

NATIONAL JUVENILE JUSTICE NETWORK

Snapshot

REDUCING THE COLLATERAL CONSEQUENCES OF A DELINQUENCY ADJUDICATION*

NOVEMBER 2016

When it comes to dealing with youth in trouble with the law, the responsible thing to do is to ensure that youth are rehabilitated and don't commit new crimes. Taking this level-headed approach makes our communities safer. Unfortunately, our current juvenile justice system is like an exceptionally difficult maze, with too many paths in and too few ways out. And in many jurisdictions, current policies often ensure that youth who leave the system are still caught in the maze – years and often decades later.

In particular, youth returning from juvenile facilities face many challenges reintegrating into the community. These hardships, or “collateral consequences,” include barriers to education, employment, military service, and public benefits – making it difficult for them to leave the maze and become responsible members of society. A promising strategy to redesign the maze and reduce these collateral consequences is to keep juvenile records confidential. When communities take this practical step to build clearer exits to the maze of the justice system, they will help youth fully exit the maze so they can move on to contribute to their communities.

Confidentiality of Juvenile Records¹

While a common perception is that juvenile delinquency records are private and protected, confidentiality of these records has eroded significantly in recent years, while at the same time,

* This snapshot is drawn from information compiled by the National Juvenile Justice Network for publication on the [Juvenile Justice Resource Hub](#), hosted by the Juvenile Justice Information Exchange and sponsored by a generous donation from the John D. and Catherine T. MacArthur Foundation's [Models for Change](#) initiative.

the negative impacts (or “collateral consequences”) of a juvenile record have become harsher and more numerous.² 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.³ 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.⁴

WHAT ARE JUVENILE RECORDS?

Juvenile records refer to all the documents created from the time of a youth’s arrest, including police reports and charging documents, witness and victim statements, court-ordered evaluations, fingerprints, and DNA samples. Many of these records contain sensitive information, including details about a child’s family, social history, mental health history, substance abuse history, education, and involvement with the law. When this information is not confidential, “it can stigmatize the youth and erect barriers to community reintegration.”⁵ For example, juvenile records that are public and accessible to employers and landlords are often used to deny individuals jobs and housing.

CORE PRINCIPLES FOR PROTECTING CONFIDENTIALITY OF RECORDS

In a [report](#) released in November 2014, the [Juvenile Law Center](#) developed core principles for protecting the confidentiality of and access to juvenile records during and after juvenile court proceedings. Below are some of their key recommended state statute reforms:⁶

- Specifically state that confidentiality protections apply to all information in law enforcement and court records, and detail the type of information contained in these records.
- Make clear that juvenile records shall be filed and kept separately from adult records.
- Prohibit public inspection of juvenile court and law enforcement records.
- Limit access to juvenile record information to individuals connected to the case, which may include juvenile court personnel, the youth and his or her attorney, the youth’s parents, supervising agencies, and the prosecutor. Limited access may be granted to individuals conducting research.
- Put protections in place for juvenile record information released to government agencies and schools.
- Confidentiality exceptions only permitted by court order.
- Provide sanctions for the unauthorized sharing of confidential juvenile record information (except for youth who share their own information).

NJJN'S POLICY RECOMMENDATION

In August 2016, the National Juvenile Justice Network (NJJN) issued a policy platform, [“Confidentiality of Youth in the Juvenile Justice System.”](#) in which we recommended the following:

[L]aw enforcement and court records and related information associated with youth under the age of 18 who come into contact with the justice system [should] 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.⁷

Sealing and Expunging Juvenile Records

Both sealing and expunging juvenile records are recommended methods to further protect the confidentiality of juvenile records and help to reduce the barriers to youth re-entering their communities.

WHAT ARE SEALING AND EXPUNGING?

“Sealing” a juvenile record generally means that the records are closed to the general public but remain accessible to certain agencies and individuals, although criteria for access differs by jurisdiction.⁸ “Expungement” generally refers to erasing a juvenile record as if it never existed so that it is no longer accessible to anyone. In some cases, though not in all, both physical and electronic records are destroyed.⁹

However, these definitions are not ironclad. In some states, “expunged” records are treated more like sealed records in that they are still available to certain parties.¹⁰ The types of records eligible for sealing/expungement — and when they become eligible — also vary by state, with some including court records, law enforcement records, DNA information, and juvenile fingerprint records.¹¹

RECOMMENDED POLICIES ON SEALING AND EXPUNGEMENT

Recommended policies regarding sealing and expunging records in order to best protect youth's confidentiality include the following from the [Juvenile Law Center's](#) November 2014 [report](#) and their core principles:¹²

- Immediately seal records upon the closure of the youth's case and ensure sealed records are completely closed to the general public.

- Define expungement to mean that records are electronically deleted and physically destroyed.
- Ensure that records of any offense are eligible for expungement at the time the youth's case is closed.
- Inform youth at their [adjudication](#) and [disposition](#) hearings of their right to sealing and/or expungement of records.
- Provide educational materials to youth and their families regarding the collateral consequences of juvenile adjudications and any rights they have to sealing and/or expungement.
- Provide opportunities for automatic expungement of records. Where this is not done automatically, inform youth of the procedures for sealing and/or expunging records, and ensure that the process is simple enough for youth to complete without attorney assistance.
- Do not charge youth for sealing and/or expunging records.
- Notify youth promptly when records have been sealed and/or expunged.
- Impose sanctions on individuals or agencies that violate the laws on sealing and expungement.

TOOLS TO HELP YOUTH WITH EXPUNGEMENT

More tools now exist to help youth with expungement. Organizations in Illinois, Maryland, and Louisiana have developed web-based expungement tools to help youth with the process.¹³ Interactive websites, which can be downloaded as apps, help youth (and adults with juvenile records) to determine their eligibility for expungement through simple yes/no questions and then direct them to legal resources to help them proceed. The first tool was developed in Illinois ([Expunge.io](#)), and Maryland ([ExpungeMaryland.org](#)) and Louisiana ([Expunge.LA](#)) were quick to follow.

For More Information

- The American Bar Association has developed a [“Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records”](#) (August 2015) which states can use in developing legislation on this topic.
- [“Confidentiality of Youth in the Juvenile Justice System”](#) (August 2016) is a National Juvenile Justice Network (NJJN) Policy Platform which provides NJJN's recommendation on youth confidentiality and background information. The accompanying document, [“Safeguarding the Confidentiality of Youth in the Justice System,”](#) provides further recommendations and resources.
- The Illinois Juvenile Justice Commission's [“Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois”](#) (January 2016), details the lack

of protections for Illinois youths' records and makes recommendations for improvement.

- Juvenile Justice Information Exchange, "Juvenile Justice Resource Hub: Re-entry," <http://jjie.org/hub/reentry/>, provides further details on this topic.
- Juvenile Law Center has several helpful publications on this topic:
 - "Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement" (2014)
 - "Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records" (2014)
 - "Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records" (February 2016)

¹Riya Saha Shah and Lauren Fine, "Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement" (Philadelphia, PA: Juvenile Law Center, 2014), <http://bit.ly/14wgc2w>. Referred to hereafter as "Shah and Fine, 'Juvenile Records.'"

² Juvenile Justice Information Exchange, "Re-entry: Key Issues/What Challenges Do Returning Youth Face?" (Juvenile Justice Resource Hub), accessed Nov. 4, 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 Nov. 4, 2016, <http://bit.ly/re-entryfn199>.

³ Shah and Fine, "Juvenile Records," 6; Melissa Sickmund and Charles Puzzanchera, "Juvenile Offenders and Victims: 2014 National Report" (Pittsburgh, PA: National Center for Juvenile Justice, 2014): 97-8, <http://1.usa.gov/1DhEoyR>.

⁴ Kristin N. Henning, "Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities be Notified?" *New York University Law Review*, vol. 79: 537-8, (2004), <http://bit.ly/1UcFXtU>.

⁵ Shah and Fine, "Juvenile Records," 12.

⁶ Shah and Fine, "Juvenile Records," 20-22.

⁷ National Juvenile Justice Network (NJJN), "Confidentiality of Youth in the Juvenile Justice System: Policy Platform" (Washington, DC, August 2016): 1, <http://bit.ly/2emRoyy>.

⁸ Shah and Fine, "Juvenile Records," 23.

⁹ Shah and Fine, "Juvenile Records," 24.

¹⁰ Shah and Fine, "Juvenile Records," 25.

¹¹ Shah and Fine, "Juvenile Records," 26-27.

¹² Shah and Fine, "Juvenile Records," 46-47; Juvenile Law Center, "Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records," accessed Nov. 4, 2016, <http://bit.ly/1w4mVNq>.

¹³ Zoe Schein, "New Web-Based Expungement Tools Launched by IL, MD, LA" (National Juvenile Justice Network, October 2, 2014), accessed Nov. 4, 2016, <http://bit.ly/1BWhkHq>.

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.¹

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.² Delinquency records are also increasingly shared with and considered by criminal courts for purposes of pretrial release, detention, and sentencing.³ And, research shows that disclosing these records to the public does not improve community safety.⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸ 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.⁹

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.¹⁰ 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.

¹ 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/>

² 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>.

³ 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>.

⁴ Chambers & Balck, “Because Kids are Different,” 12.

⁵ 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>.

⁶ 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.

⁷ Juvenile Justice Information Exchange, “Re-entry: Key Issues/What Challenges Do Returning Youth Face?” (Juvenile Justice Resource Hub), accessed Feb. 25, 2016, <http://jjiie.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>.

⁸ 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.

⁹ See Henning, “Eroding Confidentiality in Delinquency Proceedings,” 537-8.

¹⁰ Illinois Juvenile Justice Commission, “Burdened for Life,” 8-9.