

# NATIONAL JUVENILE JUSTICE NETWORK

## Policy Platform

### CONFIDENTIALITY OF YOUTH IN THE JUVENILE JUSTICE SYSTEM

AUGUST 2016

#### Policy Recommendation

---

The National Juvenile Justice Network (NJJN) recommends that the law enforcement and court records and related information associated with youth under the age of 18 who come into contact with the justice system be kept from any and all public disclosure. Our recommendation pertains to the records, wherever they are kept, of youth in contact with both the juvenile and adult systems. We recommend, further, that limits be put in place regarding the sharing of information between government agencies, law enforcement, courts, and schools. Any records that are created as a result of a youth's justice system involvement should be automatically sealed and reviewed for expungement when the youth is discharged from court supervision. Furthermore, we recommend that juvenile court proceedings be kept presumptively closed.

#### Background

---

Increased public safety begins with practical solutions that help our young people to thrive, divert them from the justice system, and pave the way for strong communities with plenty of opportunity for all those who live in them. Sending youth into the justice system is like placing them in a maze without exits. Once they are in the system, it's difficult for them to get out. When records of their involvement with the juvenile justice system are not kept confidential, their path to education, job training, housing, and other resources -- proven to help them stay on the right track -- can be seriously hindered or altogether blocked for years, or even throughout their lives.<sup>1</sup>

In addition to these barriers, the harmful stigma of a juvenile court record can cause adults and peers to view the youth negatively, damaging positive relationships he or she may have had with classmates and teachers, preventing adequate reintegration into communities, and leading to further delinquent behavior.<sup>2</sup> Delinquency records are also increasingly shared with and considered by criminal courts for purposes of pretrial release, detention, and sentencing.<sup>3</sup> And, research shows that disclosing these records to the public does not improve community safety.<sup>4</sup> We need to redesign the system so that it has more pathways to the resources youth need to reenter their communities successfully.

Protecting youth from a label of criminality was part of the reason why the juvenile justice system was created at the end of the nineteenth century. It was widely understood even then that, while adults and youth are both capable of significant behavior change, youth are still maturing and therefore, their behavior while they are young should not be held against them for the rest of their lives. Following establishment of separate juvenile courts, confidentiality became an important component of juvenile justice systems in order to ensure youth could be held accountable without damaging their chances of becoming productive members of society.<sup>5</sup> The idea that youth are different from adults and need to be treated differently by the justice system has been reinforced by the U.S. Supreme Court in several recent landmark cases.<sup>6</sup>

Unfortunately, the confidentiality of youth in the juvenile justice system has been significantly eroded over the years, while at the same time, the negative impacts (or “collateral consequences”) of a juvenile record have become harsher and more numerous.<sup>7</sup> A growing number of states no longer limit access to records or prohibit the use of juvenile adjudications in subsequent criminal proceedings, and many do not keep juvenile court proceedings private at all.<sup>8</sup> Additionally, many youthful offenses are recorded and made public on sex offender registries for years, if not a lifetime. Even a youth’s DNA is now sometimes collected and held indefinitely in law enforcement databases.<sup>9</sup>

This trend of confidentiality erosion has coincided with the increase in digital recordkeeping, online databases of information, and an increase in computerized background checks by employers, schools, housing authorities, and many others, making it ever easier and more damaging for a youth’s juvenile records to be revealed.<sup>10</sup> Protecting confidentiality is the best way to ensure that a youth’s past does not harm their future and gives them the greatest chance to successfully transition to a productive adult life.

---

<sup>1</sup> Riya Saha Shah and Lauren Fine, “Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records” (Philadelphia, PA: Juvenile Law Center, 2014), 4, <http://bit.ly/1xvmhYY>. See also, Benjamin Chambers and Annie Balck, “Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System” (Chicago, IL: Catherine T. and John D. MacArthur Foundation, Models for Change, Dec. 2014), 12, <http://bit.ly/kids-are-different>; Brief of Children’s Law Center, Inc., et.al., as Amici Curiae In Support of Neither Party, *State ex rel. Cincinnati Inquirer v. Hunter*, 141 Ohio St.3d 419, 2014-Ohio-5457; Juvenile Justice Resource Hub, “Re-entry: Key Issues/What Challenges Do Returning Youth Face?” accessed Feb. 17, 2016, <http://jjie.org/hub/reentry/key-issues/>

---

<sup>2</sup> Kristin N. Henning, “Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities be Notified?” *New York University Law Review*, vol. 79: 527 (2004), <http://bit.ly/1UcFXtU>.

<sup>3</sup> James B. Jacobs, “Juvenile Criminal Record Confidentiality,” *New York University Public Law and Legal Theory Working Papers*, paper 403 (2013), 11, <http://bit.ly/25RDgqv>.

<sup>4</sup> Chambers & Balck, “Because Kids are Different,” 12.

<sup>5</sup> Henning, “Eroding Confidentiality in Delinquency Proceedings,” 520-611, 526-7; Melissa Sickmund and Charles Puzzanchera, “Juvenile Offenders and Victims: 2014 National Report” (Pittsburgh, PA: National Center for Juvenile Justice, 2014), 97, <http://1.usa.gov/1DhEoyR>; “From its very outset, the juvenile court aimed not just to reform young offenders, but also to ensure that efforts at rehabilitation were not thwarted by a stigma of criminality that could serve as an obstacle to becoming a productive member of society.” Illinois Juvenile Justice Commission, “Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois” (April 2016), 17, <http://bit.ly/1tkxc89>.

<sup>6</sup> The Campaign for the Fair Sentencing of Youth, “U.S. Supreme Court,” accessed Feb. 25, 2016, <http://bit.ly/1UJU89U>; see also, *Montgomery v. Louisiana*, 577 U.S. \_\_\_\_ (2016), which held that its ban in *Miller v. Alabama* on mandatory sentences of life without parole for those who committed an offense before the age of 18, applied retroactively.

<sup>7</sup> Juvenile Justice Information Exchange, “Re-entry: Key Issues/What Challenges Do Returning Youth Face?” (Juvenile Justice Resource Hub), accessed Feb. 25, 2016, <http://jjie.org/hub/reentry/key-issues/>; Juvenile Justice Information Exchange, “Re-entry: Reform Trends/Reducing the Collateral Consequences of a Delinquency Adjudication” (Juvenile Justice Resource Hub) accessed Feb. 25, 2016, <http://bit.ly/re-entryfn199>.

<sup>8</sup> Riya Saha Shah and Lauren Fine, “Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement” (Philadelphia, PA: Juvenile Law Center, 2014), 6, <http://bit.ly/14wgc2w>; Sickmund & Puzzanchera, “Juvenile Offenders and Victims: 2014 National Report,” 97-8.

<sup>9</sup> See Henning, “Eroding Confidentiality in Delinquency Proceedings,” 537-8.

<sup>10</sup> Illinois Juvenile Justice Commission, “Burdened for Life,” 8-9.