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# LEGAL ANALYSIS SUBCOMMITTEE REPORT

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KING COUNTY SYSTEMS INTEGRATION  
PROJECT



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### INTRODUCTION

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The Legal Analysis Subcommittee has undertaken an extensive examination of the legal landscape in King County and how it impacts the ability of the child welfare and juvenile justice systems to collaborate on behalf of their common clients. This examination utilized two approaches: 1) legal research and analysis focusing on laws, regulations, and policies that regulate information sharing; and 2) qualitative research consisting of interviews designed to assess the impact of the laws, regulations, and policies. The findings from this research are summarized in the sections below. The discussion section presents an analysis of the findings in light of the goals of strengthening King County partnerships, coordinating service delivery, and improving outcomes for cross-system clients.

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### METHODOLOGY

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The qualitative research component of the project consisted of interviews with 20 key participants representing the following entities: the Attorney General's Office, the Office of the Public Defender, Society of Counsel, the Prosecuting Attorney's Office, Children's Administration (CA), the Division of Child and Family Services (DCFS), the Juvenile Rehabilitation Administration (JRA), the Probation Department, King County Superior Court (KCSC), and King County Department of Community and Human Services (DCHS). In addition to interviews conducted by this subcommittee, findings were derived from surveys conducted and reported by Lee Selah at CA.

Legal research was guided by the listing of federal and state statutes relevant to information sharing and confidentiality provided by local members of the subcommittee. The list was expanded as further research and interviews revealed other pertinent federal and state provisions. In addition,

administrative codes, Rules of Professional Conduct, and constitutional provisions were examined. Administrative policies, protocols, and interagency agreements were also collected and considered. Finally, the Executive Steering Committee, the Resource Subcommittee, and the Data Subcommittee guided the legal research by offering areas of specific concern requiring legal clarification.

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## INTERVIEW FINDINGS

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Participants were questioned about two main topics: 1) their knowledge and impressions of current information sharing and collaboration practices; and 2) their knowledge and impressions of the laws, regulations, and policies that affect such practices. The findings are summarized below, with more specific findings listed in Appendix B.

### **KNOWLEDGE AND IMPRESSIONS OF CURRENT INFORMATION SHARING AND COLLABORATION PRACTICES**

**What information is being sought:** Understandably, professionals working with a child and his or her family seek as much relevant information as possible in order to gain a comprehensive picture of the client's needs. Professionals also seek information in order to avoid duplicating efforts or offering services that have been unsuccessful in the past. Participant interviews began by discussing the types of information that participants routinely seek from other systems. Workers (referring to social workers, probation counselors, and parole counselors) stated that they seek information regarding what brought the child into court and how the case is progressing. They also stated that criminal, social, probation, mental health, and substance abuse histories are helpful to their investigation and service planning. Workers also seek to learn about the child's known conditions: mental health, behavioral, developmental delays or disabilities, and medical. Finally, workers want to be aware of what services are currently or were previously being provided by other systems or entities, as well as the services for which the child is eligible. Community-based providers seek much of the same information in order to provide the most appropriate services. Likewise, attorneys utilize this same information in representing their clients.

**How information is shared:** Workers reported that much information is accessed or shared informally, by simply calling the worker in the other system to request information. Where there are established relationships, information flows easily between child welfare and juvenile justice. Likewise, delinquency and dependency defenders working with the same client share information by simply speaking with one another, as they are usually working in the same office. Some information is automatically provided to attorneys due to their representative role, such as reports generated by social workers for Assistant Attorneys General and criminal history information accessed by Prosecuting Attorneys via a state database. Where needed information is not provided and informal procedures to obtain the information are not legally practicable, workers, attorneys and providers report that they try to obtain releases of information from the children or their parents.

**Identifying successful efforts:** When questioned about collaboration, participants identified a number of successful efforts. Most often cited were the Drug Court program and interagency staffings such as the Department of Community and Human Services Mental Health, Chemical Abuse, and Dependency Services Division (MHCADSD) Interagency Staffing Team (IST). Both employ a team model that includes face-to-face discussions about the client. IST benefits from a coordinator who manages confidentiality and information sharing issues. The Drug Court benefits from the commitment of a dedicated staff and agreement on a common goal. Participants also identified interagency trainings as valuable. Numerous participants stated that relationship building in King County is strong, and that there is a general belief that collaboration is a good thing. This commitment to collaboration is evidenced by the positive reception to the trainings already provided.

**Areas where improvement is needed:** Notification was a common concern for interviewees. DCFS workers need to be alerted when a CHINS or a dependent youth enters detention. Likewise, defender attorneys need notification when a child changes placements. Assistant Attorneys General report that only sometimes will the dependency attorney get notification that a dependent child has been detained. The Prosecuting Attorneys do not notify the dependency attorney that charges are

being filed against a dependent child. Interviewees also noted that the informal nature of information sharing can be challenging, as one must track down the person who possesses the needed information. It was consistently reported that health care or mental health information is especially difficult to obtain.

**Ideas for improvement:** Many participants felt that centralizing information and having a person who is specifically charged with guiding the information sharing in each case would be helpful. Participants also supported continuing training on what other agencies and entities do as well as trainings clarifying the legal aspects of information sharing.

### **KNOWLEDGE AND IMPRESSIONS OF LEGAL AND OTHER BARRIERS**

**Knowledge of the law:** Interviewees were asked about their familiarity with laws regarding information sharing and what their impressions were of the impact of such regulations on their work. Generally, workers were familiar with federal laws and regulations, such as HIPAA and FERPA, while less familiar with the state statutes addressing information sharing between child welfare and juvenile justice. Both DCFS workers and juvenile justice participants reported that one of the main barriers to sharing information is that they are unclear about what they can share and what they cannot. It is reported that workers often will assume that a signed release is required in order to share information, and will delay their response to an information request in order to complete this often unnecessary step. If there is difficulty obtaining such a release, workers will rely on attorneys to obtain a court order. The culture of erring on the side of caution is so entrenched that obtaining releases and court orders is the rule, rather than the exception.

**Fear of Liability:** Among schools and community based service providers, there is fear of liability for improper disclosure of information, given that federal rules provide criminal and civil penalties for violations. However, attorneys report that there are few cases regarding improper disclosure at the state level. Nevertheless, the federal regulations and penalties create enough of a deterrent that information can be difficult to obtain from schools, health care providers, mental

health providers, and substance abuse treatment providers. However, this is an area in which it is reported that personal relationships can overcome some barriers. Workers report that they can get information from school and health care personnel when they have previously worked together.

**Other barriers to collaboration:** Participants reported that statutes and regulations are not the central factor in deciding whether information is shared. Rather, the determining factor is whether a relationship exists. However, participants express that these relationships can be hard to come by because of how little each entity knows about the others. A common theme in the interviews is that there is a strong difference in goals among youth serving entities, which inhibits the development of relationships. Many participants reported that it is a significant challenge to reconcile defense attorneys' activities in relation to their representation of their clients and the spirit of the court process which is focused on the best interest of the child. For example, it was reported that sometimes, attorneys advise their juvenile clients not to sign releases. However, defenders have to consider that any information that is shared about their clients could be used against their clients later. Similarly, those working with the juvenile in both juvenile justice and child welfare expressed reservations about sharing information with schools, and sometimes even community agencies, because they do not trust that the information will be used properly.

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## LEGAL RESEARCH FINDINGS

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**Information sharing between child welfare and juvenile justice:** The most important statutes regarding the sharing of records created and maintained by child welfare and juvenile justice agencies are found in the Revised Code of Washington (RCW), Chapter 13.50. This chapter addresses the keeping and release of records by juvenile justice and care agencies. The term “records” refers to the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case.<sup>1</sup> The “official juvenile court file” is the legal file containing the petition and other court documents<sup>2</sup>, and the “social file” is the file that contains the record and reports of the probation counselor<sup>3</sup>. A “juvenile justice or care agency” includes the court,

prosecuting attorney, defense attorney, detention center, attorney general, and DSHS, which includes both JRA and CA. <sup>4</sup> Section 13.50.050 governs records relating to the commission of juvenile offenses. It requires that the official juvenile court file of any alleged or proven juvenile offender be open to public inspection.<sup>5</sup> All other records are confidential, but can be released under certain circumstances. Most importantly, the statute states that “records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.”<sup>6</sup> Section 13.50.100 covers records not addressed in 13.50.050.<sup>7</sup> Again, these records are confidential with disclosure allowed between juvenile justice and care agencies with an open case on a common client.<sup>8</sup> Summaries of statutes and rules can be found in Appendix D.

In general, Washington state laws affecting youth support coordinated, efficient, and effective service delivery. Although many Acts contain specific guidelines on confidentiality and information sharing, the stated intent of such Acts is usually to support the most effective strategies for positive outcomes, encouraging systems to interact and communicate to fulfill the client’s needs. Specific findings regarding legislative intent are listed in Appendix C.

In addition, federal statutes and regulations specifically relating to children and families involved with the child welfare system or the juvenile justice system make specific allowances for information sharing necessary to carry out the purposes of the laws. The Child Abuse and Prevention Treatment Act (CAPTA) allows disclosure of child welfare records to courts when deciding a relevant issue.<sup>9</sup> Note that a court handling an offender case may need information from the child welfare system to decide issues such as disposition and referred services. Both CAPTA and the Juvenile Justice Delinquency and Prevention Act (JJDP) support efforts for collaboration between child welfare and juvenile justice. Title IV of the Social Security Act allows child welfare records to be disclosed when disclosure is for purposes directly connected with administering Title IV-E and IV-B.<sup>10</sup> In this

situation, either the child welfare or juvenile justice system may be claiming the federal dollars, and coordinating with the other system can further the administration of the Title IV-E or IV-B by improving service delivery for the child.

**When attorneys become involved:** Attorneys are not only guided by statutory law, but must also adhere to the Rules of Professional Conduct. These rules require an attorney to act diligently and not to reveal confidences without consent of the client.<sup>11</sup> Under RCW 13.50.100, attorneys are included in the definition of a juvenile justice or care agency, therefore involving them in the free exchange of information regarding juvenile clients.<sup>12</sup> Moreover, RCW 13.50.100 requires that a juvenile's attorney and a parent's attorney be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile.<sup>13</sup>

A common concern of defenders is the possibility of juvenile records surfacing in the case of an adult criminal defendant. Section 13.50.050 states that "... the juvenile offense records of an adult criminal defendant...in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed."<sup>14</sup> This section also outlines a procedure for the sealing of juvenile records.<sup>15</sup> Despite the availability of this process for most juvenile records, its effect is nullified by the fact that any sealed records will be "unsealed" in the event of an adjudication of a juvenile offense or crime.<sup>16</sup> Under certain limited circumstances, juvenile records can be destroyed, but only if the juvenile record consists of only diversion agreements.<sup>17</sup>

U.S. Constitutional provisions, while not directly bearing on the specific issue of information sharing, do reveal the fundamental guidelines for criminal procedure in this country. This impacts juvenile justice practices and begins to define the role of the attorney within that system. Attorneys representing juvenile and criminal defendants are charged with protecting the constitutional rights of their clients, which sometimes requires advising clients not to reveal certain information. Interview findings reveal that this is often a frustration for workers. However, it is important to recognize that the constitution is the philosophical foundation for many of the actions taken by defense attorneys

on behalf of their clients. Summaries of statutes, rules, and constitutional provisions can be found in Appendix D.

**When schools become involved:** The federal Family Educational Rights and Privacy Act (FERPA) regulates the confidentiality of education records.<sup>18</sup> The definition of “education records” is broad and includes all records, files, documents containing information directly related to a student that an education agency or institution maintains.<sup>19</sup> FERPA generally requires that a release be signed by a student’s parents in order to share the student’s records with a third-party outside the school system.<sup>20</sup> A State policy or practice to the contrary will result in cutting off federal funds to the educational agency or institution.<sup>21</sup> However, there are exceptions to the consent requirement. First, FERPA acknowledges that education records can be disclosed in response to a court order.<sup>22</sup> Second, there is an exception that applies to juveniles involved in the juvenile justice system. Under this exception, educational records can be disclosed without the prior consent of the student’s parent or guardian if: 1) the disclosure is made to a state or local juvenile justice system agency; 2) if the disclosure is based on a state statute authorizing the disclosure; 3) if the release of records is necessary to effectively serve, prior to adjudication, the needs of the juvenile; and 4) state or local officials certify, in writing, that the institution or individual receiving the information agrees not to disclose it to a third party other than another juvenile justice system agency.<sup>23</sup> The following Washington State statutes authorize such disclosures:

- RCW 28A.600.475 states: “School districts may participate in the exchange of information with law enforcement and juvenile court officials to the extent permitted by the family educational and privacy rights act of 1974.”
- RCW 13.40.480 states: “Pursuant to RCW 28A.600.475, and to the extent permitted by [FERPA], and in order to serve the juvenile while in detention and to prepare any post-conviction services, schools shall make all student records and information necessary

for risk assessment, security classification, and placement available to court personnel and the department within three working days of a request under this section.”

- RCW 13.50.100 includes schools as “juvenile justice and care agencies,” and allows for the sharing of information among such agencies when there is an open case on a child.

Although the exception appears to be limited to juveniles who are within the juvenile justice system but not yet adjudicated, there is a report that concludes, on the basis of a 1997 bulletin issued jointly by the U.S. Department of Justice and the U.S. Department of Education, that the exception is applicable to juveniles who are identified as “at-risk”, prior to any juvenile justice system involvement, as well as juveniles who have already been adjudicated delinquent. It is recommended, however, that the scope of information sharing be specifically detailed in a multi-agency agreement. Summaries of statutes can be found in Appendix D.

**When physical or mental health information is involved:** The Health Insurance Portability and Accountability Act (HIPAA) is the controlling statute regarding confidentiality of patient medical records, and its regulations guide health care plans and providers on the uses and disclosures of protected health information.<sup>24</sup> Covered entities, which include health care providers and health plans (JRA is considered a health plan for purposes of HIPAA), may not use or disclose protected health information, except as HIPAA permits or requires.<sup>25</sup> Two relevant permitted uses are: 1) for treatment, payment, or health care operations; and 2) for public interest and benefit activities.<sup>26</sup> Under the public interest and benefit activities use, covered entities may disclose protected health information to law enforcement officials for law enforcement purposes where there is a court order, court-ordered warrant, or subpoena or summons issued by a judicial officer.<sup>27</sup> Additionally, covered entities may disclose to law enforcement in response to a law enforcement official’s request for information about a victim or suspected victim of a crime.<sup>28</sup> Disclosures for most other purposes require a signed authorization from the subject of the records or the individual’s personal representative.<sup>29</sup> Generally, the parent or guardian will be the personal representative of a child.

However, when the parent is not considered the personal representative, HIPAA defers to State law to determine the rights of parents regarding the protected health information of their child.<sup>30</sup> Therefore, if the court authorizes someone else to make treatment decisions for the child, which can happen in dependency cases, this person is the personal representative and can give consent to the disclosure of records. When use or disclosure is permitted, it must be done to the minimum extent necessary to fulfill the purpose, and additional limitations may apply.<sup>31</sup> However, the U.S. Department of Health and Human Services has yet to issue specific guidance to social service and juvenile justice agencies regarding its applicability in these areas.

Improper disclosure carries with it civil monetary penalties.<sup>32</sup> However, HHS may not impose a civil monetary penalty when a violation is due to reasonable cause and did not involve willful neglect, and the covered entity corrected the violation within 30 days of when it knew or should have known of the violation. There are also criminal penalties that are applicable when a person knowingly obtains or discloses individually identifiable health information in violation of HIPAA.<sup>33</sup>

In Washington State, the Uniform Health Care Information Act states that a health care provider may not disclose health care information about a patient without the patient's written authorization.<sup>34</sup> Disclosure without authorization is allowed in certain circumstances, including: disclosure to a person who the provider reasonably believes is providing health care to the patient, and disclosure to an official of a penal or other custodial institution where the patient is detained.<sup>35</sup> The Act provides for civil remedies for violation of this chapter.<sup>36</sup> Regarding mental health records, the Washington Code instructs that all mental health information be confidential, including the fact of admission to a facility or a program.<sup>37</sup> Disclosure without consent is allowed in a few circumstances, including in communications between qualified professionals in the provision of services.<sup>38</sup>

Specifically regarding the mental health records of minors, Washington law states that the fact of admission and all information obtained through treatment under the "Mental Health Services for Minors" chapter is confidential and may be disclosed only in certain circumstances.<sup>39</sup> Such

circumstances include communications between mental health professionals in the provision of services to the minor, to persons with medical responsibility for the minor's care, to a facility in which the minor resides or will reside, and in the course of dependency proceedings.<sup>40</sup> Summaries of statutes and regulations can be found in Appendix D.

**When drug or alcohol treatment information is involved:** The Public Health Services Act includes some of the most protective confidentiality rules in federal law. The Act states that records maintained in connection with any federally assisted program or activity relating to substance abuse treatment are to be confidential.<sup>41</sup> Such records can only be disclosed pursuant to an exception contained in federal law, if the patient gives informed written consent, or if authorized by a court order.<sup>42</sup>

Federal regulations offer further guidance, stating that acknowledgement of the presence of a patient in a federally assisted drug or alcohol abuse program can only occur with the consent of the patient, or in response to a court order.<sup>43</sup> With valid written consent, a program may disclose information about a patient to those persons within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceedings against the patient.<sup>44</sup>

The regulations state that “an order of a court...under this subpart is a unique kind of court order,” in that a response to a subpoena for these records is not permitted unless a court order authorizes it.<sup>45</sup> A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment or referral for treatment only if the disclosure is necessary in connection with investigation or prosecution of certain crimes including child abuse and neglect.<sup>46</sup> The regulations also provide procedures for obtaining an order authorizing the disclosure of patient records for purposes other than criminal investigation. Obtaining such a court order requires a particularized showing at an evidentiary hearing that the applicant has a “legally-recognized interest” in the information, that the information

is not available through any other means, and that the public interest in disclosure outweighs the patient's privacy interest.<sup>47</sup> Providers who violate federal drug privacy laws are subject to criminal sanctions including, but not limited to, fines of up to \$500 for a first offense and \$5,000 for subsequent offenses.<sup>48</sup>

State law is similar, requiring that registration in and records of drug or alcohol treatment programs be confidential.<sup>49</sup> The records can be disclosed with consent, or by court order.<sup>50</sup> Summaries of statutes and regulations can be found in Appendix D.

**Existing policies and protocols:** Interviews with participants revealed several information sharing policies already in place or being developed by a number of entities. In some cases, participants provided copies of written protocols. Review of such documents confirms that RCW § 13.50 is interpreted by participants as allowing for information to be shared among agencies and entities that provide treatment or care for juveniles for the purpose of carrying out their responsibilities. Given this foundation, JRA, KCSC, and DCFS have each participated in creating guidelines, either individually or as part of a collaborative effort, for sharing information regarding children who overlap their systems. These policies reveal few legal barriers. Summaries of these policies and agreements can be found in Appendix E.

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## DISCUSSION

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With interviews and legal research completed, the impact of laws, regulations, and policies upon information sharing and collaboration in King County can be assessed. Two essential conclusions can be drawn: 1) barriers to information sharing and collaboration between child welfare and juvenile justice workers and court participants are primarily cultural, technological, and tactical, rather than legal; and 2) legal barriers arise when outside entities such as schools, health care providers, and mental health/substance abuse providers become involved. The following discussion

explains these conclusions and offers strategies for creating an integrated system within this legal landscape.

**Sharing between workers:** The first level of information sharing and collaboration to consider is that which occurs between workers – social workers from DCFS, juvenile probation counselors from KCSC, and parole counselors from JRA. Interviews with participants revealed that workers seek information on a child’s relevant histories, known conditions, and service provision and eligibility. Therefore, a social worker may want the record kept by a probation officer about a child who has been referred to CPS or CWS by the court. Likewise, a parole officer may seek the CWS record for a child who has just been adjudicated guilty of an offense and placed in the custody of JRA. The analysis below explains why the sharing of such records, retained and produced by these agencies, should encounter no significant legal barriers.

Federal statutes and regulations support collaboration between child welfare and juvenile justice, and allow for information sharing involving case files created by child welfare and juvenile justice workers without requiring the consent of a client. Consent will only be an issue when there is a request for “second-party” information held by a school, a health care provider, a mental health provider, or a substance abuse treatment provider. Those issues are discussed below.

The Revised Code of Washington devotes an entire Chapter, Chapter 13.50, to the “Keeping and Release of Records by Juvenile Justice or Care Agencies.” This statute clears the way for communication between juvenile justice and child welfare entities when dealing with open cases of common clients. Workers can feel free to talk with one another about the case, exchange written records, and hold interagency staffings. The case histories, service histories, and information about known conditions that workers seek should be available to them.

One finding worth addressing is that workers reported confusion regarding the effect of HIPAA on their ability to share information between juvenile justice and care agencies. Unfortunately, the U.S. Department of Health and Human Services has failed to offer specific guidance on this issue.

States have been left on their own to interpret the effects of HIPPA in this context. Because of the great disparity in state interpretations, a definitive interpretation cannot be made without the guidance of Washington State itself. However, the argument can be made that child welfare and juvenile justice agencies should not be considered “covered entities” for the purpose of the HIPAA privacy rule, and that Washington State has established this position in the language of Chapter 13.50, which allows information sharing between such entities.

Given the generally supportive federal and state legal structure, the greatest challenges in information sharing between these entities will be cultural. Interviews revealed some of the cultural barriers: time spent tracking down workers who have needed information; resistance to sharing when a worker with information is unsure of the role and intention of the worker requesting information; and the inaccurate perception that releases must be signed in order to share information with those in the juvenile justice and care agencies. Nevertheless, the resource committee and data committee should be aware that they are legally supported in developing systems and strategies of information sharing between DCFS, KCSC, and JRA regarding clients with open cases. Depending on the specifics of such projects, questions will certainly arise, but generally such efforts will not confront legal barriers requiring legislative reform.

***Possible Next Steps:*** First, King County already has a strong strategy for reforming this cultural environment in its interagency agreements, its multi-system trainings and staffings, and efforts in relationship building. These efforts have been well received by participants across the board, and should be continued. Resources such as field guides can be developed in order to clarify the law, offer guidance in the form of vignettes, and provide information for trainings.

Second, it would be useful to request an attorney general opinion on the relationship of child welfare and juvenile justice agencies to the HIPAA privacy requirements. One further recommendation is to revise 13.50.100 to explicitly permit and encourage interagency agreements regarding the sharing of information. Although this is not legally necessary, it may offer some clarity and direct support for more of these efforts. A good example of such statutory language can be found in Wisconsin state statute WSA 938.78(1m).

**Sharing between attorneys and workers:** In addition to workers, attorneys play a large role in the information sharing structure. Defender attorneys, prosecuting attorneys, and Attorneys General

are all considered juvenile justice or care agencies as defined in RCW 13.50.010. Therefore, the instructions in 13.50.050 and 13.50.100 are applicable to records produced by attorneys and records sought by attorneys. Thus, workers are legally allowed to provide information to attorneys involved in a juvenile's case.

Whether attorneys can share information that they have maintained or produced is influenced by some additional sources. Attorneys must abide by specific statutory guidelines regarding privileged communications, which prohibit an attorney from being examined as to any communication made by the client to him or her. Attorneys are also guided by the Rules of Professional Conduct that require that a lawyer not reveal confidences relating to representation of a client without client consent. However, interview findings lead to the conclusion that these restrictions are not significant barriers to information sharing, since workers do not report that they seek information from attorneys that would be considered confidential or privileged. Systems integration need not require attorneys to share such information without the consent of the client. If workers are free to share amongst the two systems, most information sharing needs should be met.

Interviews reveal that attorneys are strongly influenced by tactical concerns when advising clients whether or not to sign releases or participate in evaluations. In this context, defender attorneys have concerns regarding the potential future use of sensitive information. The Revised Code of Washington has a process through which most juvenile records can be sealed upon request, but these records are automatically unsealed if the client is later charged with a crime. Therefore, defenders may not want sensitive evaluations to be performed and then become part of an official record or a prosecutor's record, both of which can resurface if charges are brought against the client as an adult. This concern on the part of defenders can lead to frustrations among workers seeking information for service provision.

**Possible next steps:** Some options for dealing with information sharing involving attorneys include: 1) focus on building more trust between workers, judges, prosecutors, and defenders so that agreements to limit the scope of certain evaluations can be reached; 2) encourage prosecutors and judges to ensure greater confidentiality by limiting the use of evaluations through court orders; and 3) develop a statute stating that certain information can remain sealed, or only be released to certain parties or for certain purposes. Regarding the last suggestion, the legislature could create a statutory distinction between the legal file and the social file, with mental health evaluations routinely kept in a social file that can be destroyed while the legal file remains. Note that there are a few states, including Wisconsin and Indiana, whose statutes give courts discretion to seal juvenile records based on the consideration of several factors, and offer no provision for unsealing records once sealed.

**Sharing between schools and workers:** As discussed in the findings section of this report, FERPA generally requires consent for the release of education records, but has an exception for youth involved in the juvenile justice system. This exception points to state law, which leads to Chapter 13.50. This Chapter once again opens the lines of communication between juvenile justice and care agencies, which includes schools. Therefore, resource committee and data committee integration efforts generally can include school personnel and education information, with more specific concerns being addressed as they arise.

This analysis is best summarized by the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention, which states: “As more and more States establish information sharing programs to serve students through cooperation with the juvenile justice system, the emphasis on neighborhood school participation in interagency information sharing will increase. FERPA need not be a barrier to this progress toward proactive information sharing networks.”<sup>51</sup>

***Possible next steps:*** DSHS has developed an excellent field guide for information sharing between schools and child welfare participants, such as social workers and caregivers. The expansion of such a guide to include the juvenile justice system would be helpful. The continuation of current trainings and inter-agency staffings should be continued, and new efforts that include education personnel should be encouraged.

**Sharing between health care providers and workers:** This area of information sharing was identified by several workers and attorneys as a significant barrier to obtaining necessary information. Although established relationships can often ease the difficulty of obtaining health related information, the law does not give health care providers much flexibility regarding the disclosure of patient information. Both federal and state rules mandate that health information be confidential. In addition, stiff criminal and civil penalties may be imposed for improper disclosure. However, the

penalties may not be imposed except in cases of willful neglect or criminal intent. Therefore, confidentiality should be taken very seriously, but health care personnel should recognize that while they should exercise reasonable caution, they need not create absolute barriers to information sharing.

Federal law allows disclosure for treatment, and similarly, Washington state law allows disclosure to those whom the provider reasonably believes are providing treatment. However, there is no guidance from the federal government on whether the scope of the treatment exception reaches to child welfare and juvenile justice workers. Therefore, workers seeking physical or mental health information about a client often must obtain either court ordered evaluations or signed releases.

Interviews reveal that obtaining a release from a juvenile client is not usually a problem. It is also possible that information can be disclosed under HIPAA's permitted use for purposes of treatment if the worker is obtaining information for this purpose. The greater difficulty is in obtaining a release from a parent in order to access the parent's medical records. It appears that the permitted uses and disclosures under HIPAA do not provide such access.

One strategy is to encourage court ordered evaluations. Washington caselaw states that court ordered evaluations are forensic evaluations for court purposes and are therefore not confidential.<sup>52</sup> Such evaluations carry no expectation of confidentiality and therefore can be shared with the department and all of the other parties to the case. There are other concerns that arise when encouraging and relying upon such evaluations, but from a legal perspective, this process allows for greater access to useful information.

**Possible next steps:** As reflected in the findings section, many participants acknowledged the success of team models such as the IST, in which one person has responsibility for ensuring that releases are signed and kept current. Support of current interagency staffing efforts and encouragement for the development of others may serve to ease the challenges in sharing health care information.

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**ENDNOTES**

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<sup>1</sup> RCW 13.50.010(1)(c)

<sup>2</sup> RCW 13.50.010(1)(b)

<sup>3</sup> RCW 13.50.010(1)(d)

<sup>4</sup> RCW 13.50.010(1)(a)

<sup>5</sup> RCW 13.50.050(2)

<sup>6</sup> RCW 13.50.050(4)

<sup>7</sup> RCW 13.50.100(1)

<sup>8</sup> RCW 13.50.100(3)

<sup>9</sup> 42 USC 5106a(b)(2)(A)(viii)(V)

<sup>10</sup> 42 USC § 671(a)(8)(A)

<sup>11</sup> RPC 1.3; 1.6

<sup>12</sup> RCW 13.50.010(1)(a)

<sup>13</sup> RCW 13.50.100(7)

<sup>14</sup> RCW 13.50.050(10)

<sup>15</sup> RCW 13.50.050(11)-(15)

<sup>16</sup> RCW 13.50.050(16)

<sup>17</sup> RCW 13.50.050(17)-(22)

<sup>18</sup> 20 USC 1232g

<sup>19</sup> 20 USC 1232g(a)(4)(A)

<sup>20</sup> 20 USC 1232g(b)(1)

<sup>21</sup> *Id.*

<sup>22</sup> 20 USC 1232g(b)(1)(f)

<sup>23</sup> 20 USC 1232g(b)(1)(E)

<sup>24</sup> 45 CFR 164.502

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<sup>25</sup> 45 CFR 164.502(a)

<sup>26</sup> 45 CFR 164.502(a)

<sup>27</sup> 45 CFR 164.512(f)(1)

<sup>28</sup> 45 CFR 164.512(f)(3)

<sup>29</sup> 45 CFR 164.502(a)

<sup>30</sup> 45 CFR 164.502(g);

<sup>31</sup> 45 CFR 164.502(b)

<sup>32</sup> Pub. L. 104-191; 42 USC 1320d-5

<sup>33</sup> Pub. L. 104-191; 42 USC 1320d-6

<sup>34</sup> RCW 70.02.020

<sup>35</sup> RCW 70.02.050

<sup>36</sup> RCW 70.02.170

<sup>37</sup> RCW 71.05.390

<sup>38</sup> RCW 71.05.390(1)

<sup>39</sup> RCW 71.34.200

<sup>40</sup> *Id.*

<sup>41</sup> 42 USC 290dd-2(a)

<sup>42</sup> 42 USC 290dd-2(b)

<sup>43</sup> 42 CFR 2.13(c)

<sup>44</sup> 42 CFR 2.35

<sup>45</sup> 42 CFR 2.61

<sup>46</sup> 42 CFR 2.65

<sup>47</sup> 42 CFR 2.64

<sup>48</sup> 42 CFR 2.4

<sup>49</sup> RCW 70.96A.150

<sup>50</sup> *Id.*

<sup>51</sup> Office of Juvenile Justice and Delinquency Prevention, *Sharing Information: a Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs*, June 1997.

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<sup>52</sup> J.N. v. Bellingham School District, 871 P.2d 1106 (1994); In re Siegfried, 708 P.2d 402 (1985); State v. Post, 826 P.2d 172, 837 P.2d 599 (1992); State v. Ackerman, 953 P.2d 816 (1998)