



# National Institute of Justice *Update*

Jeremy Travis, Director

August 1995

## State Laws on Prosecutors' and Judges' Use of Juvenile Records

Knowledge of defendants' juvenile records may help prosecutors and judges to determine appropriate sentencing for offenders ages 18–24, the age group most likely to be involved in violent crime. Otherwise, such individuals may be treated as first offenders even when they have extensive juvenile court records of violent crimes.

A review of State laws as of December 1994, sponsored by the National Institute of Justice (NIJ), found a consensus concerning the importance of juvenile records as a factor in court sentencing. Virtually all States have enacted legislation requiring presentence reports to include prior juvenile records. However, the NIJ study, *State Laws on Prosecutors' and Judges' Use of Juvenile Records*, found great diversity among the States with regard to legislated provisions for collection of information such as fingerprints, access to juvenile records, and retention of these records.

### Fingerprinting

Fingerprinting is often considered the essential first step for accurate recordkeeping and identification of juvenile offenders. Forty States explicitly authorize the police to fingerprint arrested juveniles while only 2 have laws that prohibit fingerprinting of juveniles. Yet even where authorized, fingerprinting of juveniles is not without restrictions: 16 States have a minimum age (most commonly 14), and 22 States limit fingerprinting of juveniles to those arrested for acts that would be felonies if committed by an adult.

If juveniles are not fingerprinted, identification may not be possible in the future. Therefore, States should consider mandating police fingerprinting of juveniles charged with felonies or weapons violation misdemeanors.

### Juvenile record accessibility

**Central record holding.** Central record holding at the State level ensures that information from all jurisdictions is available to criminal justice personnel throughout the State. The study found that 27 States have enacted laws authorizing such a central repository for juvenile arrest records, while 5 States forbid central record-keeping of juvenile records. Five States authorize central recordkeeping of fingerprints but not juvenile histories.

The study concludes that centralized juvenile arrest and disposition record holding and dissemination could be essential to providing the criminal justice system with necessary information. If juvenile records were maintained in the same manner as adult criminal records, their accessibility could be enhanced.

**Criminal court access.** Twenty-four States mandate consideration of defendants' juvenile records in sentencing. This ranges from inclusion of the juvenile record in calculating criminal history scores under sentencing guidelines to consideration of the record in making decisions about probation rather than incarceration. The study suggests that all States might benefit by better structuring this authority.

### Indirect effects on juvenile record availability

Other aspects of State laws have indirect effects on juvenile record availability.

**Issues of jurisdiction and waivers.** Virtual unanimity exists regarding the need for criminal court jurisdiction over serious crimes in which juveniles are charged, but opinions differ about how transfers to criminal court

---

should be accomplished. In 12 States, the prosecutor may file specified cases, such as violent felonies, in either juvenile or criminal court; in another 21 States, the law requires the prosecutor to file specified serious cases in criminal court but the prosecutor has discretion in setting the level of the crime charged.

Forty-seven States authorize the prosecutor to request a judicial waiver to transfer cases from juvenile to criminal court. While 5 States have no age limits on such waivers, 42 States will not permit waivers under defined age limits—usually 13 and under—and most have crime-based limits (felonies or serious felonies). Three States have no waiver laws.

**Juvenile record destruction.** Most States have legislated some type of provision for destroying or sealing juvenile records. All but two States have laws requiring annulment of a juvenile record, chiefly by either sealing or expunging the record. Some States require that all juvenile records be destroyed when the juvenile reaches maturity, while other States exempt records of serious crimes from being destroyed. In between are laws that differ in the age at which juvenile records should be sealed or expunged, in the discretion accorded the criminal justice system in implementing the laws, and in definitions of preconditions that limit the scope of the laws' application.

## Conclusion

Although almost every State has laws authorizing access to juvenile arrest and disposition records, the variety of limitations on record creation and the conditions upon their access may create practical problems for prosecutors and judges. Concerns arise over how to balance the need to protect juveniles with the usefulness of the juvenile records in determining disposition of offenders who began their criminal careers as juveniles. According to the study, a possible resolution is to enhance legislative waivers from juvenile to criminal court, and—not surprisingly—this is what legislators are doing.

Other possible actions include giving police increased authority for fingerprinting juveniles, permitting the prosecutor and court to have access to juvenile disposition records, and placing limitations on expunging juvenile records where there are subsequent adult convictions.

An NIJ Research in Brief synthesis of this study *State Laws on Prosecutors' and Judges' Use of Juvenile Records*, by Neal Miller of the Institute for Law and Justice, can be obtained from the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850; call 800-851-3420 or e-mail [askncjrs@ncjrs.aspensys.com](mailto:askncjrs@ncjrs.aspensys.com). Ask for NCJ #155506.

---

### U.S. Department of Justice

Office of Justice Programs

*National Institute of Justice*

*Washington, D.C. 20531*

Official Business

Penalty for Private Use \$300

BULK RATE  
POSTAGE & FEES PAID  
DOJ/NIJ  
Permit No. G-91