

JUVENILE RECORDS AND CONFIDENTIALITY ISSUES

I. History

In most jurisdictions in the United States of America, juvenile court proceedings and records are closed to the public. The reasons for this relate to the historical traditions of the juvenile court in our Country, which first began in Chicago, Illinois in 1899. The concept of having a separate court for juvenile criminal offenders quickly spread in the 20th century throughout the United States. Juvenile courts were designed to provide a more therapeutic approach to juvenile offenders, focusing on what is in the best interests of the child rather than on the interest of protecting the public. Rehabilitation, rather than punishment, was, and in most jurisdictions in our Country remains, the primary focus of the juvenile justice system.

Because the juvenile justice system in the United States adopted a less punitive and more therapeutic attitude than our adult criminal justice system, the notion of the need to maintain privacy of juvenile court proceedings evolved. Criminal justice professionals viewed public access as having a negative impact on the efforts to rehabilitate the youthful offender. Some thought it was unfair to publicly brand a juvenile as a criminal because that stigma would serve as an impediment to the youth's rehabilitation. This notion of the need to maintain privacy of juvenile court proceedings and confidentiality of juvenile court records became the law in most jurisdictions and the practice in all.

Today, however, there is a growing view that juvenile court proceedings should focus more on punishment and protection of the public than on rehabilitation and what is in the child's best interest, especially in the case of serious, violent and habitual juvenile offenders. The public should have a right to know who serious, violent and habitual juvenile offenders are within their community, for their own safety. Consequently, many states in our Country are currently adopting legislation or modifying court rules to provide for more open juvenile court proceedings to the public in these cases. In Minnesota, our state legislature recently changed our system to open juvenile court proceedings to the public for any youth who is sixteen years of age or older and who commits a crime which would be classified as a felony offense if committed by an adult. In Minnesota, you are considered a juvenile offender if you are under the age of eighteen at the time the offense occurs.

One of the unfortunate results that has come from the practice of closing most juvenile court proceedings to the public in the United States is that the quality of juvenile records in our Country is very poor. According to a 1988 study, ". . . very few juvenile justice agencies conduct regular audits of the accuracy of their juvenile records or have any quality control policies in place. In addition, very few states have statutory procedures which permit an

individual to review his/her own record and correct inaccuracies."¹ The sharing of inaccurate or misleading information between juvenile justice agencies can cause significant problems. If a juvenile court judge has inaccurate information pertaining to a juvenile's criminal history, the judge may impose an inappropriate disposition in the case. Additionally, if records are inaccurate, a juvenile offender might be denied benefits or opportunities that he or she would otherwise be entitled to. For example, if a juvenile's record inaccurately reflected a felony level offense instead of a misdemeanor, access to the prosecutor's diversion program might not be available if the prosecutor's criteria prohibits access to the program for anyone with a prior felony record.

Consequently, it is extremely important in any system of juvenile justice that a national, uniform, and accurate recordkeeping system be established. Such a system will ensure that prosecutors and representatives from other agencies who deal with youth can obtain accurate and comprehensive data to assist them in carrying out their responsibilities. With the advent of computers and information storage technologies, this has become far more practical than in the past. In the United States, we need to continue to work towards the development of such a uniform recordkeeping system for juveniles. Prosecutors in our Country believe that maintaining fingerprints and photographs of juvenile offenders in a national data base is very important. Such a data base could also contain DNA samples of juvenile sexual offenders. In our Country, we have a well developed system for state and national recordkeeping on adult criminal offenders, including fingerprints, photographs and, most recently, DNA samples. This information has been extremely valuable to law enforcement agencies who are attempting to solve crimes that have occurred. Without this type of a data base in the juvenile area, law enforcement agencies that deal with serious, violent and habitual juvenile offenders are missing a significant tool which they need to help them quickly apprehend those who have committed serious crimes so as to protect the public safety and bring the juvenile offenders to justice.

II. Types of Information Concerning Juvenile Offenders

Most jurisdictions in the United States collect juvenile records that document both a legal and a social history of a youthful offender. Most agencies that come into contact with a juvenile keep records, including police, prosecutors, courts, corrections departments, schools, private service providers and state or local human service agencies. Records that document a youth's legal history include police reports, charging documents, court motions, court findings and court orders. Records that document a youth's social history include information about a juvenile's family background (such as the names of the youth's parents, their address and phone number), living environment, record of school attendance, academic records, drug and alcohol abuse history, any history of abuse or neglect, any history of emotional or psychological problems, and any history of non-delinquent behavioral difficulties.

¹ Tamryn J. Etten & Robert F. Petrone, Sharing Data and Information in Juvenile Justice: Legal, Ethical, and Practical Considerations, Juv. & Fam. Ct. J. 65 (1994), at page 78.

Many state and federal laws in the United States classify legal and social history data concerning a youthful offender as private or confidential and restrict access by the public as well as restricting the exchange of such information among the various agencies mentioned above. In addition to the statutory barriers to the exchange of information pertaining to juveniles, many agencies have created their own internal barriers to disclosing such information. As noted in a recent article in the *Juvenile and Family Court Journal*, such agencies often lack an established policy concerning information exchange and simply decline requests for data out of habit.² This article concludes that these non-legal barriers to information exchange are as much a problem with sharing of relevant data on juveniles as are the legal restrictions. The article concluded that “. . . there are very few legal barriers to information sharing among juvenile justice agencies, but instead the barriers are often a product of long-standing agency practice and mistrust among agencies.”³ This article contains an excellent overview of federal and state case law in the United States concerning the area of juvenile records and a summary of federal statutes on this subject as well, for anyone interested in further research on this topic.

In Minnesota, my home jurisdiction, we do not have a uniform recordkeeping system for juvenile offenders even on a statewide basis. Currently, a local prosecutor such as myself has no efficient way to verify or determine what a juvenile offender’s prior criminal history is unless the prior crimes occurred within the prosecutor’s home jurisdiction. This is extremely important information since some of the crimes under our laws in Minnesota become more serious offenses depending upon the offender’s prior criminal history. Because Minnesota has no uniform recordkeeping system for juvenile offenders on a statewide basis, the only way a local prosecutor could find out a juvenile’s entire prior criminal history would be to contact and request it from each of the other 86 counties in our state. This is a practical impossibility because of the amount of time involved to do such a search. Also, there is no way of knowing whether a juvenile offender has a criminal history in another state of our Country, absent a national uniform recordkeeping system. Our state legislature has recently enacted legislation to help establish such a statewide computerized uniform recordkeeping system in Minnesota so this information would be readily available to a local prosecutor. That will be helpful, but we still need this on a national scale too.

III. Access to Juvenile Records

Laws, policies and practice that place restrictions upon access within the juvenile justice system to relevant information concerning a juvenile criminal offender’s background are a detriment not only to a prosecutor but to many other agencies involved in the criminal justice and social welfare systems as well. For example, a police officer needs information concerning a juvenile’s history of violence, possession of dangerous weapons, or gang related activities to ensure that, when attempting to make an arrest of the youth, he or she can take the proper safety precautions. A juvenile court judge or detention officer needs to know the juvenile’s prior record of runaway behavior, history of violence or prior suicide attempts to help determine the youth’s risk of flight

² *Id.* at 79.

³ *Id.* at 79.

and level of danger to himself or others, when considering whether the youth should be detained prior to trial. A juvenile court judge or probation officer needs to know a juvenile's prior record, prior placement history, and record of success or failure in prior treatment programs to determine what an appropriate disposition in the case should be and what level of monitoring during placement is warranted. This information would also aid in determining whether or not a juvenile is ready to be discharged from a current program in which the youth has been placed.

It is also imperative that schools and educational institutions have access to information pertaining to a juvenile's prior criminal history. Without such information teachers, school administrators and other students may be placed in unnecessary risk. Such information may also be relevant to the youth's educational needs, i.e., it may be appropriate to place a youth who has committed a prior alcohol-related crime or assault in classes or programs focusing on chemical dependency treatment or violence prevention. Social welfare agencies also need this information to determine whether a prior juvenile criminal offender needs specified treatment or intervention efforts. Program opportunities for the youth's family may also be available if information concerning the youth's criminal history is readily available to social service agencies.

It is also very important that schools and social service agencies share information they obtain concerning a juvenile's criminal or anti-social behavior with police agencies. Knowledge of a youth's involvement in gang-related activity that becomes known to school officials or social service providers also needs to be shared with police agencies. Sometimes, information on whether a child was in attendance at school is very important in an investigation. Police need to know all this information as it might assist them in solving crimes or help them obtain leads which can be used to solve crimes. This knowledge is also needed to help protect a police officer from harm when the officer comes into contact with a youth with known anti-social or violence tendencies or gang involvement. Unfortunately, in many states in our Country, school and social service officials are prohibited by law from sharing this information with police agencies. This should not be the case and efforts are underway in many jurisdictions in our Country to correct this problem.

Any uniform recordkeeping system concerning juvenile records that is established should allow for the sharing of relevant information concerning the juvenile between all agencies who come into contact with the youth. This includes police agencies, prosecutor's offices, schools, social service agencies, judges, and probation or correction's offices. The failure to establish a system which enables these agencies to share relevant information concerning a juvenile offender will not only result in misinformed decisions as discussed above, but will often lead to needless duplication of efforts by these individual agencies. Each such agency will likely maintain its own file concerning the juvenile which will include much of the same information that is maintained in files of other agencies. If the goal of the system is to maintain the privacy of such juvenile records, it is important to ensure that any uniform recordkeeping system and information sharing system has safeguards built in to ensure that only agencies or persons with a need to know have access to it and to protect the release of the information to unauthorized persons. The more files that exist, the more difficult that becomes, and the greater the risk for errors.

An appropriate policy concerning exchange of juvenile records between juvenile justice agencies, schools and social service agencies should restrict the exchange to those “with a need to know” the information. This would include all those individuals or agencies who care for, treat, supervise or protect a child, or who have a legal responsibility to investigate or prosecute allegations of abuse or other criminal conduct. It is important that information is shared between agencies to better protect the public safety and serve the best interests of the child and his or her family.

IV. A Model Program

Some jurisdictions in the United States are utilizing a pilot program for sharing of relevant data concerning juveniles between individuals and agencies coming into contact with the youth. The Serious Habitual Offender Comprehensive Action Program (SHOCAP)⁴ provides a successful example of what widespread sharing of relevant data concerning juveniles can accomplish. SHOCAP has developed cooperative information sharing and case management programs that promote coordination among law enforcement, prosecutors, probation, corrections agencies, social service agencies, schools and other community-based services. The goal of SHOCAP is to enable these agencies to develop comprehensive strategies to deal with serious habitual offenders based upon all available data concerning the youth. For more information concerning SHOCAP, you may contact Fox Valley Technical College at 1-800-648-4966.

As demonstrated in those jurisdictions within our Country utilizing the SHOCAP system, use of computer technology is essential in establishing an effective uniform recordkeeping and information sharing system concerning juveniles. If the information contained within such a system is not readily accessible to those who need it, e.g., police, prosecutors, judges, etc., it will be useless. Decisions by these and other agencies affecting a juvenile most often need to be made expeditiously. It is not possible, for example, for a prosecutor who must make a decision on whether or not to charge a juvenile with a crime, and with what crime, within specified time limits under the law (in Minnesota, 36 hours if the juvenile is in custody) to make a telephone or written inquiry of all agencies with relevant information affecting this decision. The information needs to be immediately accessible. Developing a computerized recordkeeping system for this information is, therefore, essential. In doing so, you must make sure that the information storage system used is compatible with and accessible by computers within the various agencies that have a need to know this information.

V. Issues You Need to Address

The types of issues that need to be considered when establishing a computerized recordkeeping and information system concerning juveniles include:

⁴ The Office of Juvenile Justice and Delinquency Prevention established two demonstration projects in the early 1980s--the Serious Habitual Offender/Drug Involved Program established in the law enforcement community and the Habitual Serious and Violent Juvenile Offender Program, located within prosecutor's offices. Fox Valley Technical College, United States Department of Justice, Habitual Juvenile Offenders: Guidelines for Detention 1 (1994). SHOCAP is an extension of these two programs.

- (1) What types of information are appropriate for inclusion within the system?
- (2) Who should have access to it?
- (3) What purposes will the information be used for?
- (4) Are there adequate safeguards to prevent access by unauthorized persons?
- (5) Are there adequate safeguards to ensure protection of the juveniles right to privacy?
- (6) Is the system compatible with computer systems of those agencies with a need to know the information?
- (7) Who will be responsible for data input, auditing, and correction?
- (8) Who will fund the system?

I hope that this information is helpful to you as you explore the issues of confidentiality and juvenile recordkeeping systems.