# Juvenile Justice Processing Study

*Volume II*

## Juvenile Justice Information Policy



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Governor
State of New York

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**December 1990**

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# Acknowledgments

There have been many individuals who have contributed to this demanding project. Foremost, we thank Ralph Fedullo, Chairman of the New York State Juvenile Justice Advisory Group and Group members for believing in the need for this report and funding its research.

We are especially indebted to the members of the project's advisory panel for providing sensitive and expert guidance to the project's staff. We are hopeful that the advisory panel gatherings will serve as a precursor for on-going forums on juvenile justice issues.

Essential information was provided by staff of the probation departments, presentment agencies and family courts in New York City and Nassau, Erie, Monroe, Albany, Dutchess and Clinton counties.

Staff of the Division of Criminal Justice Services provided valuable assistance, notably Bruce Frederick of the Office of Justice Systems Analysis; Dawn Herkenham of the Office of Legal Services; Leo Carroll, Joan McDermott and Susan Silverstein of Integrated Systems Development; Pamala Griset and Howard Schwartz of the Office of Funding and Program Assistance; Richard Ross of the Office of Communications; William Sillery of the Office of Identification Services; and Dean Mauro of the Commissioner's Office. These individuals provided invaluable analytical and editorial direction for this research.

Celia Sorrell and Deborah Govel are especially thanked for their secretarial assistance.

# Contents

# Executive Summary

This volume reviews several important information policy issues facing the New York State juvenile justice system. These issues include access to juvenile delinquency proceedings, access to sealed records, access to social service records, access to police diversion records, fingerprinting and information systems.

Issues of information policy encapsulate the constant tension between "the best interest of the juvenile and the . . . protection of the community." The question remains, can the system guard the privacy rights of children at the same time it provides information for community protection. Additionally, do treatment providers have enough information to effectively identify the needs of at-risk juveniles and offer appropriate services?

An overview of the various issues is provided along with an analysis of New York State laws and the application of these laws in 11 counties in New York State. The sites include the five counties of New York City, Erie County (Buffalo), Monroe County (Rochester), Nassau County, Dutchess County (Poughkeepsie), Albany County, and Clinton County (Plattsburgh).

This volume focuses on information processing issues involving alleged juvenile delinquency (JD) cases. In New York State, JD cases involve children seven through 15 years of age at the time of the alleged offense who are processed within the family court system. The study does not address information policy issues concerning youths charged in the adult system.

## Findings

1. **While most states have statutes pertaining to the sealing of juvenile records, New York State is unusual because the law requires that records on every case not resulting in a delinquency finding must be sealed. New York State JD sealing laws are similar to New York State adult court sealing laws.**

New York State JD sealing statutes are similar to New York State adult court sealing statutes. In the adult system, cases resulting in favorable terminations are also sealed. JD sealing laws are relatively new in the United States. While they were found in only about half the states as recently as 1974, almost every state now has sealing laws extending beyond the traditional confidentiality already accorded juvenile records. The usual approach is to require eligible juveniles to petition the court for sealing orders. In most states, JD laws refer to sealing after a particular point in time or after a child has been free from delinquent behavior. In some states, JD laws leave the matter to the discretion of the court. Compared with other states, New York State JD sealing statutes are unusual because they require sealing on all cases not resulting in a finding of juvenile delinquency, including probation intake adjustments, presentment agency declinations to prosecute, and pre- and post-fact-finding dismissals.

Concerns about access to sealed records are often raised by the law enforcement community and by treatment providers. Probation officers who work with at-risk juveniles suggest that they do not have complete enough information to evaluate needs or provide treatment services to juveniles who have sealed records. For example, a probation intake officer does not currently have access to information showing that a child has been in a drug-treatment program on a prior adjusted case. Some practitioners also argue that since probation adjustments are sealed, the system is unaware when "second chances" are expended. Also, presentment agency staff suggest that warrant histories - even those in sealed cases - are important to determine detention or bail on later cases.

Supporters of strong sealing laws (e.g., child advocates, law guardians) suggest that record sealing is needed to avoid stigmatization. They also suggest that sealing laws have evolved in a manner consistent with the traditional philosophy of the juvenile court. Thus, juveniles should not have to carry records that might harm their chances for rehabilitation. The New York State Court of Appeals has stated that sealing laws in the juvenile justice system are necessary to provide alleged juvenile delinquents protections similar to those provided to adults in the criminal justice system.

### 2. There are widely different practices on accessing sealed juvenile information and some evidence of non-compliance with the law.

There are various interpretations of sealing laws in the New York State study sites. Agencies in New York City, Nassau County, Monroe County and Erie County interpret sealing laws as prohibiting any access to records on cases favorably terminated. In other sites, where access is much broader for some agencies, practitioners are receiving information that the law does not allow.

### 3. In New York State, JD proceedings are presumptively open to the public and the news media. Access is infrequently requested outside of Monroe County and New York City. Access is sometimes denied when requested.

In New York State, by statute and through rules of the court, JD proceedings are presumptively open to the general public, news media and bona fide researchers. However, the presumption of openness is easily overcome. The family court presiding judge has the discretion to close proceedings based upon a determination that specific factors warrant exclusion. Although statutes and rules may be flexible, there are infrequent "public hearings" of delinquency cases and access by the press and researchers is strictly controlled by the

presiding judge. Only in Monroe County and New York City has there been any significant access by media and special interest groups. At all sites, the general public rarely requests access, and when access is requested, it is often denied.

Arguments to keep juvenile proceedings closed draw attention to the "cost to the child." Open hearings could encourage the media to depict the most lurid juvenile crimes and thus provide a distorted view of juvenile offenders. Child victims, as well as offenders, could be displayed to the public, violating their need for privacy. Some alleged JDs could feel rewarded by the publicity, rather than shamed by it. Some alleged JDs could be stigmatized by the public attention, making it difficult for them to participate fully in society or obtain employment.

Several arguments could be made for opening juvenile proceedings to the public. Open courts could encourage increased fairness and promote a higher quality of legal performance. Open courts could provide information for public discussion and debate and encourage public confidence in the juvenile justice system. Open courts could serve the community's need to identify the serious offender.

4. **There are no State statutes or regulations governing the collection, maintenance and dissemination of police contact records for cases not referred for further legal processing. In New York City, a Federal Court stipulation has restricted access to such records; elsewhere in the State, access to these records is governed by internal police agency policies.**

The police have many non-criminal contacts with juveniles, including cases involving Persons In Need of Supervision (PINS) and violation offenses. Police record keeping systems rarely distinguish non-criminal cases from criminal, and within criminal do not always clearly delineate those referred from those diverted. Research has found that the informal nature of these record keeping systems can lead to inconsistences and inaccuracies in records and, in turn, the release of unverified, prejudicial information to decisionmakers. On the other hand, some practitioners suggested that the denial of such records deprives decisionmakers of information that could assist them in determining the most appropriate system response.

There are no State statutes or regulations governing the collection, maintenance and dissemination of police contact information. In New York City, however, the police department has restricted the maintenance and dissemination of records in accordance with a Federal Court stipulation. For example, judges do not have access to these records for dispositional purposes. Because this stipulation has no standing over other jurisdictions, the maintenance and dissemination of records by police agencies elsewhere in the State is governed by internal departmental policies.

### 5. Family court authority to fingerprint alleged JDs in New York State is limited to relatively few cases.

In New York State, statutory authority to fingerprint juveniles applied to relatively few JD cases in 1987. The percentage of cases in which fingerprints were statutorily required ranged from 8 percent to 13 percent in non-New York City study sites and was 30 percent in New York City.

Some practitioners argue that the expansion of the authority to fingerprint would ensure that the juvenile taken into custody is positively identified, and that complete and accurate information is available to justice system practitioners for decisionmaking. Others state that fingerprinting is a stigmatizing experience for a juvenile and that effective mechanisms do not exist to purge or destroy fingerprints, when required.

Statutory authority to fingerprint juveniles exists in about 90 percent of the states examined. New York State is one of only 11 states to maintain juvenile fingerprints in a central repository; in other states, fingerprint records are maintained by local agencies.

### 6. There is imperfect compliance with statutes governing the taking of fingerprints, as evidenced by New York City.

In New York City, only 77 percent of the JD arrests referred to probation intake in 1987 were actually fingerprinted where fingerprinting was required. In addition, 1,484 fingerprints taken in New York City that year have missing case dispositions, meaning that the New York State Division of Criminal Justice Services (DCJS), the State's central repository for fingerprint records, is unable to determine whether such fingerprints should be retained or destroyed. Consequently, these fingerprints are retained.

### 7. There is an apparent discrepancy between Criminal Procedure Law and Family Court Act provisions regarding adult court access to JD records.

The Criminal Procedure Law (CPL) provisions permit an adult court to use the records of JD proceedings in considering recognizance or bail determinations. The Family Court Act (FCA) does not permit an adult court to use family court JD records, except for sentencing purposes. It is, however, not clear whether these FCA provisions apply to other agencies, including probation and presentment agencies. Generally, prior to sentencing, the only information available to the adult system is gleaned from rap sheets generated from DCJS upon a fingerprintable arrest.

Most practitioners in the juvenile justice system think that district attorneys are not allowed access to JD data even at sentencing. County attorneys in both Nassau County and Monroe County never give JD data to district attorneys in the adult system for either charging purposes or sentencing. Only the Manhattan District Attorney's Office routinely gains access to JD records, often before sentencing.

### 8. There is limited computerization in the juvenile justice system.

Current information systems in New York State, particularly at the local level, remain mostly manual systems and many practitioners say that available data are not sufficient to allow evaluation of programs, to measure workload or to gauge the costs of maintaining the system. Law enforcement and treatment providers are impacted by not having readily available data to improve identification and access to treatment histories. Also, basic clerical tasks (e.g., production of subpoenas) continue to be done manually where computerization may make the tasks more operationally efficient.

Where systems do exist, collection and maintenance of case data are often uncoordinated and inefficient, with considerable duplication of effort throughout the system. Exchange of data among agencies is restricted by policies or laws aimed at either protecting the confidentiality of juvenile records or by strict agency organizational structures and concerns. For instance, in New York City, basic demographic and arrest based information is collected and duplicated in several distinct data systems, while other critical information, unique to one system, is not accessible to the other systems even when legally permissible. Also, information collected by localities could be used for operational purposes by the State. For example, local data systems could be used to update records stored in the DCJS fingerprint record system, as well as improve planning for the New York State Division for Youth (DFY) bedspace.

### 9. There is no statewide capability for tracking specific cases through the juvenile justice process. State information systems exist primarily to serve only limited internal agency needs or are usually designed to meet the limited scope of statutorily set reporting requirements.

There is no centralized State system to service local needs for comprehensively identifying juveniles and their prior records. At present, the State has the capability to identify only those juveniles who are fingerprinted and those juveniles for whom prior fingerprint records exist. Some individuals, migrating between counties or from the juvenile justice system to the adult system, may have prior juvenile records not easily accessible to family court and adult court practitioners.

Where there are State systems, data is often lacking in comprehensiveness or quality. For instance, juvenile arrests for non-criminal violations are not distinguished from juvenile criminal arrests in the State Uniform Crime Reporting (UCR) System. Thus, it is now impossible to determine the total universe of juvenile criminal arrests. Also, there appears to be major under-counting in the number of JD petitions reported by the Office of Court Administration (OCA), particularly in New York City. Because there is no statewide automated data base for tracking cases from arrest to disposition, research must be conducted using time-consuming field data collection.

# Introduction

## Juvenile Court Philosophy and Precepts of Confidentiality

The philosophy guiding juvenile courts[1] from their inception in the late nineteenth century has generally been one of nurturance and rehabilitation. Children were held accountable but not criminally responsible for their misbehavior. The state, through the juvenile court, acted in place of parents to provide essential care lacking from the child's environment (Empey, 1982:70). Delinquency was viewed as a product of social factors in need of change, including inequality, disorganized neighborhoods and blocked opportunities. Informal procedures were utilized in attempting to correct the factors causing the adjustment problems of children. The confidentiality of court proceedings and records developed along with this philosophy.

> The two basic principles of the juvenile justice system – non-culpability and rehabilitation – generated strong pressures for confidentiality: non-culpability because it is unfair and inappropriate to brand a child as a criminal; and rehabilitation because such branding interferes with a child's rehabilitation and reassimilation into society (SEARCH, 1982:14).

Gradually, there was growing sentiment that the juvenile court was failing at its mission and that the official response to delinquent acts actually contributed to further deviance. During the 1960s, research findings began to emerge which disputed the efficacy of rehabilitation, while the civil rights movement questioned whether "the best interests of the child" could be ensured in an informal system which lacked due process guarantees (Farrington et al., 1986:122-123). This thinking led the President's Crime Commission in 1967 to recommend policies favoring non-intervention, diversion and due process to protect all but the most serious offenders from the negative effects of labeling (President's Commission, 1967).

Support for confidentiality was also reaffirmed. The National Advisory Committee for Juvenile Justice and Delinquency Prevention (1980:149) noted in its report that:

> Confidentiality of records pertaining to juveniles and closely controlled access to them have been endorsed by all of the major standards groups and model legislation which have addressed the problem.

Other commentators have observed that this policy that "takes account of the impulsiveness of many acts of youthful indiscretion and offers a fresh chance to begin anew (Farrington et al., 1986:126). The *In re Gault*[2] decision noted that the long-standing principles of confidentiality were not inconsistent with the notion of the modern juvenile court:

> . . . there is no reason why, consistent with due process, a state cannot continue if it deems it appropriate, to provide and to improve provision for the confidentiality of records of police contacts and court action relating to juveniles.[3]

In addition, federal regulations may restrict access to some social records.[4]

Despite these opinions, law enforcement groups continue to press for increased access to records, while a broad spectrum of opinion regarding increased access has emerged among supporters of the treatment-oriented perspective. Consequently, such divergent groups as law enforcement officials, as well as some supporters of the traditional treatment-oriented court, have expressed concerns about laws and policies limiting access to information. In the view of several scholars, the juvenile court, today, faces "a state of uncertainty as to its guiding philosophy" (Farrington, et al., 1986:123).

The law enforcement approach to juvenile justice stresses the need to focus resources on the serious and chronic juvenile criminal. This approach calls for changes in confidentiality laws and practices, stressing the need for more rather than less access to information. Many states have passed laws and created programs aimed at violent or repeat offenders, either within the juvenile justice system or through the adult system. From a law enforcement perspective, these offenders must be identified to carry out such policies and programs. Official criminal history records are, therefore, critical.

In testimony before the United States Senate Committee on the Judiciary in 1983, Alfred S. Regnery, Director of the Office of Juvenile Justice and Delinquency Prevention, became a vocal proponent of this view:

> There are important uses for prior offense records, at most of the key decision points in the juvenile and criminal process, including arrest, bail determination, charging, plea negotiation and sentencing. To the extent records are not available when and where needed, the entire justice system is compromised as a viable crime control mechanism. This diminishes the public's trust in the system and reduces any fear or respect for the system by the criminal, and thereby diminishes the deterrence value of the entire justice system. Most importantly, habitual or serious offender programs are completely dependent on record information for identification of such offenders early in the juvenile or criminal justice process. Particularly at the charging stage, when juvenile records are usually not available, career criminal programs are often not able to identify habitual offenders until their criminal careers have left a long string of victims (U.S. Congress, 1983).

The importance of juvenile records is underscored by empirical studies. Researchers have found that the early onset of antisocial behavior – in elementary school or in preadolescent years – and the likelihood of later serious delinquency and adult criminal activity are related (Blumstein et al., 1986:46-47). Furthermore, a national study of juvenile court involvement found a developmental pattern of offending by youth such that the probability of recidivism, as well as its seriousness, increased with each court referral (Snyder, 1988:66). This finding led the author to advocate early intervention to meet the needs of younger youth before their problems escalate and require the consumption of even greater resources. Knowledge of prior court referrals would be instrumental in implementing such an approach.

While concerns over confidentiality are often raised by proponents of tougher juvenile laws, the issue has also received attention from supporters of a treatment-oriented court. In 1967, the Task Force on Juvenile Delinquency of the President's Commission on Law Enforcement and Administration of Justice drew a distinction between legal and social reports. The Task Force recommended that the legal records should generally be available only to official criminal justice agencies, while social reports

> should be available on a strictly limited basis to . . . [probation departments, mental health clinics, and social agencies dealing with the delinquent] that need and will use the information for the same purpose for which it was originally gathered (p. 40).

A recent report on juvenile record sharing published by the National School Safety Center (NSSC), observed:

> People who work with at-risk juveniles often simply do not have the data they need to operate effectively. . . . Too often, juvenile agencies are unaware that they are each attempting to serve the same at-risk youths. When information is shared appropriately, improved strategies for rehabilitating, educating and better serving those youths – and for improving public safety – can be developed (Clontz, et al., 1989:3).

This sentiment was echoed by an official in the New York City Department of Probation:

> The regulations governing the confidentiality of juvenile records were designed to protect court involved youngsters. Unfortunately, such regulations may also prevent these youngsters from obtaining the kind of help they so desperately need. To best serve these juveniles, public and private agencies must work together. However, as these agencies are often prohibited from sharing information, they may be unaware that they are serving the same youth and work at cross purposes.

As we have seen, there are some treatment proponents, as well as those with a focus on law enforcement, calling for increased access to juvenile justice information. For them there is no fundamental disagreement, it is rather the practical issues of what information should be shared, with whom, and for what purpose. Nevertheless, these practical issues can be complex. Law enforcement priorities focus on information identifying prior legal histories, while treatment interests are concerned with prior rehabilitative and therapeutic approaches. This volume will discuss several significant information policy issues from these two perspectives, as well as from the perspective of proponents of confidentiality who continue to believe strong laws are required to protect children from stigmatization and the full glare of publicity.

New York State's juvenile justice system is an amalgam of tensions and themes, notably crystallized in the purpose clause of the Family Court Act:

> . . . in any proceeding under this article, the court shall consider the needs and best interest of the respondent [juvenile] as well as the need for protection of the community (FCA §308.1).

This wording provides a dual and broadly interpretable mission for the juvenile justice system. How do we balance the two concerns? What are the needs and best interests of the respondent? What does community protection mean? Diametrically opposed answers to these questions can be equally defensible within such a broad framework.

Issues of information policy encapsulate the constant tension between the best interest of the juvenile and the protection of the community. The question remains, can the system guard the privacy rights of children at the same time it provides information for community protection? Additionally, do treatment providers have enough information to effectively identify the needs of at-risk juveniles and offer appropriate services?

## Historical Overview

Juvenile delinquency processing is the product of over one hundred and fifty years of experience in New York State which pioneered juvenile justice legislation and processing practices on many occasions. For example, the Law of 1825 establishing the New York House of Refuge was among the first in the Nation to include a definition of juvenile delinquency. The establishment of the Manhattan Children's Court in 1902, another landmark, can be seen as the culmination of a process begun some 75 years earlier rather than as a radical new departure. Manhattan was the first jurisdiction in the country to house children's court in a separate building. However, it was not until 1924, with the enactment of the Children's Court Act, that the children's court became administratively independent from the magistrate's criminal court. The confidentiality

of juvenile records in New York State was first manifested in §45 of the Children's Court Act which stated that "all such [court] records *may be* [italics added] withheld from indiscriminate public inspection in the discretion of the judge . . . ." In other words, records were *open* for public inspection unless the judge specified otherwise. A description of the New York City Children's Court in 1953 shows how many public and private agencies had access to delinquency information:

> These include representatives of other courts in the city and of the [Federal Bureau of Investigation] FBI, Civil Service, the Army, Red Cross, Travelers Aid, and voluntary social agencies. Police precincts send officers to the Court to examine docket books and to copy disposition data on arrest cases. The Hack (Taxi) License Bureau . . . sends its representatives to look at petitions. If the case is not over ten years old, and if they wish details, these agencies may also turn to records in the Probation Department . . . . In addition, Department of Welfare investigators regularly read Probation Department case records . . . . (Kahn, 1953:59).

Another significant landmark was the enactment of the New York State Family Court Act (FCA) in 1962. This legislation provided unified jurisdiction to the children's court over cases dealing with family matters. The act also stipulated the appointment of law guardians to represent children, some years before counsel were found to be constitutionally required by the United States Supreme Court. Corresponding to the increased use of defense counsel was the growing reliance upon specialized counsels (initially the police and then corporation counsel in New York City and county attorneys elsewhere in the state) to prosecute juvenile delinquency cases.

With enactment of the Family Court Act the statutory language for the privacy of family court records was strengthened. FCA §166, entitled "Privacy of Records," provides as follows:

> The records of any proceeding in the family court *shall not* [italics added] be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record (FCA §166).

Records were now *closed* to public inspection unless the judge specified otherwise. The purpose of FCA §166 was to prevent public dissemination of information relating to legal disputes involving family problems and, in juvenile delinquency cases, to avoid the social stigma which might attach to a person if the facts of his juvenile misconduct were revealed.[5]

At the federal level, through a series of cases in the 1960s, the Supreme Court extended due process protections to juveniles comparable to constitutional protections enjoyed by adults in the adult legal system of justice. Legal rights were not to be sacrificed in the name of rehabilitation. In *Kent v. United States,* the Supreme Court held that in a juvenile delinquency proceeding, the juvenile is entitled to a hearing, access to social records and probation reports considered by the court, and a statement of reasons for the juvenile court's decision.[6] In *In re Gault,* the Supreme Court held that in juvenile delinquency proceedings, a juvenile facing a possible loss of liberty had the following due processing constitutional rights:[7]

(1) the right to notice of the charge and time to prepare for trial;

(2) the right to counsel;

(3) the right to confrontation and cross-examination of witnesses; and

(4) the right to remain silent in court.

Although *Gault* is considered the seminal case in the area of juvenile proceedings, the *Gault* decision did not have a direct impact on New York's family court proceedings. All four of the rights listed by the Supreme Court had been enjoyed by juvenile respondents before New York family courts since 1962. And, in the Supreme Court's opinion, New York law was pointed to as a model.[8]

In *In re Winship,* the Supreme Court held that in a juvenile delinquency proceeding, the charges must be proved beyond a reasonable doubt.[9]

In 1971, the Supreme Court, in *McKeiver v. Pennsylvania,*[10] held that there is no constitutional right to a trial by jury in juvenile court adjudications. In its rationale, the Court stated that:

> [A] jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal, protective proceeding . . . .[11]

In 1983, with the advent of Family Court Act Article 3, additional reforms were made to the New York State juvenile delinquency process. The aim of the new article was to further standardize juvenile justice across the State's 57 counties and the five boroughs of New York City by designating procedures and responsibilities for the system's actors (notably, police, detention agencies, probation and the presentment agency). Among its most significant stipulations are the following: the local probation intake unit should screen juvenile delinquency cases for adjustment or referral to the presentment agency; and only a presentment agency may originate a delinquency case in court.

Article 3 also provided for the sealing of juvenile delinquency records for cases terminated in favor of the respondent, patterning the protections after those accorded to adults through 1976 amendments to the Criminal Procedure Law. The New York State Court of Appeals, in *Matter of Alonzo M.,* subsequently discussed the need for such protections for juveniles.

> In summary, over the past thirty years, due process protections have been increased for alleged juvenile delinquents. It would be regressive to bestow such sweeping beneficial sealing protections on adult offenders while subjecting juvenile delinquents to the devastating prejudice of consideration of sealed data at their dispositional hearings.[12]

## New York State Juvenile Delinquency Processing

The juvenile justice process begins with police contact with juveniles alleged to have committed crimes. Once an arrest is made the police must decide if a case is suitable for diversion. If a case is not diverted, depending upon the offense and the child's age at the time of the incident, the case will be sent either to the adult system or to the juvenile justice system.

Probation intake is the first step in the post-arrest juvenile justice process (FCA §308.1). The role of intake is to remove cases by adjustment that are either too trivial or inappropriate for court intervention and, if possible, provide mediation, supervision, and services during the adjustment process.

Presentment agency screening is the next step for a case that probation intake refers for prosecution. The term "presentment agency" refers to a county attorney, corporation counsel or district attorney. The presentment agency has two major responsibilities during screening. First, it must determine whether circumstances warrant a petition being filed against the juvenile. Second, if a petition is to be filed, the presentment agency must determine what charges are to appear against the respondent. The "respondent" is the person against whom the JD petition is filed (FCA §301.2[2]).

After the petition is filed the case will go forward to fact-finding where the allegations are adjudicated. If the allegations are established at fact-finding, the case may go forward to a dispositional hearing. However, the respondent is not found to be a JD until the court determines that the youth is in need of treatment, supervision or confinement. This occurs after a dispositional hearing.[13]

Issues of information policy in the New York State juvenile justice system are compounded by the very complexity of the system itself. The system includes a variety of agencies and branches of government, as well as private individuals and organizations. The maintenance, sharing and use of information by these groups often depend upon which juveniles are involved, the seriousness of their alleged offenses and the party requesting the information.

The objective of this study is to address information policy issues from a broad perspective. New York State statutes and practices are reviewed within a historical context and with reference to other State laws.[14] The sections illustrating New York State statutes also contain abstracts from relevant sections of Institute for Judicial Administration/American Bar Association (IJA/ABA) standards addressing juvenile information policy issues.

## Access to Juvenile Delinquency Proceedings and Records by the Public, the Media and Researchers

### Overview and National Perspective

The media and the general public have been excluded from juvenile proceedings in most states to shield juveniles and their families from publicity.

Several arguments can be made for opening juvenile proceedings to the public. Open courts could encourage increased fairness and promote a higher quality of legal performance. They could provide information for public discussion and debate and encourage public confidence. Open courts could serve the community's need to identify the serious offender.

Arguments to keep juvenile proceedings closed draw attention to the "cost to the child." Child victims, as well as offenders, could be displayed to the public, violating their need for privacy. Some alleged JDs might feel rewarded by the publicity, rather than shamed by it. Other alleged JDs might be stigmatized by the public attention, making it difficult for them to participate fully in society or obtain employment. Open hearings could encourage the media to depict the most lurid juvenile crimes and thus provide a distorted view of juvenile offenders.

The National School Safety Center (NSSC) presented results of a recent survey of state laws on access to juvenile proceedings. It showed that proceedings in 29 states were closed to the public, in 12 states proceedings were open to the public, three states had hearings open or closed at the discretion of the judge, and six states have juvenile laws that do not address the issue or are unclear (Clontz, et al., 1989:68).

A review of state juvenile laws by the Massachusetts Governor's Anti-crime Council showed how varied states are:

> California provides that unless requested by the accused minor or any parent or legal guardian present, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit those persons who he or she deems to have 'direct and legitimate' interest in the particular case or the work of the court.

> Florida provides that all hearings, except as otherwise provided, shall be open to the public. The court, in its discretion, may close any hearing to the public when the public interest and the welfare of the child are best served in doing so . . .
>
> [In] Massachusetts . . . [t]he general public is . . . excluded, with the court admitting only those persons with a direct interest in the case . . .
>
> New Jersey provides generally for closed hearings . . .
>
> The Ohio code states only that all cases involving children should be heard separately and apart from the trial of cases against adults . . .
>
> The Pennsylvania code provides that . . . the general public shall be excluded . . .
>
> The Washington code states that the general public and press shall be permitted to attend any hearing unless the court, for good cause, orders a particular hearing to be closed. The presumption is to be that all hearings will be open (Massachusetts, 1986:67-68).

The SEARCH Group reviewed state law definitions on who has access because of a "direct" or "legitimate" interest and commented:

> Surprisingly, courts which have interpreted similar language in the juvenile laws in Minnesota and California have held that the news media has a 'direct interest' in the proceeding (SEARCH, 1982:96).

Despite statutory restrictions on access to court proceedings, many observers contend that juvenile records are already widely available to media, the public, and potential employers. For example, the military, employers and others often seek and receive information directly from juveniles (SEARCH, 1982:88-92). In addition, some state laws expressly provide that certain juvenile information is made public. By 1982, seven states had modified their juvenile laws to permit disclosure to the public of the names and case information of adjudicated delinquents (SEARCH, 1982:91). Disclosure is usually dependent on either prior records or the severity of the offense.

Researchers are allowed access to juvenile court records in many states, although there may be restrictions on record use or disclosure. Some state laws do not permit access to data if research identifies the juveniles. In other states, research access is permitted only if requested by a state agency. See the Appendix for a discussion of this study's attempts to access data.

To summarize, in more than half the states, juvenile proceedings are closed to the public; many state laws provide public access to certain records; and many states allow researchers access to juvenile court records, although there may be restrictions on dissemination.

Historically, a common law "open-court" rule assuring the right of public access to judicial proceedings developed. "Open court" is defined as a court which is freely open to spectators.[15] The United States Supreme Court has long recognized that all trials, civil and criminal, are presumptively open to the public.[16] But when this would jeopardize the right of the accused to a fair trial, the competing interests must be balanced and reconciled as far as possible.[17] It has also been established that the right to attend criminal trials is implicit in the guarantees of the First Amendment, absent an overriding interest articulated in court findings.[18] Similar to the "open-court" rule assuring the right of public access to civil and criminal trials, there is no constitutional impediment to public trials for juveniles.[19] Accordingly, juvenile delinquency proceedings, like other judicial proceedings, are presumptively open to the public.

Despite the presumption of public access to judicial proceedings, statutory provisions permit closure of the courtroom at the discretion of a presiding judge in a civil or criminal case, allowing departure from the common law open-court rule. Consistent with due process, a state can provide for and improve the provisions of confidentiality of court actions relating to juveniles.[20] Thus, selective exclusion of the press and public from juvenile delinquency proceedings is constitutionally permissible and selective or blanket exclusion has been authorized by most of the 50 states.[21]

New York State statutorily permits the closure of juvenile delinquency proceedings to all except "interested" persons and authorizes the exclusion of the general public from juvenile delinquency proceedings. The Family Court Act provides that:

> The general public may be excluded from any proceeding under this article and only such persons and the representatives of authorized agencies as have a direct interest in the case shall be admitted thereto (FCA §341.l).

At the outset, the wording of FCA §341.1 appears to permit the general public to attend juvenile delinquency hearings and that to deny access, an affirmative act on the part of the court is required as a precondition to public exclusion.

Any person who does not have a direct interest in the case is virtually automatically excluded from observing the juvenile delinquency proceeding (Sobie, 1983:597). FCA §341.2 provides some guidance in determining those persons who have a direct interest in the case.

1. The [juvenile] and his counsel or law guardian shall be personally present at any hearing under this article and at the initial appearance.

IJA/ABA Standard 6.1, "Right to a Public Trial," states as follows:

Each jurisdiction should provide by law that a respondent in a juvenile court adjudication proceeding has a right to a public trial.

IJA/ABA Standard 6.2, "Implementing the Right to a Public Trial," states as follows:

A. Each jurisdiction should provide by law that the respondent, after consulting with counsel, may waive the right to a public trial.

B. Each jurisdiction should provide by law that the judge of the juvenile court has discretion to permit members of the public who have a legitimate interest in the proceedings or in the work of the court, including representatives of the news media, to view adjudication proceedings when the respondent has waived the right to a public trial.

C. The judge of the juvenile court should honor any request by the respondent, respondent's attorney, or family that specified members of the public be permitted to observe the respondent's adjudication proceeding when the respondent has waived the right to a public trial.

D. The judge of the juvenile court should use judicial power to prevent distractions from and disruptions of adjudication proceedings and should use that power to order removed from the courtroom any member of the public causing a distraction or disruption.

IJA/ABA Standard 6.3, "Prohibiting Disclosure of Respondent's Identity," states as follows:

A. Each jurisdiction should provide by law that members of the public permitted by the judge of the juvenile court to observe adjudication proceedings may not disclose to others the identity of the respondent when the respondent has waived the right to a public trial.

B. Each jurisdiction should provide by law that the judge of the juvenile court should announce to members of the public present to view an adjudication proceeding when the respondent has waived the right to a public trial that they may not disclose to others the identity of the respondent.

2. If a [juvenile] conducts himself in so disorderly and disruptive a manner that the hearing cannot be carried on with him in the courtroom, the court may order a recess for the purpose of enabling his parent or other person responsible for his care and his law guardian or counsel to exercise full efforts to assist the [juvenile] to conduct himself so as to permit the proceedings to resume in an orderly manner. If such efforts fail, the [juvenile] may be removed from the courtroom if, after he is warned by the court that he will be removed, he continues such disorderly and disruptive conduct. Such time shall not extend beyond the minimum period necessary to restore order.

3. The [juvenile's] parent or other person responsible for his care shall be present at any hearing under this article and at the initial appearance. However, the court shall not be prevented from proceeding by the absence of such parent or person if reasonable and substantial effort has been made to notify such parent or other person and if the [juvenile] and his law guardian or counsel are present (FCA §341.2).

Since their appearance is required by the court, it is apparent that the juvenile, the juvenile's parent or guardian and the law guardian have an "interest" in the case. It is not clear, however, whether the "victim" or "complainant" would be considered as a person having a "direct interest" in the case. It may be concluded that persons having an "interest" include the juvenile, his or her parent or guardian, the law guardian, the presentment agency, the probation service and representatives of appropriate child welfare agencies (Sobie, 1983:597).

Uniform, statewide rules of court govern the privacy of family court proceedings, including juvenile delinquency proceedings. McKinney's 1990 New York Rules of Court §205.4, entitled "Access to Family Court Proceedings," provide as follows:

(a) In exercising the inherent and statutory discretion possessed by the judge who is presiding in the courtroom to exclude any person or the general public from a proceeding in the family court, the judge may consider, among other factors, whether:

(1) the person is causing or is likely to cause a disruption in the proceedings;

(2) the presence of a person is objected to by one of the parties;

(3) the orderly and sound administration of justice, including the nature of the proceeding and the privacy of the parties, requires that all observers be excluded from the courtroom.

Whenever the judge exercises discretion to exclude any person or the general public from a proceeding or part of a proceeding in family court, the judge shall make findings prior to ordering exclusion.

(b) The judge shall, when necessary to preserve the decorum of the proceedings, instruct representatives of the news media and others regarding the permissible use of the courtroom and other facilities of the court, the assignment of seats to representatives of the news media on an equitable basis, and any other matters that may affect the conduct of the proceedings (22 NYCRR §205.4).

Under the 1990 Rules, a judge's discretion to *exclude* observers should be based, among other things, on the factors listed above. Under these Rules, it would appear that an affirmative act is necessary for the judge to order the exclusion of an observer.

In contrast to the 1990 Rules, the 1989 Rules guided the judge's discretion to *admit* or *exclude* persons from the proceedings. Under the 1989 Rules, it appeared that individuals who met the criteria could be permitted to observe family court proceedings under carefully prescribed conditions, "but the general public [was] always excluded" (Sobie, 1983:597). In comparison, the 1990 Rules guide the judge's discretion only when excluding persons from the family court proceedings. Presumably, the lack of any guidelines in the 1990 Rules for admitting observers means that the proceedings are to be open to the general public.

The fact that the news media and researchers have access to juvenile delinquency proceeding does not mean proceedings will lose the confidential treatment traditionally accorded them.

> Public access to juvenile trials need not affect the confidentiality of records, nor, indeed, need the anonymity of the juvenile be sacrificed.[22]

> In a proper case, the need to preserve a sense of privacy and decorum in the courtroom can be met by permitting press access on a pool basis. In the absence of evidence that the child or his family is particularly vulnerable or that the issues involved are particularly sensitive, this device might provide the means to protect the right of the public to be informed without sacrificing the principles of the Family Court Act. However, . . . the court must be scrupulous in its effort to avoid 'the harmful impact publicity may have on the rehabilitation of a child.'[23]

In addition to proceedings, family court records, including probation service information, are also accorded some degree of confidentiality. While the records of family court are not open to "indiscriminate public inspection," family court records may be inspected at the court's discretion. Uniform statewide rules of court serve as a guide by which papers filed in proceedings are made available:

> Subject to the limitations and procedures set by statute and case law, the following shall be permitted access to the pleadings, legal papers formally filed in a proceeding, findings, decisions and orders and, subject to the provisions of CPLR 8002, transcribed minutes of any hearing held in the proceeding:
>
> (a) the petitioner, presentment agency [the person who goes forward on the petition; generally, the county attorney, corporation counsel or district attorney] and adult respondent in the family court proceeding and their attorneys; and
>
> (b) when a child is either a party to, or the child's custody may be affected by, the proceedings:
>
> (1) the parents or persons legally responsible for the care of that child and their attorneys;
>
> (2) the guardian, guardian ad litem and law guardian or attorney for that child;
>
> (3) an authorized representative of the child protective agency involved in the proceeding or the probation service; and
>
> (4) an agency to which custody has been granted by an order of the family court and its attorney (22 NYCRR §205.5).

Thus, it would appear from FCA §166 and the Rules of Court that while family court records are not *per se* confidential, they are accorded a considerable degree of privacy.

To recap, JD proceedings are presumptively open, but the presumption of openness is easily overcome. The family court presiding judge has the discretion to close family court proceedings based upon factors including the likelihood of disruption or a party's objection to the presence of a person.

IJA/ABA Standards 5.1 to 5.7 cover access to juvenile records. The standards prescribe that direct access by agency personnel should be limited to the minimum number of persons necessary specifically designated by the agency's chief administrator, and no access should be permitted except for the purpose of providing services or for other agency purposes. Juveniles and their parents should be given access to their records unless the information is likely to cause harm or, if the information was obtained in connection with services the juvenile had a legal right to receive without parental consent, the record should not be disclosed to the parents without the juvenile's full informed written consent.

Access by third persons to a juvenile record is strictly restricted to situations of informed consent, such consent to be obtained from juveniles over the age of ten and parents if they have a right of access and from juveniles alone if emancipated or over the age of fifteen, if the information has been reevaluated within the past ninety days and found accurate, if disclosure is appropriate, and if the person signs a nondisclosure agreement, or a bona fide emergency exists and disclosure is made to a court for the purpose of obtaining consent.

Anyone who seeks access for research or evaluation must file a written application with the juvenile agency and a copy with the privacy committee, which an agency should approve if the researcher or evaluator is qualified and, among other things, the anonymity of the juveniles will be preserved.

IJA/ABA Standard 18.1 on the use of juvenile records by third persons prohibits public and private employers, licensing authorities, credit companies, insurance companies, banks, and educational institutions from inquiring, directly or indirectly, and from seeking any information relating to whether a person has been arrested as a juvenile, charged with committing a delinquent act, adjudicated a delinquent, or sentenced to a juvenile institution.

As mentioned previously, the Rules of Court assist the family court judge in determining whether or not to exclude any person or the general public from a juvenile delinquency proceeding. It is clear that the practice in the study sites was generally to provide access to news media, researchers, and special groups such as the Fund for Modern Courts and the Citizens Committee for Children. However, except for New York City and Monroe County, requests were infrequently made by such parties in other sites. At all sites, the members of the public rarely requested access, and when requested, access was determined on a case-by-case basis.

Family court judges in Monroe County allowed researchers, local newspaper reporters and, occasionally, school groups to attend delinquency proceedings. A Monroe County assistant county attorney said of the issue of open courts:

> Reporters do come in, particularly on cases that the public is concerned about – rape cases. They are very good and do not publish the kid's name. If the defense attorney asks for the case to be closed, I always ask him to state it on the record. I think reporters should come more often to the first appearance. The court is open, but it is not used enough.

The practice in Monroe County was for a reporter to attend particularly "newsworthy" cases, but these were rare. In addition, school groups attended delinquency proceedings in Monroe County as part of organized field trips. Introductory talks were given by the court clerk and the presiding judge.

Studies conducted by Weisbrod (1981), Prescott (1981) and Kramer (1988) involved courtroom observations of delinquency proceedings in New York City. In addition, the media has recently covered several juvenile delinquency case proceedings, and access has often been provided to special groups. The general public has rarely requested access to proceedings; when access was requested, it was determined on a case-by-case basis.

Most practitioners interviewed in other jurisdictions were concerned about maintaining privacy for juveniles. A family court judge in Nassau County described open courts as inconsistent with the fundamental purpose of the family court – to protect the child. In his opinion, the privacy of delinquency proceedings was an integral part of the court's protective function. A family court judge in Dutchess County saw the danger of stigmatizing a child in a relatively trivial case:

> I don't like the idea of stigmatizing a kid who knocks a mailbox on Halloween and the complainant insists it comes to court.

The concern for protection was seen differently by two family court judges interviewed from Albany County. They remarked that, on the one hand, the public had some right to know what was happening in the court. On the other hand, the proceedings were sometimes very emotional and personal. For them, the competing interests could be weighed by the presiding judge in accord with the court rules.

In Erie County, a family court judge said of the need to protect the child from the possible stigma of publicity, that:

> The good kids, I feel, need privacy, but for the bad kids publicity makes no difference, so I don't see a need to allow reporters into the court.

A minority of practitioners shared the views of a report by the Committee on the Family Court and Child Welfare (CFCCW) of the New York County Lawyers' Association (1988), which called for reversing the current tradition. The report suggested strengthening the presumption of openness by only allowing exclusion when, on a motion by a party, it can be shown that:

> . . . [P]ublic exposure of particular testimony would be extraordinarily stressful for a juvenile and harmful to him/her from a therapeutic standpoint (CFCCW, 1988:1).

The committee did not call for the removal of all confidentiality restrictions, however, when it proposed legislation to prevent public use of photographs of juveniles involved in delinquency actions.

In summary, although statutes and rules may be flexible, there were infrequent "public hearings" of delinquency cases and access by the press and researchers was strictly controlled by the presiding judge. Only in Monroe County and New York City has there been any significant access by media and special interest groups. At all sites, the general public rarely requested access, and when requested, access was determined on a case-by-case basis. Most practitioners felt that the system worked well, allowing a certain level of controlled access, without risking the family court traditions of protection and confidentiality.

## Sealing and Expungement of Juvenile Delinquency Records

### Overview and National Perspective

Access to juvenile justice records can be denied in several ways. Confidentiality laws generally deny the non-juvenile justice community access to proceedings or records (see above). Sealing and expungement laws go a step further, for they may either deny record

access to the juvenile justice community (i.e., probation officers, prosecutors, judges) or actually order the destruction of such records. According to one analysis:

> With very few exceptions, all states have now added provisions to their juvenile codes for juvenile justice record sealing or purging, or both. These statutes are surprisingly uniform in their approach. Most of the statutes contain standards for: (1) the time at which the records may be sealed or purged; (2) the conditions that must be met; (3) the records affected; (4) the effects of the seal or purge; (5) the circumstances under which access to sealed records is permitted (SEARCH, 1982:49).

Sealing of records is usually done to avoid stigmatizing the juvenile and to prevent practitioners from using prejudicial information in decisionmaking. Some advocates argue that the destruction (expungement) of records is really the only way to guarantee that they will not be used. As a review of criminal information systems pointed out:

> In the public eye, an offender is an offender, be he juvenile or adult. Without the protection of physical record expungement, the [illegible]omidic recitals of the juvenile court's non-punitive philosophy will not save the juvenile from the record's stigma (DeWeese, 1974:40-41).

Juvenile delinquency record sealing or destruction laws are relatively new; as recently as 1974 they were found in only about one-half of the states (Altman, 1974:5). Where they do exist, the usual approach is to require eligible juveniles to petition the court for sealing or expungement orders. In addition, most laws refer to sealing after a particular point in time or after a child has been free from delinquent behavior for a certain amount of time. Some laws require a hearing to determine if the child has been subsequently adjudicated delinquent or convicted of a crime. Some laws do not require a hearing or set particular standards for sealing or destroying a record, but leave the matter to the discretion of the court (SEARCH, 1982:51-52).

New York State law requires sealing on all cases resulting in favorable terminations, and similar sealing laws apply to both adult criminal proceedings and juvenile delinquency proceedings. In the juvenile justice system, favorable terminations are cases that are disposed in favor of the respondent as a result of a dismissal, acquittal, pre-adjudicatory probation intake adjustment, or a declination to prosecute (FCA §375.1). (See below for a discussion of New York State laws and operational practices.) In Illinois, there is no statutory prohibition of the use of arrest records of cases that are favorably terminated. In Connecticut, however, if a delinquency case is dismissed by the court, it is automatically "erased" (i.e., records are destroyed). However, if a case is *nolle prosequi* (i.e., a case is referred for petitioning, but the petitioning agency determines not to go

forward), it is held open for 13 months. During this period, it may be used for certain purposes, such as probation intake information or case disposition on a different matter.

Some additional findings are worth noting:

> All of the juvenile statutes severely limit access to sealed records . . . . A number of jurisdictions . . . provide that access may be permitted only by court order upon petition of the juvenile and only to persons named in the petition . . . . However, a sizeable number of state statutes . . . expressly provide that sealed records may be used for sentencing purposes if the record subject subsequently is convicted of a crime.
>
> A number of state statutes also expressly permit other miscellaneous uses of sealed juvenile justice records. [F]or example, . . . sealed records may be made available to the victim . . . for research purposes . . . to certain law enforcement officials and to persons with a legitimate interest in the case or in the work of the court (SEARCH, 1982:52-54).

As with the issue of confidentiality, arguments against limiting practitioner access to juvenile records can be made from both a treatment and law enforcement perspective. From a treatment perspective, underlying information on a sealed case must be known to provide appropriate services to a juvenile on a later case. For instance, in some states, including New York, if a case is "terminated" by probation intake before petitioning, the case is automatically sealed. However, if as part of the termination the child is referred for drug treatment, and later rearrested, the decisionmaker cannot know of this treatment or its results.

Because favorable terminations include probation adjustments, law enforcement agencies are unaware when the child's "one chance" has been expended. Since some cases are dismissed on non-legal sufficiency grounds and may be presented again, they should be available for reevaluation. A warrant history – even that created on a sealed case – is important to determine the need for detention or bail on a later case, and the obligation to appear is completely separate and apart from any determination of guilt or innocence.

However, sealing practices have evolved in a manner consistent with the traditional philosophy of the juvenile court. They are based on the belief that juveniles should not have to carry records into adulthood that might harm their chances for rehabilitation.

To summarize, sealing and expungement laws either deny the juvenile justice community access to records or order the records to be destroyed. Sealing of records is usually performed to avoid stigmatizing and to "wipe the slate clean" for those deserving a second chance. Access to sealed records is usually available for limited purposes. With few exceptions, all states have statutory provisions for

juvenile justice record sealing or purging, or both. The laws are relatively new and uniform in their approach. Most states require eligible juveniles to petition the court for seal and purge orders.

## New York State Laws

FCA §166 indicates that records in the family court are not open to indiscriminate public inspection; however, certain family court records are accorded additional privacy protections through sealing procedures. Sealing provisions for JD records were not specifically included in the 1962 enactment of the Family Court Act. New York State statutorily provided for the sealing of juvenile delinquency records in 1982, patterning such provisions after the 1976 amendments to the Criminal Procedure Law.[24] The Criminal Procedure Law provides for the sealing and confidentiality of adult criminal history records and papers in favorably terminated cases.[25]

The New York State JD sealing provisions are found in FCA §§375.1 and 375.2. According to these provisions, certain JD records *must* be sealed while other JD records *may* be sealed. The records ordered sealed by the court must "be sealed and not made available to any person or public or private agency" (FCA §375.1). The family court is also authorized to issue orders directing the sealing of JD records in possession of other agencies in favorably terminated actions. Police, probation, presentment agency and court records must be sealed upon a favorable termination (FCA §375.1[1]). Family Court Act provisions do not address whether the family court may at a later time "lift" the seal.

A delinquency proceeding is "terminated in favor of a juvenile" or "favorably terminated" where there has been a withdrawal, dismissal under certain criteria,[26] adjustment prior to filing the petition, acquittal, or a declination to prosecute (FCA §375.1[1]). The sealing of records of JD proceedings is automatic upon a favorable termination unless the sealing order is barred by order of the court or upon motion of the presentment agency in the interest of justice (FCA §375.1[1]). And, even when the allegations are established, if the court finds that the juvenile does not require supervision, treatment or confinement, the proceedings will be deemed to have been favorably terminated, because the proceeding must be dismissed (FCA §375.1[2][f]).

Exceptions to the sealing provisions authorize release of sealed records to the juvenile or his agent and to a probation service for the limited purpose of making adjustment decisions (FCA §375.1[3]). Probation may not adjust a case with one of 12 specified charges if the juvenile had a prior adjustment of a case involving one of these offenses (FCA §308.1[4]).

Besides the virtually automatic sealing mandates of FCA §375.1, certain records of JD proceedings resulting in a finding of delinquency or "not favorably terminated" *may* be sealed. The family court has discretionary authority to issue an order sealing the records

IJA/ABA standards 17.1 to 17.7 on destruction of juvenile court records provide that all unnecessary information in records that identify the juvenile should be destroyed. In cases involving delinquency complaints, all identifying records should be destroyed when the application for the complaint is denied, the complaint or petition is dismissed, or the juvenile is adjudicated not delinquent. In cases of adjudicated delinquents, all identifying records should be destroyed when no subsequent proceeding is pending, the juvenile has been discharged from the supervision of the court or the correctional agency, two years have elapsed from the date of such discharge, and the juvenile has not been adjudicated a delinquent for a felony offense. After destruction, the court should send the juvenile a written notice that he or she has no record with respect to the matter involved and if it involved delinquency, the juvenile may inform anyone that he or she was not arrested or adjudicated delinquent, unless called as a witness in a criminal or delinquency case and the juvenile is required by the judge to disclose that he or she was adjudicated delinquent. Whenever a juvenile's record is destroyed, the proceeding may be deemed to have never occurred and the juvenile may so inform any person or organization.

IJA/ABA standard 5.8 requires rules and regulations providing for periodic destruction of juvenile records based on such criteria as: death of the subject, age of the record, likelihood that the record will not be useful to the agency or juvenile in the future, and the benefits from retention are outweighed by risk of harm to the juvenile if it is improperly disseminated. Ibid. at 248.

of JD proceedings that result in a determination of delinquency except for those proceedings resulting in a determination that the juvenile committed a designated felony act (FCA §375.2[1]).

The family court's authority to seal records of JD proceedings not favorably terminated requires a formal motion by the juvenile filed with the court and served on the presentment agency. The juvenile cannot make the motion until his sixteenth birthday. Once the motion to seal has been made, if the family court issues an order requiring that the records be sealed, they are then sealed "pursuant to subdivision one of section 375.1." Thus, if granted, the sealing order may be extended to cover the records of the JD proceeding in the possession of the presentment agency, probation department, police department and other law enforcement agencies (FCA §375.1[1]). Such records must "be sealed and not made available to any person or public or private agency" unless an exception is authorized under FCA §375.1(3).[27]

In a recent landmark decision, the New York State Court of Appeals held in *Alonzo M.* that the sealing provisions of FCA §375.1 are violated when a public agency, privy to and maintaining records and information about cases terminated in the juvenile's favor, divulges information "resurrected" from otherwise sealed records.[28] The court determined in *Alonzo M.* that except for the limited purpose of adjustment, a local probation department could not use information from records sealed under FCA §375.1. The Court stated that the background facts present in such records, if relevant and material, may be disclosed in a probation pre-disposition investigation[29] if derived from sources other than sealed records and materials.[30]

In the *Alonzo M.* decision, the Court of Appeals stated that the Legislature's rejection of proposed amendments to FCA §375.1(3) that would have authorized local probation departments to use information included in sealed records and papers for the purposes claimed by probation, confirmed previous legislative expression and intent ***not*** to permit probation's use of sealed records for purposes of preparing investigations.[31] In its rationale, the court noted that FCA §375.1 was patterned after CPL 160.50, stating:

> [t]he Family Court Act version applicable here includes a thicker cocoon [than the adult system] of protection which may be appreciated from these distinguishing features: the records of probation agencies are explicitly included as materials to be sealed under the Family Court Act provision; the CPL provision permits exceptional disclosure, despite sealing, to law enforcement agencies and the Family Court Act provision does not; and the statute applying to adult offenders expressly allows Probation Department use of sealed records when the accused is under supervision and the records concern an arrest occurring during the term of supervision.[32]

The Court of Appeals stated that the narrow scope of the only two statutory exceptions to FCA §375.1 reinforced the view that the Legislature intended the sealing provision to block the release and use of protected materials even for purposes of later dispositional hearings.

> [W]e also discover that the narrow scope of the only two statutory exceptions to Family Court Act §375.1 reinforces a fortiori the view that the Legislature intended the sealing provision to block the release and use of protected materials even for purposes of subsequent dispositional hearings. The exceptions permit only the juvenile subject of the records, or a designated agent, future access and also allow probation service access to its own sealed records and papers for the limited purpose of making adjustment determinations under Family Court Act §308.1(4). Significantly, the Legislature excluded from that exceptional authorization in the very same body of law any use of sealed records to include probation investigations under Family Court Act §351.1.
>
> The Legislature has even expressly prohibited criminal court access to sealed Family Court and related police records at time of sentence [citations omitted]. This extra measure of protection ensures that the express exception in the CPL sealing statute not be used in an adult criminal proceeding to access sealed Family Court records; it also eliminates a potential ambiguity and conflict in the meshing of the two bodies of law.[33]

The Court in *Alonzo M.* stated that when an action is favorably disposed of in an adult proceeding, the records are sealed; the arrest and prosecution are deemed a nullity; the accused is restored to the status occupied before arrest; and unless specifically required by statute or directed by a superior court, the accused is not required to divulge information regarding the favorably terminated action.[34] The Court stated that this statutory safety net protecting adults ensured that records and materials generated from an arrest and a favorably terminated proceeding are eliminated as facets of the accused's criminal pedigree.[35]

> It would be regressive to bestow such sweeping beneficial sealing protections on adult offenders while subjecting juvenile delinquents to the devastating prejudice of consideration of sealed data at their dispositional hearings.[36]

The Court in *Alonzo M.* added that access to the sealed records was contemplated under the Criminal Procedure Law so as to permit enhanced *supervision* and that CPL 160.50(1)(d)(vi) was not intended to permit probation access to sealed criminal court records and materials to be disclosed to the family court to potentially serve as the basis for *sanction* enhancement on a wholly unrelated charge.[37]

Most study site agencies provided anonymous case-level sealed data for this study (see Volume I). Generally, it was the interpretation of these agencies that the law was not intended to preclude access to sealed data for research purposes (see Appendix).

In addition to New York State sealing provisions, the family court has inherent authority to "expunge" its own court records.

> Nothing contained in this article shall preclude the court's use of its inherent power to order the expungement of court records (FCA §375.3).

Unlike sealing, expungement involves the total obliteration or destruction of the records and, as a result, expunged records are not retrievable. The family court may order expungement of its own court records in cases in which the juvenile is exonerated completely or when the delinquency petition was filed in bad faith and maintenance of the record could serve no legitimate societal purpose.[38]

Apart from the limited statutory authority granted to the family court under FCA §354.1(2) to order destruction of certain DCJS record information, there may be some question about whether the family court has the power to order expungement of JD records of other agencies and departments. FCA §354.1(2) requires the family court to direct DCJS to destroy fingerprints, palmprints, photographs and all information relating to such juvenile delinquency allegations where family court matters resulted in dispositions other than an adjudication of juvenile delinquency for a felony, or in cases involving class A or B felony acts committed when the juvenile was 11 or 12 years of age.

To summarize, the family court must seal JD records favorably terminated. The court has no authority to seal records that result in a finding of delinquency based upon a determination that the juvenile committed a designated felony act. The court may seal records in all other JD cases resulting in a finding of delinquency. The family court's sealing order extends to presentment agencies, probation departments and police departments. The family court may order expungement of family court records and, in certain circumstances, fingerprint records maintained by DCJS.

The Court of Appeals in *Alonzo M.* held that the sealing provisions of FCA §375.1 are violated "when a public agency, privy to and maintaining records and information concerning cases terminated in the juvenile's favor, divulges information resurrected from otherwise sealed records." The Court of Appeals stated that it would be regressive not to provide juveniles with the same sealing protections as provided to adults. Except for the limited purposes of "adjustment," a local probation department cannot use information from records sealed under FCA §375.1. Nor may probation use sealed records of JD proceedings for purposes of preparing an investigation and report.

Despite the stipulations of the Family Court Act and case law, the agencies and departments of local juvenile justice systems in the study sites (i.e., probation, presentment agency and the court) have taken a variety of approaches to sealing. One thing is clear, those departments that *physically* seal their records after a favorable termination do not have access to them subsequently and those that do not physically seal them do have access. Cases are physically sealed in the study sites in a variety of ways, ranging from stapling case records to moving case records to locked file cabinets. Physically sealed records are electronically sealed where data is computerized. Generally, even when a case is physically sealed, practitioners are aware that a sealed case exists and usually some information is available (see below). However, the fact that the case is physically sealed prevents them from accessing the complete contents of the case.

One of the difficulties in comparing practices is that the specific issue of sealing is not always clearly distinguished from the general issue of confidentiality by certain practitioners. For example, in Clinton County, in reply to a question about the sealing of court records, a family court clerk commented:

> We have not physically sealed the records, but we do not give records out. We file our information on a year by year basis. A whole new file is created for a child for that year. We do not go back into these records unless there is a particular reason to do so. The family court is confidential, we only give out copies of petitions and orders.

Strictly speaking then, family court records in Clinton County are never sealed. Practitioners in the county feel, however, that they fulfill the spirit and intention of sealing provisions. This is a rather loose interpretation, however, and amounts to little more than the general privacy provision prohibiting "indiscriminate public inspection" of records (FCA §166).

By contrast, probation, presentment agency and court records are physically sealed in New York City, Monroe County and Nassau County almost automatically, following probation adjustments, presentment agency declinations or favorable terminations by the court. In Nassau County the probation department's "Juvenile Investigation Manual" clearly distinguishes confidentiality from sealing. Confidential information is:

> . . . not revealed to any persons or institutions other than the court or those persons or agencies which the court has designated (1987:B2).

In the case of sealed records, according to the same document:

> . . . Only the Respondent or his designated agent have the right to unseal the records and review the contents. No other party, agency, authority or court may have access to the records unless a court order is obtained from the Family Court to that effect (1987:B2)

Other agencies in the study sites take various intermediate positions. In what follows, we deal only with issues of case records that *must* be sealed. As the discussion above explained, certain records *may* be sealed following an application by the respondent or his representative, but this rarely, if ever, happens in the study sites.

In contravention of the Family Court Act and *Alonzo M.,* Albany and Clinton counties do not physically seal any of the records of probation intake, the presentment agency or the court. Practitioners there interpret sealing to simply mean not sharing information with others and not introducing such information in court proceedings. An assistant county attorney in Albany County reported that the presentment agency physically seals a record only following an application by a law guardian. As law guardians never make applications there, no records are physically sealed. This reason was also given by a chief clerical worker in the Albany County Family Court record room to explain why favorably terminated court records were not physically sealed.

In New York City by contrast, as well as the agencies physically sealing case folders, the computerized Juvenile Justice Information Service (JJIS) (that tracks cases for probation and corporation counsel) seals favorably terminated cases following data input of the sealed status. Only a minimum of information remains for scrutiny after sealing. In the Probation/JJIS data base this includes the date sealed and the arrest charges; that is, enough information for probation intake to make the determinations required about prior adjustments according to FCA §308.1 (4). This provision states that if probation had adjusted a prior case for one of 12 specified serious charges, it may not, if the juvenile is rearrested for one the same charges, adjust the second case. However, while this mechanism may allow intake to make the determination as required by FCA §308.1, access could, in fact, be more strictly limited to only prior sealed cases with only those specific arrest charges, and only in situations where the current case had one of the specified arrest charges.

In the Corporation Counsel/JJIS data base, only the case docket number, the assigned attorney and the county of the case are accessible in sealed cases; that is, enough to identify the existence of a sealed case and reassign the same attorney to subsequent cases involving the same juvenile.

In Monroe County, all agencies physically seal their case records. Probation began sealing cases in February 1989, following the *Alonzo M.* decision. Nassau County also physically seals all favorably terminated delinquency case records. Nassau County probation intake physically seals adjusted cases, but as in New York City, some information remains on a card system, including the charge, so that prior adjustments, according to FCA §308.1 (4), may be taken into account.

Logically, except for the anomaly concerning probation adjustment, those departments that physically seal their records do not have access to them subsequently (except for limited purposes) and those that do not physically seal their records do have access. However, several practitioners said ambiguously that even though records are physically sealed with tape it is always possible to obtain the information they contain. Similarly, the probation intake supervisor of Nassau County pointed out that juveniles discuss prior cases with intake staff and the staff often remember the prior cases. Thus, for some practitioners the sealing law has no practical effect on their work.

Presentment agencies may make motions to prevent the sealing of a favorably terminated case. These motions would cover court, probation, presentment agency and police records. This sometimes happens in New York City, when, for example, one case is favorably terminated in satisfaction of a plea taken on another case. This is done to allow the probation department to use information gathered in the favorably terminated case in the investigation on the pled case. These motions are rarely made outside of New York City.

Other than this exception, the sharing of information with other agencies and departments on favorably terminated cases does not happen in those departments that physically seal their records. However, for those agencies that do not physically seal their records, the degree of information sharing is equivocal – information is not shared officially, but informal mechanisms play an important role. A Dutchess County panel law guardian illustrates the point:

> The question is, how do you remove something that exists? The information comes out, the general thing is, most information things are worked out.
>
> . . . As to records, everything that should be sealed is sealed, but in the end, the truth is that records are open.

Given the variety of approaches to sealed records, it is perhaps not surprising that there are several opinions on how sealing affects decisionmaking. A senior administrator in the probation department in Queens County, New York City, saw this as a major problem. When asked, "Do you have problems with the availability of data?" he replied:

> Sure we do; sealed records are a problem. We don't know about prior arrests and the wolf is loose in the chicken-coop. We send cases to court and they get an ACD.

The issue for him was that the full "criminal history" was unavailable to probation or the court, leading to a less serious outcome than would otherwise be the case. Another New York City senior probation administrator saw this issue in another way.

> The sealing of cases has had an effect on adjustment, I think. We can see that a kid has had a prior or priors [that is, prior sealed cases], and because we can't look in [to the records] to see what has happened, we will say, "Let's send it up [to the presentment agency]." The result is more sending of cases to court.

The result in New York City, if both of these views are correct, is that more cases go to court for less serious outcomes than would be the case if sealing provisions did not exist.

One New York City probation official suggested that the agency was hampered by not having access to certain key sealed information. She pointed out that most screening instruments use the first official contact date as the prime predictor of a juvenile's risk to the community. This crucial information would be sealed if the case was favorably terminated.

In Monroe County, an assistant county attorney thought that the sealing of prior favorably terminated cases could affect decisionmaking at disposition:

> It is the judge here, he is deprived of important information. When there is an obligation to protect society, it matters most that the probation investigation cannot include information on favorably terminated cases, because cases are not always favorably disposed on their merits. A previous recommendation to place or some other information could be crucial – say a previous arson case – to the treatment or service best suited to the child. It is a lousy provision to make pertinent information be omitted from the presentence report. Once there is a finding, I think the law owes a duty to the judge to give him all the information to make the best disposition.

According to a senior probation administrator in the same county, the sealing of records had not been happening long enough for the consequences to be known.

In Dutchess County, by contrast, where court records are not automatically sealed, a family court judge did not feel hampered in decisionmaking:

> . . . We generally go into the ["sealed"] records. We don't have problems. We know all that we need to know. The approach here is to come up with results that have the least restrictive environments to get these kids back as good citizens.

The great diversity of practice and opinion is a direct consequence of the how strictly the legislation and case law is interpreted in each study site. Monroe County, Nassau County, and New York City appear to have the strictest procedures and, not surprisingly, practitioners there voiced the greatest concerns about not having access to sealed records.

# Adult Court Access to Juvenile Delinquency Records

## Overview and National Perspective

Most state laws allow the use of juvenile justice records by the adult system for sentencing purposes and some states allow the use of juvenile justice records for bail purposes.

> Even in states where no such express statutory authority exists, court decisions consistently have held that juvenile court and police records may be used for adult sentencing purposes . . . The courts have ruled in favor of the use of juvenile records in adult sentencing proceedings even when the state's juvenile confidentiality statute expressly prohibits the use of juvenile court records as evidence for any purpose in subsequent proceedings in other courts. The courts have reasoned that use of records for sentencing after conviction does not constitute use as evidence or as part of the formal court proceeding (SEARCH, 1982:66).

Many of the state laws that authorize the use of juvenile records for adult sentencing purposes also allow the use of records for parole, probation, correctional and similar dispositional purposes (SEARCH, 1982:67). Five states (Illinois, Indiana, New Jersey, Pennsylvania and Washington) provide access to juvenile records for trial purposes. They may be used to show defendant or witness bias or for impeachment purposes (SEARCH, 1988:28).

Although juvenile records cannot generally be used in criminal proceedings prior to sentencing, some laws do permit their use in bail decisions. As a SEARCH Group, Inc. report noted, "But even in states where the juvenile code is silent about [providing access for adult] bail determinations some [adult] courts permit the use of juvenile records for bail purposes" (SEARCH, 1982:68).

When juvenile record information is unavailable it can affect the charging stage in the adult system, particularly in jurisdictions where prior record partly determines the current charge:

> . . . the real problem for the adult courts caused by the confidentiality strictures is at the arraignment or charging phase in criminal proceedings. In recent years state legislatures have established selective charging and sentencing regimens for certain types of first offenders, as well as certain types of multiple offenders (SEARCH, 1982:69).

Information on juvenile warrant history may be important at adult detention or bail hearings and during plea bargaining. As the SEARCH Group, Inc. report argues, however, the use of these materials can be seen as diametrically opposed to the philosophy of the juvenile court:

> In theory, juvenile data ought to be less available in adult criminal proceedings than it is in juvenile proceedings. After all, when juvenile data is available in juvenile proceedings no threat is posed to the concept of confidentiality because juvenile courts and welfare agencies will presumably use this data to assist in the juvenile's rehabilitation – and a primary purpose of confidentiality is to assist in rehabilitation. However, disclosure of juvenile record information in adult criminal prosecutions presents a different issue. Such disclosure raises a possibility of juvenile record information being used to punish, not to rehabilitate (SEARCH, 1982:64).

To recap, most state laws allow the adult system to use juvenile justice records for sentencing purposes. Many state laws also allow their use for post-sentencing purposes (e.g., parole) and some permit their use for bail decisions.

## New York State Laws

IJA/ABA standard 18.4 prohibits a juvenile delinquency adjudication or disposition ordered thereon or any information or record obtained in any case involving such a proceeding from being entered into evidence against such juvenile for any purpose in any proceeding except, among other things, subsequent proceedings against the same juvenile for the purposes of disposition or sentencing, if the record of the prior proceeding has not been destroyed.

Pursuant to Criminal Procedure Law (CPL), a criminal court is required to consider the report of a pre-sentence investigation before pronouncing a sentence upon a convicted felony offender, or, in the case of a misdemeanant, before imposing a sentence of probation or imprisonment for a term in excess of 90 days (CPL 390.20[1] and [2]). The sentencing court may order a pre-sentence report in any case, at its discretion (CPL 390.20[3]). The pre-sentence report contains, among other things, information regarding a defendant's history of delinquency and criminality.[39] Thus, in accordance with common law and the Criminal Procedure Law, JD histories have been considered by courts in New York State when imposing sentences upon adults.

The Family Court Act permits a court when imposing sentence upon an adult after conviction to receive and consider the records and information on file with the family court, unless such records and information have been sealed pursuant to FCA §375.1 (FCA §381.2).

A question the New York State Supreme Court addressed in *Brunetti v. Scotti* was whether the family court history could be used by a court on an application by a defendant for bail.[40] In *Brunetti*, the court held that in an application for bail in a criminal case, it was lawful to report information to the court on a defendant's past record, including his juvenile record. Under then extant CPL 510.30(2)(a), the court was mandated to "take into account" the defendant's "character, reputation, habits and mental condition," as well as his prior criminal record, previous record in responding to court appearances, his ties to the community, the weight of the evidence against him, his employment and his financial resources.[41]

Since the court's decision in *Brunetti,* CPL 510.30(2)(a) has been amended. CPL 510.30 provides with respect to bail, in determining the degree of control or restriction that is necessary to secure court attendance when required, the court must consider the respondent's retained records of previous adjudications as a juvenile delinquent, of pending cases where fingerprints are retained, or as a youthful offender.

However, neither the Family Court Act nor uniform court rules[42] contain any provision similar to CPL 510.30 regarding bail. The Family Court Act does not prescribe or authorize the use of records of JD proceedings in considering recognizance or bail determinations by the adult court. It is not clear whether or not the Family Court Act provisions prohibit other juvenile justice agencies' (e.g., probation, presentment agency) records from being accessed for adult court recognizance or bail determinations.

Under CPL 160.30, DCJS must, upon receiving the fingerprints of an arrested person, search its records for all previous records including retained, non-sealed JD records and transmit a report of the criminal history to the forwarding police or prosecution agency. Therefore, the rap sheets, presumably transmitted by the police officer or agency to an adult court, could be considered for bail or recognizance purposes (see below for a discussion of New York State JD fingerprint statutes).

## New York State Practices

Other than for adult probation investigation purposes, access to juvenile records by practitioners in the adult system is rarely encouraged by those in the juvenile justice system. Generally, the only available JD information is gleaned from "rap sheets" generated by DCJS upon a fingerprintable arrest (see above). Most practitioners in the juvenile justice system think that district attorney staff are not allowed access at that or any point in the process to juvenile records. Assistant county attorneys in both Nassau County and Monroe County, for example, said that the information is confidential and could not be divulged to district attorneys in the adult system, even at sentencing. Some years ago in Monroe County, information was shared between the Offices of the County Attorney and the District Attorney, but following a new policy introduced by the County Attorney's Office this no longer happens.

The New York County District Attorney's Office routinely gains access to JD records, often before sentencing. In other New York City counties, requests are made on an individual basis (to assistant district attorneys handling designated felony cases in the family court and to corporation counsel, who handle all other delinquency cases) for cases where it is suspected there is an extensive JD record. However, according to a representative of the Kings County District Attorney's Office, there are no formal mechanisms for obtaining juvenile records from the family court or juvenile justice agencies. The New York County District Attorney's Office uses the computer terminals of the Corporation Counsel/Juvenile Justice Information Services (JJIS) system to gain access (see below). Records of young

defendants are checked routinely in that system before arraignment. Assistant district attorneys there feel that this information is especially useful to identify predicate felons.

## Access to Police Department Juvenile Records

### Overview and National Perspective

The police have many non-criminal contacts with juveniles, including PINS and violation offenses. In addition, once a child is arrested for a criminal offense, law enforcement officers usually have much discretion in deciding whether to refer that case forward or divert the child from further processing.[43] Police agencies also have considerable discretion in establishing policies about the maintenance of records for non-referred cases. According to the SEARCH Group, Inc. analysis of juvenile records:

> Historically, the courts and legislatures have given the police almost unfettered discretion to create and maintain any type of information about juvenile suspects or alleged offenders. The result has been a very informal system producing records that are an amalgam of adult investigative and arrest reports. The courts and legislatures have placed restraints only at the dissemination stage (SEARCH, 1982:29).

Restraints on dissemination of records are, however, relatively new (SEARCH, 1982:29). The Supreme Court, in the *Gault* opinion, remarked:

> . . . it is frequently said that juveniles are protected by the process from disclosure of their deviational behavior . . . . Statutory restrictions [however] almost invariably apply only to the court records . . . . Of more importance are police records . . . . In most States police keep a complete file of juvenile 'police contacts' and have complete discretion as to disclosure of juvenile records.[44]

One example of restrictions on juvenile record dissemination is found in New York City as a result of the *Cuevas v. Leary* case.[45] This Federal Court stipulation regulated the dissemination of juvenile contact information for the New York City Police Department, including criminal and non-criminal contacts. Further discussion of this case is found below.

The issue of access to these records is especially significant to those who act later in the juvenile justice process. Concerns expressed by child advocates stress the potential misuse of such records

because of the wide variety of contacts included and the informal mechanisms often utilized to maintain and disseminate such records. Research has found that the informal nature of these record keeping systems can, in fact, lead to inconsistences and inaccuracies in records and, in turn, the release of unverified, prejudicial information to decisionmakers (SEARCH, 1982:29-31). Conversely, some practitioners suggested that the denial of such records deprives decisionmakers of information that could assist them in determining the most appropriate system response. For example, information is often unavailable to probation intake or probation investigation units. Thus, a review of juvenile histories may present an inaccurate picture of a particular individual's past involvement with the police.

## New York State Laws

The Family Court Act governs the use of police records relating to the arrest of juveniles.[46] FCA §381.3 provides that:

1. All police records relating to the arrest and disposition of any person under this article shall be kept in files separate and apart from the arrests of adults and shall be withheld from public inspection.

2. Notwithstanding the provisions of subdivision one, the family court in the county in which the petition was adjudicated may, upon motion and for good cause shown, order such records open:

   (a) to the [juvenile] or his parent or person responsible for his care; or

   (b) if the [juvenile] is subsequently convicted of a crime, to a judge of the court in which he was convicted, unless such record has been sealed pursuant to section 375.1.

3. An order issued under subdivision two must be in writing.

However, neither statute nor official rules and regulations specifically govern the dissemination of police contact information. Notwithstanding this lack of authority governing the dissemination of police department diversion and non-criminal contact information, at least one police department in this State has, by stipulation, agreed to follow a formal procedure regarding such data. In *Cuevas v. Leary*, the New York City Police Department agreed to certain procedures in keeping and destroying such juvenile records.[47]

In *Cuevas*, parents of minors commenced an action against the New York City Police Department in 1970 to enjoin the maintenance and dissemination of certain records popularly known as "Y.D. cards" and officially referred to in police department regulations as Y.D.1.

IJA/ABA standard 22.1 describes the procedure and timing of destruction of police records, requiring that upon receipt of notice from a juvenile court that a juvenile record has been destroyed or if a juvenile is arrested or detained and has not been referred to a court, a law enforcement agency should destroy all information pertaining to the matter in all records and files, except that if the chief law enforcement officer of the agency, or his or her designees, certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner.

Plaintiffs in *Cuevas* alleged that the Y.D. records were being issued, stored in a centralized data bank, and distributed to various public and private agencies in violation of the plaintiffs' constitutional rights to due process and privacy.

In a study undertaken by the New York City Criminal Justice Coordinating Council (1971), a sample of Y.D.1 cards issued in 1969 was analyzed to determine the level of reliability achieved by the Y.D.1 system in recording juvenile conduct and to consider the disposition accorded Y.D.1 cases.[48] The report concluded that the initial issuance of the cards was in error or of limited validity. Much of the misconduct that was reported within certain residual categories could have been specified and reclassified. For example, the cards tended to classify disapproved behavior as "disorderly conduct." Behaviors such as loudness, boisterousness, use of obscene language, and throwing objects were within this category. An inspection of the sampled Y.D.1 cards showed that nearly one-half were issued for behavior which, exercising discretion differently, might not have been acted upon administratively. Also, a high degree of vagueness was found in individual offense descriptions. Imprecise and incomplete reports existed about the youth's misconduct, but without specifying the particular actions which comprised the misconduct. In approximately 40 percent of the cases, there was no check on the validity of the initial decision to classify the behavior as an offense since no meaningful investigation took place. Other conclusions were that the Y.D.1 cards found to have been issued in error were not removed from the data base and that Y.D.1 cards were issued for the victims of offenses, although there was no evidence of improper behavior on the part of the victims.

The report stated that of the different categories of disposition, 30 percent resulted in a precautionary letter involving no more than notification to the parents. The precautionary letter was sent routinely rather than as the result of some assessment of the accusation of misbehavior. Yet, the cards were allowed to accumulate and were often relied upon for the disposition of future cases and influenced the youth's chances of gaining employment. Twenty percent of the dispositions resulted in "no other service indicated," meaning that a Youth Aid Division officer concluded, on the basis of the impression made by the youth and his family, that no further special services were needed to control or supervise the juvenile. In 39 percent of the cards, referrals were made to social service agencies or to courts, warranting special attention as new referrals or as previous cases "referred back to the agency or court" for consideration along with other incidents. In 10 percent of the cases, dispositions were classified as "other," where the child was presumably "deceased" or "entered the armed forces," the case was "unfounded," or "nonreferred through parental refusal."

By stipulation, in *Cuevas,* the police department agreed to sort out and isolate all Y.D. records which indicated that the juvenile named in the record had reached his or her seventeenth birthday on or prior to a predetermined annual destruction date. According to the stipulation, these isolated records and all copies thereof would then be destroyed and no further evidence of such Y.D. record would then be maintained by the police department in a manner which permitted identification of the juvenile. It was further stipulated that

all Y.D. records which failed to indicate the age of the juvenile named would also be destroyed on the annual destruction date, but that continued issuance of Y.D. cards regarding infractions for which a Y.D. card may be issued to a juvenile above age 17 would not prevented. Under the stipulation, the contents of Y.D. records would not be made known to any public or private body or agency or to any official or employee thereof, except to a member of the Youth Aid Division or the Detective Division of the police department in connection with an investigation or station house supervisor desk officer when considering whether to reduce or dismiss an otherwise arrestable offense against a minor under the age of 18 or investigating an unsolved crime. The stipulation further provided that Y.D. information would not be given to probation personnel for sentencing or dispositional purposes, nor given to the Department of Social Services relative to public assistance questions or in connection with any matter other than counselling, rehabilitation or treatment of neglected, dependent, maladjusted and runaway children or their parents.

Additional procedures provided for in the *Cuevas* stipulation permit the juvenile's parents to question the correctness of a juvenile report and require the police department to destroy it if its follow-up investigation determines that the juvenile report is "unfounded." The *Cuevas* stipulation has no standing over any other police agencies.

To summarize, the Family Court Act governs the use of police records maintained on juveniles referred for further legal processing in either the criminal justice or juvenile justice systems. There are no State statutes or regulations governing the collection, maintenance and dissemination of police records maintained on juvenile non-criminal contacts and criminal contacts that result in diversion. In New York City, however, the police department has restricted the maintenance and dissemination of non-criminal and diversion records in accordance with the *Cuevas v. Leary* Federal Court stipulation which has no standing over other jurisdictions. The stipulation requires the complete destruction by the New York City Police Department of Y.D. records when youths reach the age of 17. Elsewhere in the State, internal police agency policies govern the maintenance and dissemination of these records.

## New York State Practices

Typically, in the study sites, the police create a juvenile record in the form of a contact card[49] when a child is in custody. Contact cards are the basic system the police use to track contact with children. In practice, the systems rarely distinguish non-criminal cases from criminal, and within criminal do not always clearly delineate those referred from those diverted. This discussion, therefore, concerns contacts in general.

A copy of the juvenile contact card is sent to the designated juvenile officer or to the local juvenile aid bureau. Usually, the card includes identifying information (name, age, address, etc.), plus some

details of the alleged event. The Rochester Police Department in Monroe County and the New York City Police Department run computerized contact systems. In most other sites, local police agencies have instituted manual contact card systems.

Only in New York City are there formal procedures regulating the use of non-referral contact information. These procedures followed from the settlement of the *Cuevas* law suit in 1972 (see above).

In 1987, the New York City Police Department (NYPD) reported destroying over 64,000 records of children reaching 17 years of age and 229 records described as "unfounded, unsubstantiated, or complaint withdrawn," because of the *Cuevas* stipulation (NYPD, 1987). These rules apply to all records, whether they are kept in the precinct of arrest, the precinct in which the juvenile lives, the Youth Records Section at police headquarters, or in the police department's computerized information system.

The Rochester Police Department in Monroe County also maintains a computerized juvenile justice information system, which includes contact information on referred and diverted criminal cases, as well as Person in Need of Supervision (PINS) cases. The Juvenile Central Registry includes most police contacts in the county. The police department maintains records on the system until they are purged when the child reaches 16 years of age. A local police juvenile officer described the system as:

> . . . A great help in looking at, and helping, these kids. It helps in the decision to divert or refer. . . . From a policing aspect it would be nice, at times, to be able to look back at these records, but they only stay on [the computer] until the youth reach 16 years of age.

The Nassau County Police Department's juvenile contact card system is typical of systems in other police departments that have such systems. It includes both diverted and referred cases. A police officer described the system as follows:

> The Juvenile Activity Card is very important. If the system is to work for the good of the child we have to identify him. We keep the card going until the child is 16, but not all the information we have is kept. For example, if a kid is ACODed [adjournment in contemplation of dismissal] then we will be informed six months later and the card comes out of the record. When the child turns 16, then all the card activities are destroyed.

Those police departments that keep referred juvenile delinquency cases in their contact systems, develop mechanisms to purge them periodically of cases "favorably terminated" in the family court.

A police officer explained how the Poughkeepsie Town Police, in Dutchess County, use the contact card to monitor cases.

> They are kept with the date of birth on them until the child is 16 years of age. We keep a running record until the child ages out of the system. Only a small number of the children are recidivists; the majority we don't see again. We do hold a [diverted] case open however, and say, with the parents there, "If I see you within six months, not honoring the agreement we have made in diverting this case, it could go to court."

Some police departments use the system only for non-referred criminal cases. Contact systems are then used to track compliance with the diversion agreement, as in the Dutchess County example above. It is also used to determine subsequent diversion or referral decisions. For example, in Rochester, only children with two prior diversions or fewer are eligible for shoplifting diversion seminars.

Information in the contact systems is not only used by the police themselves, it is also shared with service providers. The *Cuevas* agreement specifically allows such disclosure in New York City:

> The Youth Aid Division [of NYPD], in the course of attempting to obtain counselling, rehabilitation or treatment services for children or parents, shall not be precluded from authorizing the release of Y.D. records to a public or private body or agency for such purposes.[50]

Y.D. record information could also be made available to probation intake, but is currently not.

Police department personnel interviewed from other counties also reported sharing contact information with service providers routinely. A rather different "sharing" of information was found in Dutchess County, where the complainants in local stores complete contact cards given to them by Poughkeepsie Town Police Department. A juvenile officer explained the system:

> When children first come into contact with the police a juvenile contact card is made out, and we add to it any relevant information. We give these cards to the major stores and they fill them out for children they apprehend and send the cards on to us. This is very successful. We use them and update them for every contact made between the police and the child. Parents sometimes ask us, "What are you doing collecting information on my kid?" But, access is allowed only within the department.

Access in most police departments is not just internal, for as noted above, information is often shared with service providers on non-referred cases. In addition, many police departments share considerable information on prior contacts with the local probation intake unit, including criminal diversion and non-criminal contacts.

# Juvenile Justice Access to Social Service Data

## Overview and National Perspective

The juvenile justice system is a loosely connected network of agencies and individuals that extends to include social service agencies, schools, health and mental health agencies, and private, not-for-profit agencies. As practitioners become more knowledgeable about links between child abuse and neglect and JD behavior, and with the development of automated data bases that have the potential of providing timely information on cases of abuse and neglect, interest in expanding juvenile justice access to child protective service records continues to grow.

Juvenile justice system access to child protective records of abuse and neglect varies from state to state. It also varies from one locality to another, depending on the relationships between the service providers and the justice system, and on factors such as population size. Smaller or rural jurisdictions are in a better position to evaluate delinquency within a total family framework.

In Illinois, as in New York, law enforcement agencies have little access to abuse and neglect records. As reported by the Illinois Criminal Justice Information Authority (ICJIA):

> If a law enforcement agency investigating a delinquency case wants to determine whether or not the child has had a history of being abused or of running away from home, that agency generally cannot obtain such information. Rather, the police must be investigating a report of known or suspected child abuse or neglect before the information can be gathered. State law does not even authorize a court to disclose such information to law enforcement officials, despite the fact that some children commit delinquent acts after running away from home to escape abuse or neglect (Firman, et al., 1986:18-19).

Most states have enacted legislation or regulations regarding access to records of child abuse, neglect and welfare, although there are great variations. Because of the delicate balance between protecting child and parental rights, child protective records are confidential and sometimes have tighter requirements than other social services or welfare programs. A major concern is the potential harm to the child and the family that could be created from the release of unfounded information.

Social Services Law (SSL) §372 provides for the confidentiality and safeguarding of all records of every court, public board, commission, institution or officer having powers or charged with duties in relation to abandoned, delinquent, destitute, neglected or dependent children. The record, besides biographical information, contains "any further disposition or change in care, custody or control of the child," and the reasons for any act performed in reference to such child (SSL §372[1]). The purpose is to protect those involved (the child and natural parents) from publicity.[51]

The protection of such records under the Social Services Law is not absolute since these records may be released as authorized by SSL §372. For example, SSL §372(3) permits application by a parent, relative or legal guardian of such child or by an authorized agency for the release of records kept by institutions having custodial care of the minors. "Authorized agency" is defined by SSL §371(10) as follows:

> (a) Any agency, association, corporation, institution, society or other organization which is incorporated or organized under the laws of this state with corporate power or empowered by law to care for, to place out or to board out children, which actually has its place of business or plant in this state and which is approved, visited, inspected and supervised by the [Social Services] department or which shall submit and consent to the approval, visitation, inspection and supervision of the department as to any and all acts in relation to the welfare of children performed or to be performed under this title.
>
> (b) Any court or any social services official of this state authorized by law to place out or to board out children or any Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter; . . .

Since probation does not appear within the definition of an "authorized agency," probation departments are not entitled to the release of social services records relating to the care and protection of children.

Under authorized circumstances, probation is entitled to receive records maintained by the Division for Youth (DFY). Specifically, where the court has ordered a probation investigation for JD adjudications for the purpose of imposing sentence or determining placement, probation departments, only upon a written request, are entitled to receive official case records maintained by DFY (SSL §372[4][b]).[52]

Probation departments are not entitled to receive reports from the Statewide Central Register of Child Abuse and Maltreatment when performing any probation function with an alleged JD, unless they are also conducting an investigation of alleged child abuse concerning the same child (SSL §422).[53]

The Nassau County Probation Department's "Juvenile Investigation Manual" indicates that a probation investigation:

> . . . shall provide a summary of Respondent's past and present personal relationships and living conditions, and shall identify family members and/or other persons and/or agencies who do or may affect the Respondent's present and future situation.
>
> There should be a concise profile/picture of each member of the family group put together by the PO from information received from all sources (and weighed for credibility by the PO) and the interrelationships between family members.
>
> Significant factors such as family members' legal history, drug and/or alcohol abuse, domestic violence, sexual abuse, etc. and the effects upon the Respondent and on the family functioning should be reported and assessed (1987:D-2).

Probation departments are not authorized to receive such information from the Statewide Central Registry of Child Abuse and Maltreatment (see section above) and yet this does not preclude them from gathering general social service information from a variety of other sources. First, in the construction of social histories, each probation intake department gathers considerable information directly from the child and family. Second, home visits are made for many delinquency cases where a pre-disposition investigation is ordered by the court and for children sentenced to probation. Third, parents are routinely asked to give permission for probation to contact social service organizations with which the child has had contact.

As an example of the sources of possible materials that probation intake units may access, the "Juvenile Delinquency Instruction Manual" for Monroe County directs the following:

> You should receive all previous files . . . it is your job to combine them. . . . Ask for the files on siblings. Call PO's from other units if they have family members. Review police JCR records and prior F.C. files. Call DSS for info. on cases you suspect they know. Call DFY if the child was in placement with them, they may still be supervising (1987:2-7).

Despite not having access to Central Registry information, probation agencies in the study sites do make considerable efforts to gather similar information locally from a variety of sources.

# Fingerprinting and Photographing

## Overview and National Perspective

Fingerprinting and photographing of juveniles is the only part of law enforcement juvenile justice record creation and maintenance that is usually subject to state regulation (SEARCH, 1982:32-34). Many state laws prohibit or restrict fingerprinting and set guidelines for its use and disposition.

> Most of the statutes are similar. They prohibit agencies from taking a juvenile's prints unless he is at least an adolescent and he has committed a serious offense. In addition, many of the statutes prohibit agencies from mixing juvenile and adult prints and require the agency to destroy the prints once the juvenile reaches adulthood, at least, if the juvenile has established a 'clean record' period (SEARCH, 1982:32).

Several factors are commonly included as criteria for fingerprinting a juvenile, including: severity of offense, the age of the offender, and the immediate need to make comparisons with latent fingerprints. Photographing is addressed separately from fingerprinting in many laws, but usually with similar criteria (SEARCH, 1982:32-34).

Statutory authority to fingerprint juveniles exists in 45 of the 52 jurisdictions examined (the 50 states, the District of Columbia, and the federal code of the United States). Many laws state that juvenile fingerprints must be stored separately from adult prints. In 34 of the jurisdictions that allow fingerprinting, there are also laws guiding the sealing, destruction, or return of fingerprint files to the juvenile court. Only 11 states have laws authorizing the maintenance of juvenile fingerprints in a central repository. These states are: Alabama, California, Florida, Kansas, Maine, Minnesota, Nebraska, Nevada, New York, Ohio and Utah. Fingerprints of juveniles in Georgia and Vermont may be forwarded to a central repository if the interests of national security require" (SEARCH, 1988:24).

An interesting example of a state fingerprinting system that does not allow for a central repository is Illinois. A report by the Illinois Criminal Justice Authority (ICJIA) stated:

> . . . because State law prohibits DSP (the Department of State Police) from receiving a minor's fingerprints from law enforcement agencies without a court order, the department [and a possible state central repository] has no mechanism to ensure that juveniles are identified accurately and that information is associated with the proper person (Firman, et al., 1986:21).

A recommendation resulting from this study of juvenile justice information policy in Illinois conducted by the ICJIA was that:

> The adult criminal justice system in Illinois has determined that a fingerprint-based information system provides law enforcement agencies with the best resource for identifying criminals and maintaining offense data. The juvenile justice system should consider implementing a fingerprint-based system as well. Such a system would allow law enforcement and court services agencies to positively identify juvenile offenders . . . (Firman, et al., 1986:43).

A recent analysis discussed the implications of state fingerprinting laws and concluded that fingerprinting is universally regarded as an indispensable element of adult criminal record-keeping. It offers a means of ensuring the accuracy of identification needed to provide a searchable criminal history. However, the lack of full juvenile histories was largely a function of its prohibition in the juvenile system. The critical nature of fingerprints in adult criminal records led the SEARCH Group, Inc. to conclude:

> It is probable that, if decisions are made to make juvenile records more available in adult criminal proceedings, these decisions will require an increase in the incidence of juvenile fingerprinting. Although many jurisdictions now use unique identification numbers and other tracking procedures as the basis for compiling juvenile histories, the experience of adult criminal record repositories has been that such procedures do not work unless they are tied to positive identification on the basis of fingerprints (SEARCH, 1988:30).

Howard Snyder, of the National Center for Juvenile Justice, discussed the importance of fingerprint information for treatment purposes:

> Fingerprinting, I would argue, is in the child's best interest because it provides the treatment-oriented justice system [through positive identifications] with more information on the child and, hopefully, enables the system to deliver a better treatment plan (SEARCH, 1989:56).

To recap, while most states permit fingerprinting, there are usually restrictions according to age and offense type, and guidelines about segregating adult from juvenile fingerprints and the sealing or destruction of fingerprints. Most states do not allow the maintenance of juvenile fingerprints in a central repository.

## New York State Laws

FCA §306.1 provides for the fingerprinting of children between 11 and 15 years of age charged with class A or B felonies, and children between 13 and 15 years of age charged with at least a C felony (FCA §306.1[a][b]). Whenever fingerprints are taken, photographs and palmprints **may** also be taken (FCA §306.1[2]). The taking of fingerprints, photographs and palmprints and related information concerning the children and the incidents shall be in accordance with standards established by DCJS (FCA §306.1[3]).[54] All copies of fingerprints must be forwarded to DCJS without any unnecessary delay. Copies of photographs and palmprints must be kept confidential and in the exclusive possession of the law enforcement agency, separate and apart from files of adults (FCA §306.1.4).

FCA §306.2 outlines the responsibilities of DCJS in maintaining juvenile fingerprints and producing a "rap sheet" of contacts. DCJS shall retain juvenile fingerprints distinctively identifiable from adult fingerprints. Juvenile fingerprints shall not be released to a federal repository (FCA §306.2[1]). When DCJS receives fingerprints following the arrest of a juvenile alleged to be a JD, DCJS shall transmit back to the sending agency, any information on file ("rap sheet") involving the person's previous adjudications and pending matters (FCA §306.2[2]). The recipient agency must forward copies of the rap sheet to the presentment agency and the family court (FCA §306.2[3]). The last provision indicates that the presentment agency and court are to receive copies of the rap sheet even when pending fingerprinted cases may subsequently result in adjustments.

FCA §354.1 outlines the provisions relating to the destruction and retention of juvenile fingerprints. Fingerprints must be destroyed unless a) the juvenile is between 11 and 12 years of age and was adjudicated to a class A or class B felony, or b) the juvenile is 13 or older and has been adjudicated to any felony offense (FCA §354.1[2]). Fingerprints that are retained must be destroyed when the person reaches the age of 21, or has been discharged from placement for at least three years, whichever comes later, and has no adult court convictions or pending adult court actions (FCA §354.1[7]).

IJA/ABA standard 19.6 includes detailed provisions on the taking, retaining, using, filing and destroying of juveniles' fingerprints and photographs. In general, if the crime charged is a felony, police may take prints but the card and all copies should be destroyed if the juvenile is not adjudicated delinquent for the alleged felony and it may be retained if the juvenile is adjudicated. Juveniles in custody may be photographed for criminal identification only if necessary for a pending investigation and the photographs should be destroyed unless the juvenile is found delinquent. Willful violation of this standard would be a misdemeanor. Police records and files should not be public records, but juveniles, their parents, and their attorneys should be given access to all such records.

## New York State Practices

Most of the police personnel interviewed for this study said that fingerprints are taken in appropriate cases. However, statutory authority to fingerprint juveniles applied to relatively few JD cases in 1987, ranging from 8 percent to 13 percent in non-New York City study sites and 30 percent in New York City cases. Several police officers mentioned how difficult the Family Court Act stipulations on fingerprinting make it for them to accurately identify juveniles. This is particularly so in Nassau County where police have contact with many children who live in New York City and may have existing records of offenses for non-fingerprintable charges such as shoplifting. For a full discussion of New York State fingerprinting practices, see Volume I, Chapter Two.

There is imperfect compliance with fingerprinting laws. For example, in New York City, only 77 percent of the JD cases were actually fingerprinted when required in 1987. In addition 1,484 fingerprints taken in New York City that year have missing case dispositions, meaning that DCJS is unable to determine if such fingerprints should be retained or destroyed. Furthermore, DCJS must receive formal notification from the agency which has favorably terminated a case (i.e., police, probation, presentment agency or family court) before the fingerprint record can be destroyed (FCA §354.1). Without such notification, the fingerprint record is retained on file.

## Juvenile Justice Information Systems at the State and Local Level

### Overview and National Perspective

There are insufficient data available nationwide on the juvenile justice system to accurately estimate the prevalence of juvenile arrests. A report issued in 1989 by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Bureau of Justice Statistics (BJS), *National Juvenile Justice Statistics Assessment: An Agenda for Action*, expressed this conclusion on information issues in juvenile justice. The report recommended that OJJDP must "[d]evelop a publication strategy for a series of routine statistical reports of current national statistics on juvenile victims and offenders and on the systems response to same" (Lynch et al., 1989:2-30). This recommendation was partly a response to congressional demands for information on children in the juvenile justice system.[55] Central to any response is the computerization of the information that is available.[56]

As well as providing for national informational needs, computerization can serve the needs of state and local juvenile justice agencies in several ways. First, computerized systems can be used to extract data to help in the development of legislative and policy initiatives. Second, systems can be used to help law enforcement organizations in the identification of suspected offenders and their prior criminal records. Third, computers can be used for operational purposes to automatically generate previously produced manual outputs (e.g., subpoenas, warrants), thus saving agencies both time and money. Fourth, systems can be used to improve case management (e.g., making case assignments, monitoring performance) in order to provide treatment and program services.

The paucity of computerized information at the national level is mirrored at the state level with a few notable exceptions.[57] The California Department of Justice, Bureau of Criminal Statistics, for instance, operates a statewide system that is used to create statistics on case dispositions and demographics on the juveniles processed. The

administrative branch of the Minnesota Supreme Court operates a system that tracks the time cases take to progress through the court system. The State of Washington operates a system that records all juvenile court activity including criminal history, detention, referral, and court calendar information, and uses it for both operational and research purposes.

Furthermore, career criminal research, as well as research in general, is hampered by the separation of juvenile and adult records and the sealing and purging of juvenile records required by confidentiality laws. The authors of *Criminal Careers and "Career Criminals"* (Blumstein, et al., 1986:194) state:

> When juvenile records are no longer operationally useful, they should be preserved in an otherwise inaccessible way for research purposes. Research on a number of important questions has been hindered by the bifurcation of juvenile and adult record systems. ... The bifurcation has hampered research on such key questions as the effect of juvenile justice intervention on adult criminal careers and the influence of information about juvenile careers on the processing of cases involving young adults. There would be considerable research value in linked records of juvenile and adult arrests and dispositions. Record purging precludes such research. Therefore, while access to juvenile records should be carefully controlled to protect individuals' identities, those records should be stored as a basis for research.

The National School Safety Center (NSSC), which advocates the interagency sharing of information among child-serving professionals, characterizes a problem that is typical of local jurisdictions that are computerized.

> However worthy the need, agencies often refuse to share information with others, believing that the law does not allow them to do so. Statutes allowing disclosure are disregarded or given extremely narrow constructions. Each agency becomes a territory unto itself and does not give information to, or receive information from, any other agency. Decisions affecting youth and society at large are made without complete information or logic (Clontz, et al.,.1989:10).

To summarize, nationally there is, in general, a void in juvenile justice information systems and where there are systems, they are usually not integrated.

There is no integrated statewide, computerized juvenile justice information system in New York. However, several computerized juvenile justice systems do exist in State agencies. They agencies include: the Division for Youth, Council on Children and Families, Office of Court Administration, Division of Probation and Correctional Alternatives, and Division of Criminal Justice Services.

### Division for Youth

The Division for Youth (DFY) is the New York State agency responsible for operating the State residential placement facilities and monitoring local detention facilities. DFY and the Department of Social Services (DSS) jointly supervise the voluntary placement facilities. DFY gathers client-specific data that range from basic demographic information such as a client's legal, social and educational background histories to case tracking data, such as dates of admission to and release from Division facilities. Aggregate data are also collected to document use of DFY services and facilities. In addition, DFY field offices and residential agencies maintain detailed case service records, including medical and psychological histories.

The Juvenile Contact System (JCS) is the Division's primary automated management information system, and is used for fiscal accounting (county billing); workload monitoring; evaluation of long-term trends in placement; and program evaluation, research and planning.

There are two other DFY systems, each designed to support a specific operational activity. The Detention Information System tracks clients through the Division's secure and non-secure detention facilities, and the Problem Oriented Services Planning System (POSPS) provides a comprehensive procedure for compiling manual service records for each client.

The Client-Facility Classification System is designed to provide a mechanism for matching relevant child characteristics about security and treatment needs to corresponding facility characteristics. As such, once fully implemented, the system will direct the progression of clients through successive levels of placement and, ultimately, will provide for community reintegration. Information provided through the Client-Facility Classification System is intended to shape program development, evaluation, resource development and case management.

### Council on Children and Families

The Children and Youth Interagency Management Information System (CYIMIS) was developed by the Council on Children and Families (CCF) to provide information on residential child care in New York State. While the system was not designed specifically for juvenile justice purposes, it does provide data on children in placement as a result of persons in need of supervision and juvenile delinquent adjudications. CYIMIS represents an interagency effort to establish a single data base on children.

CYIMIS data are gathered from the DSS, DFY, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities and the State Education Department. Each agency regularly contributes case specific data extracted from its own records. The data base is composed of two files, one containing records of cases opened before system start-up and one containing records entered after the system became operational. The system is designed to create longitudinal case records that provide detailed descriptions of the clients, track their movement while in placement, summarize agency case plans and identify responsible agencies.

### Office of Court Administration

The Office of Court Administration (OCA) collects aggregate data on a weekly basis of the total workload of the State's family courts. Data includes type of petition, petitioner, detention of the respondent and disposition. The OCA system is the most relied upon system for providing juvenile justice court processing data. Practitioners, however, suggest that OCA JD data has proven to be questionable. For instance, the New York City Corporation Counsel/JJIS System (see below) indicates that 5,330 delinquency petitions were filed in 1987. In OCA's "Report of the Chief Administrator of the Courts" (1988), only 3,909 petitions were reported filed in 1987. For those counties (e.g., Monroe County) where automation exists, the local systems store data on each case processed, maintain the court calendar process and serve other operational purposes.

### Division of Probation and Correctional Alternatives

In fulfillment of §243 of the Executive Law, the Division of Probation and Correctional Alternatives collects aggregate data on juvenile clients of local probation departments. These data include the number of family court intake cases, pre-disposition reports, and supervision services provided during the month. In addition, local departments collect workload and case specific data, including demographic, family and legal information. In particular, New York City Probation Department JD and PINS data are maintained in the Probation/JJIS computerized system (see below).

### Division of Criminal Justice Services

The Division operates two systems that have data on JD cases. The Computerized Criminal History (CCH) system records arrest and dispositional data on all fingerprinted juveniles. This system is used for juvenile "rap sheets." Data on the CCH system are purged after a fingerprint destruction order is received (see below). The Uniform Crime Reporting (UCR) system records aggregate data on all arrests of juveniles. The UCR system, however, developed from FBI standards, does not have the capability to distinguish between criminal and violation offenses. Data come from local police departments, some of which are computerized. (In the study sites, the New York City Police Department and the Rochester Police Department have computerized systems for juvenile arrest records.) For more information see Volume I, Chapter Two.

The likelihood of apprehending juveniles and adult offenders is much greater with the implementation of the Statewide Automated Fingerprint Identification System (SAFIS). With the implementation of SAFIS in May of 1990, law enforcement officials now have the technology to match fingerprints taken at crime scenes with those transmitted to DCJS by the police.

In summary, while each New York State agency endeavor may be important for limited purposes, there is no single comprehensive data system for juvenile justice information. Most State agencies participating in the juvenile justice process meet their information needs independently. There is no routine, systematic exchange of information among agencies.

There is no centralized State system for identifying non-fingerprinted juveniles. If they migrate between counties or are processed in the adult system, they may have prior records not easily accessible to family court or adult court practitioners. However, almost all study site agencies have developed informal procedures to obtain this information, usually a telephone call to another county, when it is known that a juvenile has lived in that county and may have a record there. Such arrangements are necessarily ad hoc and unreliable. It was found that in the study sites, except for Nassau County, most juveniles lived continuously in the jurisdiction where they experienced legal contact.

### Local Information Systems

As we have seen, while most State agencies participating in the process have computerized their information management activities to some degree, few local agencies have done so. One notable exception, among the study sites, is the New York City Juvenile Justice Information Service (JJIS) which provides information on children involved in the juvenile justice system in New York City. In 1987, children in New York City accounted for 60 percent of juvenile delinquency arrests statewide. Following the enactment of FCA §385.2, the New York City Office of the Mayor, Office of the Criminal Justice Coordinator, established JJIS in 1981 to serve the New York City Probation Department. In 1982, a second and separate system was added for the Department of Juvenile Justice. In 1985, JJIS established a third and separate data base serving the New York City Office of Corporation Counsel – Family Court Division (Presentment Agency). Each system is a separate data base with its own data elements. While each JJIS system is comprehensive, the systems are not integrated even though they share space on the same computer system. Indeed, there are no universal identifiers to track children from one system to another. This means that while certain basic information is duplicated in several systems (and collected by several agencies), other critical data, unique to one system, are not accessible to the other systems even when legally permissible.

In summary, technological advances have spawned a revolution in the ability of states and localities to collect and share information on offenders and cases within the criminal justice system. Yet changes in juvenile information systems have not kept pace. Automated juvenile justice information systems have lagged behind adult systems in their development for both New York State and the localities, and where systems do exist they are not integrated.

# APPENDIX

## Summary of Studied Jurisdictions

Data for the Juvenile Justice Processing Study came from a variety of state and local agencies. Information was needed at each processing point in the juvenile justice system for each study site. The information needs included both sealed and unsealed data. To obtain these data, meetings were held with representatives from each agency involved (including, local probation departments, local presentment agencies, local family courts, Division for Youth, and so on).

It was fundamental to all requests for data that the names of juveniles be coded during data collection so the anonymity of the child would be protected. Despite these assurances, a number of agencies were concerned that the Family Court Act and the *Alonzo M.* New York State Court of Appeals decision precluded them from sharing any sealed records. Other agencies suggested that they did not believe that the sealing provisions were intended to preclude access for research purposes. If all information on favorably terminated case had been unavailable, then data would have been missing for roughly 78 percent of the cases in the study. Various levels of access were provided by the study sites. These are outlined below.

The study sites are New York City, Erie County, Monroe County, Nassau County, Dutchess County, Albany County and Clinton County. Staff met with probation, presentment agency representatives and the family court supervising judge at each site. In almost all situations, staff requested intake data from the local probation agencies, screening data from the presentment agencies, and court data from the family courts. The major exception to this was in New York City where family court data were computerized in the Corporation Counsel/JJIS system. For continuity in methodology, non-Corporation Counsel court level data was requested directly of the respective district attorney offices in New York City.

### New York City

The New York City supervising family court administrative judge, deferred all data access issues to the data source agencies (probation, corporation counsel and the district attorneys offices). Corporation counsel provided the requested data whether sealed or unsealed. The New York City Probation Department, at first, would not provide data on sealed cases. However, following advice from the New York City Law Department, probation (as well as corporation counsel) decided to provide information on the condition that the data not include juveniles' names. New York City detention data was provided by the Department of Juvenile Justice (DJJ).[58] The Queens County District Attorney's Office agreed to provide unsealed and

sealed data. The other district attorneys' offices agreed to provide only unsealed data.

### Erie County

Probation and the presentment agency deferred data access to the supervising family court judge in Erie County. Project staff met with the judge who agreed to allow access to probation, presentment agency, and court unsealed and sealed data.

### Monroe County

The Monroe County Probation Department agreed to provide the study access to unsealed and sealed data. The presentment agency deferred data access issues to the supervising family court judge, who granted access to unsealed and sealed data. The judge also agreed to provide court unsealed and sealed data. Data collection problems later developed and the study was unable to access court records (see Volume I, Appendix 1, for the study's methods).

### Nassau County

Both the Nassau County probation and the county attorney's office deferred data access to the supervising judge in Nassau County. A letter was sent to probation from the judge asking these agencies to provide any data to the study that was requested. The judge also agreed to provide court unsealed and sealed data. After a change in executive family court probation staff, probation requested, that DCJS file a formal motion with the court to request unsealed and sealed data. The Nassau County Attorney's Office also requested a formal order by the judge. DCJS declined to pursue court action and, therefore, sealed and unsealed probation and presentment agency data were not available for Nassau County.

### Dutchess County

In Dutchess County, the probation department agreed to provide the study access to unsealed and sealed data. The presentment agency deferred data access issues to the supervising family court judge, who granted access to presentment agency and court unsealed and sealed data.

### Albany County

Both the probation and the agency in Albany County deferred access to the court. The two family court judges agreed to give the project access to these records. The Albany County Attorney's Office, however, requested that DCJS file a formal motion with the court releasing county attorney records. DCJS declined to pursue court action and, therefore, sealed and unsealed presentment agency data were not available in Albany County.

### Clinton County

In Clinton County, both the probation and the presentment agency deferred access to the supervising family court judge. The supervising judge decided to give the study access to probation, presentment agency and court unsealed and sealed data.

Table A.1. Types of Data/Supplying Agencies

| Site | Probation Intake Data | | Presentment Agency Screening Data | | Court Data | | Detention Data | | Post-Disposition Data | |
|---|---|---|---|---|---|---|---|---|---|---|
| NYC | Prob | (1) | CC | (1) | CC | (1) | DJJ | (1) | DFY | (1) |
| | | | Bronx DA | (3) | Bronx DA | (3) | | | | |
| | | | Queens DA | (1) | Queens DA | (1) | | | | |
| | | | NY DA | (3) | NY DA | (3) | | | | |
| | | | Kings DA | (3) | Kings DA | (3) | | | | |
| Monroe | Prob | (1) | CA | (1) | Court | (1) | DFY | (1) | DFY | (1) |
| Erie | Prob | (1) | CA | (1) | Court | (1) | DFY | (1) | DFY | (1) |
| Dutchess | Prob | (1) | CA | (1) | Court | (1) | DFY | (1) | DFY | (1) |
| Nassau | Prob | (2) | CA | (2) | Court | (1) | DFY | (1) | DFY | (1) |
| Clinton | Prob | (1) | CA | (1) | Court | (1) | DFY | (1) | DFY | (1) |
| Albany | Prob | (1) | CA | (2) | Court | (1) | DFY | (1) | DFY | (1) |

Key:

| | |
|---|---|
| Prob | Local Probation Agencies |
| CC | NYC Corporation Counsel |
| DJJ | New York City Department of Juvenile Justice |
| CA | Local County Attorney Offices |
| Court | Local Family Courts |
| DFY | New York State Division for Youth |
| 1 | All Records Provided |
| 2 | All Records Denied |
| 3 | Only Sealed Records Denied |

## Notes

1. The term "juvenile court" is used generically to describe any court that processes alleged juvenile delinquents. The term "family court" is used specifically for New York State courts that process JDs.

2. *In re Gault,* 387 U.S. 1.

3. *Id.* at 25.

4. *See Legal Issues for Alcohol and Other Drug Use Prevention and Treatment Programs Serving High-Risk Youth* prepared by the Office for Substance Abuse Prevention of the United States Department of Health and Human Services (1990).

5. *See People v. Hunter,* 88 A.D.2d 321 (2nd Dept. 1982).

6. *Kent v. United States,* 383 U.S. 541, 557 (1966).

7. *In re Gault, supra* note 2, at 1.

8. *In re Gault, supra* note 2, at 48 n.80.

9. *In re Winship,* 397 U.S. 358 (1970).

10. *McKeiver vs. Pennsylvania,* 403 U.S. 528 (1971).

11. *Id.* at 545-47.

12. *Matter of Alonzo M.,* 72 N.Y.2d 662, 668 (1988).

13. A complete discussion of case processing is presented in Volume I of the Juvenile Justice Processing Study.

14. In 1981 the Missouri Juvenile Justice Review Committee undertook an examination of the confidentiality provisions in Missouri and made a series of recommendations. The SEARCH Group, Inc. (1982) did a comprehensive analysis of policies and practices related to the confidentiality of juvenile records; the report provides a framework for understanding key issues in juvenile justice information policy. In 1986 the Illinois Criminal Justice Information Authority published a report that documented the results of a comprehensive study of juvenile justice information policy. A 1988 SEARCH Group study examined the confidentiality of law enforcement records. A 1989 report presented papers given at a joint BJS conference, entitled "Juvenile and Adult Records: One System, One Record?".

15. *See* Black's Law Dictionary (5th Ed. 1979).

16. *See Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 556 (1980); *See also Matter of Westchester Rockland Newspapers, Inc. v. Leggett,* 48 N.Y.2d 430, 438 (1979).

17. *Leggett, supra* note 15, at 438.

18. *Richmond Newspapers, Inc., supra* note 15, at 580-581.

19. *McKeiver v. Pennsylvania,* 403 U.S. 528, 547 (1971); *see Matter of Chase,* 112 Misc.2d 436, (N.Y. Fam.Ct., New York Co. 1982).

20. *In re Gault, supra* note 2, at 25.

21. *Matter of Robert M.,* 109 Misc. 2d 427 (N.Y. Fam. Ct., New York Co. 1982).

22. *Matter of Chase,* 112 Misc.2d 436, 449, 450 [N.Y. Fam. Ct., New York Co. 1982].

23. *Matter of Robert M., supra* note 22, at 431-432.

24. Effective July 1, 1983 by Chapter 920 of the Laws of 1982.

25. CPL 160.50 provides that when a criminal action has terminated in favor of the accused, the court must order the Division of Criminal Justice Services (DCJS), the heads of all police departments and other law enforcement agencies having copies of photographs, palmprints and fingerprints to return such identifying information to the accused or to the accused's attorney. If the information was transmitted to any United States or other state agency, the transferor must request in writing the return of such information. Further, the court must order that all official records and papers not including published court papers be sealed and not made available to any person or public or private agency, with exceptions. Access to official records and papers is available to the accused or the accused's agent; a prosecutor in the accused's motion under a CPL 170.56 or 210.46 dismissal; a law enforcement agency upon ex parte motion demonstrating to the court that justice requires that such records be made available to it; any state or local agency for the issuance of gun licenses upon the accused's application for such a license; the New York State Division of Parole when the accused is on parole supervision as a result of conditional release or parole release and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision; prospective police officer employers; and probation departments responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision (CPL 160.50 [1][d]).

26. For example, dismissal under the following circumstances: where the petition is dismissed under FCA §315.1 because of a defect which cannot be cured by amendment; the petition is defective

since the court does not have jurisdiction of the crime charged; the petition is defective because the statute defining the crime charged is unconstitutional or otherwise invalid; or where the petition is dismissed under Family Court Act §315.2 in furtherance of justice.

27. FCA §375.1(3) provides, as an exception, for sealed records to be made available to the juvenile or designated agent and the records and papers of a probation service shall be available to any probation service for the purpose of adjustment pursuant to FCA §308.1.

28. *Matter of Alonzo M., supra* note 11.

29. A report which assists a family court judge in determining the appropriate disposition after adjudication of juvenile delinquency charges.

30. *Alonzo M., supra* note 11, at 665.

31. *Id.* at 666.

32. *Id.* at 666.

33. *Id.* at 667.

34. *Id.* at 667 - 668.

35. *Id.* at 668.

36. *Id.*

37. *Id.*

38. *See Matter of Bryant W.,* 114 A.D.2d 962 (2d Dept. 1985), citing *Matter of Dorothy D.,* 49 N.Y.2d 212 (1980); *Matter of Todd H.,* 49 N.Y.2d 1022 (1980); *Matter of Richard S. v. City of New York,* 32 N.Y.2d 592 (1973). See also Sobie, *Practice Commentary, McKinney's Cons. Laws of NY, Book 29A, Family Court Act* §375.3, p. 597 (1983).

39. *See People v. Wright,* 104 Misc.2d 912 (N.Y. Sup. Ct., New York Co. 1980); see also CPL 390.30(1).

40. *Brunetti v. Scotti,* 77 Misc.2d 388 (N.Y. Sup. Ct., New York Co. 1974).

41. *Id.* at 390.

42. *See* McKinney's 1989 New York Rules of Court, §205.5.

43. See Volume I, Chapter Two of the Juvenile Justice Processing Study for a discussion of juvenile arrest processing in New York State.

44. *Gault, supra* note 2.

45. *Cuevas v. Leary,* 70 Civ. 2017 (S.D.N.Y. 1972).

46. See, e.g., FCA §§381.3(1), 381.3(2) and 381.3(3); see also FCA §375.1(1).

47. *Cuevas v. Leary, supra* note 45.

48. *See* "Appendix A to the Staff Report of the Special Committee on the Y.D.1 System of the Criminal Justice Coordinating Council" (July 1, 1971).

49. The actual term used for the contact card changes from department to department.

50. *Cuevas v. Leary, supra* note 45, at 5-6.

51. *Howell v. New York City Human Resources Administration,* 112 Misc.2d 351 (N.Y. Sup. Ct., New York Co. 1981), *modified on other grounds,* 97 A.D.2d 352 (1st Dept. 1983).

52. Also accessible for making determinations on Youthful Offender (YO) status.

53. These reports are generally confidential and will only be made available to persons and agencies authorized by SSL §422(4). It is a class A misdemeanor for any person to willfully permit or encourage the release of any data and information contained in the central register to persons or agencies not permitted by SSL §422. (SSL §422[12].)

    Pursuant to SSL §422(4)(A)(k), reports will be made available to a probation service conducting an investigation pursuant to Family Court Act section 653 where there is reason to suspect the child or the child's sibling may have been abused or maltreated and such child or sibling, parent, guardian, or other person legally responsible for the child is a person named in an indicated report of child abuse or maltreatment and that such information is necessary for the making of a determination or recommendation to the court. (SSL §422)

54. See 9 NYCRR Part 6053.

55. In 1988, the Congress amended the Juvenile Justice and Delinquency Prevention Act (1974) to require OJJDP to report on the numbers and characteristics of youth taken into custody, the numbers of youth who died while in custody and the surrounding circumstances. Since then OJJDP have issued a series of competitive requests for proposals to assist in the design and analysis of data collection efforts.

56. The National Council on Crime and Delinquency has produced a series of monographs on the issues; see for example *Juveniles in Custody: The State of Current Knowledge,* (June, 1989) and *Juveniles Taken into Custody: Developing National Statistics,* (October, 1989).

57. Information on other state juvenile justice systems was obtained by telephone interviews with representatives from several states. The states and their respective information systems were identified through an examination of the *Directory of Criminal Justice Issues in the States, Volumes I-V,* produced annually by the Criminal Justice Statistics Association (CJSA). The CJSA directories provide a state by state listing of major research and information systems developments. While by no means exhaustive of juvenile justice information systems developments, the discussion provides a brief overview of different types of systems (i.e., operational systems, research systems, operational and research systems) outside of New York State.

58. Detention facility data are not subject to the family court sealing provisions. DFY provided detention data for non-New York City study sites.

**Table of Bibliographic Abbreviations**

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| **CFCCW** | Committee on the Family Court and Child Welfare |
| **CJSA** | Criminal Justice Statistics Association |
| **CPL** | New York State Criminal Procedure Law |
| **FCA** | New York State Family Court Act |
| **NYPD** | New York Police Department |
| **NYRCC** | New York Rules of Court |
| **PL** | New York State Penal Law |
| **SSL** | New York State Social Services Law |

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