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Chapter:	Case Records	
Subject:	Sealing of Family Division Records	Page 1 of 5
Approved:	Christine Johnson, Deputy Commissioner	Effective: 2/19/2020
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Introduction


Per 33 V.S.A. § 5119, family court records relating to a child who has been adjudicated delinquent shall 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.

Upon written order from the court, youth who have successfully completed probation as youthful offenders may also have their family division records sealed by the same process as adjudicated delinquents.

The process of sealing records must be initiated by the family division. The court will notify the state’s attorney at least 60 days before the individual is eligible to have their 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 family or criminal 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

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the court record be sealed.

An individual adjudicated CHINS may also apply to have their records sealed, once they have 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 family 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.

Definitions

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.

Sealing of Records: To physically and electronically segregate the record in a manner that ensures confidentiality of the record and limits access only to those persons who are authorized by the law or court order to view the record. Sealed files or records are retained and shall not be destroyed unless a court issues an order to expunge the record.

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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. Sealed records can only be retrieved by department staff under specific circumstances and if the court has given permission to unseal the record. The department shall reply to any request for information that no record exists with respect to such person and the specific docket that was sealed.


Evaluating a Request to Seal a Delinquency Record

Upon receipt of notice from the state's attorney that a person is eligible to have their 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 was 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 as 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.

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Sealing and Storage 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 any reference to the delinquency on any physical index card kept by the district.
- Enter the information into the Juvenile Sealing screen on FSDNet. This screen will serve as the index of all the sealed records for the district office.

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; and
- 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.

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 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 or supervision may apply to the court to have their record sealed. The court may order the sealing of all files and

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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 department records if:

- There are extraordinary circumstances in which the State’s interest in the protection of a child clearly outweighs the purposes of the family division sealing law and the privacy rights of the person who is subject of the record, and the sealed record is necessary to accomplish the State’s interest. 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.