

To: Senate Committee on Government Operations
From: Department of Public Safety Commissioner Michael Schirling
Re: Considerations related to juvenile records
Date: January 13, 2021

In support of our testimony and discussion of this topic we submit the following outline that includes *some* of the items of consequence as the committee explores this issue.

Legal Questions & Considerations

Juvenile laws- Confidentiality

33 V.S.A. § 5101. Purposes

(a) The juvenile judicial proceedings chapters shall be construed in accordance with the following purposes:

(1) to provide for the care, protection, education, and healthy mental, physical, and social development of children coming within the provisions of the juvenile judicial proceedings chapters;

(2) to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which ensure:

(A) balanced attention to the protection of the community;

(B) accountability to victims and the community for offenses; and

(C) the development of competencies to enable children to become responsible and productive members of the community;

33 V.S.A. § 5110. Conduct of hearings

(a) Hearings under the juvenile judicial proceedings chapters shall be conducted by the court without a jury and shall be confidential.

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and such other persons as the court finds to have a proper interest in the case or in the work of the court, including a foster parent or a representative of a residential program where the child resides, may be admitted by the court. An individual without party status seeking inclusion in the hearing in accordance with this subsection may petition the court for admittance by filing a request with the clerk of the court. This subsection shall not prohibit a victim's exercise of his or her rights under sections 5233 and 5234 of this title, and as otherwise provided by law.

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt

proceedings pursuant to Rule 16 of the Vermont Rules for Family Proceedings. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2015, No. 60, § 6.)

33 V.S.A. § 5117. Records of juvenile judicial proceedings

(a) Except as otherwise provided, court and **law enforcement reports and files concerning a person subject to the jurisdiction of the Court** shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the Court otherwise orders in the interests of the child, **such records and files shall not be open to public inspection nor their contents disclosed to the public by any person.** However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act which would have been a felony if committed by an adult, the Court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

Notably, unlawful dissemination of law enforcement records and files concerning a child subject to family court's jurisdiction is a crime. See 33 V.S.A. § 5117(b)(2).

“Concerning”

The use of the term “concerning” when reviewed together with various sections of Vermont’s juvenile shield laws suggests the Legislature intended to extend confidentiality protections to cover all law enforcement information relating to a child subject to juvenile court jurisdiction. It raises questions that seem to have conflicting answers in other statutory provisions.

- Does this include tickets issued to juveniles?
- Does this include crash reports related to juveniles?
- If the goal of the statutory provisions is to protect juveniles from the taint of criminality, should it not protect records even before the records reach the Juvenile Court?
- If there is a lag between citation and opening of a Family Court case, should the records be releasable until the Family Court actually opens a file?

The Legislature recently amended [3 V.S.A. § 163](#) by providing confidentiality provisions of this section shall become effective when notice of violation is issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b) and shall remain in effect unless the person fails to register with or complete the Youth Substance Awareness Safety Program.

Vermont’s Public Records Act

Law enforcement records:

1 V.S.A. § 317(c)(5)(D) specifically prohibits an agency from releasing identities of private persons, including a child’s identity, contained in “[r]ecords dealing with the detection and investigation of crime, unless withholding the identity conceals government wrongdoing. See 1 V.S.A. §§ 317(c)(5)(A), (D).

BUT - under Vermont’s PRA specifically provides an exception to the withholding of identities where the record reflects “the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, and records reflecting the charge of a person.” 1 V.S.A. § 317(c)(5)(B).

Multiple Custodians – different laws

A custodian's records include "any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business." 1 V.S.A. § 317(b).

Law Enforcement Agency- must send an accident report to DMV and DMV is the repository of accident reports. See [23 V.S.A. § 1603a](#) and [1603b](#).

DMV – must release its records pursuant to Driver's Privacy Protection Act. See [23 V.S.A. § 104](#).

See also Driver's Privacy Protection Act, 18 U.S.C. §§ [2721](#) and [2725](#).

Law enforcement tickets are sent to the Judicial Bureau. May tickets be released by the Judicial Traffic Bureau?

Additional Operational & Contextual Considerations for Legislators

Beyond the inherent legal conflicts between public records law, juvenile law, and statutes that govern accident/crash reports and traffic tickets (also recall for context that these were formerly criminal matters), there are operational conflicts and considerations including but not limited to:

- Recently expanding legislative goals of expungement, record sealing, and expansion of the "juvenile" proceedings to those under 22 years of age – beyond the historic 18 /19 year old definitions.
- Challenges to #1 presented by online services that "scrape" and archive data and information which make it difficult or impossible to expunge or seal a record (or more accurately a partial record or fragment of information) once it is public facing even for a moment. This presents several long-term challenges, including:
 - The commercialization of information, often fragmented and incomplete information, for profit.
 - The inability of those whose records become public facing to "clear" stories or flags about that record even if it is sealed or expunged.
 - The inability of those whose records become public facing and whose records are sealed or expunged to gain access to an accurate version of that record after seal or expungement. This may be necessary to provide details of an event to a prospective employer, during a background investigation, or other situation.