



# Confidentiality of Juvenile Offense Histories: A Statutory Review

CONFIDENTIALITY  
OF  
JUVENILE OFFENSE HISTORIES:  
A STATUTORY REVIEW

Prepared for:  
Office of Juvenile Justice  
and Delinquency Prevention  
August 1983

This report was supported by Contract number J-LEAA-005-82 awarded by the Office of Justice Assistance, Research and Statistics, in behalf of the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Points of view or opinion stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

100119

U S Department of Justice  
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this document has been granted by the National Institute of Justice.

Public Domain/NII/OJJDP  
US Department of Justice

In the National Criminal Justice Reference System (NCJRS)

Further reproduction outside of the NCJRS system requires permission of the National Institute of Justice.

Technical Assistance Provided by:

John C. Patterson, Arthur D. Little, Inc.  
Kevin Houlihan, Arthur D. Little, Inc.

Arthur D. Little, Inc.  
Washington, D.C.

100119c.1

## SUMMARY OF JUVENILE RECORD STATUTES

### Introduction

This report summarizes Arthur D. Little's examination of juvenile codes from the fifty states and the District of Columbia regarding the issues of confidentiality of juvenile records.

The study was undertaken at the request of the Office of Juvenile Justice and Delinquency Prevention. The request identified five areas for analysis:

1. Separate record storage requirements (juvenile from adult); also restrictions on central storage of juvenile records (law enforcement, court - legal and social).
2. Other specific restrictions such as court orders, on access by:
  - a. Law enforcement, prosecutors (also defense) juvenile and adult courts, corrections (also other treatment agencies).
  - b. Other special purpose users - civil courts, military, employers, victims, and, media as well as the general public.
3. Sealing and expunging provisions and restrictions on access to sealed records.
4. Provisions/restrictions on finger-printing and photographing of juveniles.
5. Other pertinent provisions, such as record quality.

There are areas, outside the scope of this effort, that also should be examined. ADL did not, for example, review the rules of juvenile court procedures that in many states will impact on the manner in which juvenile records are managed. ADL did not include in our study the adult criminal codes that also may impact on the use of juvenile records in bail setting, probation, presentencing and parole procedures. While in some states these statutes may have impact, the majority of states deal with the issues identified for this study in their juvenile codes.

Exhibits I-IV represent the details of juvenile code record provisions for each state and the District of Columbia. Matrices are provided for:

- Juvenile Court Records

- Juvenile Law Enforcement Records
- Fingerprinting and Photographing
- Sealing and Destruction of Juvenile Records

The matrices are useful for examining the particular provisions of an individual state's code or how all of the states deal with a particular access or records management issue. This level of detail, however, obscures the fundamental issues surrounding confidentiality of juvenile records. In the following sections, we address the issues drawing upon information from each of the matrices to illustrate the point being made.

#### DEFINITIONS OF TERMS

##### Juvenile Court Records

As used in this report, juvenile court records refers to documents or files with the court pertaining to specific complaints regarding specific juvenile offenders and their adjudication or disposition. Our working definition of court records is more generic than that used by some states. For example, in Washington State, "Official Juvenile Court Files" means the legal files of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court and court orders." [RCW 13.50.010(1)(b)]. In the District of Columbia, "juvenile case records refers to the following records of a case over which the Division has jurisdiction under section 11-1103 (13):

- (1) Notices filed with the court by an arresting officer pursuant to this subchapter [16].
- (2) The docket of the court and entrees therein.
- (3) Complaints, petitions, and other legal papers filed in the case.
- (4) Transcripts of proceedings before the court.
- (5) Findings, verdicts, judgements, orders, and decisions.
- (6) Other writings filed in proceedings before the court, other than social records. [(D.C. law 16-2331 (a))].

In both of the above descriptions of the official records, there is a distinction between legal records and social records. This study concentrates on the legal files pertaining to criminal type offenses. Therefore, if there was a conflict between the confidentiality provisions pertaining to criminal type offenses and other types of court records, such as those dealing with child abuse and neglect, we used the provisions for criminal type offenses.

##### Law Enforcement Records

Most state statutes are not as specific in regards to law enforcement records as they are in specifying court records. In general, law enforcement records are defined as records originated by a police department or other law enforcement agency that contain allegations that a specific juvenile committed an offense under the jurisdiction of the juvenile court.

There is an interesting variety of requirements pertaining to law enforcement records and their control. For example, Indiana law states:

"A judge of a juvenile court or his employees may not exercise any jurisdiction or control over (i) records kept and maintained by law enforcement agencies relating to juveniles and (ii) the discretion granted to heads of law enforcement agencies to release, or grant access to, records and information, unless specifically provided in this article. Any specific authority which is granted shall not imply the existence of any other jurisdiction or control." [I.C. 31-6-8-1.2(k)]

This provision is in contrast with many states that specifically direct the juvenile court to establish court rules governing the management of law enforcement records on juveniles.

Few states require law enforcement records to be complete with disposition. California, however, requires that, "The Department of Justice shall not knowingly transmit to any person or agency any information relating to an arrest or taking into custody unless such information also includes the disposition resulting therefrom." [Section 204, Annotated California Code]

#### FINDINGS REGARDING STATUTORY CONFIDENTIALITY PROVISIONS

##### Role of Juvenile Court In Controlling Access

The juvenile court judge in the majority of states controls access to juvenile records. We found that in addition to those specifically identified in many codes that 42 states provided access to juvenile court records to those with "a legitimate interest." Twenty-three states provide access to juvenile law enforcement records via court order to "those with a legitimate interest." At least three states limit all access to juvenile records to those with a court order.

The net effect of the judicial role in governing records access cannot be assessed within the scope of this study. Some states, for example Alabama and Michigan, indicate that there are court rules that have been promulgated to guide judicial discretion.

#### Access to Juvenile Records for Use in Adult Criminal Sentencing

Only six states -- Arkansas, Connecticut, Florida, Hawaii, Kentucky, and Utah -- were found to hold juvenile offense histories as inadmissible in other courts. Conversely, 25 states permit access to juvenile court records without court order for the purpose of presentencing studies for adult courts and 3 states permit access by court order. In addition, juvenile law enforcement records may be used for presentencing studies in 21 states, only two of which require a court order for access for this purpose. When access to juvenile court records and juvenile law enforcement records are combined, thirty-one states (including D.C.) provide explicit access to juvenile records for the purpose of presentencing studies in adult courts. When the third factor of persons with a legitimate interest is included, 45 states could logically be expected to be able to use juvenile offense histories in presentencing studies in adult court, depending upon how judges interpret "persons with a legitimate interest" in the 12 states not explicitly opening records for predisposition studies.

In granting access to juvenile offense histories, some states place restrictions on the information that may be used. An example of this is Missouri, which specifies that the only juvenile offenses that may be listed on a presentencing report in adult court are murder, rape, sodomy, kidnapping, robbery, arson, burglary, and, bodily harm [Section 211.321 Mo. Ann. Stat.].

#### Sealing and Destruction of Juvenile Offense Records

All but nine of the juvenile codes examined made specific provisions regarding the eventual disposition of juvenile offense records. Thirty two states provide that records are to be sealed and in 24 of these sealing represents the final disposition of the records. Subsequent offenses after sealing has taken place have the effect of nullifying the sealing order in many states. In thirteen states, sealing may be the first step in a process that may culminate, years later, in the physical destruction of the juvenile records. Eight states only make provision for the destruction of records; twenty-five of the states require that the prosecutor be given notice of the pending sealing or destruction of juvenile records; three states prohibit the sealing of offense records of felony type offenses; and, nine states put additional restrictions on the destruction of records of felony type juvenile offenses.

#### Fingerprinting and Photographing

Fingerprinting and photographing represent special types of law enforcement records. In thirty-eight states and the District of Columbia fingerprinting and photographing of juveniles are addressed as

special topics in the juvenile codes. There are several variables that commonly are considered in the decision as to whether or not to fingerprint a juvenile offender. These variables include the severity of the offense, (20 states permit routine fingerprinting of felony type offenders) the age of the offender, the immediate need to make comparisons with latent fingerprints (15 states permit fingerprinting for comparison purposes without court orders; 3 with court order) and past offense history.

Photographing a juvenile for the purpose of identification is addressed separately from fingerprinting in 37 states. The variables are similar as for fingerprinting and include age and severity of offense, however, there are more restrictions on photographing juveniles than there are for fingerprinting. Sixty-two percent of states permitting photographing require court order for photographing as compared to 55 percent for fingerprinting, where fingerprinting is permitted.

#### Access to Juvenile Offense Records By Victims

Nine states specifically permit information from juvenile court records to be given to victims of the offenses. An additional four states permit information from law enforcement records to be shared with the victims of juvenile offenses. Combined with the "person with legitimate interest" clauses, forty-two states, including the District of Columbia, either explicitly or implicitly provide victims of juvenile offenses with access to information concerning the outcomes, identity and parentage of the juvenile offenders responsible for their victimization.

#### Storage Requirements for Juvenile Records

Arthur D. Little found that nine state juvenile codes have requirements for juvenile court records to be stored separately from other court records. Separate storage for juvenile law enforcement records is required in twenty-one states. Twenty states that permit fingerprinting of juveniles require, if the prints are retained, that they be filed separately from adult fingerprints. Most states that permit fingerprinting of juvenile offenders prohibit the transmission of the fingerprints to a central records bureau, either state or national FBI. Of the 37 states making provisions for fingerprinting of juveniles, only ten states allow a central repository. Eight states permit the fingerprints to be sent to the F.B.I. (Note: An F.B.I. spokesman told ADL that unless a juvenile is transferred to criminal court and prosecuted as an adult, they return juvenile fingerprint records to the originating agency.)

### Summary

In the above sections, we have presented a brief analysis of some of the statutory provisions related to juvenile offense records. The findings were:

- The juvenile court has considerable influence on controlling the access to juvenile offense records. This discretion is statutorily given to the court but cannot be analyzed through statutory examination.
- Only six states were found to hold the findings in a juvenile court as inadmissible in other courts apparently. Forty-two states are able to use such information either through court order or statutory provision in making presentencing studies and recommendations.
- All but nine of the state codes made provision for the sealing or destruction of juvenile records. In many states in which sealing occurs the files may be reopened in the event of a subsequent offense. Twenty five of the states require that notice be given to the prosecutor prior to the sealing or destruction of juvenile offense records.
- Thirty-nine states, including the District of Columbia, permit fingerprinting of juvenile offenders under certain circumstances. Important variables include: severity of the offense, age of the offender, need to make comparisons with latent fingerprints, and past offense history.
- Nine states specifically permit information from juvenile court records to be given to victims of the offenses, an additional four states permit law enforcement records to be shared with the victim. Combined with the "persons with a legitimate interest" clauses, forty-two states either explicitly or implicitly provide access to juvenile offense information for victims.
- Of the 39 states making provisions for fingerprinting of juveniles, only ten states allow a central repository. Separate storage for juvenile law enforcement records is required in twenty-one states. Twenty states that permit fingerprinting of juveniles require, if the prints are retained, that they be filed separately from adult fingerprints.

On the following pages are the matrices that provide a comparison between the juvenile code provisions from the fifty states. Exhibits I and II depict the access to juvenile court and juvenile law enforcement as permitted by the current statutes. The column headings indicate the accessing party. A "bullet" under the heading indicates ac-

cess without need for a court order; an "x" indicates a need for judicial permission. Where there is a blank under a heading the statute did not make specific reference to the accessing party. The code "NA" indicates that the topic was not addressed in the State's juvenile code.

Exhibit III indicates the circumstances and conditions necessary for photographing and fingerprinting juvenile offenders. The same code -- "bullet" for authorization without court order and "x" for required court order -- is used. If the code did not address the issue "NA" was used.

Exhibit IV shows the sealing and expunction provisions of state juvenile codes. Following the matrices is the Appendix containing excerpts from the juvenile codes of the states and the District of Columbia.



FOOTNOTES  
YOUTH COURT RECORDS ACCESS

1. Delaware - Name of child and parents to be released by court upon request by "responsible representative of public media" when a child is arrested for crimes classified as felony [Section 972, DCA]
2. Idaho - Official file open except where closed by court order. [16-1816, Idaho Code]
3. Kansas - Official file open for any juvenile 16 years of age or older at the time of the offense. [38-1607 KRS]
4. Kentucky - Statutes refers to probation records. [208.340 KRS]
5. Maine - Records of juveniles charged with murder, Class A, B, or C crime if the juvenile were an adult, or from any subsequent dispositional hearings are open. [3301-2 MRSA]
6. Mississippi - The victim is entitled to be informed of the offenders disposition in youth court [43-21-61 Miss. Code Ann.]
7. Missouri - Petition sustained charging Class A felony, capital murder, or second degree murder is open record. [311.321 Mo. Ann. Stat.]
8. Montana - Publicity may not be withheld as to the identity of a youth charged with a felony type offense. [41-5-601 M.C.A.]
9. Oklahoma - Laws governing the use, confidentiality and disposition of court records are invalidated when a juvenile who is 16 or 17 years of age commits a felony [Section 1127 OSA]

EXHIBIT II  
LAW ENFORCEMENT RECORDS ACCESS

State	Juvenile court	Agency child is committed to	Law enforcement officials	Probation officers	Parole board	Prosecution	Parent-legal	Court - Pre-sentencing	Military	Victim	Defense attorney	Separate storage	Central storage	Interest of National Security	Adult-Juvenile Prisoner Review Bd.	Youth	Legitimate interest	Research activity	Penal institution	Preliminary Investigation	Escape from institution	Waive jurisdiction	Not admissible in other courts		
Alabama																									
Alaska																									
Arizona																									
Arkansas																									
California																									
Colorado																									
Connecticut																									
Delaware																									
District of Columbia																									
Florida																									
Georgia																									
Hawaii																									
Idaho																									
Illinois																									
Indiana																									
Iowa																									
Kansas																									
Kentucky																									
Louisiana																									
Maine																									
Maryland																									
Massachusetts																									
Michigan																									
Minnesota																									
Mississippi																									
Missouri																									
Montana																									
Nebraska																									
Nevada																									
New Hampshire																									
New Jersey																									
New Mexico																									
New York																									
North Carolina																									
North Dakota																									
Ohio																									
Oklahoma																									
Oregon																									
Pennsylvania																									
Rhode Island																									
South Carolina																									
South Dakota																									
Tennessee																									
Texas																									
Utah																									
Vermont																									
Virginia																									
Washington																									
West Virginia																									
Wisconsin																									
Wyoming																									

• = without court order  
x = with court order

FOOTNOTES  
LAW ENFORCEMENT RECORDS ACCESS

1. Indiana - Head of law enforcement agency empowered to grant access. [31-6-8-1.2 ICA]
2. Louisiana - Records of previously adjudicated may be released upon subsequent charge of delinquent act. Also records are open for youths adjudicated delinquent for a felony type offense. [Article 123, Louisiana Revised Statutes Annotated]
3. Massachusetts- Statutory footnote references case law which found that the legislative failure to limit access to juvenile records maintained by police does not preclude exercise of judicial powers. [Police Com'r of Boston V. Municipal Court of Dorchester Dist. (1978) 374 N.E. 2d 469, 366 Mass. 640]
4. Montana - Felony type offenses open records. [41-5-61 Montana Stat. Ann.]
5. Pennsylvania - Provides public availability of records for serious crimes if 14 years or older. [6308(b) Pa. Stat. Ann.]
6. Vermont - Victim of felony type of offense entitled to name of juvenile offender. [663(a) Vt. Stat. Ann.]

EXHIBIT III  
FINGERPRINTING AND PHOTOGRAPHING

State	Fingerprinting	Separate from adult files	Destroyed if Unsubstantiated	Filed with local agency	Filed with FBI	Felony Act	Latent fingerprints	Waive Jurisdiction	Dangerous weapon Misdemeanor	Violation of Law	Central storage	Expunge	Photographing
Alabama	•		•										•
Alaska	•		•										•
Arizona	•		•										•
Arkansas	•		•										•
California	•		•										•
Colorado	•		•										•
Connecticut	•		•										•
Delaware	•		•										•
Dist. of Columbia	•		•										•
Florida	•		•										•
Georgia	•		•										•
Hawaii	•		•										•
Idaho	•		•										•
Illinois	•		•										•
Indiana	•		•										•
Iowa	•		•										•
Kansas	•		•										•
Kentucky	•		•										•
Louisiana	•		•										•
Maine	•		•										•
Maryland	•		•										•
Massachusetts	•		•										•
Michigan	•		•										•
Minnesota	•		•										•
Mississippi	•		•										•
Missouri	•		•										•
Montana	•		•										•
Nebraska	•		•										•
Nevada	•		•										•
New Hampshire	•		•										•
New Jersey	•		•										•
New Mexico	•		•										•
New York	•		•										•
North Carolina	•		•										•
North Dakota	•		•										•
Ohio	•		•										•
Oklahoma	•		•										•
Oregon	•		•										•
Pennsylvania	•		•										•
Rhode Island	•		•										•
South Carolina	•		•										•
South Dakota	•		•										•
Tennessee	•		•										•
Texas	•		•										•
Utah	•		•										•
Vermont	•		•										•
Virginia	•		•										•
Washington	•		•										•
West Virginia	•		•										•
Wisconsin	•		•										•
Wyoming	•		•										•

• = without court order  
x = with court order

FOOTNOTES  
SEALING AND DESTRUCTION

1. Louisiana - Special provisions for destruction of records of juvenile adjudicated delinquent for a felony. [Article 124]
2. Massachusetts - See notes of decisions after Section 60.
3. Minnesota - Minnesota does not have any stipulation in its code which deals explicitly with sealing and destruction. It does say, however, that "the court shall keep and maintain records until the prisoner reaches 23 years of age." [260.161 Minn. Stat. Ann]
4. Nevada - Records automatically sealed when reaches 24 years of age. [62.370 Nev. Rev. Stat.]
5. Virginia - Records are destroyed if the child has reached the age of 19 and five years have elapsed since the date of the last hearing except if the child was found guilty of a delinquent act which would be a felony if committed by an adult. If a juvenile has committed a delinquent act other than a felony, his records can be destroyed when he has reached the age of 19 and five years have elapsed since the date of the last hearing. The second check mark covers the possibilities of having one's record destroyed even that individual has committed a felony. If ten years have passed since the date of the last hearing and the subject of the records files for destruction, they can be destroyed. In addition, the records are automatically destroyed if 20 years pass since the date of the last hearing. [Code of Virginia Section 16.1-306]

FOOTNOTES  
FINGERPRINTING AND PHOTOGRAPHING  
(Continued)

10. North Dakota - No child can be fingerprinted without a court order unless that child has committed a specified felony. [27-20-53 N.D.C.C.]
11. South Dakota - Fingerprint and photographs of a child cannot be sent to the FBI unless that child has committed a felony. [26-8-19.6 S.D.C.L.]
12. Virginia - Fingerprints and photographs of juveniles are permitted under two conditions:
  - 1) The juvenile is 15 or over and has committed any felony; and
  - 2) The child is 13 or over and has committed a specified felony. [Section 16-1-299 Code of Virginia]

EXHIBIT IV  
SEALING AND DESTRUCTION OF RECORDS

	Sealing	After age of majority	After Final Disposition	Court action	Felony	Misdemeanor	Under 3 years	3-4 years	5-6 years	7 - up	Can records be reopened	Restriction	After age of majority	After Final Disposition	Court action	Felony	Misdemeanor	Under 3 years	3-4 years	5-6 years	7 - up	Retire to Prosecutor
Alabama	X		X	X			X				YES	X	X									X
Alaska	X	X	X	X			X				YES	X	X									X
Arizona			X	X			X		X		YES	X	X	X	X				X			X
Arkansas	X	X	X	X			X				YES	X	X									X
California	X	X	X	X			X				YES	X	X									X
Colorado	X	X	X	X			X				YES	X	X									X
Connecticut	X	X	X	X			X				YES	X	X									X
Delaware	X	X	X	X			X				YES	X	X									X
District of Columbia	X	X	X	X			X				YES	X	X									X
Florida	X	X	X	X			X				YES	X	X									X
Georgia	X	X	X	X			X				YES	X	X									X
Hawaii	X	X	X	X			X				YES	X	X									X
Idaho	X	X	X	X			X				YES	X	X									X
Illinois	X	X	X	X			X				YES	X	X									X
Indiana	X	X	X	X			X				YES	X	X									X
Iowa	X	X	X	X			X				YES	X	X									X
Kansas	X	X	X	X			X				YES	X	X									X
Kentucky	X	X	X	X			X				YES	X	X									X
Louisiana	X	X	X	X			X				YES	X	X									X
Maine	X	X	X	X			X				YES	X	X									X
Maryland	X	X	X	X			X				YES	X	X									X
Massachusetts	X	X	X	X			X				YES	X	X									X
Michigan	X	X	X	X			X				YES	X	X									X
Minnesota	X	X	X	X			X				YES	X	X									X
Mississippi	X	X	X	X			X				YES	X	X									X
Missouri	X	X	X	X			X				YES	X	X									X
Montana	X	X	X	X			X				YES	X	X									X
Nebraska	X	X	X	X			X				YES	X	X									X
Nevada	X	X	X	X			X				YES	X	X									X
New Hampshire	X	X	X	X			X				YES	X	X									X
New Jersey	X	X	X	X			X				YES	X	X									X
New Mexico	X	X	X	X			X				YES	X	X									X
New York	X	X	X	X			X				YES	X	X									X
North Carolina	X	X	X	X			X				YES	X	X									X
North Dakota	X	X	X	X			X				YES	X	X									X
Ohio	X	X	X	X			X				YES	X	X									X
Oklahoma	X	X	X	X			X				YES	X	X									X
Oregon	X	X	X	X			X				YES	X	X									X
Rhode Island	X	X	X	X			X				YES	X	X									X
South Carolina	X	X	X	X			X				YES	X	X									X
South Dakota	X	X	X	X			X				YES	X	X									X
Tennessee	X	X	X	X			X				YES	X	X									X
Texas	X	X	X	X			X				YES	X	X									X
Utah	X	X	X	X			X				YES	X	X									X
Vermont	X	X	X	X			X				YES	X	X									X
Virginia	X	X	X	X			X				YES	X	X									X
Washington	X	X	X	X			X				YES	X	X									X
West Virginia	X	X	X	X			X				YES	X	X									X
Wisconsin	X	X	X	X			X				YES	X	X									X
Wyoming	X	X	X	X			X				YES	X	X									X

Arthur D. Little, Inc.

FOOTNOTES  
FINGERPRINTING AND PHOTOGRAPHING

1. Florida - Requires that fingerprints and photographs of youth adjudicated for felony be distributed to State Department of Law Enforcement and other jurisdictions. [39.031 Fl. Stat. Ann.]
2. Georgia - State codes indicate that intake officials need an order of the court to fingerprint juvenile offenders. The exception to this occurs when the juvenile is 13 years of age or older and commits a specified felony. [15-11-70 Ga. C.A.]
3. Georgia - Fingerprints sent to FBI in interest of national security. [15-11-60(b)]
3. Hawaii - The rules and standards set by the court concerning the fingerprinting or photographing of any child in police custody do not apply if a child commits a felony. [571-74 Ha. Rev. Stat.]
5. Kansas - Fingerprints and photographs of juveniles cannot be sent to state or federal depositories unless:
  - 1) The child commits a felony;
  - 2) The child has runaway; or
  - 3) The child unlawfully terminates his commitment to a state youth center. [K.S.A. 38-611]
6. Louisiana - Permits fingerprinting and photographing when taken into custody for felony or misdemeanor involving dangerous weapon. [Article 36, La. Rev. Stat. Ann.]
7. Mississippi - Refer to footnote #6 [43-21-255 Miss. Code Ann.]
8. New Jersey - Fingerprints of youth 14 years of age or older charged with criminal type offense may be taken without court order. No child can be photographed if under the age of 14. [Assembly Bill 643 Section 2, effective September 1, 1983]
9. New Mexico - No child can be photographed if under the age of 13. [32-1-27 NMSA]

**END**