

 VERMONT DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>165</h1>
Chapter:	Case Records	FINAL
Subject:	Sealing of Juvenile Records	Page 1 of 4
Approved:	Cynthia K. Walcott, Deputy Commissioner	Effective: 2/20/2007
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Introduction

In 2006 the House and Senate passed S.194, a bill requiring that all juvenile court records relating to a child who has been adjudicated delinquent be automatically sealed two years after discharge, unless the court finds certain circumstances exist based on the state's attorney motion objecting to the sealing.

For individuals who were adjudicated delinquents between July 1, 1996 and June 30, 2001, the process of sealing must be completed by January 1, 2010. For individuals more recently adjudicated – between July 1, 2001 and June 30, 2004, the records sealing process must be completed by January 1, 2008.

Individuals adjudicated delinquent before July 1, 1996 may also apply to have their records sealed.

The process of sealing records must be initiated the juvenile court. The court will notify the state's attorney at least 60 days before the individual is eligible to have his or her record sealed. The state's attorney will be given an opportunity to object to the sealing. If the state's attorney objects, a hearing will be held. Reasons for objection are:

- The individual has subsequently been convicted, in juvenile or adult court, of a listed crime, or a proceeding is pending seeking such conviction; OR
- The state's attorney establishes, to the satisfaction of the court, that the individual has not been rehabilitated.

The court may order, based on a showing of good cause by the state's attorney, that only the court record be sealed.

An individual adjudicated CHINS may also apply to have his or her records sealed, once he or she has reached the age of majority.

The sealing order applies to files and records of the court, law enforcement, prosecution and the department ***related to the specific court proceeding subject to the sealing***. It also applies to general indices kept by those entities. Once the record is sealed, ***those entities must act as if the delinquency never occurred***.

This policy details the system that must be used to seal the delinquency record and outlines the conditions in which Family Services can (1) request the state's attorney to file a motion to object to the sealing of individual juvenile court records or (2) unseal a previously sealed record.

This policy recognizes that, in order to promote holistic service of an individual and family, the division does not maintain freestanding records for adjudicated delinquents. Instead, one record is kept for a child and, in some cases, a family. This record contains information about the division's entire involvement with the individual. This may include child protection, CHINS and/or delinquency.

Definition

Delinquency Record: Any document related to the delinquency charge or proceeding which was generated by law enforcement, the state's attorney or the court. This includes affidavits, petitions, findings and orders.

General or Master Index: The master index of clients kept by the division.

Policy

Confidentiality of Records

All case records maintained by the department are confidential and not subject to inspection unless specifically authorized by law or by order of the court.

Records sent to Public Records can only be retrieved by department staff.

Evaluating a Request to Seal a Delinquency Record

Upon receipt of notice from the state's attorney that a person is eligible to have his or her delinquency record sealed, the district office will determine if the division should object to the sealing on the basis that the person has not been rehabilitated, as demonstrated by:

- The individual has the subject of a child abuse or neglect investigation in the two years following discharge as a delinquent;
- The individual has been adjudicated for a subsequent delinquency;
- The individual has been or continues to be the subject of an open case with the division, either as a child or a caretaker;
- The nature of the delinquency makes it reasonable to assume that the individual may be a danger to children or vulnerable adults in the future, making it necessary to have continued access to the record to accurately assess risk; OR

- A legal action, legal claim or administrative action has been filed against the department or division related to this individual.

Objecting to Sealing

If any of the above criteria are met, the district director will request that the state's attorney object to the sealing of the record. If the state's attorney declines to file a motion, consult with the Assistant Attorney General about options to pursue.

Sealing of Records

Upon receipt of an order to seal a delinquency record, the district office will:

- Examine the file and remove the delinquency record (see definition);
- Insert an orange Sealed Record form in the front of the record. This form will list the individual's name, date of birth, the docket number sealed, the dates of case opening and discharge from probation or custody related to the delinquency
- Remove or expunge any reference to the delinquency on any physical master index card kept by the district.
- Send a copy of the sealing order to DPE, with the relevant MIS number(s) noted on the order. DPE shall remove reference to the delinquency in the electronic master index.

Index of Sealed Records and Storage of Records

The administrative assistant will maintain a list of sealed delinquency records. The list will contain:

- The name and date of birth of the individual whose records have been sealed;
- The docket number;
- The MIS number; and
- The date of the sealing.

The index shall be kept confidential and may be accessed only to facilitate a request to unseal a record. Only the following people may access the index:

- The commissioner or deputy commissioner;
- The Assistant Attorney General;
- The administrative assistant charged with keeping the index.

The documents removed from the case record will be filed in a manila file, marked with the individual's name. All sealed files will be stored in a locked cabinet and may not be inspected by any person unless unsealed. A special record series will be created so that sealed records can be sent to Public Records at appropriate intervals.

Records Already at Public Records

If at the time of the receipt of the sealing order, the individual's record has been sent to Public Records, including those that have already been microfilmed, there is no requirement to retrieve that record. However, the master index will note that the record has been sealed. If, in the future, it becomes necessary to retrieve that record, the record will then become subject to sealing procedures.

CHINS Records

Any adult who, while a child, was found to be in need of care of supervision may apply to the court to have their record sealed. The court may order the sealing of all files and records related to the proceeding if it finds:

- the person has reached the age of majority; and
- sealing the person's record is in the interest of justice.

Requests to Unseal a Record

The Assistant Attorney General may submit a confidential motion, supported by an affidavit, for authorization to inspect the records if:

- there are extraordinary circumstances in which the protection of a child is in jeopardy; or,
- to effectively respond to a legal action, legal claim or administrative action filed against the department or division.

The motion may be heard *ex parte*. Any order issued *ex parte* will be followed by a notice to the person that the record has been unsealed unless the division establishes, to the satisfaction of the court, a compelling reason that the person should not receive notice.

If the Court grants permission for the Division to inspect the records, the records shall be unsealed for the minimum necessary period of time.