



SEALING OF POLICE OFFICE RECORDS		
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effective date: September, 2020	amend date:	

I. PURPOSE

The purpose of this General Order is to establish and describe policies and procedures for sealing orders.

II. POLICY

It is the policy of the Tompkins County Sheriff's Office to seal or destroy police records, fingerprints, and photographs maintained by the office in accordance with law.

III. DEFINITIONS

Fingerprints: The term, "fingerprints," for purposes of this order refers to all fingerprints and palm prints taken pursuant to an arrest that is later sealed.

Photographs: The term, "photographs," for purposes of this order refers to any photograph, photographic plate or proof, negative, or a computerized or digital image, of a defendant taken pursuant to an arrest that is later sealed.

Note: This does not include photographs taken for a Defensive Action Report DAR (i.e., "use of force" photographs). Such photographs will not be destroyed but will be retained by the office.

Police Records: The term, "police records," for purposes of this order refers to all reports, statements, depositions, or other documents associated with a specified case, arrest, or event.

Seal: The term, "seal," for purposes of this order means that the police records in question are secured in an opaque envelope or container which is fastened in a manner that would make any opening of the envelope or container evident. It is further means that the envelope or container is secured in a locked file cabinet separate from other records with access limited to persons specified in this order. In relation to computerized records contained in the office's Spillman or **CRIMES** databases it means that the computerized records have been "sealed" with access limited to the persons specified in this order. Sealed records may not be made available to any person or public or private agency except as set forth by law and this order.

Youthful Offender Adjudication: “A Youthful Offender adjudication is comprised of a youthful offender finding and the youthful offender sentence imposed thereon and is completed by imposition and entry of the youthful offender sentence.” *See* CPL § 720.10-6.

Youthful Offender Records: “All official records and papers on file with the Office relating to a case involving a youth who has been adjudicated a youthful offender.” *See* CPL § 720.35-2.

IV. LEGAL REQUIREMENTS TO SEAL POLICE RECORDS

A. Adult Records

The legal requirement to seal police records and destroy fingerprints and photographs in adult cases is triggered by any of the following events:

1. Court Order: If a criminal proceeding is terminated in favor of the defendant the court may issue an order to destroy fingerprints and photographs and to seal police records. The office is obligated to destroy fingerprints and photographs and to seal records upon receipt of such an order from criminal court. *See* CPL § 160.50-1.
2. Notice from District Attorney’s Office: In the event the District Attorney elects not to prosecute a person before an accusatory instrument is filed with the court the District Attorney is obligated to notify the police agency of such decision. The office is obligated to destroy fingerprints and photographs and to seal police records upon receipt of such notice from the District Attorney’s Office. *See* CPL § 160.50(3)(i).
3. Police Agency Does Not Proceed With Arrest: In the event a person is arrested by the Tompkins County Sheriff’s Office but no accusatory instrument is filed and the office elects not to proceed further with the criminal action or proceeding the office must destroy fingerprints and photographs and seal police records in the same manner required by a sealing order from the court. *See* CPL § 160.50-3(j).
4. Youthful Offender Adjudication: All official records and papers on file with the office to a case involving a youth who has been adjudicated a youthful offender, are confidential and may not be made available to any person or public or private agency unless authorized by law and this order. *See* CPL § 730.35-2.

B. Juvenile Records

The legal requirement to seal police records and destroy fingerprints and photographs in juvenile cases is triggered by any of the following events:

Note: FCA 354 (1) mandates the destruction of fingerprints, palm prints and photographs of a juvenile respondent unless the respondent is 11 or 12 years of age and has been found to have committed a Class A or B felony, or unless the respondent is older than 12 and has been found to committed a felony.

1. Family Court Order Upon Termination of Delinquency Proceeding in Favor of Respondent: Upon termination of a delinquency proceeding against a respondent in favor of such respondent the Family Court may issue an order to seal records. The office is obligated to destroy fingerprints and photographs and to seal police records upon receipt

of such an order from the Family Court. *See* FCA § 375.1(1).

2. Family Court Order After a Finding of Delinquency: If a juvenile petition has requested in finding of delinquency, other than a finding that the respondent committed a designated felony act, the Family Court may issue an order to seal police records after the respondent reaches his or her sixteenth birthday. The office is obligated to destroy fingerprints and photographs and to seal police records upon receipt of such an order from the Family Court. *See* FCA § 375.2.
3. Adjustments of Case by Probation: If the Probation Department adjusts a juvenile case or terminates a case without adjustment prior to the filing of a petition they are required to notify the police agency of such action. The office is obligated to destroy fingerprints and photographs and to seal police records upon receipt of such notice from the Probation Department. *See* FCA § 375.1(5).
4. Termination by Presentment Agency: If the Presentment Agency (i.e., County Attorney's Office) chooses not to proceed with a juvenile case prior to filing of a petition they are required to notify the police agency of such action. The office is obligated to destroy fingerprints and photographs and to seal police records upon receipt of such notice from the County Attorney's Office. *See* FCA § 375.1(4).

V. PROCEDURE TO SEAL RECORDS

- A. All office personnel who receive notice of any of the events listed above will forward such notice forthwith to the Civil Division.
- B. Upon receipt of such notice to the Civil Division, the information shall be forwarded to the designated Clerk assigned to Seal & Delete notices (referred to hereinafter as the Seal & Delete Officer). The Seal & Delete Officer shall do the following:
 1. Complete a *Sealed Records Checklist* to document actions taken. The completed checklist will be filed with the sealed records.
 2. Collect all pertinent police records in possession of the office. This would generally include police reports and other documents maintained in the Records Division case file as well as those maintained by the Criminal Investigations Division. Also, any DAR (use of force) photograph(s) will be retrieved and included in the sealed file. The case will be "sealed" in the CRIMES and SPILLMAN computer systems.
 3. If hard copies of documents exist they will be sealed in an envelope or other container. The envelope will be labeled with the name of the defendant or respondent and case number, and conspicuously stamped or marked "SEALED." The sealed cases will then be filed in a locked file cabinet separate from other files.

Note: Sealed juvenile records will be secured separately from sealed adult records.

4. Access to the sealed files will be limited to the Undersheriff, Lieutenants, and the designated Seal & Delete Officer.

Note: No member of the office will have authority to access the material contained in the sealed file unless authorized by a court of competent jurisdiction or otherwise specifically authorized by law.

5. Collect all photographs and fingerprints from cases that must be sealed. All such photographs and fingerprints that are the subject of a sealing order will be destroyed or permanently sealed within the Live Scan System. This will be documented on the checklist.
 6. The Case and any Supplemental Reports will be reviewed to determine whether copies of any police records, photographs, or fingerprints have been provided to any other agency. If any such copies have been provided, the Civil Division will forward a letter to the agency in question requesting that the copies be destroyed or returned to the Sheriff's Office. *See Attachment B.* If the copies are returned to the Sheriff's Office they will be destroyed and this will be documented on the checklist. *See CPL § 160-50-1(b).*
 7. Maintain a file containing copies of all sealing orders received from any court. Criminal Court orders will be filed separately from Family Court orders.
- C. If the office receives notification from the FBI that a case is "expunged," nothing further needs to be done by the Sheriff's Office. The FBI notification simply means that the FBI has acknowledged the receipt from the court of record of notification that a case needs to be sealed. The FBI does not seal cases; they simply destroy them relying on the local law enforcement agency to have a sealed copy if the case needs to be unsealed by a court order.

VI. ACCESS TO SEALED RECORDS

- A. Access to sealed **Adult Records (except Youthful Offender records)** is limited to the following:
1. Accused Person: Upon request, sealed records may be provided to the accused person or his or her designated agent (i.e., attorney) in an adult case. *See CPL § 160.50-1(d)*;
 2. Prosecutor: Sealed records may be provided to a prosecutor in any adult proceeding in which the accused has moved for an order pursuant to CPL § 170.56 (adjournment in contemplation of dismissal in cases involving marijuana) or § 210.46 (adjournment in contemplation of dismissal in marijuana cases in a superior court). *See CPL § 160.50-1(d)(i)*;
 3. Court Order: A law enforcement agency may make an *ex parte* application to a superior court demonstrating that justice requires the agency to have access to sealed records. *See CPL § 160.50-1(d)(ii)*. This would generally occur when the agency has a need to access the records for investigative purposes. Office personnel will consult the District Attorney's Office for assistance should the need arise to apply for access to sealed records;
 4. Pistol Permit Applications: Sealed records may be made available to any State or local officer or agency with the responsibility for the issuance of licenses to possess guns, when the accused has made application for such license. *See CPL § 160.50-1(d)(iii)*;
 5. Parole: Sealed records may be released to the New York State Division of Parole when the

accused is on parole supervision and the arrest which is the subject of the inquiry occurred while the accused was under such supervision. *See* CPL § 160.50-1(d)(iv);

6. Police Officer Applicant: Sealed adult records may be made available to any prospective employer of a police officer or peace officer in relation to an application for employment provided that the person who is the applicant for a police/peace officer position is provided with a copy of all records released to the prospective employer. The prospective employer is required by law to afford the applicant an opportunity to explain the circumstances of the event. *See* CPL § 160.50-1(d)(v);
7. Probation: Sealed adult records may be released to a Probation Department responsible for the supervision of the accused when the arrest which is the subject of the inquiry occurred while the accused was under such supervision. *See* CPL § 160.50-1(d)(vi).

B. Access to **Youthful Offender Records**. Pursuant to CPL § 720.35-2, access to Youthful Offender records is limited to the following:

1. Court Order: Youthful Offender records may be released pursuant to an order of the court making the Youthful Offender adjudication;
2. Institution: Youthful Offender records may be released to an institution to which the youth has been committed;
3. Probation/Parole: Youthful Offender records may be released to the Division of Probation or Parole when the records are required for the purpose of carrying out duties specifically authorized by law;
4. Order of Protection: Any order of protection issued pursuant to CPL § 530.12 or a warrant issued in connection with an order of protection may be maintained on the statewide automated order of protection and warrant registry even if the subject of the order or warrant has been adjudicated a Youthful Offender. An order of protection or temporary order of protection may be maintained in the registry for the period of time the order is in full force and effect. A warrant may be maintained on the registry for the period of time the warrant may be executed.
 - a. An order of protection, temporary order of protection, which order and information is maintained in the statewide automated order of protection and warrant registry may be made available to law enforcement personnel for purposes of adjudicating or enforcing the order or temporary order. Office procedures for orders and temporary orders of protection will be followed in cases involving a Youthful Offender adjudication. *See G.O. Orders of Protection (In Progress)*.
 - b. Prior to releasing information regarding an order of protection or temporary order of protection, or a warrant issued in connection with an order of protection, Office personnel will check the statewide registry to confirm the information sought to be released is contained in the registry. In accordance with applicable law, only information contained in the statewide registry may be released.
 - c. Personnel will consult with the County Attorney or the District Attorney's Office regarding any release of Youthful Offender records not addressed above.

C. Access to **Juvenile Records** is limited to the following:

1. If the records were sealed pursuant to Section 375.1 FCA. (*see* § IV (B)(1), (3), (4) above), sealed juvenile records shall be made available to the respondent or a designated agent of the respondent. *See* FCA § 375.1(3);
2. If the records were sealed pursuant to a Family Court order (*see* § IV B)(2) above), the sealed juvenile records may be made available to the following, BUT ONLY upon receipt of a written Family Court order permitting the opening (*see* FCA § 381.2(2) and 381.3): (i) respondent or his or her parent or person responsible for the respondent, or (ii) if the respondent is subsequently convicted of a crime to a judge of the court in which the person was convicted.

D. Procedure for Access to Sealed or other Confidential Records is as follows:

1. Any person or entity requesting access will be furnished with a *Request for Access to Sealed Records Form*. *See* attachment. The form must be completed and signed by the person making the request. Any court order or other documentation will be attached to the form.
2. The completed form and attachments will be forwarded to the Civil Division Lieutenant for review. The Lieutenant will review the request and conduct or cause to be conducted such additional inquiry as may be necessary. The County Attorney may be consulted for legal guidance in handling requests for sealed records.
3. Upon completion of the review process the Lieutenant will either approve or deny the request. In the absence of the Lieutenant, the Undersheriff may review and approve or deny the request.
4. Upon approval of the request the sealed records will be opened and the pertinent records provided to the requesting party. This will be documented in the appropriate portion of the *Request Form*.
5. The records will be resealed along with a copy of the *Request Form* and any court order if one has been issued and secured in the appropriate filing cabinet.
6. Office personnel lawfully gaining access to sealed records will ensure that the use and dissemination of such records is strictly limited to purpose(s) for which they were lawfully unsealed.

VII. SEALED CASE WARRANT PROCEDURES

- A. In the event that a case involving multiple defendants is SEALED by the Courts, for one or more, but not all the involved defendants, the following procedures will be followed when processing warrants or other paperwork for the remaining NON-SEALED Defendants.
 1. If a warrant is issued for a defendant in a SEALED Case, the Seal & Delete Officer will generate a new event number under the WARRANT-SEALED Case Event Type. A Case Report will be generated under the WARRANT-SEALED Case Type and the required

information for person(s) named in the warrant, including the CHARGES section, will be entered into the Case Report.

2. The Seal & Delete Officer will detail the facts of the warrant in the Case Narrative, including referencing the original Event and Case numbers. The Case Narrative should reflect that the warrant was issued due to the original case being Sealed for a Co-Defendant. NO co-defendants will be named in any Case Narrative for this Case Type.
3. When the subject(s) of the warrant is arrested, the arresting officer will adhere to current office policies and procedures for processing/canceling the warrant. If the court eventually seals the ORIGINAL Case for any remaining defendants, the appropriate WARRANT-SEALED Case must all be sealed following current office procedures.

Attachments:

- A. *Sealed Records Checklist*
- B. *Letter Requesting Return of Sealed Records*
- C. *Request for Access to Sealed Records Form*

By Order Of



Derek Osborne
Sheriff