



## RESOLUTION REGARDING CONFIDENTIALITY, SEALING, AND EXPUNGEMENT OF JUVENILE RECORDS

WHEREAS, more than 50 years ago, the U.S. Supreme Court’s landmark decision in *In re Gault* recognized that juveniles are not merely small adults, stating that, “it is frequently said that juveniles are protected by the process from disclosure of their deviational behavior...[I]t is the law’s policy ‘to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.’” The Court went on to note that, “[t]his claim of secrecy, however, is more rhetoric than reality;” and

WHEREAS, in a series of decisions between 2005 and 2016, the U.S. Supreme Court recognized that children have “greater prospects for reform” when compared with adults, echoing the National Academy of Sciences’ developmental approach recommendations that were grounded in research; and

WHEREAS, involvement with the juvenile justice system (law enforcement, courts, probation, corrections)—including, but not limited to, arrests, dismissed petitions, and adjudications—can create collateral consequences for a young person’s life—for example, interfering with their ability to join the military, pursue higher education, obtain housing (for themselves or their family), or secure employment and achieve financial independence.

WHEREAS, juvenile records are maintained by law enforcement, courts, probation, and other government agencies, both in hard copy and electronic formats, with varying levels of security and many state laws require juvenile records to be kept confidential; such laws also contain numerous exceptions that permit juvenile justice records to be accessible to entities outside the justice system and to the general public, although there is not a body of research supporting the idea that publicly available juvenile justice records improves communities safety; and

WHEREAS, once records are available outside the justice system, it is virtually impossible to safeguard the information from further disclosure and each time a juvenile record is made available in an online database or accessed by a new source, a youth’s exposure to collateral consequences increases; and

### **NOW, THEREFORE, BE IT RESOLVED:**

Juvenile court judges have a responsibility to protect youth and promote community safety within their jurisdiction; therefore, the NCJFCJ seeks to protect youth from disclosure of juvenile records and the collateral consequences.

The NCJFCJ encourages juvenile justice policies and practices that foster each youth’s personal growth, support positive behavior change, enhance long-term success, and make communities safer.

The NCJFCJ supports legislation or policies that limit access to juvenile justice (law enforcement, courts, probation, corrections) records and provide youth involved in the juvenile justice system opportunities to have such records expunged or sealed automatically with no associated fees (at no cost to them). Specifically:

Juvenile justice records of any allegation and/or offense should be eligible for expungement or sealing.

Juvenile justice (law enforcement, court, probation, corrections) records should never be publicly available online and should be made available to entities outside the court on a limited basis only.

Legislation or policies regarding expungement or sealing of juvenile justice records should provide that expunged/sealed juvenile justice records must be maintained for research purposes (such as recidivism analyses or validation of risk/needs assessment instruments).

Expungement should mean that electronic records are deleted from databases (other than research databases maintained separately from justice information systems and accessible only by researchers) and paper records are physically destroyed. Sealed records should be available for research purposes, but completely closed to the

general public, should be expunged after 10 years if the youth has no felony convictions as an adult, and should only be unsealed for justice system purposes by court order. Personally-identifying information (PII) in research databases should be encrypted to ensure confidentiality. Researchers requiring access to PII are expected to adhere to confidentiality requirements as outlined in the Federal Policy for the Protection of Human Subjects known as the Common Rule.

Law enforcement records of juvenile arrests that do not result in charges should be expunged immediately and automatically. Court and probation records of cases that are terminated in favor of the accused should be expunged immediately and automatically. Records of adjudicated youth should be eligible for expungement at the time their case is closed. Corrections records should be expunged automatically either when a youth leaves confinement or turns 18 years of age.

Courts and at least one other designated entity or individual should be responsible for informing youth, in developmentally-appropriate language, about sealing and expungement, including, but not limited to, conditions for availability, eligibility criteria, and procedures. Notification should occur more than once during the youth's involvement with the juvenile justice system.

The process for requesting the sealing or expunging of records should be automatic so that youth do not need to initiate the process. If sealing or expunging cannot be made automatic, the procedure for requesting expungement or sealing of records should be clearly defined in youth-friendly terms. Courts, attorneys, and other justice system stakeholders should collaborate to create forms and procedures youth can understand and complete without the assistance of an attorney.

Requests for access to juvenile justice records (or related data) should always be in writing. Court Clerks and/or other persons or agencies responsible for maintaining juvenile justice records (and related data) should keep a record of all requests for access to juvenile justice records or data. Execution of a record and/or data sharing agreement should be required prior to releasing juvenile justice records to entities outside the juvenile justice system. Such agreements should specify limitations on time and use of such records and security and record destruction requirements.

Youth should be notified when their records have been shared outside the justice system (other than for research purposes). Youth should be notified when their records have been expunged or sealed. Courts should inform youth that they do not have to admit they have a juvenile record if the record has been expunged. Sealing orders should include a provision allowing the youth access to their own record without a court order.

Any person or entity receiving juvenile justice records, for any purpose other than research, should be notified immediately when a youth's record is sealed or expunged and required to provide confirmation of destruction.

Sanctions should be imposed on individuals and entities (including researchers and their universities, agencies, or organizations) that unlawfully share confidential, sealed, or expunged juvenile record information or fail to comply with sealing or expungement orders.

State and local agencies may be asked to provide certain juvenile record information to the FBI's Criminal Justice Information Services Division (CJIS) under the Bipartisan Safer Communities Act's (BSCA ([P.L. 117-159](#))) firearm purchase background check requirements. Because of the complexities of the BSCA, the NCJFCJ encourages states to seek guidance/training from Subject Matter Experts (SMEs) regarding the appropriate record information to share with CJIS. [National Criminal History Improvement Program supplemental funding](#) is available to support state BSCA efforts.

*Adopted by the NCJFCJ Board of Directors on July 15, 2023, Baltimore, Maryland*

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