

# The Abell Report

*What we think about, and what we'd like you to think about*

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## **ABELL SALUTES: “Banner Neighborhoods” Helping residents stay fixed in their homes by keeping their homes fixed up.**

Eugene Egelston is 79 years old and lives alone in the house where he was born and where his parents before him lived most of their lives— 223 N. Kenwood Ave. But he probably wouldn't still be living in the house because the costs and the inconveniences of maintenance would have forced him to consider making other living arrangements. This dilemma was on his mind when he heard about Banner Neighborhoods—and that is when he changed his mind, and changed his life. He says, “I heard about Banner Neighborhoods from a neighbor, and that if I called them they would come out and make the repairs that were worrying me and that the service was free. Well, I called them and two very polite men came out and took care of my maintenance needs. They put some siding on the house, which was badly needed. They fixed a leaking spigot in the kitchen. They were pleasant and friendly and knew exactly what they were doing. They made a huge difference in my life. I am no longer thinking about moving, not as long as there is Banner Neighborhoods. I am not exaggerating.”

Mr. Egelston's is not an isolated case. An elderly Ms. Anita Impalleria lives alone where she was born and

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## **Confidentiality Laws: Protections For Kids Or Cloak Of Secrecy For Agencies?**

*Privacy vs. the public's interest in knowing  
about children at risk and in trouble*

By Mark Soler<sup>1</sup> and Amy Breglio<sup>2</sup>

### **Introduction**

On July 4, 2009, 17-year-old Lamont Davis was arrested in Baltimore for shooting a gun in a street confrontation in which the bullet critically injured 5-year-old Raven Wyatt. At the time of the incident, Davis was under the jurisdiction of the Maryland Department of Juvenile Services (DJS). In fact, he was on community supervision on another charge and was ordered to wear a GPS device attached to his ankle. News reports stated that Davis had a lengthy history of arrests.<sup>3</sup> As reporters sought to obtain information on the youth and the reasons for his release, the Department refused to comment on the specifics of the cases. The Department cited state confidentiality laws that prohibit it from releasing information about young people under its care. A *Baltimore Sun* reporter wrote that “officials hide behind a cloak of secrecy.”<sup>4</sup>

In January 2002, 22-year-old Keisha Carr and her husband took their two-month-old son, James, to Johns Hopkins Hospital, and told doctors that his

left arm seemed swollen. An examination revealed that both of James' arms and legs had been broken. Carr pleaded guilty to child abuse and received probation on the condition that she attend parenting classes and individual counseling at Healthy Start, a program for low-income mothers. In November 2002, a health counselor for Healthy Start reported to the Child Protective Services division of the Baltimore Department of Social Services (DSS) that Carr had ceased attending the counseling sessions, stopped taking her medication, and suffered from severe depression. Carr was pregnant again, and the counselor was concerned that James and Carr's newborn could be in danger. Despite the warning, DSS did not remove the children. Three months later, Carr killed her infant, David, breaking his skull, ribs, and arm. After David's death, DSS refused to comment on the case, citing confidentiality laws.<sup>5</sup>

But confidentiality is hardly absolute, in law or in practice. For example, although state laws prohibit disclosure to the public of personal

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information regarding children involved in juvenile court, violations of those laws occur every day that court is in session at the Baltimore City Juvenile Justice Center. On the third floor of the building, in the public area, in full view, is a screen that lists confidential information—the names of children who have hearings that day.

The public has a strong interest in learning about who commits violent crimes in the community and how children can die after the authorities have been warned about danger from family members. How public agencies and the courts handled particular cases, whether standard practices were followed, and whether official policies put the public or individual children at risk, are all important issues, potentially matters of life and death. The media, as the eyes and ears of the public, want to learn what happened before, during, and after these tragedies.

At the same time, confidentiality has been a hallmark of the juvenile justice system since its creation more than a century ago,<sup>6</sup> as a means of ensuring that children are not stigmatized by court proceedings and not punished throughout their lives for misdeeds they committed when they were young.

Similarly, in child abuse cases, confidentiality is necessary for investigators to obtain relevant information from family members, witnesses, and those reporting the alleged abuse. Consequently, child abuse and child welfare records are also guarded with legal protections.

In addition, although confidentiality laws prohibit the disclosure of DJS and DSS records, there can be real benefits to public agencies sharing information about children under their jurisdiction. For example, for youth in trouble with the law and in need of rehabilitation, information from other agencies can be helpful to the Department of Juvenile Services in developing treatment plans. Or if a child is alleged to be delinquent and *also* neglected or abused by his caregivers, information-sharing between DJS and DSS can reduce duplication of efforts and help both agencies work more effectively.



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These various interests in confidential information—interests of the public, of children and families, and of the agencies responsible for caring for them—raise important questions for public policy and agency accountability. How much do confidentiality laws protect information about children in the custody of public agencies? Do agency officials hide behind confidentiality laws when delinquent youth commit serious crimes, or when parents kill their child after DSS receives warnings

about potential dangers but does not remove the child from the home? Can agencies share information effectively to provide better services to children and families? Are reforms needed?

To sort out these issues and answer these questions, we reviewed the relevant federal and Maryland state statutes, advice on the issues by the Maryland State Attorney General’s office, and relevant court decisions.<sup>7</sup> We looked at statutes in other states and the legal and policy literature on confidentiality and information-sharing, including materials published by the U.S. Department of Justice and the U.S. Department of Health and Human Services. We also interviewed agency secretaries; chiefs of staff; public information officers; assistant attorneys general assigned to work with the agencies; and other personnel in Baltimore City and Maryland state agencies, including the Juvenile Court, State’s Attorney’s Office, Office of the Public Defender, Baltimore City Department of Social Services, Office of the Mayor in Baltimore, the Maryland Department of Juvenile Services, Department of Human Resources (the umbrella agency for the local departments of social services), Department of Public Safety and Correctional Services, and the StateStat program in the Office of the Governor, as well as independent advocates for children and youth.

### **Interests of Children and Families, Agencies, and the Public Children and Families**

Any analysis of confidentiality laws should begin with a discussion of the interests involved. Children and families involved in the juvenile justice sys-

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tem have important interests in keeping their records confidential. These interests include avoiding stigma, embarrassment, and humiliation from disclosure of personal or family problems. There is also concern that if peers or authority figures such as teachers learn of court involvement, they will treat the child differently and expect the worst in the future.<sup>8</sup> Rejection by adults may, in turn, breed frustration, resentment, and aggression, i.e., the very qualities that the juvenile justice system is supposed to diminish. Moreover, disclosure of juvenile court involvement may have longer-term negative consequences for a child's education, employment, and housing.<sup>9</sup> Attorneys for children are concerned that their clients' interests may be jeopardized by disclosure of information that is not admissible in court. Moreover, the records are an amalgamation of information from wide-ranging sources – some having separate confidentiality concerns. For example, education records are protected by the Federal Education Rights and Privacy Act and the Federal Individuals with Disabilities Education Act; medical records are protected by the Health Insurance Portability and Accountability Act and the Maryland Medical Records Act.

In the child welfare system, confidentiality has long been considered necessary for full investigations. DSS records are a compilation of information from a wide variety of sources—schools, health care providers, psychologists, therapists, neighbors, family members—that are promised confidentiality in return for cooperation. In addition, cases alleging child abuse are inherently inflammatory, initial reports may be based upon second- or third-hand information or vague suspicions, accusations

made publicly cannot readily be withdrawn, and Department of Social Services records are filled with the most private and personal information.

### **The Public and the Media**

At the same time, when youth under the care or custody of state or local agencies commit violent crimes, or are the victims of abuse or neglect, the public has strong interests in obtaining information that is timely and accurate. These interests include understanding actual or potential threats to the safety of children or the community, and efforts by public agencies to address those threats; learning whether agency personnel are following established procedures; assessing whether public agencies and their personnel have the capacity and ability to carry out their functions; and considering whether new policies or additional resources are needed to address crime in the community and the needs of troubled youth and families.

### **Public Agencies**

When the media publish information about violent incidents involving young people under their care, public agencies have their own strong interests in correcting misinformation in the public domain about agency operations and in providing context information to enable a fuller understanding of what policies are in place and why. These interests are not limited to DJS and DSS. For example, prosecutors are concerned that, without background information, reporting of a plea bargain in a particular case may make it appear that they were too easy on the accused when many factors affected the state's attorney's plea negotiations.

Public agencies also have important interests in sharing information about

children and families to whom they provide services. In many circumstances, children and families receiving services have interests consistent with the interests of public agencies. These interests include providing children and families with all the services that they need, coordinating service plans and strategies, avoiding duplication of assessments and services, and monitoring the provision of services.

It is also important to understand that some agency information is not confidential. For example, information that does not identify specific individuals is not confidential. Thus, aggregated information—such as the total number of youth who are held in secure detention each month, or the number of child abuse reports received each year—is not confidential. Most federal and state statutes either explicitly state that non-identifiable information is not confidential, or implicitly make the same point by stating that only disclosure of identifiable information is prohibited.<sup>10</sup>

### **Legal Protection of Confidential Information in Maryland**

In Maryland, state law provides that all juvenile court records are confidential.<sup>11</sup> “Juvenile court records” include records of the Maryland Department of Juvenile Services<sup>12</sup> and the local departments of social services. The records may not be divulged except by order of the court for good cause shown.<sup>13</sup> The prohibition is so strong that not even the juvenile or his or her parents may waive the confidentiality requirement and consent to disclosure.<sup>14</sup>

Similarly, except by order of the court, Maryland law prohibits disclosure of any information concerning a child or family receiving child welfare services or other social services that comes from

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“records, papers, files, investigations or communications” of the State or any of its agencies or political subdivisions, or acquired in the performance of official duties.<sup>15</sup> Local departments of social services view all such information as confidential, including the name of the individual receiving services.<sup>16</sup> Reports or records concerning child abuse or neglect are also confidential.<sup>17</sup> Further, state and local child fatality review teams that investigate child deaths may not disclose any identifying information about any specific case.<sup>18</sup> In addition, all information and records acquired by a team are confidential; the team members may not be questioned about their work in any civil or criminal proceeding; and a team’s information, documents, and records are not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.<sup>19</sup> Unauthorized disclosure of any confidential information covered by these statutes is a misdemeanor punishable by up to 90 days in jail, a fine up to \$500, or both.<sup>20</sup>

Although the basic confidentiality statutes are written as broad protections of information, there are many exceptions in the laws. For example, juvenile court records may be disclosed to a local superintendent of schools if a student is arrested for certain offenses.<sup>21</sup> Juvenile court records may also be disclosed to DJS and court personnel, the prosecutor, the child’s counsel, and any court-appointed special advocates for the child, in a proceeding in the court involving the child; a law enforcement agency in Maryland, in an investigation or prosecution; a judicial officer, defense counsel, and prosecutor, when determining an adult defendant’s eligibility for pretrial release (i.e., to look at the individual’s juvenile record); the Maryland Parole Commission, the Maryland Divi-

sion of Parole and Probation, and the Maryland Division of Corrections; the Baltimore Health Department; entities doing criminal justice research, as long as the records do not contain identifying information and the research is performed at the direction of the Department of Juvenile Services; and victims of crimes, as part of the victim notification provisions of Maryland law.

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Similarly, Maryland law allows disclosure of child welfare records to authorized officers or employees of the State of Maryland; another state; local governments and agencies in any state; the United States government; and fiduciary institutions responsible for administering social services programs, public assistance, or medical assistance. In addition to release under a court order, reports and records concerning child abuse or neglect *must* be disclosed to an administrative law judge regarding a pending case (e.g., a finding of indicated child abuse or neglect) and to the Baltimore City Health Department if the Department is providing treatment to a victim of child abuse, or if the record concerns a child convicted of a crime or adjudicated delinquent for causing a death or a near-fatality, or if the record concerns a juvenile victim of

a crime of violence who lives in Baltimore “for the purpose of developing appropriate programs and policies aimed at reducing violence against children in Baltimore City.”<sup>22</sup> Further, child abuse reports may, under certain circumstances, be disclosed to personnel in law enforcement; social services; multidisciplinary teams; child protective services; foster care; adoption; child fatality review teams; professional treatment, child care and placement facilities; hospitals; and public school superintendents or principals, to enable them to carry out their responsibilities regarding investigation of child abuse reports or treatment of child abuse victims. The reports may also be disclosed to parents or guardians, including alleged abusers and neglectors, if there are appropriate protections for the alleged victim and for the person reporting the alleged abuse or neglect.<sup>23</sup> In cases of child fatality or serious physical injury, if the alleged perpetrator is charged with a crime and a determination is made that disclosure is not contrary to the best interest of the child or any other child, the Secretary of the Department of Human Resources or the director of a local Department of Social Services may disclose the name of the allegedly abused or neglected child, the date of the report of abuse or neglect, the findings of the DSS investigation, any services provided to the child or the family or the alleged abuser or neglecter, the number of previous referrals to the agency, and other information.<sup>24</sup>

### **Disclosure Of Confidential Information To The Media**

When reporters ask DJS, DHR, or a local department of social services for background or case information after a tragedy occurs, the requests generally go through each agency’s Public Information Officer (PIO), who in turn may

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consult with one or more of the Assistant Attorneys General (AAG) assigned to work with the agency. The AAGs make recommendations to the agency, and the authority to make the final decision rests with the head of the agency. Except in the case of child fatalities, where disclosure is specifically authorized in limited circumstances, the agencies routinely reject such requests, citing the confidentiality laws.

Nevertheless, confidential information is often reported in the press during high-profile investigations. Reporters get this information in several ways. In cases involving youth under the jurisdiction of DJS or a local DSS, reporters may be allowed to view the videotape record of a juvenile court proceeding. This kind of disclosure may be permitted by a judge, for good cause. Because any part of the DJS or juvenile court records may be discussed during the proceedings, the videotape may be a mechanism for disclosure of substantial parts of the records.

In practice, however, it appears that release of the videotape of a hearing is rare, and the videotapes contain limited information. After *The Baltimore Sun* argued that a reporter should be allowed to view the videotape of a hearing for a youth charged with murder, and a judge agreed, the reporter was allowed to view the recording, which lasted 1 minute and 38 seconds.<sup>25</sup>

If a minor is charged with a violent offense, the minor may be prosecuted in adult criminal court. Proceedings in adult criminal court are generally open to the public. Consequently, the information disclosed in those proceedings may be reported by the media. This poses a legal anomaly: DJS or juvenile

court information may be prohibited from release to the public in juvenile court, but it may be available right down the street in adult criminal court.

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Another way that reporters obtain confidential information is through leaks. Leaks of confidential information may be made by attorneys in the case, by DJS or DSS or other agency employees, or by court personnel. Leaks may be made to correct misinformation that has been reported in the press, or to provide a broader understanding of the situation beyond what has been reported. Leaks may also be made in an effort to gain public sympathy or an advantage in court for one side or the other in a case, defense or prosecution. To be sure, most agency and juvenile court personnel strictly adhere to the confidentiality requirements in statutes. But agency directors may prefer to get information out, rather than be accused of hiding something. Agency personnel may refuse to reveal confidential information on the record, but provide it to reporters on the side.

### **Federal Guidance**

The U.S. Supreme Court has provided some guidance in this area. Though

the reformers who created the juvenile court believed that confidentiality would further the court's goals, the Supreme Court has expressed mixed views on the issue. In 1967, in the landmark case *In re Gault*,<sup>26</sup> the Court noted that juvenile court secrecy is “more rhetoric than reality”<sup>27</sup> because confidential information is available to the police, the FBI, government agencies, and even private employers.<sup>28</sup>

However, four years later, in *McKeiver v. Pennsylvania*, the Court held that minors do not have a constitutional right to a jury trial, in part because such trials would remove the desirable protection of confidentiality.<sup>30</sup>

In 1980, in *Richmond Newspaper Inc. v. Virginia*,<sup>31</sup> the Court held that the public and the media have a constitutional right to attend trials in adult criminal court. The Court cited the historic openness of criminal trials<sup>32</sup> and the value of trials in allowing the public to see and understand the judicial process: “the appearance of justice can best be provided by allowing people to observe it.”<sup>33</sup>

Two years later, in *Globe Newspaper Co. v. Superior Court*,<sup>34</sup> the principle of open criminal trials clashed with considerations of juvenile confidentiality. *Globe Newspaper* had sought access to the criminal trial of a defendant accused of forcible rape of three girls who were minors. Because the girls were juveniles, the trial judge, relying on the authority of a state statute, closed the courtroom. *Globe* appealed. The Massachusetts Supreme Judicial Court held that the statute required the closure of sex-offense trials during the testimony of victims who were minors; during other portions of the testimony, the judge could use his or her discretion to close or open the proceedings.<sup>35</sup> Based on that interpretation by the highest

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court of Massachusetts, the United States Supreme Court held that the statute violated the First Amendment as a blanket prohibition on access to criminal trials. Instead, said the Court, in determining whether the testimony of any particular victim should be open to the public and the press, the trial judge should consider the minor victim's age, his or her psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives.<sup>36</sup>

Congress has also provided some guidance. Although there is no federal juvenile justice statute that requires that juvenile delinquency records be kept confidential,<sup>37</sup> Congress has spoken on child welfare and dependency records. In 1974, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA), which for the first time required that states provide for "methods to preserve the confidentiality of all records in order to protect the rights of the child, his parent or guardians,"<sup>38</sup> including criminal penalties for unauthorized disclosure. Congress was concerned with protecting the best interests of the child as well as the privacy of child abuse reporters and the parents accused by those reporters.

By the 1990s, there were press reports reflecting the potential dangers of strict confidentiality—child deaths possibly resulting from lack of coordination among social services case workers, police, and other government agencies; and stories about parents' lives being ruined by publicity about child abuse reports that were ultimately found to be unsubstantiated. In 1992, Congress amended CAPTA to require cooperation by child welfare agencies with the police, courts, and human services

agencies, without lifting the requirement of confidentiality of records.<sup>39</sup> In 1996, Congress amended CAPTA again, to allow agencies to keep information on unsubstantiated reports to help with future cases involving the same individuals. Also, for the first time Congress told states to open up the process somewhat to outside scrutiny by providing information to child fatality review teams and revealing the findings of investigations when a child dies or nearly dies from abuse.<sup>40</sup> Maryland law on confidentiality of social services, child abuse, and child fatality records tracks these requirements of federal law. Maryland law also tracks the requirements of Titles IV-B and IV-E of the Society Security Act, which are more restrictive than the CAPTA statute and regulations.<sup>41</sup>

### **State Examples**

States have adopted varying approaches to confidentiality of delinquency and dependency court records. California follows the traditional approach of barring the public from attending dependency court hearings unless the child's parent or guardian consents. For good cause shown, judges may admit to the proceedings persons with a "direct and legitimate" interest, and the press does not have such a "direct and legitimate" interest.<sup>42</sup>

In New York, on the other hand, Family Court—which includes delinquency and dependency hearings—is presumptively open to the public and the media. A judge may bar the public or any particular person only on a case-by-case basis and for a compelling reason based on supporting evidence.<sup>43</sup>

New York changed its law in 1996 following the beating, sexual abuse, and death of six-year-old Elisa Izquierdo while the girl was under the protection

of the New York City Child Welfare Administration. A storm of public outrage followed, and many felt that the agency was stonewalling to cover up mistakes by Elisa's caseworker and agency supervisor. The new legislation, enacted to bring transparency to agency procedures, was called "Elisa's Law."<sup>44</sup>

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Indeed, the trend in delinquency proceedings has been toward more openness. The legislation that created the first juvenile court in Illinois in 1899 provided that delinquency hearings should be open so that the public could monitor the activities of the court.<sup>45</sup> By the 1950s, however, many states closed their juvenile courts or permitted reporters to attend but not disclose the identity of the juvenile. With increased public concern about juvenile crime since the 1990s, more states have opened their juvenile courts. By 2004, statutes or court rules in 14 states opened their delinquency hearings to the general public. In addition, 21 other states open juvenile court proceedings for some cases, usually depending on age or offense criteria.<sup>46</sup>

## Recommendations Regarding the Public and the Media

There are clearly valid and important interests on all sides of this issue. Children and families have legitimate concerns about protecting their privacy. Agencies are justified in worrying that child abuse will not be reported, and other witnesses will not come forward, if child abuse information is not kept confidential. Maryland must follow federal law with respect to maintaining confidentiality of child welfare records, or lose federal funds.

On the other hand, the Supreme Court has taken a strong position in support of the “monitoring” or “watchdog” function of the public and the press, which requires some degree of openness and transparency. And when incidents occur that raise serious questions about agency procedures and safeguards, the public has a strong interest in learning what happened and why.

Clearly, there is no single “bright line” rule that can resolve these issues. Instead, the Maryland legislature can provide guidance to the courts, the agencies, the press, and the public by making explicit the factors that decision makers should consider in determining whether confidential information should be released.

A good place to start is the factors used by the Supreme Court in *Globe Newspaper Co.*: the age of the child who is at the center of the case, the child’s psychological maturity and understanding (and mental health problems, if any), the nature of the allegations, the desires of the victim (or the alleged delinquent child), and the interests of parents and relatives. The type of proceeding is also

important: Some feel that there is more of a need for confidentiality in child welfare and child abuse cases, and that in delinquency cases the child is “at least partially responsible for the case being in court.”<sup>47</sup>

Another factor is the nature of the publicity and the potential for embarrassment.<sup>48</sup> This includes the likely impact on the child’s self-image and future education and employment prospects, as well as the potential impact on efforts to reunify the family. Also, the law should look at the potential benefits from increased transparency and monitoring of the public agencies. When necessary, records may be released with names and other identifiable information redacted. Finally, the courts should look at the availability of the information from other (non-confidential) sources.

The legislature should pass legislation establishing state policy to consider these factors in balancing the best interests of the child against the public’s need for disclosure of the confidential information. In most cases, many of these factors will weigh against disclosure—but certainly not in all cases. Where there is a demonstrated need for the watchdog function of the public and the press, the need for disclosure can and should outweigh considerations of privacy.

## Information-Sharing Among Public Agencies

The most common type of information-sharing among public agencies is also the simplest. Case workers in one agency often contact their counterparts in other agencies to learn whether particular children and families have received services. This informal sharing, which includes confidential information, goes on all the time.<sup>49</sup>

Maryland has been one of the most active states in the country in developing a formal infrastructure for information-sharing among public agencies. Maryland laws specifically provide for the sharing of information among public agencies that serve children, youth, and families.<sup>50</sup> The statutes aim to facilitate a “seamless system of family-focused services” and to develop “a comprehensive and coordinated interagency approach” to services for children and families.<sup>51</sup>

Although the statutory scheme prohibits disclosure of confidential information without a written request and the written consent of the person who is the subject of the information, the Attorney General (AG)’s office has advised DJS that the prohibition on disclosure is inapplicable where there is a “service-directed, cooperative relationship” between DJS and the other agency regarding a particular youth.<sup>52</sup> The AG’s interpretation is based in part on Maryland laws that allow DJS to designate any public or private agency or organization in the state as its agent and that require State agencies to cooperate with DJS in carrying out its objectives.<sup>53</sup>

Consequently, in practice there is virtually a free flow of information between DJS and law enforcement agencies, and among DJS, DHR, and local Departments of Social Services.

This cooperation is clearest for DJS and law enforcement agencies. As noted earlier, the statute governing confidentiality of juvenile court records has an exception that allows access to those records by a State law enforcement agency in “an investigation or prosecution.” As long as the law enforcement agency asks for the information as part of an investigation or prosecution, DJS provides whatever is requested.

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For DJS and DHR, a change in the law was needed. Until last year, Maryland law permitted DHR to share confidential information with DJS but did not allow DJS to share information with DHR. In the 2009 legislative session, House Bill 1382 completed the circle by authorizing DJS to share information with DHR.<sup>54</sup>

In addition, until recently DJS was not authorized to share information with agencies in other states. In the 2009 legislative session, the agency sponsored legislation to allow it to share information with agencies in other states that border Maryland (Virginia, Pennsylvania, West Virginia, Delaware) and the District of Columbia, regarding alleged delinquents who cross state lines. The Legislature resisted somewhat, and as enacted, the legislation allows DJS to share information only with agencies in DC and Virginia.<sup>55</sup>

## Breaking New Ground

Maryland has sought to improve information-sharing among its child- and family-serving agencies for many years. Governor O'Malley, who came into office in January 2007, has taken a personal interest in this issue. During his first year in office, the Maryland Children's Cabinet launched an intensive, collaborative, cabinet-level effort to improve interagency services.<sup>56</sup> Improved information-sharing was one of the goals, although the Children's Cabinet report contained more in the way of aspirations than concrete accomplishments.<sup>57</sup>

In April 2008, the Children's Advocacy Center and First Star, two organizations focused on the needs of neglect-

ed and abused children, issued a national report on transparency of child welfare agencies when child fatalities occur. Entitled *State Secrecy and Child Deaths in the U.S.*, the report contains a report card on every state, ranking them on five criteria for disclosing information on child deaths. Maryland received an F. Not surprisingly, this spurred efforts in the Executive Branch to accelerate the pace of information-sharing.

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This strong concern for information-sharing became closely aligned with one of Governor O'Malley's other personal interests: reducing crime, particularly juvenile crime, when young people are perpetrators and victims. In 2003, in response to homicides involving young people in the city, he initiated a violence prevention effort called Operation Safe Kids (OSK). OSK provides community-based case management and monitoring to juvenile offenders who are at high risk of becoming victims or perpetrators of violence. Because death by violence is a leading public health concern for young people in Baltimore, OSK operates as a project of the Baltimore City Health Department.

Health Department workers work closely with DJS case managers and other state and city agencies. Each youth is assigned a case worker who coordinates a treatment service plan for the youth and his or her family. The treatment service plan includes such services as substance abuse treatment, mental health treatment, educational advocacy, and employment assistance. OSK reports that it has decreased the average arrest rate for OSK youth by more than 40 percent and has increased involvement in education, employment, and mental health treatment.<sup>58</sup>

In 2008, the Legislature appropriated funds to expand OSK to other parts of the state. On January 22, 2009, the Governor announced that OSK would be introduced into Prince George's County. These efforts are part of the state's Violence Prevention Initiative.

A key component of OSK is KidStat, which consists of weekly meetings of decision-making staff from city and state agencies and service providers to review data and discuss program progress and coordination of services. The KidStat meetings involve sharing of confidential information across agencies to reduce crime and develop better services for particular youth.

As chief executive of the State, Governor O'Malley has expanded this kind of information-sharing. Based on the District of Columbia's award-winning Safe Passages Information System and guidelines from the federal Office of Juvenile Justice and Delinquency Prevention,<sup>59</sup> the Executive Branch has developed two mechanisms for facilitating information-sharing between agencies. The mechanisms are called “dashboards.” They consist of software search engines developed and sited at the Department of Public Safety and



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Correctional Services that enable agencies to share information quickly in real time. One dashboard enables case workers at DJS to identify case workers at DHR who are working with the same children, youth, and families, and vice-versa. Once the workers make contact, they can share information. The purpose of the dashboard is to increase efficiency and effectiveness of services for youth who are dually supervised by both agencies. The dashboard is not a database and workers cannot use it to change any information in files or to directly contact each other: It is a read-only search engine that allows case workers only to identify their counterparts at the other agency.

The second dashboard enables law enforcement agencies to access DJS's ASSIST data system for information relevant to pending investigations. In response to a police request, the dashboard only provides "alert" information, i.e., whether there is an open warrant on the youth, whether the youth is a gang member, whether the youth is suicidal, whether the youth is in part of the Violence Prevention Initiative (OSK). If the request hits an alert, the law enforcement agency then must contact DJS directly to get substantive information. The dashboard is very active: It receives more than 10,000 inquiries from law enforcement officials each day.

Before instituting the dashboards, the governor's attorney and the assistant attorneys general assigned to the agencies reviewed the mechanism for any confidentiality problems. Problems were identified and the parties agreed to share information that legally they could share. For example, DJS and DHR are already authorized by statute

to share information, and DJS is already authorized by statute to share information with any State law enforcement agency. On the other hand, the DHR addendum to the Memorandum of Agreement expressly excludes Child Protective Services information from inclusion in the dashboard. According to officials, the dashboard is simply designed to greatly speed up the process of information-sharing that is already authorized by the law.



*“The Governor’s office and the state agencies have made concerted efforts to abide by the law and protect confidential information in their information-sharing mechanisms. Nevertheless, a number of concerns remain.”*



In addition to the first dashboard, DJS staff now has direct access to social service records in the CHESSIE data system for many purposes related to providing services to children in out-of-home placements served by both agencies. Also, many DJS residential facilities have MOUs with local departments of social services regarding coordination of investigations into allegations of child abuse or neglect in the facility.

## Recommendations Regarding Interagency Information-sharing

The Governor's office and the state agencies have made concerted efforts to abide by the law and protect confidential information in their information-sharing mechanisms. Nevertheless, a number of concerns remain. These are particularly important in thinking about how the processes will work in future administrations, when the current governor, agency secretaries, and their staffs are gone.

1. **Terminology.** Some of the terminology in laws and policies may be vague or subject to very broad interpretation. For example, if DJS can designate any public or private agency or organization as its "agent," what are the boundaries of that concept? Can the Department share any information with any entity simply by invoking "agency" status? As another example, if the DJS-law enforcement dashboard yields an alert for youth who are "gang members," are the criteria for that category sufficiently narrow to avoid including family members, childhood friends, neighborhood associates, and others who have a close relationship but are not criminally involved? The Legislature or DJS should clarify if there are any limits on who or what can be considered an "agent" of DJS, and should identify the criteria to be used to identify "gang members."
2. **Scope of information-sharing and control of confidential information.** More information-sharing isn't necessarily better information-sharing. Every time a confidential record is shared outside an agency, there are more opportunities for the record to be disclosed inappropriately. Maryland DHR law provides that whoever receives confidential

information must adhere to the same restrictions as the person or agency that provides the information, but the further one gets away from the original source the harder it is to maintain the protection. Moreover, more collection of information by law enforcement doesn't necessarily mean that the community is safer. Information can be misused by the police, e.g., in targeting specific groups or individuals.<sup>60</sup> What appears to the Health Department and police as reasonable efforts to protect potential child victims in Baltimore, may appear to the public defenders as an excuse to conduct regular surveillance of their clients. In any event, the pressure is more intense on the police to solve a crime when it receives attention in the press.

Although DHR and DJS have been careful to limit the Department of Public Safety and Community Service (DPSCS)'s role to development and maintenance, affording that agency no access to the data, the fact that the dashboards were created and are maintained by the DPSCS—rather than by DJS, DHR, or the Governor's Office—raises concerns in this regard. The Executive Branch has made major efforts to ensure that the dashboards comply with applicable confidentiality laws. But the narrow use of the search engines is not built into state statutes. The information that is *potentially* available through the dashboards is enormous. Without controlling legislation, a future Executive Branch could considerably broaden the information shared through the dashboards. The Legislature should incorporate into state statutes the limits to information-sharing and the protections for confidential information that are

included in the Memoranda of Agreement that established the dashboards.

3. **Staff training.** The key to effectiveness of any system of confidentiality is well-trained staff. It is critical that all of the state and local agencies involved provide training for their staffs on the purposes and limitations of their mechanisms for information-sharing. The Legislature should require such training; and DJS and DHR should establish policies and guidelines for training staff on protection and disclosure of confidential information, including the new dashboards.

## The Authors

Mark Soler is the Executive Director of the Center for Children's Law and Policy (CCLP), a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems. CCLP engages in a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy, and litigation. CCLP capitalizes on its location in Washington, DC, by working in DC, Maryland, and Virginia, as well as in other states and on national efforts such as the MacArthur Foundation's Models for Change and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative. From 1978 until February, 2006, Mr. Soler was Senior Staff Attorney, Executive Director, then President of the Youth Law Center, a national public interest law firm. At the Youth Law Center, he and his colleagues worked in more than 40 states on juvenile justice, child welfare, health, men-

tal health, and education issues, and litigated successfully in 16 states on behalf of children whose rights had been violated in juvenile justice and child welfare systems. He has written more than 20 articles and book chapters on civil rights issues and the rights of children, and has taught at Boston College Law School, the Washington College of Law at American University, Boston University School of Law, the University of Nebraska Law School, and San Francisco State University. He has received awards for his work from the American Psychological Association, American Bar Association, Alliance for Juvenile Justice, and Office of Juvenile Justice and Delinquency Prevention. Mr. Soler graduated from Yale University and Yale Law School.

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## ENDNOTES

- <sup>1</sup> Executive Director, Center for Children's Law and Policy, Washington, DC.
- <sup>2</sup> Second-year law student, Georgetown University Law Center, Washington, DC.
- <sup>3</sup> *Alleged Teen Shooter Had Lengthy Record*, WBAL-TV, July 6, 2009, available at: <http://www.wbal.com/news/19970516/detail.html>; Justin Fenton, "Suspect Had Cut Off GPS Band," *The Baltimore Sun*, July 7, 2009, available at: [http://articles.baltimoresun.com/2009-07-07/news/0907070002\\_1\\_juvenile-services-juvenile-justice-state-juvenile](http://articles.baltimoresun.com/2009-07-07/news/0907070002_1_juvenile-services-juvenile-justice-state-juvenile).
- <sup>4</sup> Peter Hermann, Baltimore Crime Beat, *The Baltimore Sun*, July 8, 2009.
- <sup>5</sup> Tom Pelton, Warnings of Abuse, Yet the System Fails a Child, *The Baltimore Sun* (January 25, 2004). The law has since been changed to allow more disclosure, so this case does not represent current practice. See note 24, *infra*.

- <sup>6</sup> Kristin N. Henning, "Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?" 79 *N.Y.U. L. Rev.* 520, 526-27 (2004).
- <sup>7</sup> In this report, it is impossible to cover the entire legal landscape of federal and state confidentiality laws. This report reviews selected laws that apply to agency confidentiality and interagency information-sharing.
- <sup>8</sup> *Id.* at 527.
- <sup>9</sup> *Id.* at 528-29, 543-576.
- <sup>10</sup> Mark I. Soler, Alice C. Shotton, and James R. Bell, "Glass Walls: Confidentiality Provisions and Interagency Collaborations," 17 (*Youth Law Center* 1993).
- <sup>11</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(b)(1) (2009).
- <sup>12</sup> 69 Opinions of the Attorney General 165 (1984).
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.*
- <sup>15</sup> Md. Code Ann., Hum. Svcs. § 1-201 (2009). The statute also applies to other programs operated by the Department of Human Resources, including cash assistance, food stamps, and medical assistance. This provision codifies in Maryland law the confidentiality provisions of federal statutes pertaining to foster care and adoption services, medical assistance, food stamps, child support collection, and cash assistance.
- <sup>16</sup> There are other Maryland statutes that provide for confidentiality of education records, health records, mental health records, and records of treatment for alcohol and substance abuse. Many of the state provisions track or implement requirements of federal law such as the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.
- <sup>17</sup> Md. Code Ann., Hum. Svcs. § 1-202(a) (2009).
- <sup>18</sup> Md. Code Ann., Health-Gen. § 5-704(d) (2009).
- <sup>19</sup> Md. Code Ann., Health-Gen. § 5-709 (2009).
- <sup>20</sup> Md. Code Ann., Hum. Svcs. §§ 1-201, 202(f); Health-Gen. §§ 5-708, 709 (2009).
- <sup>21</sup> Md. Code Ann., Educ. § 7-303 (2009). However, once the information is released, it may not be made part of the student's permanent educational record or re-disclosed in the absence of a court order for good cause shown. *Id.*
- <sup>22</sup> Md. Code Ann., Hum. Svcs. § 1-202(b)(3)(iii) (2009).
- <sup>23</sup> Md. Code Ann., Hum. Svcs. § 1-202(c)(1) (2009).
- <sup>24</sup> Md. Code Ann., Hum. Svcs. § 1-203 (2009). However, the director may not disclose the name of a sibling, parent, guardian, or other member of the household, other than the alleged abuser or neglecter.
- <sup>25</sup> Peter Hermann, "Time For Open Records: Teen Was Charged with Murder as Adult after Release, but his Juvenile Court Record Remains Confidential," *The Baltimore Sun*, September 20, 2009.
- <sup>26</sup> 387 U.S. 1 (1967).
- <sup>27</sup> Emily Bazelon, "Public Access to Juvenile and Family Court: Should the Courtroom Doors Be Open or Closed?" 18 *Yale L. & Pol'y Rev.* 155, 170.
- <sup>28</sup> 387 U.S. at 24-25.
- <sup>29</sup> 403 U.S. 528 (1971).
- <sup>30</sup> *Id.* at 545.
- <sup>31</sup> 448 U.S. 555 (1980).
- <sup>32</sup> Pretrial proceedings, on the other hand, need not be open to the public. *Gannett Co. v. DePasquale*, 443 U.S. 368, 377-378 (1979).
- <sup>33</sup> *Richmond Newspaper Inc.*, *supra*, 448 U.S. at 572.
- <sup>34</sup> 457 U.S. 596 (1982).
- <sup>35</sup> *Id.* at 599-600.
- <sup>36</sup> *Id.* at 608.
- <sup>37</sup> DJS has a Memorandum of Agreement with DHR for the collection of monies under Title IV-E of the Social Security Act and is also subject to Title IV-B requirements, so those federal requirements apply equally to DJS as to DHR. DJS is also bound by Medicaid confidentiality requirements for youth receiving Medicaid benefits.
- <sup>38</sup> Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4, 4(b)((2)(E) (1974) (codified at 5 U.S.C. § 8902(j)) (amended by 42 U.S.C. § 5106a (1994)), cited in Bazelon, *supra* note 27, at 174.
- <sup>39</sup> Bazelon, *supra* note 27, at 175.
- <sup>40</sup> *Id.* at 175-176.
- <sup>41</sup> 42 U.S.C. § 671(a)(8); 45 CFR. 205.50, 45 CFR 1355.21, 1355.30.
- <sup>42</sup> Bazelon, *supra* note 27, at 160.
- <sup>43</sup> *Id.* In Maryland, under the rules, the juvenile courts are open unless closed for good cause shown. Thus, a reporter can sit in court unless the judge decides to close the court upon a showing of "good cause."
- <sup>44</sup> *Id.* at 182-183.
- <sup>45</sup> Howard N. Snyder and Melissa Sickmond, "Juvenile Offenders and Victims: 2006 National Report," 108 (2007).
- <sup>46</sup> *Id.*
- <sup>47</sup> Bazelon, *supra* note 27, at 162 n. 44, citing *In re Katherine B.*, 189 A.D. 2d 443, 449 (N.Y. App.Div. 1993), which quotes *In re T.R.*, 556 N.E.2d 439, 449-50 (Ohio 1990).
- <sup>48</sup> *In re M.S.*, 38 Cal. App. 4th 220, 239 (1995), cited in Bazelon, *supra* note 27, at 163.
- <sup>49</sup> Soler, et al., "Glass Walls," *supra* note 10, at 18-19.
- <sup>50</sup> Md. Code Ann., Hum. Svcs. §§ 1-208 – 1-212 (2009).
- <sup>51</sup> Md. Code Ann., Hum. Svcs. § 209(b)(2)-(3) (2009). See Memorandum from Karl A. Pothier, Principal Counsel, Office of the Attorney General, to Donald W. DeVore, Secretary, Department of Juvenile Services, October 3, 2008, at 3.
- <sup>52</sup> Memorandum from Karl Pothier, *id.*, at 4.
- <sup>53</sup> *Id.* at 4 n. 10, citing Md. Code Ann., Hum. Svcs. §§ 9-217(1) (2007) and 9-221(a) (2007).
- <sup>54</sup> See H.D. 1382, 2009 Leg., 424th Sess. (Md. 2009) (codified at Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(b)(4)(i)-(iv) (2010)). House Bill 101 – Budget Reconciliation and Financing Act of 2009 (BRFA) – provides that "notwithstanding any other provision of law, [DJS and DHR] and the United States Department of Health and Human Services may share information and records as necessary to properly administer the federal Title IV-B and Title IV-E programs." HB 1382 and HB 101 were signed into law on the same day, becoming Chapters 486 and 487 respectively. While the statutory law of Maryland is generally found in the Annotated Code of Maryland, some law is not published in the Annotated Code and can only be found in the Sessions Laws, the publication of all of the laws enacted during each session of the General Assembly. The Session Laws are the "law," and the Annotated Code is the "evidence" of the law. Md. Cts. & Jud. Proc. Art. Section 10-201.
- <sup>55</sup> See H.D. 1382, 2009 Leg., 424th Sess. (Md. 2009) (codified at Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(b)(7)(i) (2010)).
- <sup>56</sup> Maryland Children's Cabinet, "The Maryland Child and Family Services Interagency Strategic Plan," 5-9 (2008).
- <sup>57</sup> *Id.* at 26-28.
- <sup>58</sup> Baltimore City Health Department, "Operation Safe Kids," available at: <http://www.baltimorehealth.org/operationsafekids.html>.
- <sup>59</sup> *Id.* at 27-28. These provisions of Maryland law are similar to those in other states. A majority of jurisdictions have either enacted juvenile information sharing legislation or are in the process of drafting such agreements. The Office of Juvenile Justice and Delinquency Prevention (OJJDP), an agency of the U.S. Department of Justice, has identified five key components of model information statutes. These include: (1) provisions clearly authorizing or requiring collaboration among state and local juvenile justice agencies; (2) statutes requiring record-sharing among agencies that provide supervision and intervention services to known juvenile offenders under court supervision; (3) laws mandating the inclusion of schools in the interagency teams as to both known offenders and juveniles considered at-risk; (4) policies that authorize or require school-based collaboration between schools and law enforcement; and (5) programs that broaden interagency collaboration into proactive efforts that compile risk factors of juveniles who are or may be at-risk for delinquent behavior. *State Statutes on Juvenile Interagency Information & Record Sharing*, <http://dept.fvtc.edu/ojjdp/states.htm>.
- <sup>60</sup> Lisa Rein & Josh White, "More Groups Than Thought Monitored in Police Spying; New Documents Reveal Md. Program's Reach," *The Washington Post*, January 4, 2009, at A1.

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## ABELL SALUTES

*continued from page 1*

raised in the same southeast Baltimore neighborhood. She says, “The house is old and there were always problems and I live on a limited income and really couldn’t afford to stay in the house any longer. But at a meeting of the Patterson Park Community Association I heard about Banner Neighborhoods. And so I called them. They removed the air conditioner from above my front door and wrapped it for storage. They changed my light bulbs—I am too old to get up on ladders anymore. They changed the batteries in my fire alarms. Larry and Dave—the two men who came out to do the work—they’re super! They returned my call right away. I feel that I have somebody I can count on and make me confident that I can stay in my house and I don’t have to move.

Banner Neighborhoods was founded in 1982 as a neighborhood project in Southeast Baltimore designed to help elderly homeowners on a fixed income maintain their homes, prolonging the years that they could live independently in their neighborhoods. Its stated mission: “To promote resident-based leadership, neighborhood pride and stability, and to provide direct services that contribute to the overall viability and livability of ten neighborhoods in the Southeast Baltimore community.” The Banner program target area extends from Monument Street to Eastern Avenue and from Washington Street to Haven Street.

A total of 132 senior homeowners are currently enrolled in the program. The average age of homeowners is 77 and their annual income averages \$12,400. Most participants are single female homeowners who, without Banner Neighborhood’s assistance, would not be able to maintain their houses or live independently. During the past

year, the crew responded to a total of 135 service calls, in addition to multiple maintenance visits to each household during fall and spring to check gutters, move air conditioning units, change ceiling light fixtures, and test smoke and carbon monoxide detectors.

Often the difference between an elderly resident being able to remain in his/her home or having to move from the community is the ability to make the small but necessary repairs and upkeep needed to maintain a home. Banner Neighborhoods finds that household tasks which require tools and ladders, specialized knowledge, or heavy lifting are simply impossible for the elderly homeowner to complete without assistance, and with the household’s limited financial means, regular home maintenance is deferred. This program helps aging homeowners remain in the neighborhood, contributing to the vitality and stability of the neighborhood population and maintenance of the housing stock.

Two part-time crew members respond to home maintenance calls and work with homeowners to address problems related to the home. Banner Neighborhoods makes minor home repairs and services ranging from faucet replacement to handyman tasks like gutter cleaning and window air conditioner installation and removal. By having staff regularly go into homes, talk with owners and observe conditions, Banner Neighborhoods keeps a watchful eye on their clients’ ability to negotiate upkeep and maintenance of their homes. They intervene with additional resources from the city and state to prevent a problem in the house, such as water damage or faulty furnace, from becoming a problem for adjacent houses and the entire block.

Next year the program will support the existing 132 homeowners in the program and expand to serve additional households requesting services. The

cost of the service is less than \$1,000 per household, for which participants re-enroll annually and pay no fee. In the coming year, the staff will receive additional training on energy efficiency and services that include outreach and education on energy saving measures and increased referrals to the city’s weatherization program.

Mrs. Sophia Rosselli has been living in her home at 262 South Eton St. for 40 years. She says, “I had Banner neighborhoods come out and change light bulbs. They painted the outside wall of the garage, and the cornice, and fixed the leaking faucet in bathtub. I can’t tell you how much they have done for me! Banner Neighborhoods is the greatest gift that you could give us old people on fixed income!”

The Abell Foundation salutes Banner Neighborhoods, its executive director Jolyn Rademacher Tracy and her talented work crew, for helping residents stay fixed in their homes, by keeping their homes fixed up.