

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

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Supp.

To amend the Department of Youth Rehabilitation Services Establishment Act of 2004 to clarify the procedures governing the release of Department of Youth Rehabilitation Services records and to permit the Metropolitan Police Department to obtain, without a court order, certain records of the Department of Youth Rehabilitation Services for the purpose of investigating a crime allegedly involving a juvenile in the custody of the department; and to amend Chapter 23 of Title 16 of the District of Columbia Official Code to allow information contained in juvenile case records, juvenile social records, and law enforcement records pertaining to a child to be disclosed to persons who have a professional interest in the protection, welfare, treatment, and rehabilitation of the child, to authorize post-adjudication motions to vacate an adjudication or to grant a new factfinding hearing on the grounds of actual innocence, and to establish a process for sealing certain juvenile records in cases of actual innocence.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Expanding Access to Juvenile Records Amendment Act of 2010”.

Sec. 2. Section 106 of the Department of Youth Rehabilitation Services Establishment Act of 2004, effective April 12, 2005 (D.C. Law 15-335; D.C. Official Code § 2-1515.06), is amended as follows:

Amend
§ 2-1515.06

(a) Subsection (a) is amended to read as follows:

“(a)(1) Records pertaining to youth in the custody of the Department or contract providers shall be privileged and confidential and shall be released only in accordance with this subsection.

“(2) Juvenile case records shall be released only to persons and entities permitted to inspect those records under D.C. Official Code § 16-2331 and in accordance with the procedures governing the release of records under that section.

“(3) Juvenile social records shall be released only to persons and entities permitted to inspect those records under D.C. Official Code § 16-2332 and in accordance with the procedures governing the release of records under that section.

ENROLLED ORIGINAL

“(4) Law enforcement records shall be released only to person and entities permitted to inspect those records under D.C. Official Code § 16-2333 and in accordance with the procedures governing the release of records under that section.

“(5) All other Department records pertaining to youth in the custody of the Department shall be released only to persons and entities permitted to inspect juvenile social records under section 16-2332 and in accordance with the procedures governing the release of records under that section.”.

(b) A new subsection (d) is added to read as follows:

“(d) Notwithstanding the confidentiality requirements of this section, or any other provision of law, the Metropolitan Police Department is authorized to obtain records pertaining to youth in the custody of the Department, other than juvenile case records as defined in D.C. Official Code § 16-2331 and juvenile social records as defined in D.C. Official Code § 16-2332, for the purpose of investigating a crime allegedly involving a youth in the custody of the Department. The confidentiality of any information disclosed to the Metropolitan Police Department pursuant to this subsection shall be maintained pursuant to D.C. Official Code § 16-2333.”.

Sec. 3. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding 4 new section designations to read as follows:

“16-2333.01. Permitted disclosures of juvenile information.

“16-2333.02. Juvenile Abscondence Review Committee.

“16-2335.01. Motion to vacate adjudication or grant a new factfinding hearing on the ground of actual innocence.

“16-2335.02. Sealing of records on ground of actual innocence.”.

(b) Section 16-2301 is amended by adding a new paragraph (45) to read as follows:

“(45) The term “Superior Court” means the Superior Court of the District of Columbia.”.

**Amend
§ 16-2301**

(c) Section 16-2331 is amended to read as follows:

“§ 16-2331. Juvenile case records; confidentiality; inspection and disclosure.

“(a) For the purposes of this section, the term “juvenile case records” means the following records of a case over which the Family Court has jurisdiction under section 11-1101(13):

**Amend
§ 16-2331**

“(1) Notices filed with the court by an arresting officer pursuant to this subchapter;

“(2) The docket of the court and entries therein;

“(3) Complaints, petitions, and other legal papers filed in the case;

“(4) Transcripts of proceedings before the court;

“(5) Findings, verdicts, judgments, orders, and decrees; and

“(6) Other writings filed in proceedings before the court, other than social records.

“(b) Except as otherwise provided in this section and in section 16-2333.01, juvenile case records shall be kept confidential and shall not be open to inspection, nor shall information from records inspected be divulged to unauthorized persons.

“(c) Subject to the limitations of subsection (f) of this section, the following entities and persons may inspect juvenile case records:

“(1) The Courts:

“(A) Judges and professional staff of the Superior Court; and

“(B) Any court in which the respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court’s probation staff.

“(2) Family Court case participants:

“(A) The Attorney General and his assistants assigned to the Family Court;

“(B) The respondent and any attorney for the respondent without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case;

“(C) The parents or guardians and any attorney for them without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case;

“(D) Unless the release of the information is otherwise prohibited by law or includes mental health information, each victim, or the immediate family member or custodians of each victim if the victim is a child or is deceased or incapacitated, and their duly authorized attorneys, at the discretion of the Attorney General and when the information relates to:

“(i) Release status;

“(ii) The level of respondent’s placement;

“(iii) Stay-away orders imposed;

“(iv) Respondent’s participation in diversion or a consent decree;

“(v) The offenses charged in the petition;

“(vi) The terms of any plea agreements, findings, or verdicts related to the adjudication of the case; or

“(vii) Commitment or probational status;

“(E) Unless the release of information is otherwise prohibited by law or includes mental health information, each eyewitness, or the immediate family members or custodians of each eyewitness if the eyewitness is a child or is deceased or incapacitated, and their duly authorized attorneys, at the discretion of the Attorney General or of the respondent’s

attorney and when the information relates to:

- “(i) Release status;
- “(ii) The level of respondent’s placement;
- “(iii) Stay-away orders imposed;
- “(iv) Respondent’s participation in diversion or a consent decree;
- “(v) The offenses charged in the petition;
- “(vi) The terms of any plea agreements, findings, or verdicts

related to the adjudication of the case; or

- “(vii) Commitment or probational status; and

“(F) Public or private agencies or institutions providing supervision or treatment or having custody of the child, if supervision, treatment, or custody is under order of the Family Court;

- “(3) Other court case participants and law enforcement:

“(A) The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys, or defense attorneys, when necessary for the discharge of their official duties;

“(B) Any law enforcement personnel when necessary for the discharge of their official duties;

“(C) The Pretrial Services Agency of the District of Columbia when necessary for the discharge of its official duties; and

“(D) The Court Services and Offender Supervision Agency for the District of Columbia when necessary for the discharge of its official duties;

- “(4) Government agencies and entities:

“(A) The Mayor in accordance with the Motor Vehicle Operator's Permit Revocation Amendment Act of 1988, effective March 16, 1989 (D.C. Law 7-222; 36 DCR 570);

“(B) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

“(C) The Child Fatality Review Committee for the purposes of examining past events and circumstances surrounding deaths of children in the District of Columbia or of children who are either residents or wards of the District of Columbia, or for the discharge of its official duties;

“(D) The Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this

subparagraph;

“(E) The Child and Family Services Agency, for the purposes of carrying out its official duties; and

“(F) The Juvenile Abscondence Review Committee for the purposes of examining circumstances and events surrounding any homicide, assault with intent to kill, and assault with a deadly weapon committed in the District by or to a juvenile in abscondence; and

“(5) Other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of the respondent’s family, or in the work of the Superior Court, if authorized by rule or special order of the court.

“(d) The prosecuting attorney inspecting records pursuant to subsection (c)(3)(A) of this section may divulge the contents to the extent required in the prosecution of a criminal case, and the United States Attorney for the District of Columbia and his assistants may inspect a transcript of the testimony of any witness and divulge the contents to the extent required by the prosecution of the witness for perjury, without, wherever possible, naming or otherwise revealing the identity of a child under the jurisdiction of the Family Court.

“(e) Notwithstanding subsection (b) of this section, the Family Court, upon application of the Attorney General, may order the release of certain information contained in the case record if:

“(1) The respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;

“(2) Release of the information is necessary to protect the public safety and welfare; and

“(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

“(f) Notwithstanding subsections (b) and (c) of this section, the Superior Court may by rule or special order provide that particular items or classes of items in juvenile case records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection:

“(1) In delinquency or need of supervision cases, by the attorney for the child; or

“(2) In neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

“(g) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

“(h)(1) Notwithstanding subsection (b) of this section, for every respondent against whom the Office of the Attorney General has filed a petition for the following:

“(A) A crime of violence (as defined in section 23-1331(4));

“(B) A weapons offense;

“(C) Unauthorized use of a vehicle;

“(D) Theft in the first degree where the property obtained or used is a motor vehicle (as defined in section 22-3215(a)); or

“(E) The Office of the Attorney General has filed 3 or more petitions against the respondent, and the respondent is not detained by the Family Court pursuant to section 16-2313(b)(3), the Family Court shall provide, within 48 hours of the decision not to detain the respondent, the following case record information to the Chief of the Metropolitan Police Department ("Chief"):

“(i) Respondent's name and date of birth;

“(ii) Last known address of the respondent;

“(iii) Last known address of respondent's parents, guardians, caretakers, and custodians;

“(iv) Address where the respondent will be placed and the name and address of the person into whose custody the respondent will be placed; and

“(v) All terms of the placement or conditions of release.

“(2) Notwithstanding subsection (b) of this section, the Family Court shall provide the following case record information to the Chief for all cases in which the respondent is not detained by the Family Court pursuant to section 16-2313(b)(3) and cases in which the respondent is placed on probation pursuant to section 16-2320(c)(3):

“(A) Respondent's name and date of birth;

“(B) All terms or conditions of any stay-away order; and

“(C) All terms or conditions of any curfew order.

“(3) The Chief shall utilize information obtained from the Family Court and may disclose such information to law enforcement officers or law enforcement entities only as necessary to preserve public safety or the safety of the respondent. The Chief shall not otherwise disclose this information, except as authorized by this section.

“(4) If the Chief discloses information pursuant to paragraph (3) of this subsection, the Chief shall notify the recipient that the information may only be re-disclosed to law enforcement officers and only to the extent necessary to preserve public safety or the safety of the respondent. The Chief shall notify the recipient of the information that any other use or disclosure of the information shall be governed by this section and sections 16-2332 and 16-2333, and that unauthorized re-disclosure may be prosecuted under section 16-2336. Any violation of this paragraph will result in an investigation of the violation by the Inspector General of the District of Columbia.

“(5) If the petition filed against the juvenile does not result in disposition, the Family Court, within 48 hours of the entry of the decision by the court to dismiss or close the case, or the withdrawal of the petition by the Office of the Attorney General, shall notify the

Chief of the Metropolitan Police Department that the case has not resulted in a disposition. The Chief shall, within 48 hours of the notification, destroy and erase from Metropolitan Police Department files the case record information received from the Family Court pursuant to this subsection and shall notify all parties and agencies to which it transmitted case record information pursuant to paragraph (3) of this subsection that the juvenile's case did not result in a disposition and any information that has been transmitted shall be destroyed and erased.

“(i) No person shall disclose, inspect, or use records in violation of this section.”.

(d) Section 16-2332 is amended to read as follows:

Amend
§ 16-2332

“§ 16-2332. Juvenile social records; confidentiality; inspection and disclosure.

“(a) For the purposes of this section, the term "juvenile social records" means all social records made with respect to a child in any proceedings over which the Family Court has jurisdiction under section 11-1101(13), including preliminary inquiries, predisposition studies, and examination reports.

“(b) Except as otherwise provided in this section and in section 16-2333.01, juvenile social records shall be kept confidential and shall not be open to inspection.

“(c) Subject to the limitations of subsection (e) of this section, the following persons and entities may inspect juvenile social records:

“(1) Courts:

“(A) Judges and professional staff of the Superior Court; and

“(B) Any court or its probation staff, for purposes of sentencing the child as a defendant in a criminal case;

“(2) Family Court case participants:

“(A) The Attorney General and his assistants assigned to the Family Court;

“(B) The respondent and any attorney for the respondent without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case; and

“(C) Public or private agencies or institutions providing supervision or treatment, or having custody of the child, if the supervision, treatment, or custody is under the order of the Family Court;

“(3) Other court case participants and law enforcement:

“Law enforcement officers of the United States, the District of Columbia, and other jurisdictions when a custody order has issued for the respondent, except that such records shall be limited to photographs of the child, a physical description of the child, and any addresses where the child may be found, and the law enforcement officer may not be permitted access to any other documents or information contained in the social file;

“(4) Government agencies and entities:

“(A) Professional employees of the Department of Youth Rehabilitation Services when necessary for the discharge of their official duties;

“(B) The Child and Family Services Agency when necessary for the discharge of its official duties;

“(C) The Child Fatality Review Committee for the purposes of examining past events and circumstances surrounding deaths of children in the District of Columbia or of children who are either residents or wards of the District of Columbia, or for the discharge of its official duties;

“(D) Authorized personnel in the Mayor’s Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families; and

“(5) Other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of the respondent’s family, or in the work of the Family Court, if authorized by rule or special order of the court.

“(d)(1) Except as otherwise provided in this section and in section 16-2333.01, records inspected pursuant to subsection (c) of this section may not be divulged to unauthorized persons.

“(2)(A) Notwithstanding paragraph (1) of this subsection, health and human services information contained with juvenile social records may be divulged for the purposes of and in accordance with Title I of the Data-Sharing and Information Coordination Amendment Act of 2010, signed by the Mayor on July 20, 2010 (D.C. Act 18-489; 57 DCR 7171) (“Data Sharing Act”).

“(B) For the purposes of this paragraph, the term “health and human services information” shall have the same meaning as provided in section 101(3) of the Data-Sharing Act.

“(e) Notwithstanding subsections (b) and (c) of this section, the Superior Court may by rule or special order provide that particular items or classes of items in juvenile social records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection:

“(1) In delinquency or need of supervision cases, by the attorney for the child; or

“(2) In neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

“(f) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile social records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

“(g)(1) Notwithstanding subsections (b), (c), (d), or (e) of this section, for every respondent committed to the Department of Youth Rehabilitation Services (“Department”)

pursuant to section 16-2320(c)(2) who has been adjudicated of:

“(A) A crime of violence (as defined in section 23-1331(4));

“(B) A weapons offense;

“(C) Unauthorized use of a vehicle;

“(D) Theft in the first degree where property obtained or used is a motor vehicle (as defined in section 22-3215(a)); or

“(E) Adjudicated 3 or more times, the Mayor may direct the Director of the Department ("Director") to provide notice to the Chief of the Metropolitan Police Department ("Chief") of any assignment or placement of the respondent in a Department facility or residential or other placement, including any facility operated by a contractor or agent, as soon as practicable prior to the assignment or placement.

“(2) Notwithstanding subsections (b), (c), (d), or (e) of this section, for any respondent who is detained or committed to the Department, the Director shall provide notice to the Chief of any respondent who has absconded or escaped from any Department facility, or residential or other placement, including any facility or placement operated by an agent or contractor, within one hour of the absconding or escaping.

“(3) Notice issued pursuant to this subsection shall include the following information, as applicable:

“(A) Respondent's name and date of birth;

“(B) Last known address of the respondent;

“(C) Last known address of the respondent's parents, guardians, caretakers, and custodians;

“(D) Address to which the respondent will be assigned, placed, or released and the name and address of the person into whose custody the respondent will be placed if the respondent is not placed into a Department facility; and

“(E) A recent photograph of the respondent, if available.

“(4) The Chief shall utilize information obtained from the Director and may disclose such information to law enforcement persons or law enforcement entities only as necessary to preserve public safety or the safety of the respondent. The Chief shall not otherwise disclose this information, except as authorized by this section.

“(5) If the Chief discloses information pursuant to paragraph (4) of this subsection, the Chief shall notify the recipient that the information may only be re-disclosed to law enforcement officers and only to the extent necessary to preserve public safety or the safety of the respondent. The Chief shall notify the recipient of the information that any other use or disclosure of the information shall be governed by this section and sections 16-2331 and 16-2333, and that unauthorized re-disclosure may be prosecuted under section 16-2336. Any violation of this paragraph will result in an investigation of the violation by the Inspector General of the District of Columbia.

“(6) The Chief may make additional case-specific inquiries to the Mayor based

on information disclosed under paragraph (1) of this subsection. The Mayor may direct the Director to provide such additional information, when requested by the Chief, but only as necessary to protect public safety or the safety of the respondent.

“(h) No person shall disclose, inspect, or use records in violation of this section.”.

(e) Section 16-2333 is amended to read as follows:

“§ 16-2333. Police and other law enforcement records.

Amend
§ 16-2333

“(a) Except as otherwise provided in this section and in section 16-2333.01, law enforcement records and files concerning a child shall not be open to public inspection nor shall their contents or existence be disclosed to the public unless:

“(1) A charge of delinquency is transferred for criminal prosecution under section 16-2307;

“(2) The interest of national security requires; or

“(3) The court otherwise orders in the interest of the child.

“(b) Inspection of such records and files is permitted by:

“(1) Courts:

“(A) The Superior Court, having the child currently before it in any proceedings; and

“(B) Any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court’s probation staff, or by officials of rehabilitation or penal institutions and other rehabilitation or penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;

“(2) Case participants:

“(A) The child and any attorney for the child without regard to the age of the child at the time of the inspection and without regard to the existence of a pending Family Court case;

“(B) Parents or guardians of the child and any attorney for them without regard to the age of the child at the time of the inspection and without regard to the existence of a pending Family Court case;

“(C) Each eyewitness, victim, or the immediate family members or caretakers of the eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorneys, when the records relate to the incident in which they were an eyewitness or a victim; and

“(D) The officers of public and private institutions or agencies to which the child is currently committed, and those professional persons or agencies responsible for the child’s supervision after release;

“(3) Prosecutors and law enforcement:

“(A) Law enforcement officers of the United States, the District of Columbia, and other jurisdictions when necessary for the discharge of their current official

duties;

“(B) The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys when necessary for the discharge of their official duties;

“(4) Government agencies and entities:

“(A) Professional employees of the Department of Youth Rehabilitation Services when necessary for the discharge of their official duties;

“(B) The Child Fatality Review Committee when necessary for the discharge of its official duties;

“(C) Authorized personnel in the Mayor’s Family Court Liaison, the Department of Health, the Department Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

“(D) The Children’s Advocacy Center and the public and private agencies and institutions that are members of the multi-disciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records of copies of the records, may be provided pursuant to this subparagraph; and

“(E) The Juvenile Abscondence Review Committee for the purposes of examining circumstances and events surrounding any homicide, assault with intent to kill, and assault with a deadly weapon committed in the District by or to a juvenile in abscondence; and

“(5) Any other person, agency, or institution, by order of the court, having a professional interest in the child or in the work of the law enforcement department.

“(c) The Family Court, upon application of the Attorney General and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the law enforcement records if:

“(1) The respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;

“(2) Release of such information is necessary to protect the public safety and welfare; and

“(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

“(d) Photographs may be displayed to potential witnesses for identification purposes, in accordance with the standards of fairness applicable to adults.

“(e)(1) Certain juvenile crime information (but not records) shall not be confidential and shall be disclosable to the public strictly in accordance with the provisions of this subsection.

“(2) The public availability of the information regarding a child shall be limited

to:

- “(A) The child’s name;
- “(B) The fact that the child was arrested;
- “(C) The charges at arrest;
- “(D) The charges in the petition filed pursuant to section 16-2305;
- “(E) Whether the petition resulted in an adjudication and the charges for which the child was found involved; and
- “(F) If the child was found involved, whether at initial disposition the child was placed on probation or committed to the custody of the Department of Youth Rehabilitation Services.

“(3) The information shall be available only regarding:

“(A) A juvenile who has been adjudicated delinquent of a crime of violence (as defined in section 23-1331(4)), or any felony offense under Chapter 45 of Title 22 (weapons) or Chapter 23 of Title 6 (Firearms Control);

“(B) A juvenile who has been adjudicated delinquent 2 or more times of:

- “(i) A dangerous crime (as defined in section 23-1331(3)) that is not included in subparagraph (A) of this paragraph;
- “(ii) Unauthorized use of a vehicle;
- “(iii) Theft in the first degree where the property obtained or used is a motor vehicle (as defined in section 22-3215(a));
- “(iv) A assault (as defined in section 22-404(a)(2)); or
- “(v) Any combination thereof; and

“(C) An adult offender (including a juvenile tried as an adult under this chapter) convicted of a felony or of misdemeanor assault; provided, that no more than 3 years have lapsed between the completion of his or her juvenile sentence and the adult conviction.

“(4) This subsection permits the limited disclosure of information contained in records and files otherwise protected from disclosure under § 16-2333, but does not authorize disclosure of the records and files.

“(5) This subsection shall apply only to individuals adjudicated after January 1, 2011, regardless of when the criminal offense occurred.

“(6) Any law enforcement information shared with the public shall comply with Metropolitan Police Regulations that apply to adult criminal records, including the Duncan Ordinance (Chapter 10 of Title 1 of the District of Columbia Municipal Regulations).”.

“(f) Notwithstanding the confidentiality requirements of subsection (b) of this section, the Metropolitan Police Department shall make reports available to the public every 6 months of the number of children arrested in the District by the location of the police service area within which the juvenile suspect lives, and giving the location of the police service area within which the crime occurred, the charges, and the date of the crime.

“(g) No person shall disclose, inspect, or use records in violation of this section.”.

ENROLLED ORIGINAL

(f) New sections 16-2333.01 and 16-2333.02 are added to read as follows:

“§ 16-2333.01. Permitted disclosures of juvenile information.

New
§ 16-2333.01

“(a) An official of the Family Court, the Department of Youth Rehabilitation Services, or the Metropolitan Police Department may disclose information (but not records) about a juvenile otherwise protected from disclosure under sections 16-2331, 16-2332, and 16-2333 in accordance with this section only if:

“(1) In the professional judgment of the official, disclosing the information will assist in the protection, welfare, treatment, or rehabilitation of the juvenile;

“(2) A professional relationship exists between the official and the juvenile; and

“(3) The general nature of the disclosure, and rationale for making the disclosure, is approved by the official’s supervisor or agency director.

“(b) Information disclosed under this section may be disclosed only to:

“(1) A principal, teacher, or counselor at a school that the juvenile attends or has attended; or

“(2) A mental health professional as that term is defined in section 7-1201.01(11).

“(c) The information that may be disclosed under this section shall be limited to:

“(1) The juvenile’s name;

“(2) Whether the juvenile is or has been on probation or in the custody of the Department;

“(3) Whether the juvenile has violated the terms of probation or absconded while in the custody of the Department;

“(4) Whether the juvenile has been arrested by the Metropolitan Police Department, or another law enforcement agency, and the charges brought against the juvenile; and

“(5) The disposition of the charges brought against the juvenile.

“(d) Information disclosed pursuant to this section shall be:

“(1) Kept confidential and shall not be disclosed by the recipient to another individual or entity except in accordance with section 16-2331, 16-2332, or 16-2333; and

“(2) Limited to the greatest extent possible consistent with its express purpose.

“(e) This section permits the limited disclosure of information contained in records and files otherwise protected from disclosure under sections 16-2331, 16-2332, and 16-2333, but does not authorize disclosure of the records and files.

“§ 16-2333.02. Juvenile Abscondence Review Committee.

New
§ 16-2333.02

“(a) For the purposes of this section, the term “abscondence” means the status of a youth who is in the custody of the Department and:

“(1) Has escaped from detention at New Beginnings or the Youth Services Center and for whom the Department has requested a custody order from the court; or

“(2) Has violated his or her Community Release Agreement with the

Department by not maintaining contact with his or her case manager or by leaving the place of community placement and for whom the Department has requested a custody order from the court.

“(b)(1) There is established, as part of the District of Columbia government, a Juvenile Abscondence Review Committee (“Committee”). Facilities and other administrative support may be provided in a specific department or directly to the Committee, as determined by the Mayor.

“(2) The Committee shall:

“(A) Identify cases in which a homicide, assault with intent to kill, or assault with a deadly weapon (firearm), was committed by or to a juvenile in abscondence;

“(B) Examine what steps could have been taken to prevent the juvenile from absconding; and

“(C) Recommend systemic improvements to identify and locate high risk youth that are in abscondence and have the propensity to commit or be involved in a homicide, assault with intent to kill, or assault with a deadly weapon.

“(c)(1) The following shall be members of the Committee:

“(A) The Director of the Department of Youth Rehabilitation Services, or his or her designee;

“(B) The Chief of the Metropolitan Police Department, or his or her designee;

“(C) The Chief Judge of the Superior Court, or his or her designee;

“(D) The United States Attorney for the District of Columbia, or his or her designee; and

“(E) A public member, appointed by the Mayor, with advice and consent of the Council, who shall serve a 2-year term.

“(2) All members of the Committee (including their designees) shall have expertise in programs providing services to children or in locating high-risk youth who are in abscondence and have the propensity to commit or be involved in a violent crime.

“(3) The chairman of the committee of the Council responsible for public safety and the judiciary and the chairman of the committee responsible for oversight of the Department of Youth Rehabilitation Services (but not their designees) shall serve as ex officio members.

“(4) Vacancies in membership shall be filled in the same manner in which the original appointment was made.

“(5) The Committee shall establish quorum and other procedural requirements as it considers necessary.

“(d)(1) Notwithstanding the confidentiality requirements of sections 16-2331 and 16-2333, the Committee shall make a report available to the public of its findings and information related to a juvenile in abscondence within 6 months of the occurrence of the crime for which the juvenile was the victim or the alleged perpetrator.

“(2) The report shall include only information that could be released under and in accordance with section 16-2333(e).

“(3) The report shall not include any information that:

“(A) Interferes with an ongoing law enforcement investigation or proceeding pertaining to the homicide, assault with intent to kill, or assault with a deadly weapon;

“(B) Deprives a person of a right to a fair trial or an impartial adjudication;

“(C) Endangers the life or safety of any person; or

“(D) Is in violation of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936).”.

(g) Section 16-2335 is amended by adding a new subsection (h) to read as follows:

“(h) Notwithstanding the availability of information pursuant to section 16-2333(e), a juvenile shall not be required to disclose and shall have the right to refuse disclosure of his or her juvenile delinquency history in an application for employment, education, or housing.”.

(h) New sections 16-2335.01 and 16-2335.02 are added to read as follows:

“§ 16-2335.01. Motion to vacate adjudication or grant a new factfinding hearing on the ground of actual innocence.

“(a) A person adjudicated delinquent in the Superior Court may move the court to vacate the adjudication or to grant a new factfinding hearing on grounds of actual innocence based on new evidence.

“(b) Notwithstanding the time limits in any other provision of law, a motion for relief under this section may be made at any time.

“(c) The motion shall set forth specific, non-conclusory facts:

“(1) Identifying the specific new evidence;

“(2) Establishing how that evidence demonstrates that the movant is actually innocent despite having been adjudicated at a new factfinding hearing or having pled guilty; and

“(3) Establishing why the new evidence is not cumulative or impeaching.

“(d)(1) The motion shall include an affidavit by the movant, under penalty of perjury, stating that movant is actually innocent of the crime that is the subject of the motion, and that the new evidence was not deliberately withheld by the movant for purposes of strategic advantage.

“(2) The denial of a motion for relief under this section shall not be admissible in any prosecution based on the filing of a false affidavit.

“(e)(1) Unless the motion and files and records of the case conclusively show that the movant is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto.

“(2) The court may appoint counsel for an indigent movant under this section

New
§ 16-2335.01

pursuant to Chapter 26 of Title 11.

“(3) The court may entertain and determine the motion without requiring production of the movant at the hearing.

“(4) A movant shall be entitled to invoke the processes of discovery available under Superior Court Rules of Juvenile Procedure or Civil Procedure, or elsewhere in the usages and principles of law if, and to the extent that, the judge, in the exercise of the judge's discretion and for good cause shown, grants leave to do so, but not otherwise.

“(f) A motion for relief made pursuant to this section may be dismissed if the government demonstrates that it has been materially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the movant could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

“(g)(1) In determining whether to grant relief, the court may consider any relevant evidence, but shall consider the following:

“(A) The new evidence;

“(B) How the new evidence demonstrates actual innocence;

“(C) Why the new evidence is or is not cumulative or impeaching;

“(D) If the adjudication resulted from a factfinding hearing, and if the movant asserted a theory of defense inconsistent with the current claim of innocence, the specific reason the movant asserted an inconsistent theory at the factfinding hearing; and

“(E) If the adjudication resulted from a guilty plea, the specific reason the movant pleaded guilty despite being actually innocent of the crime.

“(2) If, after considering the factors in paragraph (1) of this subsection, the court concludes that it is more likely than not that the movant is actually innocent of the crime, the court shall grant a new factfinding hearing.

“(3) If, after considering the factors in paragraph (1) of this subsection, the court concludes by clear and convincing evidence that the movant is actually innocent of the crime, the court shall vacate the adjudication and dismiss the relevant count with prejudice.

“(4) If the adjudication resulted from a plea of guilty, and other charges were dismissed as part of a plea agreement, the court shall reinstate any charges of which the respondent has not demonstrated that the respondent is actually innocent.

“(h) The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant.

“(i) An order entered on the motion is a final order for purposes of appeal.

“§ 16-2335.02. Sealing of records on ground of actual innocence.

“(a) Notwithstanding section 16-2335, a person who has been arrested for violation of the District of Columbia Official Code or the District of Columbia Municipal Regulations, or has been the subject of a petition filed pursuant to section 16-2305 and whose prosecution has been terminated without adjudication may file a motion with the Family Court at any time to

New
§ 16-2335.02

seal all of the records of the arrest and related court proceedings on grounds of actual innocence.

“(b) The burden is on the movant to establish that:

“(1) The violation for which the person was arrested or petitioned did not occur;

or

“(2) The movant did not commit the offense.

“(c) If the motion is filed within 4 years after the prosecution has been terminated, the movant must satisfy the burden described in subsection (b) of this section by a preponderance of the evidence.

“(d) If the motion is filed more than 4 years after the prosecution has been terminated, the movant must satisfy the burden described in subsection (b) of this section by clear and convincing evidence.

“(e) In determining such motions, the Family Court may, but is not required to, employ a rebuttable presumption that the movant is not entitled to relief if the court finds that the government has been substantially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the person could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

“(f) An acquittal does not establish a presumption that the movant is innocent or entitled to relief pursuant to this section.

“(g) A person whose adjudication has been vacated pursuant to section 16-2335.01(g)(2), and whose subsequent prosecution is terminated without adjudication, may file a motion with the Family Court pursuant to subsection (a) of this section or any other provision of law.

“(h) A person who is found to be actually innocent pursuant to this section or section 16-2335.01(g)(3) shall be entitled to the following relief with respect to such count or counts:

“(1)(A) The Family Court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed.

“(B) A copy of the order shall be provided to the movant or his or her counsel.

“(C) The movant may obtain a copy of the order at any time from the Family Court, upon proper identification, without a showing of need.

“(2)(A) In a case involving co-respondents or co-defendants in which the Family Court orders the movant's records sealed, the Family Court may order that only those records, or portions thereof, relating solely to the movant be sealed.

“(B) The Family Court shall order that the movant's name be redacted to the extent practicable from records that are not sealed. The Family Court may make an in camera inspection of these records in order to make this determination.

“(C) The Family Court need not order the redaction of references to the movant that appear in a transcript of court proceedings involving the co-defendants.

“(D) After references to the movant have been redacted as provided for in this paragraph, the Court shall order those records relating to co-defendants returned to the prosecutor or the Clerk of the Superior Court (“Clerk”).

“(3) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

“(4) The Court shall:

“(A) Order the prosecutor, any relevant law enforcement agency, the Department of Youth Rehabilitative Services, and any other public or private agencies or institutions that provided supervision or treatment, or had custody of the person, if the supervision, treatment, or custody was under an order issued by the Family Court to seal any records that identify the movant as having been arrested, prosecuted, or adjudicated;

“(B) Order the prosecutor to arrange for any computerized record of the movant's arrest, prosecution, or adjudication to be eliminated except for a restricted-access file that would permit the prosecutor and law enforcement agencies to retrieve sealed records if ordered to do so by the Court; and

“(C) Expressly allow the prosecutor and law enforcement agencies to maintain a publicly available record so long as it is not retrievable by the identification of the movant.

“(5) The Family Court shall order the prosecutor, any relevant law enforcement agency, the Department of Youth Rehabilitative Services, and any other public or private agencies or institutions that provided supervision or treatment, or had custody of the person, if the supervision, treatment, or custody was under an order issued by the Family Court to file a certification with the Court within 90 days of an order to seal the records that, to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or adjudicated have been sealed.

“(6) The Family Court shall:

“(A) Order the Clerk to collect all Family Court records pertaining to the movant's arrest, record, or adjudication and cause to be purged any computerized record;

“(B) Expressly allow the Clerk to maintain a record so long as the record is not retrievable by the identification of the movant; and

“(C) Order the Clerk to file under seal all Family Court records retrieved pursuant to this section, together with the certifications filed pursuant to this subsection by the prosecutor, any relevant law enforcement agency, the Department of Youth Rehabilitative Services, and any other public or private agencies or institutions that provided supervision or treatment, or had custody of the person, if the supervision, treatment, or custody was under an order issued by the Family Court, within 7 days after receipt of such records.

“(7) The Clerk shall place the records ordered sealed by the Family Court in a special file, appropriately and securely indexed in order to protect its confidentiality. Unless otherwise ordered by the Family Court, the Clerk shall reply in response to inquiries concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

“(8) Once notified, any District agency in possession of a person's record shall seal, expunge, and otherwise maintain the record so that the record is in compliance with any order issued by the Family Court pursuant to this section.

“(i) The effect of relief pursuant to this section shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested or charged. No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, or charge, or trial in response to any inquiry made of him or her for any purpose.

“(j) A motion to seal filed with the Family Court pursuant to this chapter shall state grounds upon which eligibility for sealing is based and facts in support of the person's claim. It shall be accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents. A copy of the motion shall be served upon the prosecutor. The prosecutor shall not be required to respond to the motion unless ordered to do so by the Family Court pursuant to subsection (l) of this section.

“(k) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings in the case, that the movant is not eligible for relief or is not entitled to relief, the Family Court may dismiss or deny the motion.

“(l) If the motion is not dismissed or denied after initial review, the Family Court shall order the prosecutor to file a response to the motion. The prosecutor shall file the response within 60 days of the issuance of the order except where the arrest was not presented to the prosecutor for a charging decision, in which case the prosecutor shall file the response within 90 days of the issuance of the order.

“(m) Upon the filing of the prosecutor's response, the Family Court shall determine whether a hearing is required.

“(n) If the Family Court determines that a hearing is required, the hearing shall be scheduled promptly.

“(o) At the hearing, the movant and the prosecutor may present witnesses and information by proffer or otherwise. Hearsay evidence shall be admissible.

“(p) An order dismissing, granting, or denying the motion shall be in writing and include reasons.

“(q) The Family Court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant regarding the same offenses or arrests unless the

previous motion was dismissed or denied without prejudice.

“(r) An order dismissing, granting, or denying a motion for sealing is a final order for purposes of appeal.

“(s) Records sealed pursuant to this section shall be opened only on order of the Family Court upon a showing of compelling need, except that, upon request, the movant shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under this section was granted. A request for access to sealed court records may be made ex parte.

“(t) Any person, upon making inquiry of the Family Court concerning the existence of records of arrest, court proceedings, or adjudications involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk's response that no records are available under subsection (h)(7) of this section with respect to any issue about that person's knowledge of the individual's record.”.

Sec. 4. Section 210 of the Data-Sharing and Information Coordination Amendment Act of 2010, signed by the Mayor on July 20, 2010 (D.C. Act 18-489; 57 DCR 7171), is repealed.

**Amend
§§ 16-2331,
16-2332,
16-2333**

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia