 2006) (citing *In re Hairston*, 1996 Ohio App. LEXIS 3447 (Ohio Ct. App. 1996)); Oregon (Or. Rev. Stat. § 419A.260(2)); Texas (Tex. Fam. Code § 54.04(h)(2), 58.003, 58.206-58.209(a); Tex. Code Crim. Proc. art. 45.0216); Washington (Wash. Rev. Code § 13.50.050(17)(ii), (20)).

150 Kan. Stat. § 38-2312(g).

Only seven states require detailed notification of the steps required to seal or expunge a juvenile record.¹⁵¹ In Nebraska, the prosecuting attorneys are statutorily required to inform a juvenile in written, plain language about the record sealing process and what sealing means.¹⁵² In Vermont, although the statute does not provide for notification of the process, it is the only state that statutorily requires the court to assist a juvenile in filing for an expungement.¹⁵³

Finally, eight states require notification of the eligibility requirements to obtain sealing or expungement.¹⁵⁴ California requires each juvenile court and probation department to provide youth with information regarding eligibility and the procedures for obtaining sealing or expungement.¹⁵⁵

Illinois has a robust notification requirement. The clerk of the circuit court shall send a “Notification of a Possible Right to Expungement” postcard to young persons at their last known address when they turn 17 or 21 for cases where eligibility is at age 17 or 21, respectively.¹⁵⁶ Moreover, the expungement statute requires the Office of the Appellate Defender to create an information packet for juveniles seeking expungement, which must include, at a minimum, an explanation of the State’s juvenile expungement process, the circumstances under which expungement may occur, the eligible offenses, the steps necessary to initiate and complete the expungement process, and contact information for the State Appellate Defender. The information packet may also include a pre-printed expungement petition with instructions on how to complete the application and a pamphlet containing information that will assist individuals through the expungement process.¹⁵⁷

Texas, which has automatic expungement in some instances, provides for a detailed notice to the child, including advising that: 1) the child probably has a juvenile record as a result of the delinquent conduct; 2) the juvenile record is a permanent record that is not destroyed or erased unless the record is eligible for sealing and the child hires a lawyer and files a petition in court to have the record sealed; 3) the child’s juvenile record can be accessed by criminal justice officials in Texas and elsewhere; 4) the record can be accessed by employment and educational organizations; 5) if the record is placed on restricted access when the child turns 17, access will be denied to employers, educational institutions, and others except for criminal justice agencies; and 6) restricting access is automatic and does not require any action by the child.¹⁵⁸ This comprehensive notification ensures that the juvenile is made aware of the consequences of his record being retained and the process and opportunities for restricting its access.

151 California (Cal. Welf. & Inst. Code § 781(g)(1)); Illinois (705 Ill. Comp. Stat. 405/5-615, -915(2.5) to (2.6)); Nebraska (Neb. Rev. Stat. § 43-2,108.02); Nevada (Nev. Rev. Stat. § 62H.100-.170, .260); New Mexico (N.M. Stat. § 32A-2-26 (F)); Oregon (Or. Rev. Stat. § 419A.260(2)); Texas (Tex. Fam. Code §§ 54.04(h)(2), 58.003, 58.306, 58.208-.209(a)(B)); Tex. Code Crim. Proc. art. 45.0216).

152 Neb. Rev. Stat. § 43-2,108.02.

153 Vt. Stat. tit. 33 § 5119(k).

154 California (Cal. Welf. & Inst. Code § 781(g)(1)); Illinois (705 Ill. Comp. Stat. § 405/5-915(2.5), (2.6)); Kansas (Kan. Stat. § 38-2312(h)); Nevada (Nev. Rev. Stat. § 62H.100-.170, .260; Nev. Rev. Stat. § 62H.130, .140, .150, .170); New Mexico (N.M. Stat. § 32A-2-26 (F)); New York (N.Y. Fam. Ct. Act, § 375.1); Texas (Tex. Fam. Code §§ 54.04(h)(2), 58.003, 58.206, 598.208, 58.209(a), (B)); Tex. Code Crim. Proc. art. 45.0216, 45.0216(e); Washington (Wash. Rev. Code § 13.50.050(17)(ii), (20)).

155 Cal. Welf. & Inst. Code § 781(g)(1).

156 705 Ill. Comp. Stat. § 405/5-915(2.7).

157 705 Ill. Comp. Stat. § 405/5-915(7.1), (7.2).

158 Tex. Fam. Code § 58.209(a).

States that provide notification of actual process for sealing or expungement

California

Illinois

Nebraska

Nevada

New Mexico

Oregon

Texas

Several states also provide information online about expungement or sealing, as well as sample motions and other useful information that can be downloaded.¹⁵⁹ However, these online resources are often developed and posted at the local or county level, rather than by the State.¹⁶⁰ California provides a model: the statute requires the development of a sealing petition that the child can easily fill out that must be given to all juveniles at the time court supervision is terminated or when their cases are dismissed.¹⁶¹

Finally, some states require notification that the expungement has been effectuated, alerting youth that they no longer have to disclose their juvenile court involvement or records. In New Mexico, the court must notify the child that the department's records have been sealed and that the court, the children's court attorney, the child's attorney and the referring law enforcement agency have been notified that the child's records are subject to sealing.¹⁶² In Indiana, the law enforcement agency must collect all the records and either present them to the individual petitioning for expungement or destroy them.¹⁶³

159 See Arizona (Sup. Ct. Ariz., Maricopa County, *Destruction of Records*, <http://www.superiorcourt.maricopa.gov/sscDocs/packets/jvdor.pdf>); Arkansas (Ark. Crime Info. Ctr., *Forms*, <http://acic.org/Pages/forms.aspx>); California (County of Fresno, *Procedures for Sealing of Juvenile Records*, <http://www.co.fresno.ca.us/Department-Page.aspx?id=39735>); Colorado (Colo. Judicial Branch, *Sealing Juvenile Records Forms*, http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=157); Delaware (Family Court of Del., *Expungement of a Juvenile Record*, <http://courts.delaware.gov/forms/download.aspx?id=60948>); District of Columbia (D.C. Office on Returning Citizen Affairs, *Record Sealing and Expunging*, <http://orca.dc.gov/service/record-sealing-and-expunging>); Florida (Fla. Dep't. of Law Enforcement, *Seal and Expunge Process*, <http://www.flde.state.fl.us/Content/getdoc/c83dd888-cf7a-448e-9a96-ba69fc4181f7/Seal-and-Expunge-Home.aspx>); Georgia (Ga. Dep't. Juvenile Justice, *Sealing Your Juvenile Court Record*, <http://www.djj.state.ga.us/Policies/DJJPolicies/Chapter20/Attachments/DJJ20.40AttachmentC.pdf>); Indiana (Ind. Legislative Serv. Agency, *Sealing and Expunging Conviction Records*, <http://www.in.gov/legislative/ic/code/title35/ar38/ch9.html>); Kentucky (Ky. Dep't. of Juvenile Justice, <http://djj.ky.gov/default.htm>); Louisiana (Jefferson Parish Juvenile Court, *Expungement Information Sheet*, <http://www.jpjc.org/WebContent/Forms/Expungement.pdf>); Maryland (Md. Judiciary, *Expungement*, <http://www.courts.state.md.us/courtforms/joint/ccdcr072br.pdf>); Michigan (Mich. State Police, *Requesting Criminal History Records*, http://www.michigan.gov/msp/0,1607,7-123-1589_1878_8311-10418--,00.html); Minnesota (Minn. Judicial Branch, *Criminal Expungement*, <http://www.mncourts.gov/selfhelp/?page=276>); Missouri (Mo. Judicial Branch, *Petition for Expungement of Arrest Records*, <http://www.courts.mo.gov/file.jsp?id=647>); Montana (Mont. Judicial Branch, *Policies and Procedures*, <http://courts.mt.gov/content/hr/policies/administrative/youth/1290youthcourtrecords.doc>); Nebraska (Neb. Judicial Branch, *Filing a Motion to Seal a Juvenile Criminal Record*, <http://supremecourt.ne.gov/self-help/7240/filing-motion-seal-juvenile-criminal-record>); New Jersey (N.J. Courts, *How to Expunge our Criminal and/or Juvenile Record*, http://www.judiciary.state.nj.us/prose/10557_expunge_kit.pdf); North Carolina (State of N.C., *Petition/Order/ Notice Expunction of Juvenile Records Upon Dismissal*, <http://www.nccourts.org/Forms/Documents/553.pdf>); North Dakota (N.D. Courts, *Records Retention Schedule*, <http://www.ndcourts.gov/court/rules/administrative/Ar19sch.htm>); Ohio (Office of the Pub. Defender, *Sealing and Expunging Juvenile Court Records*, http://www.opd.ohio.gov/Juvenile/JV_Sealing.htm); Oregon (Or. State Bar, *Clearing Your Record*, http://www.osbar.org/public/legalinfo/1081_clearingrecord.htm); South Carolina (S.C. Judicial Dep't., *Expungements*, <http://www.judicial.state.sc.us/expungementInfo/expAppProcessJuveniles.cfm>); Vermont (Vt. Crime Info. Ctr., *Expungement-Sealing-Pardon Information*, <http://vcic.vermont.gov/Criminal%20History%20Repository/Expungement-Sealing-Pardon%20Information>); and Wisconsin (Wis. Court Sys., *Frequently Asked Questions*, <http://wcca.wicourts.gov/faq.xsl;jsessionid=DF90113588E0B502000606C162E35DA9.render6>).

160 See, e.g., Illinois (Legal Assistance Foundation, *LAF Legal Clinics and Help Desks*, <http://www.lafchicago.org/images/pdfs/FINAL%20LAF%20Legal%20Clinics%20and%20Help%20Desks.pdf>); Massachusetts (Children's Law Center of Mass., *Sealing Juvenile Records*, <http://www.wclcm.org/edsealingrecords.html>); Minnesota (Council on Crime and Justice, *Consequences of a Juvenile Delinquency Record in Minn.*, <http://www.crimeandjustice.org/pdffiles/MN%20Juvenile%20Records%20FAQ.pdf>); Mississippi (*Expungement Statutes*, <http://www.lawsoft.com/Law/MS/Expungement.pdf>); Pennsylvania (Juvenile Law Cent., *Juvenile Records Expungement*, http://www.jlcc.org/sites/default/files/publication_pdfs/expungeguide.pdf); Washington (Team Child, *Juvenile Record Sealing Project*, http://www.teamchild.org/index.php/education/118/juvenile_record_sealing_project).

161 Cal. Welf. & Inst. Code § 781(g)(2).

162 N.M. Stat. § 32A-2-26.

163 Ind. Code Ann. § 31-39-8-5.

Timing of Notification

In order for notification to be meaningful, it must be timely. A number of states provide youth with notification of their expungement or sealing rights at the adjudication or disposition hearing.¹⁶⁴ Unfortunately, in most jurisdictions, this is long before the youth will become eligible for sealing or expungement and heightens the risk that the juvenile will forget about the opportunity once he or she becomes eligible. For example, in Ohio, at the end of every juvenile hearing in Ohio, “the court shall advise the child of the child’s right to record expungement...,”¹⁶⁵ but no further notice is required.

Seven states and the District of Columbia provide for notification at the time the child is discharged from probation,¹⁶⁶ which is often the last time a court has contact with the child. In Alabama, for example, youth must be notified of their sealing and destruction rights at final discharge from placement or probation.¹⁶⁷ Arizona requires that notice be given when the juvenile is discharged from court supervision.¹⁶⁸ Some states also provide for notice of expungement rights at the initial hearings and again upon discharge from court supervision. In the District of Columbia, youth shall be notified of their rights to have their records sealed at the time a dispositional order is entered and again at the time of final discharge from supervision, treatment, or custody.¹⁶⁹ While these notification provisions are helpful, they should be followed up at the time of eligibility with information and practical instructions.

Several states provide for automatic expungement of juvenile records. These states typically do not require notification of expungement eligibility because expungement is done administratively. Some of these states, however, go further and require notice to the juvenile at disposition that the record will be automatically expunged, or require notice to the juvenile once the record has been expunged. In New Mexico, the juvenile must be notified in writing when he or she turns 18, or at the expiration of legal custody and supervision, whichever occurs later, that the department’s records have been sealed and that the court, the children’s court attorney, the child’s attorney and the referring law enforcement agency have been notified that the child’s records are subject to sealing.¹⁷⁰ In Nevada, the juvenile must receive notice at the time of eligibility that his or her record will be automatically expunged.¹⁷¹

164 Colorado (Colo. Rev. Stat. § 19-1-306(2)(a)); District of Columbia (D.C. Code § 16-2331(f)); Illinois (705 75 Ill. Comp. Stat. § 405/5-615, -915(2.5), -915(2.6)); Kansas (Kan. Stat. § 38-2312(h)); Kentucky (Ky. Rev. Stat. § 610.330); Nebraska (Neb. Rev. Stat. § 43-2,108.02); Nevada (Nev. Rev. Stat. 62H.100-.170, .260); New York (N.Y. Fam. Ct. § 375.1); Ohio R. Juv. Proc. 34(J); *In re Carrie A.O.*, 2006 Ohio App. LEXIS 787 (Ohio Ct. App. 2006) (citing *In re Hairston*, 1996 Ohio App. LEXIS 3447 (Ohio Ct. App. 1996)); Oregon (Or. Rev. Stat. § 419A.260(2)); Texas (Tex. Fam. Code §§ 54.04(h)(2), 58.003, 58.206-58.209(a), (B)); Tex. Code Crim. Proc. art. 45.0216; Washington (Wash. Rev. Code Ann. §§ 13.50.050(17)(ii), (20)).

165 Ohio R. Juv. Proc. 34.

166 Alabama (Ala. Code § 12-15-137); Arizona (Ariz. Rev. Stat. § 8-348); California (Cal. Welf. & Inst. Code § 781(g)(1)), District of Columbia (D.C. Code § 16-2331(f)); Nevada (Nev. Rev. Stat. §§ 62H.100 to .170, .260); New Mexico (N.M. Stat. § 32A-2-26 (F)); Oregon (Or. Rev. Stat. § 419A.260(2)); Texas (Tex. Fam. Code § 54.04(h) (2), 58.003, 58.206-58.209(a)).

167 Ala. Code § 12-15-137(c).

168 Ariz. Rev. Stat. § 8-348.

169 D.C. Code § 16.2335(f).

170 N.M. Stat. § 32A-2-26 (F).

171 Nev. Rev. Stat. Ann. § 62H.120.

CORE PRINCIPLES: NOTIFICATION OF SEALING AND EXPUNGEMENT RIGHTS

State statutes should require notification:

- by the child's attorney throughout the course of the representation;
- by the Court at the final hearing (e.g., at the time of dismissal of the case, at disposition, or at discharge from supervision);
- by the juvenile probation department or its equivalent when juvenile court supervision is discharged;
- by the child's attorney and the court at the time the child is eligible to apply for expungement
- by the 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
- The timeline for automatic expungement or expungement upon application.

Eligibility

Expungement and sealing eligibility vary across states. Age and offense-related exceptions are common, as are waiting periods before sealing or expungement may be available. Additionally, the records to which expungement or sealing applies will vary by state.¹⁷² For example, while one state might permit expungement of court and law enforcement records, another might require records to be kept by law enforcement.

Forty states condition eligibility for expungement on age;¹⁷³ in many states the age

172 For more detailed information on how these laws work together in a particular state, visit (www.jlc.org/juvenilerecords).

173 Alabama (Ala. Code § 12-15-137); Alaska (Alaska Stat. § 47.12.300(d)); Arizona (Ariz. Rev. Stat. § 8-349); Arkansas (Ark. Code § 9-27-309(b)(2)); California (Cal. Welf. & Inst. Code § 781(a)); Connecticut (Conn. Gen. Stat. § 46b-146); Delaware (Del. Code tit. 10 §§ 1015, 1017); Florida (Fla. Stat. § 985.045); Hawaii (Haw. Rev. Stat. §§ 571-88(a)(1), 571-11(1, 2)); Idaho (Idaho Code § 20-525A); Illinois (705 Ill. Comp. Stat. 405/1-9; 405/5-915, 405/5-915(1)(a-d), 405/5-915(2)(a, b)); Iowa (Iowa Code § 692.17(1)); Kansas (Kan. Stat. § 38-2312 (e)); Louisiana (La. Rev. Stat. § C:917, 918, 919, 923); Maryland (Md. Code, Cts. & Jud. Proc. 3-8A-27(c)); Michigan (Mich. Ct. R. 3.925(E)(3)(a); Mich. Ct. R. 3.925(E)(3)(c); Mich. Comp. Laws § 712A.18e(3)); Minnesota (Minn. Stat. § 299C.095(Subd. 2)(d, e), Minn. Stat. § 260B.171); Mississippi (Miss. Code § 43-21-263); Missouri (Mo. Rev. Stat. § 211.321; Mo. Rev. Stat. § 311.326); Montana (Mont. Code § 41-5-216(7)); Nebraska (Neb. Rev. Stat. § 43-2, § 108.03(5)); Nevada (Nev. Rev. Stat. § 62H.150(2, 5), Nev. Rev. Stat. § 62H.130, Nev. Rev. Stat. § 62H.140); New Hampshire (N.H. Rev. Stat. § 169-B:35(II)); New Mexico (N.M. Stat. § 32A-2-26, (A), (H)); New York (N.Y. Fam. Ct. Act §§ 375.1, 375.2 (McKinney 29A)); North Carolina (N.C. Gen. Stat. § 7B-3200(a, h)); North Dakota (N.D. Cent. Code, § 27-20-54(1)); Oklahoma (Okla. Stat. tit. 10A, § 2-6-108(B); Okla. Stat. tit. 10A, § 2-6-109(A)); Oregon (Or. Rev. Stat. § 419A.262, (4, 6, 8)); Pennsylvania (18 Pa. Const. Stat. § 9123); South Carolina (S.C. Code § 63-19-2050(A, B)); Tennessee (Tenn. Code §§ 37-1-153; 40-39-202; 37-1-153 (f)(1), (F)(2), (B), (C)); Texas (Tex. Fam. Code § 58.003(a), (c), (I), Tex. Fam. Code § 58.006; Tex. Fam. Code Ann. § 58.203); Utah (Utah Code § 78A-6-1105(1)(a), (1)(b), 2(b), (2)(c)); Vermont (Vt. Stat. tit. 13 § 2802b); Virginia (Va. Code § 16.1-306(A)); Washington (Wash. Rev. Code §§ 13.50.050(17)(a)(i), (c),(17)(d),(a)(i),(a)(ii)(18)); West Virginia (W. Va. Code, § 49-5-18(a); 2013 W. Va. Laws, S.B. 601); Wisconsin (Wis. Stat. § 938.355(4m)(a). See also *In re Adam D.B.*, 305 Wis.2d 656 (Wis. App., 2007); *State v. Eric A.*, 332 Wis.2d 805 at *2 (Wis. App., 2011)); and Wyoming (Wyo. Stat. § 14-6-241). However, in some states, additional requirements are imposed: in Louisiana, for example, a person who is at least 17 years old can petition the juvenile court to have his or her records permanently removed (La. Rev. Stat. § C:917). However, depending on the type of offense, the person must also have waited specified periods of time (two or more years since the youth satisfied the conditions of the most recent judgment against him or her for a misdemeanor offense, and five or more years for a felony).

of eligibility is 18 or 21.¹⁷⁴ Minnesota, on the other hand, retains records of children against whom a delinquency petition was filed and continued without adjudication, or of delinquency adjudications for gross-misdemeanors or felonies, until the person reaches 28.¹⁷⁵ Many states also condition expungement eligibility on the amount of time that has passed since the youth was discharged from the court’s supervision, or discharged from placement.¹⁷⁶

Eligibility can also depend on subsequent criminal or juvenile court involvement, or whether the person committed specified crimes.¹⁷⁷ Some states categorically exclude adjudications for offenses that would be felonies if committed by an adult.¹⁷⁸ Twenty-six

174 For example, in Arizona, California, and Connecticut, juveniles may petition for sealing when they turn eighteen (*See* Ariz. Rev Stat. § 8-349; Cal. Welf. & Inst. Code § 781(a); Conn. Gen. Stat. § 46b-146), and in Arkansas, Iowa, and Maryland, they may petition when they are twenty-one (*See* Ark. Code § 9-27-309(b)(2); Iowa Code § 692.17(1); Md. Code § 3-8A-27(c)).

175 Minn. Stat. § 299C.095(2).

176 Alabama (Ala. Code § 12-15-136 (sealing); Ala. Code § 12-15-137 (destruction)); Arkansas (Ark. Code § 9-27-309(b)(1)(A)-(B)); *See also* L.H. v State, 973 S.W2d 477, 333 Ark. 613 (1998)); California (Cal. Welf. & Inst. Code § 781(a)); Colorado (Co. Rev Stat. §§ 19-1-306(6)(a), 19-1-306(7)(e), § 19-1-306(9)); Connecticut (Conn. Gen. Stat. § 46b-146); Delaware (Del. Code tit. 10 §§ 1017(a), 1018); District of Columbia (D.C. Code §§ 16-2335, 16-2335(a, e)); Florida (Fla. Stat. § 943.0582); Georgia (Ga. Code § 15-11-79.2); Idaho (Idaho Code § 20-525A); Illinois (705 Ill. Comp. Stat. 405/1-9; 405/5-915, 405/5-915(1)(a-d), 405/5-915(2)(a, b)); Indiana (Ind. Code § 31-39-8-2, 3, Ind. Code § 35-38-5-5); Iowa (Iowa Code § 232.150(1)); Kansas (Kan. Stat. § 38-2312, (e)); Kentucky (Ky. Rev Stat. § 610.330); Louisiana (La. Stat. C: 917, 918, 919, 923; Maine (15 Me. Rev Stat. § 3308(8) (A)(1)-(3)); Massachusetts (Mass Gen. Laws 276 § 100B); Michigan (Mich. Code Rev 3.932(C)(7), Mich. Code Rev 3.925(E) (3)(b)); Minnesota (Minn. Stat. § 299C.095(2)(b), (2)(c), Minn. Stat. § 260B.198(6)); Montana (Mont. Code § 41-5-216(3); *State v. Radi*, 185 Mont. 38, 604 P2d 318 (Mt. S. Ct. 1979)); Nebraska (Neb. Rev Stat. § 43-2,108.01; Neb. Rev Stat. § 43-2,108.03, *In re Candice H.*, 284 Neb. 935, 936-93 (Neb. S. Ct. 2012); New Jersey (N.J. Stat. § 2C:52-4, *In re R.N.*, 2012 WL 3490821 (N.J. Super. 2012); *In re J.B.*, 26 N.J. Super. 496 (N.J. Super. 2012); *In re J.B.*, 426 N.J. Super. 496, 509 (N.J. Super., 2012)); North Carolina (N.C. Gen. Stat. § 7B-3200(b)(2)); North Dakota (N.D. Cent. Code § 54-23.4-17(5), N.D. Cent. Code, § 27-20-54(1), N.D. Cent. Code §§ 12.1-20-03, 12.1-20-04, or 12.1-20-07, N.D. Cent. Code § 25-03.3-04); Ohio (Ohio Rev. Code § 2151.356(B)(1), (B)(1)(c), *Juv. R. 34* (citing Ohio Rev. Code § 2151.358(e)); Oklahoma (Okla. Stat. tit. 10A, § 2-6-108); Oregon (Or. Rev Stat. § 419C.610, Or. Rev Stat. § 137.225(1)(a), Or. Rev Stat. §§ 419A.262(2)(a)-(e)); Pennsylvania (18 Pa. Const. Stat. § 9123); Rhode Island (R.I. Gen. Laws § 12-1.3-2 (b), (c)); South Dakota (S.D. Codified Laws § 26-7A-115); Tennessee (Tenn. Code § 37-1-153, § 40-39-202, § 37-1-153 (f)(1), (F)(2), (B), (C)); Texas (Tex. Fam. Code § 58.003(a)); Vermont (Vt. Stat. tit. 33 § 5119(h) (1), (a)(2), (g)); Washington (Wash. Rev Code § 13.50.050(12)(a); Wash. Rev Code § 13.50.050(12)(b)); *State v. Sanchez*, 169 Wash. App. 405, 409 n.4 (Wash. App. Div. 1, 2012) (citing Rinal B. Report, on Substitute SB 5204, 62 Leg. Reg. Sess. (Wash. 2011)); and West Virginia (W Va. Code, § 49-5-18(a); 2013 W Va. Laws, S.B. 601). The statutes vary in terms of how they describe the last point of court contact, or the date from which the waiting period begins. For example, in California, an individual must wait five years from the date of the last appointment with a probation officer or the date on which the person was taken before a probation officer pursuant to Section 626 (which governs temporarily taking a child into custody, either for the purpose of providing “shelter care, counseling, or diversion services,” or to commence juvenile court jurisdiction), or the date on which the person was last taken before any officer of a law enforcement agency. Cal. Welf. & Inst. Code § 781(a).

177 *See, e.g.*, Ariz. Rev Stat. § 8-349 (requiring that an individual seeking destruction of his or her records must not have any subsequent felony convictions or pending charges, and must never have been adjudicated of certain violent offenses); Colo. Rev. Stat. § 19-1-306 (enabling a petition for expungement after five years if the juvenile had been adjudicated a repeat or mandatory juvenile offender and if the juvenile has no further criminal violations).

178 *See, e.g.*, Ky. Rev Stat. § 610.330.

States where expungement eligibility based upon age

Alabama
Alaska
Arizona
Arkansas
California
Connecticut
Delaware
Florida
Hawaii
Idaho
Illinois
Iowa
Kansas
Louisiana
Maryland
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
New York
North Carolina
North Dakota
Oklahoma
Oregon
Pennsylvania
South Carolina
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

States that categorically exclude offenses against persons or felony offenses from expungement eligibility

Alabama
Alaska
Arizona
Colorado
Delaware
Idaho
Illinois
Kansas
Kentucky
Louisiana
Michigan
Minnesota
Nevada
New Jersey
New York
North Carolina
Ohio
Oregon
Rhode Island
South Carolina
Texas
Utah
Vermont
Virginia
Washington
Wyoming

States where offenses that require sex offender registration are ineligible for expungement

Florida
Kansas
Minnesota
Montana
North Dakota
Oregon
Pennsylvania
Tennessee
Texas

states categorically exclude offenses against persons or felony offenses.¹⁷⁹ In nine states, offenses that require sex offender registration are ineligible for expungement.¹⁸⁰ And in some states, individuals adjudicated delinquent for more than one offense are ineligible for expungement. In Michigan, a person who has an adult felony conviction following a juvenile adjudication cannot apply to have the juvenile record set aside.¹⁸¹ In Nevada, before ordering certain records to be sealed, the juvenile court will hold a hearing to determine whether the child has been convicted of a felony or any misdemeanor involving moral turpitude and whether the child has been rehabilitated to the satisfaction of the court.¹⁸²

Thirteen states (including some that overlap with previous categories) also exclude drug and sex offenses.¹⁸³ Alabama precludes expungement for any drug-related adjudication.¹⁸⁴ Idaho excludes, among other offenses, those related to drug trafficking.¹⁸⁵

Just as some states exempt certain offenses from sealing or expungement, others affirmatively provide for expungement or sealing of records for certain offenses. In Louisiana, records concerning conduct or conditions that resulted in a misdemeanor or felony adjudication for prostitution can be expunged upon a showing that, during the time of the commission of the offense, the person seeking expungement was a victim of trafficking of children for sexual purposes. In Delaware, any individuals who receive a gubernatorial pardon are automatically entitled to expungement of their juvenile record.¹⁸⁶

179 Alabama (Ala. Code § 12-15-137(a)(2)); Alaska (Alaska Stat. § 47.12.300); Arizona (Ariz. Rev. Stat. § 8-349; Ariz. Rev. Stat. § 8-348); Colorado (Colo. Rev. Stat. § 19-1-306(7)(a)); Delaware (Del. Code tit. 10 § 1018(a)); Idaho (Idaho Code § 20-525A (4)); Illinois (705 Ill. Comp. Stat. § 405/5-915(2)); Kansas (Kan. Stat. § 38-2312 (b, c)); Kentucky (Ky. Rev. Stat. § 610.330(1)); Louisiana (La. Stat. C. 918); Michigan (Mich. Code Rev 712A.18e(1)); Minnesota (Minn. Stat. § 260B.198(6), *In re: Welfare of J.J.P.*, 831 N.W2d 260, 266-70 (Minn. 2013)); Nevada (Nev. Rev. Stat. § 62H.130, Nev. Rev. Stat. § 62H.150(6), Nev. Rev. Stat. § 62H.140); New Jersey (N.J. Stat. § 2C:52-4.1); New York (N.Y. Fam. Ct. Act §§ 375.2, 301.2 (McKinney 29A)); North Carolina (N.C. Gen. Stat. § 7B-3200(b)(1); N.C. Gen. Stat. § 7B-2102(d)); Ohio (Ohio Rev. Code §§ 2151.356(A), 2151.358(C), *State v. Muller*, 2000 WL 1681025 (2000), *In re Rontar*, 2006 WL 3703273); Oregon (Or. Rev. Stat. § 137.225(5), §§ 419A.262(9a, 9b, 9bF), 419A.260(1)(d)(J)); Rhode Island (R.I. Gen. Laws § 12-1.3-2, R.I. Gen. Laws § 12-1.3-1); South Carolina (S.C. Code § 63-19-2050(A, B)); Texas (Tex. Fam. Code § 58.003(n); Tex. Fam. Code § 58.003 at (b) (citing §§ 53.045, 51.031), (g-1); Tex. Fam. Code § 58.202); Utah (Utah Code § 78A-6-1105(5)); Vermont (13 Vt. Stat. § 5301, § 5119(a)(1) (A)); Virginia (Va. Code §§ 16.1-306, 16.1-306(B), 46.2-383); Washington (Wash. Rev. Code § 13.50.050(12)(v)); and Wyoming (Wyo. Stat. § 14-6-241).

180 Florida (Fla. Stat. § 943.0582); Kansas (Kan. Stat. § 38-2312 (b), (c)); Minnesota (Minn. Stat. § 260B.198(6); *In re J.J.P.* 831 N.W2d 260, 266, 270 (Minn. 2013)); Montana (Mont. Code § 41-5-216(3), *State v. Radi*, 185 Mont. 38, 604 P.2d 318 (Mont. 1979)); North Dakota (N.D. Cent. Code §§ 54-23.4-17(5), 27-20-54(1), 12.1-20-03, 12.1-20-04, 12.1-20-07, 25-03.3-04); Oregon (Or. Rev. Stat. §§ 137.225(5), 419A.262(9)(a), 419A.260(1)(d)(J), 137.225(9)(b)(F)); Pennsylvania (18 Pa. Const. Stat. § 9123); Tennessee (Tenn. Code §§ 37-1-153, § 40-39-202, § 37-1-153(f)(1), (F)(2), (B), (C)); Texas (Tex. Fam. Code § 58.003(a)).

181 Mich. Comp. Laws § 712A.18e.

182 Nev. Rev. Stat. § 62H.150.

183 Alabama (Ala. Code § 12-15-137(a)(2)); Alaska (Alaska Stat. § 47.12.300); Arizona (Ariz. Rev. Stat. §§ 8-348, 8-349); Colorado (Colo. Rev. Stat. § 19-1-306(7)(a)); Delaware (10 Del. Code § 1018(a)); Idaho (Idaho Code § 20-525A(4)); Michigan (Mich. Comp. Laws 712A.18e(1)); Minnesota (Minn. Stat. § 260B.198(6), *In re J.J.P.* 831 N.W2d 260, 266, 270 (Minn. 2013)); New Jersey (N.J. Stat. § 2C:52-4.1); New York (N.Y. Fam. Ct. Act §§ 375.2, 301.2 (McKinney 29A)); South Carolina (S.C. Code § 63-19-2050(A, B)); Vermont (13 Vt. Stat. §§ 5301, 5119(a)(1)(A)); Virginia (Va. Code §§ 16.1-306(B), 46.2-383).

184 Ala. Code § 12-15-137(a)(2).

185 Idaho Code Ann. § 20-525A.

186 Del. Code tit. 10 § 1013.

Nineteen states and the District of Columbia allow expungement for any type of juvenile offense, without exception.¹⁸⁷ However, in at least some of these states, expungement is at the discretion of a prosecutor or judge, or is available only with the prosecutor's consent. In Pennsylvania, prosecutors have veto power;¹⁸⁸ other states simply require notice to the prosecutor.¹⁸⁹ All of these practices can limit eligibility for sealing or expungement. Other considerations may also affect a youth's ability to seal or expunge his records. Examples include how long the child has been out of the court system if the statute doesn't require a certain amount of time to have passed before eligibility,¹⁹⁰ or what the young person has been accomplishing in or outside of school. Some states require a finding that the destruction of records "would be in the interests of justice" and "would further the rehabilitative process of the applicant."¹⁹¹ In Maine, which provides for sealing but not expungement, the court can refuse to seal a juvenile record if it decides that "the general public's right to information substantially outweighs the juvenile's interest in privacy."¹⁹²

Finally, although some states will seal or expunge any juvenile offense, they may not do so immediately or completely. In Louisiana, for example, a youth who is at least 17 years old can petition the juvenile court to have his or her records permanently removed.¹⁹³ However, depending on the type of offense, the person might also be required to wait specified periods of time (two or more years since the youth satisfied the conditions of the most recent judgment against him or her for a misdemeanor offense, and five or more years for a felony) before petitioning for expungement. Colorado limits the filing of applications for expungement to one per any 12-month period.¹⁹⁴ Colorado and other

187 Arkansas (Ark. Code § 9-27-309(b)(2)); California (Cal. Welf. & Inst. Code § 781(a)); Connecticut (Conn. Gen. Stat. § 46b-146); District of Columbia (D.C. Code § 16-2335); Georgia (Ga. Code Ann. § 15-11-79.2); Hawaii (Haw. Rev. Stat. § 571-88(a)(1), 571-11(1, 2)); Indiana (Ind. Code § 10-13-4-13); Iowa (Iowa Code §§ 232.150, 692.17); Maine (Me. Rev. Stat. tit. 15 §3308(8)); Maryland (Md. Code §3-8A-27(c)); Massachusetts (Mass. Gen. Laws 276 §§ 100B, 100C); Mississippi (Miss. Code § 43-21-263); Missouri (Mo. Rev. Stat. §§ 211.321, 311.326); Nebraska (Neb. Rev. Stat. §§ 43-2, 108.03(5)); New Hampshire (N.H. Rev. Stat. § 169-B:35(II)); New Mexico (N.M. Stat. § 32A-2-26(A, H)); Oklahoma (Okla. Stat. tit. 10A §§ 2-6-108(B), 2-6-109(A)); South Dakota (S.D. Codified Laws § 26-7A-114, 115, 116, 105); West Virginia (W Va. Code § 49-5-18(a); 2013 W Va. Laws, S.B. 601); Wisconsin (Wis. Stat. § 938.355(4m)(a), *See also In re Adam DB.*, 305 Wis.2d 656 (Wis. App., 2007), *State v. Eric A.*, 332 Wis.2d 805 at *2 (Wis. App. 2011)).

188 18 Pa. Const. Stat. § 9123.

189 *See, e.g.*, Alabama (Ala. Code § 12-15-136); Rhode Island (R.I. Gen. Laws § 12-1.3-3); Vermont (Vt. Stat. tit. 33 § 5119(b)).

190 *See, e.g.*, Ind. Code § 31-39-8-3.

191 *See, e.g.*, Ariz. Rev. Stat. § 8-349(F). *See also* Minn. Stat. § 260B.198 and *In re Welfare of J.J.P.*, 831 N.W.2d 260 at 270 (Minn. 2013), which provides discretion for a juvenile court to expunge a juvenile record at any time, with the "court's discretion [...] guided by a balancing test that examines whether expungement of the order adjudicating the juvenile delinquent would yield a benefit to the petitioner that outweighs the detriment to the public in sealing the record and the burden on the court in issuing, enforcing, and monitoring the expungement order. Missouri, also, enables expungement after a child has turned 17, if the court finds that "it is in the best interest of the child that such action or any part thereof be taken". Mo. Rev. Stat. § 211.321.

192 Me. Stat. tit. 15 § 3308(8)(B).

193 La. Stat. § C:917.

194 Colo. Rev. Stat. § 19-1-306(9).

States that allow expungement for all juvenile offenses

Arkansas
California
Connecticut
District of Columbia
Georgia
Hawaii
Indiana
Iowa
Maine
Maryland
Massachusetts
Mississippi
Missouri
Nebraska
New Hampshire
New Mexico
Oklahoma
South Dakota
West Virginia
Wisconsin

states typically require completion of conditions of probation, payment of restitution, and payment of fines or court costs prior to the sealing or expungement of records.¹⁹⁵

Sealing and Expungement Procedures

Automatic Sealing Or Expungement

Automatic sealing or expungement means that juvenile records are sealed or expunged without any action on the part of the juvenile. Nebraska and Alaska have exemplary policies. In Nebraska, once children turn 17, if they have successfully completed their disposition or the case is “successfully terminated,” the court is alerted and a motion to seal the record is automatically generated.¹⁹⁶ In Alaska, the official court records of all juvenile proceedings are automatically sealed within thirty days of a minor’s eighteenth birthday—or, if the court retains jurisdiction over the juvenile past his or her eighteenth birthday, the records are sealed within thirty days after the court ends jurisdiction over the youth.¹⁹⁷

In Montana, juvenile court records are automatically sealed (and juvenile probation records destroyed) on the juvenile’s eighteenth birthday.¹⁹⁸ New Hampshire seals all court records and other records, including police records when the juvenile reaches age 21,¹⁹⁹ as does Nevada, except for records of certain specified offenses.²⁰⁰ Maryland provides that all files and records be sealed upon termination of the juvenile court’s jurisdiction.²⁰¹ Arkansas, too, statutorily provides for automatic expungement when the young person turns 21.²⁰²

In many states, automatic expungement is available sooner for juveniles whose court involvement did not result in an adjudication of delinquency. In several states, including Colorado,²⁰³ Georgia,²⁰⁴

195 Colo. Rev Stat. § 19-1-306(7)(c). *See also* Ariz. Rev Stat. § 8-349. In Iowa, too, 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 and the restitution amount will be put into a judgment and lien until the restitution is paid in full. Iowa Code § 232.150(1)(3)(c). New Jersey has a similar statute: under N.J. Stat. 2C:52-11, in contested cases, an expungement is granted if the person has not, in the intervening period, violated any conditions of probation or parole, and has not been convicted of any previous or subsequent criminal acts—it also only works one time (the person cannot have had “a prior or subsequent criminal matter dismissed because of acceptance into a supervisory treatment or other diversion program”). Expungement can also be granted without a hearing if, prior to the hearing, there is no objection from those law enforcement agencies notified or from those offices or agencies that are required to be served, “and no reason . . . appears to the contrary.” N.J. Stat. 2C:52-11.

196 Neb. Rev Stat. §§ 43-2, 108.04(5, 6, 7). *See also* Va. Code § 16.1-306. On January 2 of each year, or on another date designated by the court, files, papers, and records, including electronic records, associated with any proceeding involving juveniles who meet the statutory expungement criteria are automatically expunged.

197 While this review is limited to sealing and expungement of juvenile records, Alaska’s statute goes further. This includes juvenile records, as well as driver’s license proceedings, criminal proceedings, and punishments assessed against him or her. At that point, the records may not be used unless authorized by an order of the court upon a finding of good cause, or in the preparation of a pre-sentencing report. Alaska Stat. § 47.12.300(d).

198 Mont. Code. § 41-5-216.

199 N.H. Rev Stat. § 169-B:35.

200 Nev Rev Stat. § 62H.140.

201 Md. Code, Cts. & Jud. Proc. §3-8A-27(c).

202 Ark. Code § 9-27-325(d). The statute also provides for the juvenile court to be able to expunge a record at any time.

203 Colo. Rev Stat. § 19-1-306(6)(a).

204 Under Ga. Code § 15-11-79.2, juvenile delinquency files shall be sealed by the court upon dismissal of the petition or upon completion of informal adjustment.

Pennsylvania,²⁰⁵ Missouri,²⁰⁶ and Nebraska,²⁰⁷ a person is eligible for expungement immediately upon the equivalent of a “not guilty” finding at an adjudicatory hearing, dismissal of the petition as a result of non-prosecution, or successful completion of a juvenile diversion program, a deferred adjudication, or an informal adjustment.²⁰⁸ In a recently enacted law in Illinois, law enforcement records pertaining to a minor who has been arrested can be automatically expunged if: (1) the minor had been arrested and no delinquency petition was filed with the clerk of the circuit court; (2) the minor has attained the age of 18 years; and (3) since the date of the minor’s most recent arrest, at least 6 months have elapsed without an additional arrest.²⁰⁹

In Mississippi, records related to dismissed cases, diverted cases, cases in which the juvenile was ruled not involved, or cases where charges were not substantiated must be expunged immediately following the court’s discharge of the case, without any application or action necessary by the juvenile.²¹⁰ In Connecticut, if *nolle prosequi* is entered, the records are erased thirteen months after that order is entered.²¹¹ Minnesota is at the other end of the spectrum, where even records of cases referred to diversion or continued for dismissal do not get destroyed until the child reaches the age of 21.²¹²

Additionally, in many states, although sealing or expungement may be labeled “automatic,” it is not so in practice. In Vermont, “sealing is automatic,” except that the process allows for objections and, if necessary, a hearing; 60 days prior to automatic sealing, notification will be sent to the state’s attorney who may object and a hearing may be held to address the objection.²¹³

205 18 Pa. Const. Stat. § 9123 provides for the expungement of juvenile delinquency records and records for summary offenses committed while the individual was under 18 years of age, after 30 days’ notice to the district attorney after a petition is filed. This applies in cases where a complaint is filed and not substantiated or the petition which is filed as a result of a complaint is dismissed by the court; where a written allegation is filed which was not approved for prosecution; where six months have elapsed since the individual successfully completed an informal adjustment and no proceeding seeking adjudication or conviction is pending; or where six months have elapsed since the final discharge of the person from supervision under a consent decree or diversion program, and no proceeding seeking adjudication or conviction is pending. However, the Pennsylvania statute is not ideal in that it still requires a young person to petition for expungement, and does not process the expungement automatically. A better statute is one that automatically deletes the charges and arrest records, without requiring the young person to take any action. At the very least, a young person should be notified about this immediate eligibility, and provided with the necessary information to get the expungement taken care of as expeditiously as possible.

206 Mo. Rev. Stat. § 211.151(3) allows for closing an arrest record, including photographs and fingerprints, if a child is not charged within 30 days of being taken into custody. If the child is not charged within one year, the arrest record can be expunged. The Court can also expunge the police record if it determines that the arrest was based on false information, there is no probable cause at the time of the expungement action, no charges will be pursued, the youth has no prior or subsequent misdemeanor or felony convictions, and no civil action is pending. Mo. Rev. Stat. § 610.122.

207 Neb. Rev. Stat. § 42-2.108.01 (juvenile records can be sealed when no petition or complaint was filed against the juvenile, if the juvenile has successfully completed mediation or diversion, or the juvenile has satisfactorily completed juvenile probation, supervision, or another treatment or rehabilitation program).

208 Other states provide for similar relief, but require youth to wait longer in order to take advantage of it. For example, under Arizona law individuals whose referrals resulted in diversion, adjudication as delinquent for most misdemeanor offenses, for some felony offenses, or whose referrals resulted in no further action may petition for the destruction of their juvenile court and juvenile corrections records, but must wait until they are over 18. Ariz. Rev. Stat. § 8-349. The juvenile also must not have any felony convictions or pending charges, have never been adjudicated of certain violent offenses, successfully completed his probation and paid restitution, and the court must find that “[t]he destruction of the records is in the interests of justice,” and “would further the rehabilitative process of the applicant.” Id. at (C). This represents a much more onerous set of eligibility requirements for youth who had very minor charges (i.e. misdemeanors or charges that made them eligible for diversion).

209 705 Ill. Comp. Stat. 17/1; <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=978&GAID=12&DocTypeID=SB&LegID=70667&SessionID=85&GA=98>

210 See Miss. Code. § 43-21-263.

211 Conn. Gen. Stat. § 46b-133a(b). See also, e.g., Miss. Code § 43-21-263.

212 Minn. Stat. § 299C.095(2).

213 Vt. Stat. tit. 33 § 5119(a)(2).

States that describe process as automatic because court or administrative agency may commence the process

District of Columbia
Georgia
Indiana
Iowa
Kentucky
Maryland
Missouri
Nebraska
New York
Oklahoma
Oregon
Pennsylvania
South Dakota
West Virginia

In some states, the passage of time that is required for “automatic expungement” is so long that the rationale for expungement is undermined. For example, in some states, certain records must be retained for 10 years or until the youth turns age eighteen, whichever is later. “Juvenile Sex Offense Files” are automatically expunged in North Dakota but not until fifty years after the date of disposition or court action.²¹⁴

Finally, in thirteen states and the District of Columbia, the process is labeled as “automatic” but it is not because the process must still be initiated by a party other than the juvenile himself.²¹⁵ Typically this is the court, the prosecutor or probation.²¹⁶ Georgia provides that “the court *shall* order the sealing of the files and records in the case” when a petition has been dismissed or an informal adjustment completed, but either the juvenile must apply for sealing, or the court can do it on its own motion.²¹⁷ Similarly, Kentucky provides that the court, “on its own motion,” or on the motion of a probation officer of the court, a representative of the Department of Juvenile Justice or the cabinet, or any other interested person, shall initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court.²¹⁸ However, this is not automatic, because someone must determine that statutory requirements have been met before proceeding, i.e., that either two years have passed since the termination of the court’s jurisdiction over the person, or that two years have passed since the unconditional release from the agency, and the person has not been convicted of a felony or adjudicated in a public offense action and no felony proceedings are pending against him or her.²¹⁹

Sealing or Expungement by Petition or Other Application

Procedures for sealing or expunging records vary widely. Twenty-four states²²⁰ require youth to initiate the process for sealing or expungement of their records, placing the burden on the youth to obtain information about his eligibility and the process for obtaining sealing or expungement; in some instances, the youth may be required to pay a fee or court costs. The youth may require the assistance of counsel to navigate the system.

214 N.D. Cent. Code §§ 12.1-20-03, 12.1-20-04, 12.1-20-07, 25-03.3-04, 27-20-54(1); 27-20-54.

215 District of Columbia (D.C. Code §§ 16-2335, 16-2335(a, e)); Georgia (Ga. Code § 15-11-79.2); Indiana (Ind. Code § 31-39-8-3); Iowa (Iowa Code § 692.17(1)); Kentucky (Ky. Rev. Stat. § 610.330); Maryland (Md. Code, Cts. & Jud. Proc. 3-8A-27(c)); Missouri (Mo. Rev. Stat. § 211.321; Mo. Rev. Stat. § 311.326); Nebraska (Neb. Rev. Stat. § 43-2, § 108.03(5)); New York (N.Y. Fam. Ct. Act §§ 375.1, 375.2 (McKinney 29A)); Oklahoma (Okla. Stat. tit. 10A, § 2-6-108(B)); Okla. Stat. tit. 10A, § 2-6-109(A)); Oregon (Or. Rev. Stat. § 419A.262, (4, 6, 8)); Pennsylvania (18 Pa. Const. Stat. § 9123); South Dakota (S.D. Codified Laws § 26-7A-114, 115, 116, 105); West Virginia (W. Va. Code, § 49-5-18(a); 2013 W. Va. Laws, S.B. 601).

216 *See, e.g.*, Ark. Code § 9-27-309, which allows the juvenile court to expunge juvenile records at any time.

217 Ga. Code § 15-11-79.2 (emphasis added).

218 Ky. Rev. Stat. § 610.330(1).

219 Ky. Rev. Stat. § 610.330(1).

220 Alabama (Ala. Code § 12-15-136); Arizona (Ariz. Rev. Stat. § 8-349(E)); California (Cal. Welf. & Inst. Code § 781(g)(2)); Colorado (Colo. Rev. Stat. 19-1-306(5a)); Connecticut (Conn. Gen. Stat. §§ 46b-146, 46b-133a(b)); Hawaii (Haw. Rev. Stat. §§ 571-88, 571-11(1, 2)); Idaho (Idaho Code § 20-525A; Idaho Juv. R. 28); Illinois (705 Ill. Comp. Stat. § 405/5-915); Kansas (Kan. Stat. § 38-2312); Louisiana (La. Stat. § C:917-919); Maine (Me. Rev. Stat. tit. 15 § 3308(8)(A)); Massachusetts (<http://www.mass.gov/courts/docs/probation/sealingpetition.pdf>); Michigan (Mich. Comp. Laws § 712A.18e (4, 5, 6, 7)); Minnesota (Minn. Stat. § 260B.198(6)); Mississippi (Miss. Code § 43-21-263(2)); New Jersey (N.J. Stat. § 2A:4A-62); North Carolina (N.C. Gen. Stat. § 7B-3200(a, b)); Rhode Island (R.I. Gen. Laws § 12-1.3-3); South Carolina (S.C. Code § 63-19-2050); Tennessee (Tenn. Code § 37-1-153); Texas (Tex. Fam. Code § 58.003 (a, g)); Utah (Utah Code § 78A-6-1105(c, d, 1a, 6a, e)); Wisconsin (Wis. Stat. § 938.355(4m) (a)); Wyoming (Wyo. Stat. § 14-6-241).

Fourteen states and the District of Columbia allow the court or an administrative agency to file the petition or commence the sealing or expungement process in addition to permitting the youth to file himself.²²¹ In Delaware, for example, the Attorney General responsible for prosecuting a delinquency action must affirmatively choose to petition the court to expunge the arrest record of a child if, at the time of a state motion to dismiss or entry of a *nolle prosequi* in the case, the State has determined that the continued existence and possible dissemination of information about the arrest would constitute a “manifest injustice” to the juvenile.²²² By contrast, in Mississippi, a young person does not have the right to initiate the expungement (destruction) process; only the court can expunge records, and only with the approval of the director of the Department of Archives and History.²²³

Approval by someone other than the judge may be required before a court can order expungement. In Pennsylvania, for example, youth may petition for early expungement before the statutorily mandated five year waiting period has expired, but expungement will be granted only if the prosecutor provides consent.²²⁴ In Montana, expungement requires waiting 10 years after sealing, and the juvenile court judge or county attorney must consent to the destruction.²²⁵

Some states place additional burdens upon a youth seeking expungement. For example, Alabama not only requires individuals to file motions themselves, but also to collect and file the records, reports or information contained in their legal and social files.²²⁶ Massachusetts requires that youth obtain copies of their record from the court where they were arraigned or from the Commissioner of Probation before initiating the process; requests to seal in Massachusetts must also be notarized, which can be an impediment for young people.²²⁷

States where juvenile must file petition

Alabama
Arizona
California
Colorado
Connecticut
Hawaii
Idaho
Illinois
Kansas
Louisiana
Maine
Massachusetts
Michigan
Minnesota
Mississippi
New Jersey
North Carolina
Rhode Island
South Carolina
Tennessee
Texas
Utah
Wisconsin
Wyoming

221 Delaware (10 Del. Code §§ 1015, 1015(a, b, c), 1017(b), 1018(d)); District of Columbia (D.C. Code § 16-2335) Georgia (Ga. Code § 15-11-79.2); Indiana (Ind. Code § 10-13-4-13); Iowa (Iowa Code § 692.17(1)); Kentucky (Ky. Rev Stat. § 610.330, (1)); Maryland (Md. Code § 3-8A-27); Missouri (*See* Mo. Rev Stat. §§ 211.321, 311.326, 610.123); Nebraska (Neb Rev Stat. §§ 43-2, 108.03(5a, 6); *In re Candice H.*, 284 Neb. 935, 940 (Neb. 2012)); New York (N.Y Fam. Ct. Act §§ 375.1(1), 375.3 (McKinney 29A)); *In re Daniel PP*, 224 A.D.2d 906 (N.Y.A.D. 3 Dept., 1996)); Oklahoma (Act of May 31, 2013, sec. 19, § 2-6-1-8, 2013 Okla. Sess. Law Serv. Ch. 404 (S.B. 679); Okla. Stat. tit. 10A, § 2-6-108(B)); Oregon (Or. Rev Stat. § 419A.250(5)(d)); Pennsylvania (18 Pa. Const. Stat. § 9123); South Dakota (S.D. Codified Laws §§ 26-7A-114, 26-7A-115); West Virginia (W. Va. Code § 49-5-18; 2013 W. Va. Laws, S.B. 601).

222 10 Del. Code § 1018.

223 Miss. Code § 43-21-265.

224 18 Pa. Const. Stat. § 9123.

225 Mont. Code. § 41-5-216.

226 Ala. Code § 12-15-136.

227 Mass Gen. Laws § 100B.

States where hearing held on sealing or expungement

California

Colorado

Connecticut

District of Columbia

Georgia

Idaho

Illinois

Kansas

Kentucky

Louisiana

Maryland

Michigan

Missouri

Nebraska

Nevada

New Jersey

North Carolina

Ohio

Oklahoma

Oregon

Rhode Island

Texas

Vermont

Washington

Wisconsin

Sealing or Expungement Hearing

In twenty-four states and the District of Columbia²²⁸ a hearing may be held to consider a petition for sealing or expungement.²²⁹ In yet other states, the hearing requirement is waived if the parties consent,²³⁰ or required only if the prosecutor or law enforcement object to the expungement petition.²³¹ In Washington, the court, any party or any other interested person may request a hearing to seal or redact the court records.²³² In Texas, a hearing on a sealing petition is considered a right that a young person can waive.²³³

How hearings are conducted also varies across states. In Michigan, for example, the statute provides great detail about what information must be presented to the court; it lists the parties, including the victim and prosecutor that can offer evidence during the hearing.²³⁴ Michigan's hearing procedures are formal, requiring the filing of affidavits and taking of testimony as appropriate; it also specifies the records that must be set aside if the court "determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public

228 California (Cal. Welf. & Inst. Code § 781(g)(2)); Colorado (Colo. Rev Stat. § 19-1-306(5a)); Connecticut (Conn. Gen. Stat. §§ 46b-146, 46b-133a(b)); District of Columbia (DC. Code § 16-2335(a)); Georgia (Ga. Code § 15-11-79.2); Idaho (Idaho Code § 20-525A; Idaho Juv R. 28); Illinois (705 Ill. Comp. Stat. § 405/5-915); Kansas (Kan. Stat. § 38-2312); Kentucky (Ky. Rev Stat. § 610.330); Louisiana (La. Stat. § C: 917, 918, 919); Maryland (Md. Rule 11-601); Michigan (Mich. Comp. Laws §§ 712A.18e(4-7); Missouri (*See* Mo. Rev Stat. §§ 211.321, 311.326, 610.123); Nebraska (Neb Rev Stat. §§ 43-2,108.03(5a, 6); *In re Interest of Candice H.*, 284 Neb. 935, 940 (Neb. 2012)); Nevada (Nev Rev Stat. § 62H.150(2, 5), 62H.13); New Jersey (N.J. Stat. § 2A:4A-62); North Carolina (N.C. Gen. Stat. §§ 7B-3200(a, b); Ohio (Ohio Rev Code §§ 2151.356(B)(1)(b, d, e)), 2151.357(D), 2151.358(A)); Oklahoma (Act of May 31, 2013, sec. 19, § 2-6-108, Okla. S.B. 679 (2013)), Okla. Stat. tit. 10A, § 2-6-108(B)); Oregon (Or. Rev Stat. §§ 419C.610, 137.225; 419A.262(1)-(2)); Rhode Island (R.I. Gen. Laws § 12-1.3-3); Texas (Tex. Fam. Code § 58.003 (a, g)); Vermont (Vt. Stat. Ann. tit. 33 § 5119(b)); Washington (Wash. Rev Code § 13.50.050(14, 11)); Wisconsin (Wis. Stat. § 938.355(4m, a)).

229 In Kentucky, for example, upon the filing of a petition for expungement, the court will set a date for a hearing and will notify the prosecutor for the county and anyone else who the court or the child, his or her parents, relatives, guardians, or custodians may have reason to believe may have information relevant to the expungement of the record. Ky. Rev Stat. § 610.330(2). In Utah, hearings are always held, whenever a petition is filed: in practice, this can turn into a contested hearing, or simply a formality. Telephone Interview with Pamela Vickrey, Executive Director, Utah Juvenile Defender Attorneys (Apr. 8, 2013).

230 *See, e.g.*, Louisiana (La. Stat. § C: 919 provides for a hearing, unless waived by consent of the parties).

231 *See, e.g.*, Maryland, which only holds hearings if there is an objection to the petition. http://www.courts.state.md.us/courtforms/joint/ccdc_cr072br.pdf.

232 Wash. Rev Code § 13.50.050(14).

233 Tex. Fa. Code § 58.003(c-1, d, e), describing that after a petition is filed, the court will hold a hearing before sealing a person's records unless the applicant waives the right to a hearing in writing and the court and the prosecuting attorney consent. The court is required to provide reasonable notice of the hearing to the person who made the application or who is the subject of the records named in the motion; the prosecuting attorney for the juvenile court; the authority granting the discharge if the final discharge was from an institution or from parole; the public or private agency or institution having custody of records named in the application or motion; and the law enforcement agency having custody of files or records named in the application or motion.

234 Mich. Comp. Laws § 712A.18e(5, 8, 9) explain that once an application is filed, the court will hold a hearing, and may require the filing of affidavits and the taking of proofs as it considers proper. The hearing cannot be held until the court receives the Michigan State Police report, including records of both the department and the FBI in relation to any pending charges against the juvenile. Mich. Comp. Laws 712A.18e(5). The attorney general and the prosecuting attorney shall have an opportunity to contest the application, and the victim of the offense has a right to appear and make a statement if the offense was an "assaultive crime" or "serious misdemeanor." The court will consider the circumstances and behavior of the applicant after the adjudication, and determine whether setting aside the adjudication is consistent with the public welfare. Mich. Comp. Laws 712A.18e(9). The known victim of any application involving an offense that would be considered an assaultive crime or serious misdemeanor when committed by an adult has the right to appear at the hearing on the application and/or to make a written or oral statement.

welfare.”²³⁵ In Wisconsin, while the statute does not specifically require a hearing, practitioners indicate that a hearing is always held, even if the child’s expungement request is uncontested.²³⁶

In Nevada, after a young person files a petition for expungement, the juvenile court notifies the district attorney and the chief probation officer (only in cases where the probation department did not file the petition initially). Then, the district attorney and the chief probation officer, their deputies, or any other person who has evidence that is relevant to consideration of the petition may testify at the hearing on the petition. In Idaho, the court is statutorily required to consider “any relevant evidence and make findings” but “written findings of fact are not necessary.”²³⁷ In Indiana, the expungement statute is quite prescriptive, setting out factors that the court may consider:

- (1) the best interests of the child;
- (2) the age of the person during the person’s contact with the juvenile court or law enforcement agency;
- (3) the nature of any allegations;
- (4) whether there was an informal adjustment or an adjudication;
- (5) the disposition of the case;
- (6) the manner in which the person participated in any court ordered or supervised services;
- (7) the time during which the person has been without contact with the juvenile court or with any law enforcement agency;
- (8) whether the person acquired a criminal record; and
- (9) the person’s current status.²³⁸

Some state statutes mandate a hearing, but local county practices may differ.²³⁹ In several states, even where procedures are set forth in statute, actual practice may differ. In Iowa, while the sealing statute provides for a hearing to determine whether the applicant the statutory eligibility criteria,²⁴⁰ in practice, there is often no formal hearing unless the prosecutor files an objection, which is reportedly rare.²⁴¹ In Pennsylvania,

235 Mich. Comp. Laws 712A.18e(8). As described in a subsequent section, at that hearing, the attorney general and the prosecuting attorney shall have an opportunity to contest the application, and the victim of the offense has a right to appear and make a statement if the offense was an “assaultive crime” or “serious misdemeanor.” The court considers the circumstances and behavior of the applicant after the adjudication, and determines whether setting aside the adjudication is consistent with the public welfare. Mich. Comp. Laws Ann. § 712A.18(c)(9).

236 Telephone Interview with Janice Pasaba, Assistant State Public Defender, Racine, WI (Apr. 4, 2013).

237 Idaho Juv. R. 28.

238 Ind. Code § 31-39-8-3.

239 See, e.g., California, whose law Cal. Welf. & Inst. Code § 781(a), lays out the process for an expungement, which includes a hearing (once the juvenile files for the sealing of his or her records, the court notifies the district attorney of the county and the county probation officer, who then may testify at a hearing on the petition (along with “any other person having relevant evidence”). However, hearings are not required in all counties: in Santa Clara County, for example, the court’s website explains to applicants that “[a]fter submitting your application and Petition, you do not need to appear in Court. The process is done by a Probation Officer and submitted to the Judge of the Juvenile Court who then grants or denies the Petition.” See [http://www.sccgov.org/sites/probation/Juvenile%20Probation%20Services/Record%20Sealing%20Procedure/Pages/Juvenile-Record-Sealing-Application-\(English\).aspx](http://www.sccgov.org/sites/probation/Juvenile%20Probation%20Services/Record%20Sealing%20Procedure/Pages/Juvenile-Record-Sealing-Application-(English).aspx).

240 Iowa Code § 232.150.

241 Telephone Interview with Roberta Megel, Chief Public Defender, Council Bluffs, IA (Apr. 25, 2013).

the situation appears to be reversed. Even though the statute appears to contemplate a “hearing” for all “early” expungement petitions, this right is effectively meaningless because the district attorney’s consent is required for an expungement petition to be granted.²⁴²

In several states, victims have a right to be notified of an application for sealing or expungement. In Idaho, upon the filing of a petition to expunge a juvenile record, notice is given to the prosecutor, who is mandated to then notify any victim of the offense.²⁴³ Michigan has a similar provision, providing for notice of petitions to “set aside” a juvenile record to victims of assaultive crimes or serious misdemeanors, including crimes involving the use of a weapon. The victim has the right to appear at the expungement hearing or make a written or oral statement.²⁴⁴ In Maryland as well, once a petition for expungement is filed, a victim or victim’s representative who has filed a notification request form may be notified of proceedings and events involving the expungement.²⁴⁵ Utah has a similar provision, which provides victims with the opportunity to request notice of a petition for expungement;²⁴⁶ if requested, the victim receives notice of a petition at least 30 days prior to the hearing. Victims do not receive notice if the juvenile court record consists only of non-judicial adjustments, which will be expunged without a hearing.

In Vermont, in cases involving an identifiable victim, the victim is entitled to receive notice of any expungement petition and has the right to provide a statement to the prosecutor prior to any stipulation or to offer the court a statement. If the victim cannot be located using “reasonable effort” (using the mail or telephone at the person’s last known address), the expungement proceeding should not be delayed.²⁴⁷

242 18 Pa. Const. Stat. § 9123; Pa. R. Juv. Ct. Proc. 170; 18 Pa. Const. Stat. § 9123(a)(4) (explaining that one of the requirements for expungement is that “the attorney for the Commonwealth consents to the expungement.”).

243 Idaho Juv R. 28. Additionally, prior to expungement, in all juvenile court cases, the victim is entitled to the name of the juvenile offender involved, the name of the juvenile offender’s parents or guardian, and their addresses and telephone numbers, if available in the records of the court. Idaho Code §20-525 (5).

244 Mich. Comp. Laws § 712A.18e(5)-(6).

245 Md. Code, Cts. & Jud. Proc. §3-8A-27(g). In Michigan, once an expungement is granted, it does not prevent the victim from filing a civil suit for damages, nor does it create a right to commence an action for damages for detention under the disposition that the applicant served before the adjudication is set aside pursuant to this section. Mich. Comp. Laws § 712A.18e(11).

246 Utah Code §78A-6-1105(1)(f)(i).

247 Vt. Stat. tit. 13 § 7608.

CORE PRINCIPLES: EXPUNGEMENT ELIGIBILITY AND PROCESS

State Statutes should provide for

- 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 Sealed or Expunged Records

In order for expungement or sealing to be meaningful, prohibitions on the disclosure or dissemination of sealed or expunged records must be enforced.

In seventeen states and the District of Columbia, a sanction, including the possibility of incarceration, is imposed for failing to comply with sealing or expungement laws.²⁴⁸ In

248 Alabama (Ala. Code § 12-15-134(f)); Delaware (10 Del. Code § 1019(e)); District of Columbia (D.C. Code § 16-2331(h)(4)); Florida (Fla. Stat. § 943.0585(4)(c)); Kansas (Kan. Stat. § 38-2312(g)); Michigan (Mich. Comp. Laws 712A.18e(16)); Missouri (Mo. Rev. Stat. § 610.125); Montana (Mont. Code §§ 41-5-221; 41-5-216(2)); Nebraska (Neb. Rev. Stat. §§ 43-2, 108.05, 43-2,108.05(6)); New Hampshire (N.H. Rev. Stat. § 169-B:36); New Jersey (N.J. Stat. § 2C:52-30); Ohio (Ohio Rev. Code § 2151.357(E-F)); Oklahoma (Okla. Stat. tit. 10A § 2-6-104); Oregon (Or. Rev. Stat. § 419A.262 (27); 338 Or. 508, 524 (Or. 2005) (citing *In re Gustafson*, 333 Or. 468 (Or. 2002)); Or. Rev. Stat. § 419A.262(25, 26)); Tennessee (Tenn. Code § 40-32-101(c)(1)); Virginia (Va. Code Ann. § 16.1-309); West Virginia (W. Va. Code § 49-5-18 (f)); and Wyoming (Pursuant to Wyo. Stat. § 7-19-504(c)).

States that impose sanctions for failing to carry out expungement or sharing expunged information

Alabama

Delaware

District of Columbia

Florida

Kansas

Michigan

Missouri

Montana

Nebraska

New Hampshire

New Jersey

Ohio

Oklahoma

Oregon

Tennessee

Virginia

West Virginia

Wyoming

many of these states, the criminal sanction is accompanied by a monetary fine of varying amounts.²⁴⁹

Sanctions should be part of the sealing or expungement framework. An enforcement mechanism helps ensure that law enforcement entities and individuals comply with the procedures and practices mandated by the sealing or expungement laws in each jurisdiction. Additionally, given the number of private companies that store and record information, sanctions can deter them from improperly sharing expunged or sealed information. While some states actually provide for criminal sanctions that include the possibility of incarceration, Juvenile Law Center recommends that violation of state sealing or expungement policies should be punishable by no more than a fine.

Imposing significant monetary fines holds public and private entities and individuals accountable for improperly disseminating this information.

CORE PRINCIPLES: 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

Fees

Many states impose fees or court costs for sealing or expunging records. Often, this means that the youth must pay these fees or costs before the petition can be processed. Some states have statutorily defined fees for expungement or sealing; in many states, fees are assessed at the local level. Although this information is not apparent from a reading of many states' laws,²⁵⁰ there are several jurisdictions where the statute provides that a young person must pay at least a nominal fee to have a record sealed

²⁴⁹ This is in contrast to the current law in some states, which require individuals to create and file their own motions. *See, e.g.*, Ala. Code § 12-15-136.

²⁵⁰ *See* Alabama (Ala. Code § 12-15-136); Arizona (Ariz. Rev. Stat. § 8-349(E)); Connecticut (Conn. Gen. Stat. §§ 46b-146, 46b-133a(b)); District of Columbia (DC. Code § 16-2335(a)); Idaho (Idaho Code § 20-525A, Idaho Juv. R. 28); Indiana (Ind. Code § 31-39-8-2). However, it is important to note that it is likely that a fee for sealing or expungement still exists for many youth in that jurisdictions whose state statutes are obscure or silent on the topic. We assume that fees in many jurisdictions are set by county or court rules, as is the case with many other court costs and filing fees.

or expunged.²⁵¹ In at least three states, the fee is \$50 or less.²⁵² In an additional three states, expungement or sealing costs range between \$50 and \$100,²⁵³ and in five states, expungement or sealing fees exceed \$100.²⁵⁴ In Oregon, a person seeking to set aside his juvenile adjudication must pay a fee of \$80 to the Department of State Police as well as a filing fee of \$252.²⁵⁵ Four states require a fee but do not specify the amount.²⁵⁶ In Delaware, although there is no fee listed in the statute for an expungement, youth must still pay \$52.50 to obtain a certified copy of their record, which must be attached to their petition.²⁵⁷ Fees may dissuade young people who would otherwise apply for sealing or expungement. Fourteen states impose no fees or costs for sealing or expungement.²⁵⁸

CORE PRINCIPLES: FEE FOR SEALING OR EXPUNGEMENT

State statutes should state:

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

States that charge an expungement fee greater than \$50

Florida

Illinois

Kansas

Minnesota

Oregon

Rhode Island

South Carolina

Utah

251 California (under Cal. Welf. & Inst. Code § 781, jurisdictions can set a fee amount for sealing); Delaware (10 Del. Code § 1015); Florida (Fla. Stat. § 943.0582); Georgia (https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/GCICFees.pdf); Hawaii (<http://research.lawyers.com/hawaii/hawaii-expungement-and-record-sealing.html>); Illinois (S. Ct. R. 298; Illinois (705 Ill. Comp. Stat. § 405/5-915(2.6)); Kansas (Kan. Stat. § 38-2312(d)); Michigan (Mich. Comp. Laws § 712A.18e(5)-(6)); Minnesota (<http://www.mncourts.gov/district/4/?page=1197>); Missouri (<http://research.lawyers.com/Missouri/Missouri-Expungement-and-Record-Sealing.html>); Nebraska (In Nebraska, in order to seal a juvenile record, one must obtain copies of the record, and obtaining copies requires a fee – see <https://www.nebraska.gov/apps-nsp-limited-criminal/>); Oregon (Or. Rev. Stat. §§ 137.225(2), 21.135); Rhode Island (R.I. Gen. Laws § 12-1.3-3(c)); South Carolina (<http://www.judicial.state.sc.us/expungementInfo/expAppProcessJuviles.cfm>); Utah (<http://www.utcourts.gov/resources/fees.htm>).

252 Georgia (https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/GCICFees.pdf); Hawaii (<http://research.lawyers.com/hawaii/hawaii-expungement-and-record-sealing.html>); Michigan (Mich. Comp. Laws § 712A.18e(5)-(6)).

253 Florida (Fla. Stat. § 943.0582); Illinois (S. Ct. R. 298; Illinois (705 Ill. Comp. Stat. § 405/5-915(2.6)); Rhode Island (R.I. Gen. Laws § 12-1.3-3, (c)).

254 Kansas (Kan. Stat. § 38-2312(d)); Minnesota ([http://www.mncourts.gov/Documents/4/Public/Forms/Juvenile_Expungement_Multi-Case_Packet_\(2\).pdf](http://www.mncourts.gov/Documents/4/Public/Forms/Juvenile_Expungement_Multi-Case_Packet_(2).pdf)); Oregon (Or. Rev. Stat. § 137.225(2); Or. Rev. Stat. § 21.135); South Carolina (<http://www.judicial.state.sc.us/expungementInfo/expAppProcessJuviles.cfm>); Utah (<http://www.utcourts.gov/resources/fees.htm>).

255 Or. Rev. Stat. § 137.225(2) (citing Or. Rev. Stat. § 21.135).

256 Delaware (10 Del. Code § 1015); Missouri (<http://research.lawyers.com/Missouri/Missouri-Expungement-and-Record-Sealing.html>); Nebraska (In Nebraska, in order to seal a juvenile record, one must obtain copies of the record, and obtaining copies requires a fee – see <https://www.nebraska.gov/apps-nsp-limited-criminal/>); and Pennsylvania (18 Pa. Const. Stat. § 9123).

257 See <http://courts.delaware.gov/forms/download.aspx?id=27108>.

258 California (Cal. Welf. & Inst. Code § 781); Delaware (10 Del. Code § 1015); Florida (Fla. Stat. § 943.0582); Georgia (https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/GCICFees.pdf); Hawaii (<http://research.lawyers.com/hawaii/hawaii-expungement-and-record-sealing.html>); Kansas (Kan. Stat. § 38-2312(d)); Michigan (Mich. Comp. Laws § 712A.18e(5)-(6)); Minnesota ([http://www.mncourts.gov/Documents/4/Public/Forms/Juvenile_Expungement_Multi-Case_Packet_\(2\).pdf](http://www.mncourts.gov/Documents/4/Public/Forms/Juvenile_Expungement_Multi-Case_Packet_(2).pdf)); Missouri (<http://research.lawyers.com/Missouri/Missouri-Expungement-and-Record-Sealing.html>); Nebraska (In Nebraska, in order to seal a juvenile record, one must obtain copies of the record, and obtaining copies requires a fee – see <https://www.nebraska.gov/apps-nsp-limited-criminal/>); Oregon (Or. Rev. Stat. §§ 137.225(2), 21.135); Rhode Island (R.I. Gen. Laws § 12-1.3-3, (c)); South Carolina (<http://www.judicial.state.sc.us/expungementInfo/expAppProcessJuviles.cfm>); Utah (<http://www.utcourts.gov/resources/fees.htm>).

Policy Recommendations

As this National Review illustrates, many states are not doing enough to protect children from the direct and collateral consequences of their juvenile records. With our **Core Principles** in mind, we recommend the following:

States should:

- Adopt policies consistent with Juvenile Law Center's Core Principles to keep records confidential during and after proceedings and prior to expungement eligibility.
- Adopt policies consistent with Juvenile Law Center's Core Principles to a) immediately seal records upon a child's case closure; b) provide opportunities for automatic expungement; and c) notify youth when records have been automatically sealed or expunged.
- Collect data to track the number of youth obtaining expungements successfully.
- Prohibit employers from inappropriately considering juvenile adjudications in their hiring process.
- Adopt policies ensuring that access to juvenile record information is limited to individuals or entities associated with the juvenile proceeding.
- Require that a youth has a right to an attorney to provide post-disposition representation for sealing and expungement.
- Adopt policies consistent with Juvenile Law Center's Core Principles to ensure records can be expunged free of charge.

Judges and Juvenile Court Personnel should:

- Ensure confidentiality of proceedings and information regarding juvenile records during and after proceedings and in accordance with state law.
- Inform youth of the consequences of their juvenile adjudications.
- Inform youth at their adjudication and disposition hearing of their right to sealing or expungement.
- Inform youth of their jurisdiction's procedures for sealing or expungement of records
- Inform youth in writing, when they become eligible for expungement by application, that they have the right to petition for expungement and how to do it.
- Ensure that juvenile record information is made available only in compliance with state law.
- Establish procedures for informing youth of their eligibility for expungement.
- Develop materials and information packets which explain the consequences of juvenile adjudications, record retention, and the right to expungement for distribution to youth and their families at disposition and when their cases are closed.
- Provide youth with notice and verification that their records have been expunged.
- Create youth-friendly sealing or expungement application forms that youth can complete on their own without the assistance of an attorney.
- Process petitions or applications for expungement free or charge.

Defense Attorneys should:

- Using language tailored to a client’s level of understanding, in line with National Juvenile Defender Center Standards,²⁵⁹
 - Inform youth at all stages of juvenile proceedings of the collateral consequences of a juvenile adjudication.
 - Explain to youth that their records can be sealed or expunged in accordance with state law.
 - Inform youth during plea negotiations or when entering admissions or guilty pleas when their records will be eligible for sealing or expungement.
- As part of post-disposition representation, file expungement or sealing petitions on behalf of eligible clients.

Youth-Serving Agencies should:

- Develop educational materials for distribution to youth and families about the consequences of juvenile records and their rights to sealing and expungement.
- Conduct trainings with youth in juvenile placement facilities on the consequences of their records and how they can seek expungement.

259 National Juvenile Defense Standards, available at <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>. These Standards promote best practices for juvenile defenders and others involved in the juvenile court process and provide excellent recommendations and strategies that should be adopted by practitioners and jurisdictions in concert with the Core Principles outlined in this National Review.

Conclusion

Records of juvenile crime can have far-reaching consequences, including affecting a youth's ability to join the military, pursue higher education, obtain employment, secure housing, or receive public benefits. Juvenile Law Center undertook this National Review to highlight state practices related to the confidentiality, sealing or expungement of juvenile records. We hope the Review will be used to mitigate the negative consequences of young people's system involvement after they exit the system. Retaining juvenile records too often undermines important societal goals, including community protection, by preventing young people from successfully reintegrating into their communities.

We also aim to promote best practices by highlighting statutes and practices that ensure that confidentiality of juvenile record information is protected and that children can truly have a "second chance." We hope that policymakers and advocates will use our Core Principles to assess their jurisdiction's current practices and enact measures to better protect youth from the harmful effects of system involvement.

Juvenile Law Center is available to assist jurisdictions in considering how to implement legislative and policy changes that are consistent with our **Core Principles**. If you are interested in technical assistance, please contact us at info@jlc.org.

Glossary of Terms

Confidentiality: Confidentiality of juvenile records refers to statutory protections preventing access to, dissemination or use of a juvenile record in any situation outside of juvenile court, unless it is intended to further the individual's case planning and service provisions. We refer to confidentiality of records during the course of proceedings and prior to expungement or sealing eligibility; in other words, the sections on confidentiality provide an overview of laws that address how records are treated while court proceedings are pending and immediately thereafter.

Court Records: Court records include all documents or notations created by or stored by the juvenile court or the juvenile probation office. This may contain documents or information about a child's family, his social history, behavioral health history, education, and prior involvement with the law.

Expungement: Expungement is the physical destruction and complete erasure of a juvenile record as if it never existed. Recognizing that language used to describe juvenile records and the mechanisms for limiting their exposure differs from state to state (and that, when describing the expungement of juvenile records, a state statute may refer to the practice as expunction, expungement, destruction, erasure, or something else), when appropriate, we used the state's language. However, in many cases, we deduced the meaning of a term and used more broadly understood language of "expungement" to describe the concept of physical destruction.

Juvenile Record Information: Throughout the publication, we refer to "juvenile records" or "juvenile record information" which includes both court records as well as law enforcement records.

Law Enforcement Records: Law enforcement records include documents created by or stored by any law enforcement agency. Specifically, the records may contain files or documents designating an arrest, the taking into custody, detention, formal charges, fingerprints, DNA information, photographs and other police notes regarding a young person.

Sealing: Sealing is the most commonly used term to describe a mechanism for limiting access to juvenile court records. In most jurisdictions, sealing a juvenile record means that the record is unavailable to the public, but remains accessible to select individuals or agencies, such as law enforcement. State laws vary on who has access to sealed records and whether access is permitted with or without a court order. When sealed, records remain physically available and could be unsealed and open to discovery and dissemination.

