

# The Significance of Juvenile Records

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This paper will first describe the ways in which juvenile records are created and can be harmful. Second, it will present data on how one state attempts to deal with the stigmatizing effects of juvenile records, and third, it will show that the statutory purpose is not being carried out due to unintended administrative effects.

Numerous kinds of juvenile records are created daily and are widely disseminated. For the minor who is stopped of a suspected law violation, warned by the police and then released without an arrest or further action, there may be a report made and kept in the police files. An arresting police officer may decide to cite the minor and inform him of his obligation to appear before the probation department. A record of that contact will also be

made. If the officer takes the minor to a police station, booking information will be obtained which will be kept by the local police agency, and copies may be sent to the state criminal records bureau and to the Federal Bureau of Investigation.

After an arrest, the police officer will generally deliver the minor to a juvenile probation department. Another record will be created at intake and at each step in the juvenile justice process. The attorneys involved in the case, the court, and any institution that might become involved will have records of the minor's behavior. The minor's school may also have a record of the case, particularly if the matter was school-related.

The number of records will be greatly increased if the case arises in one county and then has to be transferred to a second county. When a case is transferred, each parallel agency in the second county may record the events surrounding the case.

Many states restrict the access to juvenile court records and juvenile probation documents relating to minors. This is the case in California.<sup>1</sup> The law in California declares that juvenile records held by law enforcement agencies must be kept confidential. Despite these efforts to ensure confidentiality of juvenile records, however, the law permits numerous agencies to have direct access to

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them, and many agencies and private parties have the means of finding out about them.

Such records, if revealed, can have serious negative effects for the minor. Several studies have been made concerning the effects upon employment opportunities of both juvenile and criminal records. They indicate without exception that the record will limit the applicant's opportunity to secure a job.<sup>2</sup> Some of the studies also suggest that the nature of the records are not as significant to the prospective employer as its mere existence.<sup>3</sup> Even the California Appellate Courts have pointed out the stigmatizing effects of a juvenile record: .

While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be a conviction of crime, nevertheless, for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason. Courts cannot and will not shut their eyes to everyday contemporary happenings. It is common knowledge that such an adjudication when based upon a charge of committing an act that amounts to a felony, is a blight upon the character of and is a serious impediment to the future of such minors. Let him attempt to enter the armed services of his country or obtain a position of honor and trust and he is immediately confronted with his juvenile court record.<sup>4</sup>

The California legislature recognized the importance of protecting minors from the lasting effects of juvenile records when it passed Welfare and Institutions Code section 781 (then 752) in 1959. The law permits a person who acquired a record as a juvenile to petition the juvenile court to have the record sealed upon his eighteenth birthday, or five years after the event. If, after a hearing, the court determines that the minor has not been convicted of a felony or a misdemeanor involving moral turpitude, and further, that he has been rehabilitated, the court then orders sealing of the court records and any records in the custody of other agencies and officials named in that order. Thereafter, the proceedings in the case are deemed never to have occurred and the person may reply accordingly to any inquiry about the events sealed. The sealed records may be unsealed for inspection only

when so ordered by the court, and even then only the court, jury, parties, counsel for the parties and other authorized persons may inspect the records.

The policy underlying the law was to provide young persons an opportunity to begin their adult lives without the stigma of a juvenile record. It is difficult to know whether this policy is carried out in practice. The statute leaves much to the discretion of the county probation departments and the juvenile court judges. It is left to the minor to initiate the proceedings. This paper will look into both the advising procedures across the state as well as the results of these proceedings. The following specific questions will be studied:

1. Are minors advised of their rights to seal their records? If so, at what stage in the proceedings are they given notice, and in what form is it presented to them?
2. What kinds of steps are taken to implement the sealing, and how effective are they?
3. Are there certain categories of minors which are less likely to receive notice of their rights than others?
4. What kinds of minors are more likely to ask to have their records sealed, and what types of minors do in fact have their records sealed?

A questionnaire concerning juvenile record sealing procedures was sent to all fifty-eight juvenile probation departments in the state of California. Fifty-two departments responded, often attaching additional information and relevant documents to the questionnaire. The responding counties represent 98.3 percent of the state population including all counties with over one million in population. The questionnaire was typically filled out by the head of the juvenile probation department or the person assigned to record sealing in the department.

The areas of inquiry covered in the questionnaire included how minors are advised of their rights under the California Welfare and Institutions Code section 781 (the statute dealing with record sealing), what procedures are followed to petition the court for record

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sealing, what steps are taken to implement a court order to seal, and finally, what types of juveniles ask to have their records sealed, and how many of each type are indeed granted a sealing of their records. Both structured and open-ended questions were used.

## RESULTS

### ADVISEMENT PRACTICES

The law in California does not expressly require that the probation department or law enforcement personnel inform the minors with whom they come into contact that their juvenile records can be sealed. No probation department reported that it would initiate a petition to seal without the minor first requesting such action. Thus, in order for a minor to have his record sealed, it is important that he first be advised of his rights.

In spite of the obvious importance of this notice to the minor, our data indicate that there are differences as to which minors are advised, and in what form they are notified. Several departments indicated that they had no set procedures, and one county reported that the matter only comes up when the parents of the minor raise the question.

Forty-one counties responded that they advise minors on informal cases of their rights to seal the records. Seven counties do not give such advisement to this category of minor; two counties advise such minors sometimes, and one county gives advice only when the matter is raised. It is interesting to note that minors who go to court but who are not placed on probation or made wards or dependent children of the court are less frequently

advised of their rights than are the informal cases. Thirty-nine counties give such minors information, three counties give it sometimes, and nine do not give advice at all. In contrast, forty-eight counties give advice of sealing rights to minors who have been placed on formal probation, while only three do not. It appears that the more involved the minor becomes in the formal juvenile justice system, the more likely he is to be informed, while those with less serious cases are less likely to be informed.

The form of the advisement can effect the minor's ability to recall his rights when the time comes to petition for record sealing. A written notice or form letter is probably superior to oral notice which may be forgotten during the stress of an interview or court session. Our data showed that the majority of counties give oral service to minors, and that minors with formal cases are more likely to receive written notice than are minors with informal cases.

TABLE 1  
TYPE OF ADVISEMENT ABOUT  
RECORD SEALING  
FORMAL AND INFORMAL CASES  
TYPE OF CASE

Type of Advice	Informal	Formal
Oral	36	29
Written	5	16
Both	2	5
Total	43*	50**

\*One county gives information only when the question is raised; eight counties give no information at all.

\*\*One county gives information only when asked; one county gives no information.

The table reveals that minors with more serious cases receive more frequent and substantial advice than those with less serious cases.

The timing of the advice may also effect the minor's ability to take advantage of the statute. A minor who is informed at the begin-

ning of his case may forget his rights during the proceedings and the months or years that follow before he becomes eligible to petition for record sealing. In informal cases, ten counties give verbal advice at intake, five give verbal advice at dismissal, and four give both oral and written advice upon the termination of the case. In formal cases, fourteen counties send out written notice both at intake and dismissal. Among those counties that give verbal notice in formal cases, five give this notice at intake, one at dismissal and six both at intake and dismissal. These results again suggest that minors with more serious cases are more likely to receive written notice at the time of dismissal than are minors with less serious cases.

The most effective time to inform the minors about their record sealing rights would seem to be when they reach the age of eighteen or five years after the jurisdiction of the court has ended. All counties responded, that due to practical reasons, they could not keep track of minors to remind them of their rights, and many counties stated that this was the minor's own responsibility.

We attempted to determine whether the county population might effect the advisement procedures. The data revealed that the larger counties are more likely to employ form letters than are the smaller counties. We could find no other correlation between population and advisement procedures.

In summary, for a minor to have his records sealed, it is important that he be informed of his right. Our data show that the more contact the minor has with the juvenile justice system and the more formalized the contact, the more likely he is to be given notice of his rights, and the more likely the advisement will be in a written rather than a verbal form. We shall see later that this also results in more record sealing efforts by minors with frequent contact with the probation department than by minors with little contact.

#### IMPLEMENTATION PROCEDURES

Most counties will begin implementation of the record sealing procedures as a service to the minor, without an attorney, provided the minor takes the initiative and asks them first. The implementation procedures are often long and cumbersome. The California law states that for the minor to have his records sealed, he must not have committed any felonies or misdemeanors involving moral turpitude, and the court must find him rehabilitated. The initial screening involves investigation of the minor's subsequent criminality by checking with law enforcement agencies, such as the CII and the FBI. This will determine whether a minor has been convicted of a felony. However, there may be some difficulties deciding whether a conviction of a particular misdemeanor involved moral turpitude, and what is judged to be rehabilitation may also vary from county to county. One probation officer wrote that "very apparently, each county has a different set of rules or requirements as to what they need to expunge a juvenile record."

If the court grants the request to seal the records, an order is signed, and the order is sent to all relevant agencies. The relevant agencies included in the order will vary according to the circumstances of the case. Many local, state, and federal agencies may have records of the juvenile, yet often only local agencies are asked to comply with the request. Thus, the minor may be told that his records are sealed when in fact some agencies holding records were not notified or did not comply with the order. One county warns the applicants that the sealing may only apply to local and certain state agencies, but most probation departments do not issue such warnings.

We asked if the departments had any procedures by which they can determine that a court order to seal records has actually been carried out. Twenty-two departments said they asked for the return of a compliance letter, thirteen said that this was the responsi-

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bility of the county clerk, and seventeen did not indicate any follow-up. One county made the assertion that a probation department had "no authority to enforce compliance, nor any capability to do so." We also asked what the probation department would do if it discovered an agency that had not complied with the sealing order. Eighteen counties reported that they had experienced such a situation, while thirty-one said that they had not. Of the eighteen, eleven took some action against the non-complying agencies, while five did not. In the majority of these cases, the probation department obtained a new order from the court specifying the non-complying agency. However, many doubted that even when a new order is issued, the court can do anything to ensure compliance. The law does not pro-

vide for any disciplinary action which could be initiated against the non-complying agencies.

### WHO ASKS FOR RECORD SEALING AND WHO ARE SUCCESSFUL?

What are the results of the advisement practices and implementation procedures we have discussed? How many minors with records actually request to have them sealed, and how many of these are successful? We asked the probation departments to make an estimate of how many requests to seal they received monthly over the last two years. As expected there was a wide variation in the numbers of these requests ranging from none at all (population less than 1000) to 146 a month (population over 1,000,000).

**TABLE 2**  
**MONTHLY REQUEST BY POPULATION**  
**SIZE OF COUNTY**

	over 1,000,000	500,000 1,000,000	200,000 500,000	100,000 200,000	50,000 100,000	25,000 50,000	10,000 25,000	under 10,000
Range	58-146	22-60	10-30	1-9.2	2-15	2.4-5	0.1-10	0-
Average	108.7	39	15.9	4.2	6.8	2.1	2.3	0.
Number	4*	7	9	6	5	6	6	5

\*One county did not give an estimate.

Table 2 shows the distribution of monthly requests by population size. The differences in the number of requests within each population bracket might be explained by differences in advisement practices. A detailed examination revealed that generally the counties with the highest number of requests were more likely to give written notice than those with the lowest number.

We also asked the departments to estimate how many of the minors who have contact with their departments actually attempt to have their records sealed. Nine counties reported five percent or less, twenty-eight counties said ten percent, four counties said twenty percent, one county said thirty percent, and two counties said forty percent. Eight counties gave no answer, and three stated it was

impossible to give such an estimate. From the data it is apparent that in all the reporting counties most minors do not take advantage of their rights to seal records. Many departments stated that it is a good thing that so few apply. As one probation officer wrote, "If every minor requested sealing, the consequences in terms of workload for all agencies would be catastrophic."

We next asked how many minors who petition the court are successful in getting their records sealed. The data reveal that the overwhelming majority are in fact successful in their efforts. Nine counties said that 100 percent are successful, eighteen counties reported that 95-99 percent are successful, twenty-one counties said that ninety percent are successful, three counties said eighty per-

cent and one county said twenty percent are successful. Thus, ninety-three percent (forty-eight in number) said that ninety percent or more of the petitioning minors are successful in getting their records sealed. These data also showed that the success rate has no relationship to the number of requests or the size of the county. We examined these variables specifically and found that there were no significant correlations. In most counties ninety percent or more of all minors who do apply for record sealing are successful in getting their requests granted.

The high success rate could be due to the fact that only minors with minimal juvenile records or few contacts with the probation department apply to have their records sealed. We asked each county whether minors with less contact were more likely to request sealing. Twenty-six counties responded that minors who have more contact with the juvenile justice system are more likely to request sealing. Only seventeen counties reported that minors with less contact are more likely to request sealing. Nine counties said that the two categories are equally likely to request sealing. These data are consistent with the data on advisement practices. The data indicate that the more the minor has contact with the juvenile justice system, the more likely he is to be advised, and the more likely he is to request sealing when he becomes eligible.

#### DISCUSSION

This study has revealed that the law on record sealing is being administered very differently in various California counties. Counties differ with respect to whom, in what form and at what time the advisement is given, and they also differ in both their implementation and checking for compliance procedures. The study has further revealed that only about ten percent of all minors who come in contact with the probation department attempt to take advantage of the sealing procedures. In spite of an elaborate checking procedure, generally

about ninety percent or more of these minors are successful in having their petition to seal granted. Finally, the data showed that minors with the most contact with the juvenile justice system are deriving the greatest benefit from the law. Not only do more of these minors receive better and more frequent notice of their rights, they are also more likely to request to have their records sealed. Due to the large petition-acceptance rate, they are also likely to end up with their records sealed.

From the data we conclude that the present system of record sealing in California is inadequate. Not only is the system of record sealing failing to reach most of the deserving juveniles, namely those with less serious records, a great number of juveniles are not taking advantage of their rights. This may be true because minors are not adequately advised of their rights. It may be true because minors believe they have no record or what record there is will be destroyed or kept confidential. It may be because minors have simply forgotten about their contact with the juvenile justice system. It may be because minors believe that their record will be of no significance in their adult lives.

Whatever the reason, few minors utilize their rights under the law. Yet, many studies show that such records do indeed have a tremendous, negative impact on the minor's adult life. The importance of a juvenile record to a person's future cannot be overestimated, because the discovery of a juvenile record can have a detrimental effect upon a person's ability to secure employment and positions of trust, as well as his ability to avoid a life of criminality.

The treatment of juvenile records is an important problem that deserves the immediate attention of the California legislature and the legislature in all states.<sup>5</sup> The present system of record sealing, as outlined here, does not work well both because of its cumbersome procedures and because it fails to provide relief to those who most need and deserve its assistance.

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### FOOTNOTES

- <sup>1</sup>*California Welfare and Institutions Code* Sections 827 and 828 (West Supplement, 1977).
- <sup>2</sup>W. Buikhuisen, and F. Dijksterhuis, "Delinquency and Stigmatization," *British Journal of Criminology* 11 (1971): 185-187; T. Hayden, "How Much Does The Boss Need to Know?" *Civil Liberties Review* 3 (3)(1976): 23-43; A. Mahoney, "The Effect of Labeling Upon Youths," *Law and Society Review* 8 (4)(1974): 583-614; J. Melichercik, "Employment Problems of Former Offenders," *NPPAJ* 43 (2)(1956): 542; P. Schiavo, "Condemned by the Record," *American Bar Association Journal* 55 (June, 1969): 540-543; R. Schwartz, and J. Skolnick, "Two Studies of Legal Stigma," *Social Problems* 10 (Fall, 1962): 133-142.
- <sup>3</sup>P. Schrag, and D. Divoky, *The Myth of the Hyperactive Child* (New York: Pantheon Books, 1975) p. 196; Schwartz and Skolnik, "Two Studies."
- <sup>4</sup>*In re Contreras*, 109 Cal. App. 2d 787 at 789, 241 P.2d 631, 633 (1954); *cited in People v. Dotson*, 46 Cal. 2d 891, 899, 299 P.2d 875, 880 (1956) and *In re Poff*, 1a5 F. Supp. 224, 227 (D.D.C. 1955).
- <sup>5</sup>I. Sagatun, and L. Edwards, "A Study of Juvenile Record Sealing Practices in California," *Pepperdine Law Review* 4 (3)(1977): 543-575.

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