

# Juvenile Record Sealing: The Q&A of Policy and Practice

by Judge Leonard Edwards (ret.)

In January 2013, China's [Criminal Procedure Law](#) will require record sealing for juveniles who have been sentenced to less than five years' imprisonment. Implementation of the measure could take cues from the United States, where juvenile record sealing has been a common practice for over 50 years. This article attempts to tackle key questions about record sealing and how might it be implemented in order to maximize opportunities for rehabilitation and minimize danger to the public.



Judge Edwards gives a presentation to Chinese delegates during Dui Hua's 2012 Juvenile Justice Expert Exchange

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I. What is a juvenile justice record and who keeps these records?

A juvenile justice record is a notation reflecting the fact that a youth has been arrested, prosecuted, or brought before the juvenile court. A record may be maintained in law enforcement files, it may be kept by the prosecutor's office, and, if the case involved formal court proceedings, it may be kept by the juvenile court. Court records may include notations relating to the court proceedings and a report prepared by the probation department. Other persons or agencies also may have records of the youth's behavior. Wherever the conduct took place, for instance at a school or business, that entity may keep a record of the event.

It is important to remember that the records collected by law enforcement and the prosecutor's office may be different from those maintained by the juvenile court. Law enforcement may arrest a youth for several serious crimes. The prosecutor may only file charges in some of those crimes, and the juvenile court may find that only one or none of the charges is proven in court. For this reason law enforcement and the prosecutor records do not reflect the charges proven in court. Law enforcement and prosecutor records can be misleading and should be confidential from all persons.

## II. Should juvenile records be treated differently from adult criminal records?

The answer is yes—children's records should be treated differently from adult records for a number of reasons. The United States Supreme Court has held that children are different from adults. "Our history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults."<sup>[1]</sup> This is the principle reason behind the creation of the juvenile court separate and apart from the adult criminal court. In the United States, as in most countries in the world, we treat children differently from adults for criminal behavior because children are developing beings whose brains and personalities have not been fully formed. They are not as responsible for their actions as adults are. Moreover, it has been the experience throughout the world that children can be rehabilitated and become productive members of society whereas it is much more difficult to rehabilitate an adult.

The United States Supreme Court has acknowledged these differences in a number of recent decisions. In speaking for a majority of the Supreme Court, Justice Kennedy has stated:

“...developments in psychology and brain science continue to show fundamental differences between adult and juvenile minds.”<sup>[2]</sup>

These conclusions have led the United States Supreme Court to abolish the death penalty for children,<sup>[3]</sup> and imprisonment for [life without the possibility of parole](#).<sup>[4]</sup>

### III. What do juvenile court records have to do with rehabilitation?

A record can follow a person through life. If available to employers or schools, it can limit a person's ability to secure employment or positions of trust as well as make it difficult to avoid a life of criminality.<sup>[5]</sup> If social policy is to acknowledge and reflect that children are different from adults and that rehabilitation of youth is a goal, then access to juvenile records should be restricted.

### IV. What is the difference between confidentiality, record sealing, and record destruction?

Restricting public access to juvenile records can be accomplished in several ways, but each has individual characteristics. State policy may be that juvenile records are to be confidential. This means that no person or agency can have access to them unless they have a legitimate interest. Access may be available to a class of persons or agencies such as all law enforcement or all prosecutors, or access may be available only if a juvenile court judge so orders. Any access by either an agency or an individual can be granted with conditions attached, such as a restriction that no further dissemination is permitted and that once the use of the record has been completed, that it be destroyed.

Record sealing differs from confidentiality—it literally means that the record is sealed from public access and cannot be obtained without a court order unsealing the record. Such an unsealing can only occur if so ordered by the juvenile court. Record destruction (also called expungement) refers to the actual destruction of the juvenile record such that access is no longer possible because the record no longer exists.

### V. Who should have access to juvenile records?

Juvenile records should be confidential and unavailable to the general public. That conclusion has been accepted by most modern states. However, certain agencies are often permitted access to these records. These include judges, law enforcement, prosecutors, and probation departments. In addition, many other professionals have asked for and received access to juvenile records. In California, for example, 16 individuals and groups have been designated by the legislature that they have the right to inspect juvenile records without prior court approval.<sup>[6]</sup> Others may inspect juvenile records only with prior approval of a juvenile court judge.

### VI. Are some juvenile records more confidential than others?

Yes. Sometimes social investigation of juvenile offenders includes extremely sensitive information about family members or the youth. Psychological and psychiatric reports, in particular, may contain information that would, if known, jeopardize a young person's ability to rehabilitate and to move ahead in life either in school or to be employed. It may be a good policy to restrict access to such reports even to those who are permitted to inspect juvenile records by statute. Some courts segregate these reports from the remainder of the court file and only permit access to court records, not mental health reports.

#### VII. What are the procedures for gaining access to juvenile records?

For a person or agency to gain access to a juvenile court record, it is necessary either to be designated in the statute or by court order. A petition for disclosure usually is made to the juvenile court judge. The petition states facts indicating why the petitioner should have access to the records and what the petitioner proposes to do with them. For example, the petitioner may want to have information relating to an automobile accident in which the juvenile was driving while under the influence of alcohol. The petitioner may wish to bring a civil lawsuit for damages against the juvenile. In such proceedings, the juvenile court judge would permit the juvenile to appear and state his or her position about the release of the records and then rule on the petition. If the records are released by the judge, the judge should set conditions on the release. The conditions might be that the records only be used in the pending civil suit and after that suit is over, be destroyed or returned to the court. Further the judge might order that the records not be further disseminated by the petitioner.

Should the petitioner approach another record holder such as law enforcement or the prosecutor's office, that office should refer the matter to the juvenile court judge regarding whether the records should be released. Moreover, if the names or other identifying information regarding other juveniles are contained in the juvenile court records, that information should be deleted before the records are released.

#### VIII. What is the cost of collecting and maintaining juvenile records?

Creating files and storing them in a confidential area will cost the court time and energy. Staff will have to be hired to record, catalog, and maintain the records so that they can be retrieved, if necessary. Space will have to be dedicated to storage, and that space will have to be expanded as long as the records are maintained and new records are created. The cost for the collection, storage and maintenance of these records may be substantial for the court system.

IX. What is the burden on the juvenile court to decide who has access to juvenile records?

The juvenile court judge will have to decide who has access to juvenile records. This responsibility may take significant judicial time. Based on experience in California, this responsibility can take up to 5% of a judge's time on and off the bench. Off the bench time includes reviewing the records page by page to determine whether there is information of such relevance that the petitioner should be granted access to the records. It also includes deleting information about other juveniles that may be contained in the records as well as copying the records that will be released.

X. When should juvenile records be sealed?

There are several choices policy makers can make about the timing of record sealing for juvenile records. They could be sealed immediately after the creation of the record, they could be sealed at some specific time, or they could be sealed only after application by the youth. California law requires the youth to apply to have his or her records sealed. The recommendation from research suggests that automatic sealing is a better policy.<sup>[7]</sup>

XI. Are there some juvenile records that should not be sealed?

When a youth commits very serious crimes, perhaps his or her record should not be sealed. The legislature should decide which categories of crimes should not be sealed. For example, in cases of homicide and forcible rape, the record might not be sealed until a later date. One difficulty with this approach is that the juvenile court filing system must segregate and maintain those serious crimes in a separate area so that they can be easily retrieved. This will require the development of a sophisticated record filing system.

XII. When should juvenile court records be destroyed?

The policy in many states is that juvenile records should be destroyed at some time. Keeping records indefinitely is costly and unnecessary. The question is when that destruction should take place. In California the law permits destruction to take place when the youth reaches the age of 26. That appears to be an arbitrary number, but the California system seems to have worked well.

XIII. Are there some juvenile records that should not be destroyed?

Just as some juvenile court records should not be sealed, some juvenile records should not be destroyed when the youth reaches 18 years of age. Only records pertaining to the most serious crimes should be maintained by the juvenile court after that age. Yet even these should be destroyed at some time, perhaps five or ten years after all other records are destroyed. Some states destroy all juvenile court records when the youth reaches a certain age regardless of the nature of the crime. In California, for example, all juvenile records are destroyed at age 26.

XIV. How can the juvenile court be assured that other agencies holding juvenile records will seal or destroy them when the juvenile court does?

The juvenile court may seal or destroy records at a particular time either automatically or at the request of an applicant. It is important that other agencies such as law enforcement or prosecution seal or destroy their records at the same time. Otherwise, juvenile records will be potentially available to the public. Some states such as California require the court staff (the clerk of the court) to notify each agency that the court has ordered certain records sealed or destroyed and to order that the agency take similar action regarding the records that they hold. This is a burdensome task for the clerk of the court and assumes that the agency will abide by the court order. An alternative would be for the law to state that the agency automatically seal or destroy all juvenile records at a certain time.

XV. After a juvenile court record has been sealed or destroyed, what can the person answer to the question: "Have you ever been in juvenile court or been the subject of juvenile court proceedings?"

If a prospective employer asks a person whether he or she has ever appeared in juvenile court proceeding, what can a person say? If the record has been sealed or destroyed, the person should be able to say "I have never been in the juvenile court." Yet that is an untruthful statement. Are we asking a person to lie about his or her contact with the juvenile court?

This is a difficult problem. On the one hand, if rehabilitation is to be meaningful, the prospective employer should not be informed of any juvenile court record or that a record was sealed. On the other hand, we are asking a person to lie, and they may be unwilling to do so, thus defeating the purpose of the record sealing and record destruction law.

Two approaches might be employed. First, a law could prohibit employers, schools, or other

agencies from asking persons about juvenile records. Second, the juvenile court could inform the person that he or she could deny any contact with the juvenile court. This information could be handed to the person at the time his or her juvenile record is sealed or destroyed.

## XVI. Conclusions and Recommendations

The sealing and destruction of juvenile court records involves a number of complex issues. The juvenile court and the legislature must address these issues effectively if the goal of rehabilitation is to be fulfilled.

- A. The rehabilitation of children who break the law is an important public goal. This is because children are different from adults. They are developing creatures and can grow into productive citizens if redirected and offered services by the juvenile court and agencies serving the juvenile court.
- B. Juvenile court records should be confidential from the public. Otherwise the goal of rehabilitation will be jeopardized. Only agencies with a legitimate interest such as law enforcement and prosecutor's offices should be able to keep juvenile records and have access to juvenile court records.
- C. There should be a legal process enabling those persons or agencies with a legitimate interest in specific juvenile court records to petition the juvenile court for access to those records. The juvenile court judge should determine whether and under what conditions any petitioner should have access to those records. In no case should a youth's mental health record be included in his or her juvenile court record.
- D. Most juvenile court records should be automatically sealed at a certain time, possibly when a youth reaches 18 years of age. A few juvenile records relating to very serious crimes should be maintained by the juvenile court after that time.
- E. All juvenile court records should be destroyed at a certain time. It is recommended that destruction take place when the youth reaches 26 years of age. Destruction will ease the burden on the juvenile court to maintain records indefinitely.
- F. The legislature should pass a law making all records relating to arrests, prosecution and juvenile court proceedings confidential. Should an applicant ask law enforcement or the prosecutor's office for copies of their records, those offices should refer the applicant to the juvenile court. The law should state that all of these records be sealed at 18 and destroyed at 26.
- G. The legislature should pass a law restricting employers from asking potential employees whether they were arrested as a juvenile or have had contact with the juvenile court. The law should further state that once a record has been sealed, the

youth may respond to any such inquiry by stating that he or she has never been arrested or involved with the juvenile court.

These recommended policies, laws, and procedures will maximize the opportunity for rehabilitation to occur and will minimize danger to the public.

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1. *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) <sup>^</sup>
  2. *Graham v. Florida*, 130 S.Ct. 2011 <sup>^</sup>
  3. *Roper v. Simmons*, 543 U.S. 551, at 569 (2005) <sup>^</sup>
  4. *Graham v. Florida*, *op.cit.*, footnote 2. <sup>^</sup>
  5. Edwards, L., & Sagatun, I., "A Study of Juvenile Record Sealing Practices in California," *Pepperdine Law Review*, Vol. 4, (1977), pp 543- 572 at p. 544. <sup>^</sup>
  6. Welfare and Institutions Code section 827 lists 16 groups of persons who can inspect juvenile records without prior court approval including school superintendents, probate investigators, and members of a multi-disciplinary team. California Welfare & Institutions Code section 827, West, 2012 <sup>^</sup>
  7. Edwards, L., & Sagatun, I., *op.cit.*, footnote 5 at 564. <sup>^</sup>