



ACQUISITIONS

# National Institute of Justice

## Research in Brief

Jeremy Travis, Director

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### Issues and Findings

**Discussed in this Brief:** An NIJ-sponsored review of State laws, as of December 1994, as they pertain to the role of juvenile records in criminal court sentencing.

**Key issues:** Knowledge of defendants' juvenile records may help prosecutors and judges to determine appropriate sentencing for offenders ages 18–24, the age group most likely to be involved in violent crime. Otherwise, such individuals may be treated as first offenders, even when they have extensive juvenile court records of violent crimes. Although almost every State has laws authorizing access to juvenile arrest and disposition records for presentence report purposes, the variety of restrictions on creating records and the conditions placed on their access may pose practical problems for prosecutors and judges. Concerns arise over balancing the need to protect juveniles with the usefulness of juvenile records in determining disposition of offenders who began their criminal careers as juveniles.

- Nearly half of the States (24) mandate judicial use of defendants' juvenile records by defining their significance for sentencing.

- Forty States authorize police fingerprinting of juveniles, but two (Alaska and Hawaii) have not provided funding to implement the law, and five others (Mississippi, North Dakota, Oregon, Texas, and

## State Laws on Prosecutors' and Judges' Use of Juvenile Records

by Neal Miller

Young adults aged 18–24 are the group most likely to be involved in violent crime, according to the Federal Bureau of Investigation.<sup>1</sup> Until recently, the existence of extensive juvenile court records for many of these offenders was rarely known to judges and prosecutors, who often were inclined to be lenient with defendants thought to be in court for the first time. In the past 15 years many jurisdictions have enacted laws to ensure that prosecutors and judges are aware of offenders' juvenile records. A number of these laws specify how the offenders' juvenile records are to be used. But in some States, the emphasis placed on the confidentiality of juvenile records makes it difficult for prosecutors and the court to gain access to them. As part of a larger project funded by the National Institute of Justice (NIJ) to examine how adult criminal courts use defendants' juvenile records, the Institute for Law and Justice (ILJ) examined various State laws that provide judges, prosecutors, and probation officers with access to juvenile records for specific purposes:

- To authorize pretrial release from custody.
- To charge defendants and negotiate pleas.

- To prepare presentence reports.

- To impose sentencing.

This Research in Brief examines laws authorizing the creation, dissemination, use, and destruction of juvenile records from the perspective of the criminal court.

### Juvenile records and the criminal court

The effectiveness of laws permitting juvenile record use is related to the juvenile court's jurisdiction. State laws that set different age limits for juvenile court proceedings define when a juvenile record is created. Other State laws restrict the jurisdiction of the juvenile court to hear cases involving juvenile defendants who are charged with specific crimes (legislative waiver) or authorize the juvenile court to transfer the defendant to criminal court proceedings (judicial waiver). Finally, there are State laws that authorize the sealing or expungement of juvenile court records, thereby withdrawing these records from criminal court accession.

The existing literature has not specifically addressed the issue of laws authorizing criminal court use of defendants' juvenile records. Such a review is needed by policymakers and legislators to assist

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## Issues and Findings

*continued*

Vermont) prohibit central retention of fingerprint-based records.

- States are nearly unanimous in recognizing the need for criminal court jurisdiction for serious crime and related cases in which juveniles are charged, but no agreement exists as to the kinds of cases that should receive such treatment or the methods for accomplishing criminal court jurisdiction.

- States also concur that some provision is needed for destroying or sealing the juvenile record, thus preventing its later use in criminal court, but they differ considerably about the cases that should be covered by this provision.

- In most States, laws providing for erasure of juvenile records are inconsistent with recently enacted sentencing laws that dictate how juvenile records affect sentencing outcomes; this situation has led to a focus on obtaining legislative waivers from juvenile to criminal court.

This study suggests that all States should consider enacting laws that authorize fingerprinting of juveniles charged with weapon violations that would be felonies if committed by adults, centralize juvenile arrest and disposition recordholding and dissemination, provide prosecutor and court access to juvenile records, permit law enforcement use of juvenile records for investigative purposes, and create limitations on expungement of juvenile records when subsequent adult convictions have occurred.

**Target audience:** State policy-makers, prosecutors, researchers in the field of sentencing practices.

them in evaluating the adequacy of their State's laws and in drafting new legislation. In addition, practitioners may be surprised to learn that enabling legislation exists in their States that either has not been implemented (in some cases for budgetary reasons) or is inconsistently applied across the jurisdiction. This latter problem occurs in instances where the law has been subject to numerous amendments made in a piecemeal fashion.

Taken as a whole, these laws show a virtual consensus on the relevance of juvenile disposition records to court decisionmakers. However, when it comes to record availability and use, opinion wavers. Underlying the juvenile justice system is a countervailing principle that calls for providing a "second chance"; as a result, some lawmakers have adopted restrictions on the dissemination of juvenile records. As a partial compromise, States are broadening the jurisdiction of the criminal courts to hear cases involving juvenile defendants. An overview of the positions taken by States is presented below:

- Virtually all States authorize the criminal court to consider the defendant's juvenile record for sentencing purposes.

- Most States authorize fingerprinting of juvenile defendants who have committed felony-level crimes.

- Prosecutors are given record access authority in only about half the States.

- About half the States authorize State-level collection and dissemination of fingerprints for purposes of creating a juvenile history record.

- Structured use of the juvenile record is required under nearly half the States' sentencing laws.

- Forty-eight States' laws authorize sealing or expungement of juvenile court records.

- Forty-seven States' laws provide for judicial waiver from juvenile to the criminal court, and 30 States authorize the prosecutor to file directly in the criminal court when the juvenile is charged with a serious violent felony.

Considerations for changes in State laws affecting juvenile record collection, dissemination, and use are directed at inconsistencies among the several laws governing criminal court access to these records. They assume that use of juvenile records is desirable in cases where serious violent offenders are before the criminal court.<sup>2</sup> To ensure the collection and retention of juvenile records across agency and jurisdictional lines, this study indicates that laws also are needed to authorize central recordkeeping and juvenile fingerprinting.

### State law review

This study of State laws, as of January 15, 1995,<sup>3</sup> examined the process by which juvenile records are first created, through arrest, fingerprinting, and dissemination. It then looked at laws that structure the use of juvenile records and those that limit their relevance (waiver) and availability (expungement).

#### Fingerprinting of juvenile arrestees.

Fingerprinting of juveniles is necessary to ensure that the records are accurate in identifying a specific juvenile as the subject of a court disposition. Among all the jurisdictions maintaining juvenile records at the State level, only one does not base record collection on fingerprint identification.<sup>4</sup>

- Forty States' laws explicitly authorize police to fingerprint juveniles who have been arrested.

- Three States' statutory codes include provisions that reference fingerprinting of juvenile arrestees.

- Two States' laws may be interpreted as providing fingerprinting authority, although no definitive court interpretation was found.

- Only two States' laws forbid fingerprinting of juvenile arrestees.

- Three States' laws make no reference to fingerprinting of juveniles.

State law authorization to fingerprint juvenile arrestees does not typically extend to all arrested juveniles. In 16 States (of 40), authorization is granted to fingerprint juveniles who have reached a specific age (most commonly 14). Twenty-two States authorize fingerprinting of only those juveniles arrested for acts that would be felonies if committed by an adult. Of these, four restrict fingerprinting to juveniles charged with violent felonies. Five States permit fingerprinting of juveniles charged with felonies or misdemeanors. Thirteen States have no crime limits for fingerprinting, and only 1 of these 13 has an age limit for fingerprinting.

**Central holding of juvenile records.**

Central recordholding at the State level is necessary to ensure that information from all judicial districts is available to criminal justice personnel across the State.

- Twenty-seven States have enacted laws authorizing establishment of a central record repository to hold juvenile arrest and/or court disposition records from throughout the State.

- Three other States have laws that reference central recordholding.

- Five States forbid central recordkeeping of juvenile records.<sup>5</sup>

- Five States authorize central holding of juvenile fingerprint but not juvenile history records.

Most laws that authorize centralization of juvenile records place the recordholding responsibility with the criminal justice history record center. Included among the 27 States with record repository laws are four that authorize establishment of a separate juvenile record center. Two of these States authorize both types of recordkeeping centers.<sup>6</sup>

The adult recordkeeping systems that maintain juvenile records collect files of only those juveniles whose fingerprints are authorized to be taken under State law. Thus, two States where fingerprints may be taken of juveniles who are convicted of serious and violent crimes limit central collection to the records of these same offenders. However, two other States also limit central collection to records of those juveniles convicted of serious crimes, although broader fingerprint authority exists. Only one State's law calls for the use of court records, rather than fingerprints, as the basis for identification of juveniles in the record system.

**Criminal court access to juvenile records.** Every State provides for prosecutor and/or court access to juvenile records of adult defendants at some point in the judicial process. In 48 States, this authority is explicit. In two States, legislative establishment of a central repository for juvenile records implicitly authorizes prosecutor and court access. Different legislative schemes exist for providing access authority:

- Twenty-four States' laws explicitly provide for prosecutor access.<sup>7</sup>

- Fourteen States' laws directly authorize probation officers to see juvenile records; seven other States directly authorize the judge to see these records.

- In 27 other States, the law either prescribes inclusion of the juvenile record in the presentence report filed with the court, or it authorizes court consideration of defendants' juvenile records in setting sentence.

In a few States, the juvenile court records of a subset of youthful offenders are exempted from other laws establishing confidentiality of juvenile records. In Tennessee, for example, records of those found to be violent juvenile offenders are public, open to general disclosure.<sup>8</sup>

**State sentencing laws.** Twenty-four States' laws provide for structured consideration of defendants' juvenile records in the setting of sentences. The most common structuring method is through inclusion of the juvenile record among the factors used in State sentencing guidelines (14 States). Typically, the juvenile record is included in calculating a criminal history score. This score is applied to a sentencing grid that matches a criminal history score with a crime seriousness score based upon the crime of conviction. The grid location where the two scores intersect establishes the presumptive sentence to be imposed. Considerable variation exists, however, in the method for calculating the juvenile history score and in the weight accorded juvenile dispositions in adult criminal history scores:

- In Maryland, a single juvenile disposition does not affect the criminal history score, while a limit of two points

(two juvenile commitments) may be added to the total score. Further, only defendants who are younger than 26 will have juvenile record scores considered.

- Only Oregon, among the 10 States authorizing juvenile record use in calculating a criminal history score, counts all juvenile disposition records as equal to adult convictions.<sup>9</sup>

- Pennsylvania counts juvenile dispositions as equal to adult convictions if the juvenile was 14 years or older and convicted of a felony equivalent or a weapon misdemeanor.

In two guidelines States (North Carolina and Wisconsin), the juvenile record is simply an authorized aggravating factor that the judge can use in sentencing to the most severe guideline penalty.

Two States require judges to use defendants' juvenile records in setting sentence under a presumptive sentencing law. This type of law establishes a range of sentences to be imposed on conviction and sentence of incarceration; the existence of a juvenile record places the defendant in a higher range of these presumptive sentences. Seven other States (and one with a presumptive law structure) provide for judges to consider a juvenile record as a significant factor in determining whether to impose a sentence of incarceration or probation. Three other States with presumptive sentence laws also fail to include the juvenile record as a relevant factor. In California and Louisiana, defendants' juvenile records are counted toward the "three strikes" and habitual offender laws, respectively. Virginia law is unique in explicitly authorizing juvenile record access for purposes of jury sentencing.

**Juvenile court age-jurisdiction limits.** The most significant type of State law limiting jurisdiction for the juvenile courts (and juvenile record creation) establishes an age beyond which the juvenile court cannot exercise its authority. Thus, 39 States' laws provide that a youth may not be tried in the juvenile court past the age of 18. However, of these, 13 States extend the juvenile court's jurisdiction to permit prosecution of youths over the age of 18 for acts committed before that age. Two of these States provide no age limit beyond which the juvenile court retains jurisdiction (other than the statute of limitations); seven States terminate juvenile court jurisdiction at age 21 for acts committed prior to age 18.

Of the 11 States with a lower age base to limit juvenile court jurisdiction, eight terminate jurisdiction at age 17 and three at age 16. Two of the eight States terminating jurisdiction at age 17 provide for extended jurisdiction until age 18 for acts committed before age 17.

**Concurrent or superseding jurisdiction of the criminal court.** A second type of jurisdiction-limiting law provides for concurrent original jurisdiction between the juvenile and criminal courts. In these States, the juvenile and criminal courts share original jurisdiction in specific cases. For convenience purposes, States where the criminal court has exclusive jurisdiction for serious juvenile crime are also listed under the rubric of concurrent jurisdiction.

- In 12 States, the prosecutor may file specified cases (e.g., violent felonies) in either the juvenile or the criminal court. In four of these concurrent jurisdiction States, the criminal court may hold a hearing to determine if these

"direct file" cases should be transferred to the juvenile court.

- In 21 "legislative waiver" States, the prosecutor is required to file specified cases in the criminal court; discretion still resides, of course, in prosecutorial determination of the level of crime charged.

- In 3 of these 21 States, mandatory direct filing requirements are limited to capital cases. In two other States, direct file authority covers both capital crimes and robbery. In one other State, direct filing extends to attempted murder cases. In the remaining States, direct file requirements apply to violent felony offenses; four of the States also extend direct filing requirements to drug trafficking cases.

- In seven of the direct file States, a reverse waiver hearing may be held to transfer the case to the juvenile court.

**Waiver/transfer from juvenile to adult criminal court.** A third type of jurisdiction-limiting law is through judicial waiver of juvenile court jurisdiction.

- Forty-seven States' laws authorize the prosecutor to request judicial waiver at the juvenile court's discretion.

- Four States have laws that create a presumption in favor of judicial waiver in specified cases; one of these States provides for mandatory waiver in yet other cases. In 10 States, legislative waiver is integrated into the traditional waiver framework by mandating that the court transfer specific crime cases in the criminal court; the judge there may transfer the juvenile to the juvenile court. In a second no-waiver State, prosecutor discretion to file in either court is combined with reverse waiver

hearing authority. In a third no-waiver State, the juvenile court judge may apply adult penalties in specified cases.

Laws authorizing discretionary waiver of juveniles to the adult court are subject to two types of limitations. Only five States permit waiver to adult court of all juveniles regardless of their age. Among the vast majority (42) of States having age limits, most do not permit waiver of juveniles aged 13 or less. Similarly, most States limit transfer to juveniles charged with felonies or serious felonies. Eighteen States have no crime-based limits on waiver to adult court. Only two States with crime-based limits permit waiver of juveniles charged with misdemeanors. Thirteen States combine age and crime limits, for example, authorizing waiver of a juvenile aged 14 charged with any crime. Younger juveniles may be waived only if charged with a crime for which a life sentence may be imposed.

**Expungement laws.** All but two States have some statutory provision for annulment of a juvenile record. These provisions are of two main types: laws providing for sealing of the record and laws calling for expungement or destruction of the record.

- Twenty-one States' laws provide for record sealing.
- Twenty-four States' laws call for record expungement.
- Two States provide for both procedures, depending on the age of the individual. One State provides for both mechanisms, depending on the seriousness of the juvenile disposition.
- One State's law provides simply for a juvenile disposition to be "set aside."

In 40 States, application of these laws is discretionary with the court. In eight States, expungement or sealing is mandatory. A few laws provide for annulment while the individual is still a juvenile; most do not take effect until the individual is an adult. In three States, a subsequent offense automatically results in unsealing of a sealed juvenile record, including one State where record sealing is mandatory.

### Summary

At one level, the review of State laws shows considerable consensus about the utility of juvenile records for court sentencing purposes. Thus, virtually all States have enacted legislation that requires the presentence report to include this information. The majority of States similarly authorize prosecutor access to juvenile records; only two States have laws that limit this power.

**Juvenile record accessibility.** There is less consensus about *implementing* the principle that a defendant's juvenile record is relevant information.<sup>10</sup> While 40 States authorize police fingerprinting of juveniles (and only 2 States' laws explicitly deny this authority), a smaller number of States (27) authorize centralized retention and dissemination of juvenile record histories. Five States that authorize fingerprinting of juveniles also prohibit central recordkeeping of fingerprint-based records. Finally, a slight minority (24 States) mandate judicial use of defendants' juvenile records, by defining their significance for sentencing. This ranges from inclusion of the juvenile record in calculating criminal history scores under sentencing guidelines to consideration of the record in making decisions about imposition of a probation, rather than incarceration, sentence.

**Juvenile record creation/destruction.** State laws that affect juvenile record availability are similarly diverse. There is virtual unanimity about the need for criminal court jurisdiction for serious crime and related cases in which juveniles are charged. But no agreement exists as to which cases should be covered by these laws or how criminal court jurisdiction should be accomplished. The States also agree that some provision should be made for destroying (or sealing) the juvenile record, the result of which is, of course, to prevent its later use in criminal court. They disagree about which cases warrant such destruction. At one extreme are the States that require all juvenile records to be destroyed when the juvenile reaches maturity. At the other extreme are laws that either exempt records of serious crimes from the expungement laws or reopen sealed records on a subsequent adult conviction. In between are laws that differ in the specified age at which expungement may be sought, the mandatory or discretionary nature of the laws' operation, and the preconditions about subsequent crimes that limit the scope of the laws' application.

**Trends.** From an historical perspective, two distinct trends are evident. First, States are increasingly enacting laws that make offenders' juvenile records available to prosecutors and courts. Other new laws also dictate that the juvenile records be used in directed ways. In addition, liberalization of "legislative waiver" laws both reduces the need for prosecutors to seek judicial waiver and makes juvenile record availability less germane. Modifications in both types of waiver laws is the most significant legislative trend in the past few years; 22 States

in 1994 adopted laws making it easier to prosecute juveniles in the criminal courts.<sup>11</sup> Second, at the same time that these tougher measures are being enacted, laws providing for erasure of juvenile records remain generally unchanged. The reason for this absence of statutory change probably is related to the fact that most juvenile offenders do not commit serious violent crimes. The need to protect the majority of juveniles from future problems relating to juvenile record has not yet been outweighed by the utility of the juvenile record for sentencing career criminals who began their careers as juveniles. As a result, only two States' laws provide for automatic reversal of a sealing order on subsequent adult conviction. In many of the remaining States, erasure laws are inconsistent with new sentencing laws that dictate how juvenile records affect sentencing outcomes; e.g., mandatory erasure laws set an age ceiling on what records are available—even where juvenile records are relevant to sentencing decisions. The easiest way to resolve this conflict is to focus efforts on legislative waiver from juvenile to

criminal court. Not surprisingly, this is what legislators are doing.

### Policy implications

States should consider taking legislative action to ensure that juvenile arrest and disposition records are available to prosecutors and judges. There is little debate about whether such access is appropriate; almost every State has laws authorizing such access at least as part of a presentence report to the court. Nonetheless, the legislative scheme in a number of States presents practical problems in record accessibility. In some States, many juveniles are never fingerprinted, so that identification may be impossible in the future. In other States, no central recordholding exists, thus precluding information sharing among local jurisdictions. Where juvenile records are created and collected, expungement laws limit their usefulness—even when there have been subsequent adult convictions. Laws that could resolve these problems would authorize:

- Police fingerprinting of juveniles charged with crimes that are felonies if committed by an adult or are weapon violation misdemeanors.
- Centralized juvenile arrest and disposition recordholding and dissemination in a manner like that of adult criminal history records.
- Prosecutor and court access to juvenile disposition records.
- Law enforcement use of juvenile arrest records for investigative purposes.
- Limitations on expungement of juvenile records when there are subsequent adult convictions.

Adoption of these policies would greatly facilitate judicial use of juvenile disposition records for sentencing purposes. States that have enacted sentencing guideline legislation that does not provide for use of juvenile records may wish to review those policies in light of the general consensus that juvenile records are relevant in determining the import of an offender's criminal history.

**EXHIBIT 1 — State<sup>12</sup> Fingerprinting Laws Authority, 1994**

State	Age Limits	Crime Limits
ALABAMA	14 or older	Felony
ALASKA	16 or older	Felony
ARKANSAS	None	None
CALIFORNIA	None	None
COLORADO	Implicit authority = no limits	Implicit authority = no limits
CONNECTICUT	14 or older	Felony charge
DELAWARE	Implicit authority = no limits	Implicit authority = no limits
FLORIDA	None	Felony and serious misdemeanor
GEORGIA	13 or older	Specific crimes
HAWAII	NA	NA
IDAHO	None	None
ILLINOIS	None	Forcible felony or weapons charge
INDIANA	15 or older	Felony
IOWA	14 or older	Felony/aggravated misdemeanor
KANSAS	None	Felony
KENTUCKY	None	None
LOUISIANA	None	Felony or weapons charge
MAINE	None	None
MARYLAND	Age 14;16	Serious felonies
MASSACHUSETTS	None	None
MICHIGAN	None	None
MINNESOTA	None	Felony
MISSISSIPPI	None	Felony or weapons charge
MISSOURI	NA: forbids fingerprinting	
MONTANA	None	Felony
NEBRASKA	14 or older	
NEVADA	14 or older	Felony
NEW JERSEY	14 or older	None
NEW YORK	11 or older, or 13 or older	A or B felony; C felony
NORTH CAROLINA	NA: forbids fingerprinting	
NORTH DAKOTA	14 or older	Specific serious crimes
OHIO	None	Felony
OKLAHOMA	None	None
OREGON	None	Felony or misdemeanor
PENNSYLVANIA	None	Felony or firearm charge
SOUTH CAROLINA	None	Violent felony
SOUTH DAKOTA	Implicit authority = no limits	Implicit authority = no limits
TENNESSEE	None	Felony
TEXAS	15 or older, none	Felony; specific serious felonies
UTAH	14 or older	Felony
VERMONT	None	None
VIRGINIA	14 or older; 13 for violent felony	Felony
WASHINGTON	None	Felony or gross misdemeanor
WISCONSIN	None	None
WYOMING	None	Felony

**EXHIBIT 2 — State Laws Authorizing/Forbidding Central Holding of Juvenile-History Records, 1994**

State	Adult Record Repository Holding	Juvenile Record Repository
ALABAMA	Fingerprint only for ID purposes	
ALASKA	Authorized	
ARKANSAS	Authorized	
CALIFORNIA	Authorized	
DELAWARE	Authorized	
FLORIDA	Authorized	
GEORGIA	Bar repealed	
HAWAII		Authorized
ILLINOIS	Authorized	
INDIANA	Authorized	
IOWA	Fingerprint only	
KANSAS	Authorized	
KENTUCKY	Authorized	
LOUISIANA	Fingerprint for ID purposes	
MAINE	Authorized	
MARYLAND	Authorized	
MASSACHUSETTS	Authorized	
MICHIGAN	Authorized	
MINNESOTA	Authorized	
MISSISSIPPI	Central record forbidden	Authorized
NEBRASKA	Implied reference	
NEVADA	Fingerprint only for ID purposes	
NEW JERSEY	Fingerprint only for ID purposes	
NEW MEXICO	Implied reference	
NEW YORK	Authorized	
NORTH DAKOTA	Central record forbidden	
OKLAHOMA	Authorized (serious offenders)	Authorized
OREGON	Central record forbidden	
PENNSYLVANIA	Authorized	
RHODE ISLAND	Authorized	
SOUTH CAROLINA	Authorized (violent offenders)	
TENNESSEE	Authorized	
TEXAS	Central record forbidden	
UTAH	Authorized	
VERMONT	Central record forbidden	
VIRGINIA	Authorized	Authorized
WASHINGTON	Authorized	
WISCONSIN	Authorized	
WYOMING	Authorized	



**EXHIBIT 3 — Criminal Court Access to Juvenile Records by State, 1994**

State	Prosecutor	Probation Officer	Judge	Central Repository Holding Juvenile Records	Sentencing Law
ALABAMA		Can see			
ALASKA		PSI report		Authorization to hold	Record/factor
ARIZONA					Record/factor
ARKANSAS	Can see		Can see	Authorization to hold	
CALIFORNIA	Can see			Authorization to hold	Record/factor
COLORADO	Can see				
CONNECTICUT	Can see some	Can see	Can see		
DELAWARE				Authorization to hold	
FLORIDA	Can see		Can see		Record/factor
GEORGIA		PSI report			
HAWAII			Can see		Record/factor
IDAHO	Can see				Record/factor
ILLINOIS	Can see	Can see	Can see	Authorization to hold	Record/factor
INDIANA	Can see	Can see	Can see	Authorization to hold	Record/factor
IOWA		PSI report	Can see		
KANSAS	Can see	PSI report	Can see	Authorization to hold	Record/factor
KENTUCKY	Can see	PSI report		Authorization to hold	
LOUISIANA	Can see	Can see	Can see		Record/factor
MAINE		PSI report	Can see	Authorization to hold	
MARYLAND		PSI report			Record/factor
MASSACHUSETTS		PSI report		Authorization to hold	
MICHIGAN		PSI report		Authorization to hold	Record/factor
MINNESOTA	Can see some	PSI report		Authorization to hold	Record/factor
MISSISSIPPI	Can see	Can see	Can see		
MISSOURI		PSI report			
MONTANA	Can see	Can see	Can see		Record/factor
NEBRASKA		Can see	Can see		
NEVADA		Can see			
NEW HAMPSHIRE		PSI report			
NEW JERSEY	Can see	PSI report			Record/factor
NEW MEXICO	Can see	PSI report			
NEW YORK		PSI report		Authorization to hold	
NORTH CAROLINA	Can see				
NORTH DAKOTA		Can see	Can see		
OHIO					Record/factor
OKLAHOMA		PSI report		Authorization to hold	
OREGON		PSI report	Can see		Record/factor
PENNSYLVANIA		PSI report		Authorization to hold	Record/factor
RHODE ISLAND	Can see	PSI report		Authorization to hold	Record/factor
SOUTH CAROLINA	Can see some	PSI report		Authorization to hold	
SOUTH DAKOTA	Can see	Can see	Can see		
TENNESSEE		Can see	Can see	Authorization to hold	
TEXAS	Can see				
UTAH		PSI report		Authorization to hold	Record/factor
VERMONT	Can see		Can see		
VIRGINIA		Can see		Authorization to hold	
WASHINGTON	Can see			Authorization to hold	Record/factor
WEST VIRGINIA		PSI report			Record/factor
WISCONSIN		PSI report		Authorization to hold	
WYOMING		PSI report		Authorization to hold	

**EXHIBIT 4 — State Sentencing Laws Using Juvenile Records by Type of Sentencing Law, 1994**

State	Sentencing Guidelines <sup>13</sup>	Presumptive Sentencing Law <sup>14</sup>	Probation Factor
ALASKA		Prior juvenile disposition affects	
ARKANSAS	Prior juvenile disposition used		Prior juvenile disposition weighed
CALIFORNIA		Prior juvenile disposition affects; counts for 3 strike law	
FLORIDA	Prior juvenile disposition used		
HAWAII			Prior juvenile disposition weighed
IDAHO			Prior juvenile disposition weighed
ILLINOIS			Prior juvenile disposition weighed
INDIANA			Prior juvenile disposition weighed
KANSAS	Prior juvenile disposition used		
LOUISIANA	Prior juvenile disposition used	Habitual offender law	
MARYLAND	Prior juvenile disposition used		
MICHIGAN	Prior juvenile disposition used		
MINNESOTA	Prior juvenile disposition used		
MONTANA			Prior juvenile disposition weighed
NEW JERSEY		Prior juvenile disposition affects	Prior juvenile disposition weighed
NORTH CAROLINA	Prior juvenile disposition used		
NORTH DAKOTA			
OHIO			Prior juvenile disposition weighed
OREGON	Prior juvenile disposition used		
PENNSYLVANIA	Prior juvenile disposition used		
RHODE ISLAND	Prior juvenile disposition used		
UTAH	Prior juvenile disposition used		
WASHINGTON	Prior juvenile disposition used		
WISCONSIN	Prior juvenile disposition used		

**EXHIBIT 5 — Juvenile Court Age Limits and Concurrent Criminal Court Jurisdiction by State, 1994**

State	Age: Juvenile Court Limit	Discretionary or Mandatory Direct File/Reverse Waiver
ALABAMA	18	Direct file required: age 16 and violent felony or drug trafficking
ALASKA	18	
ARIZONA	18	
ARKANSAS	18	Prosecutor discretion to file in either court; age 16 and felony
CALIFORNIA	18	
COLORADO	18	Prosecutor direct file authorization; 14 and class I felony or 16 and violent felony or felony + priors
CONNECTICUT	16	
DELAWARE	18	Direct file required in violent felony, reverse waiver hearing available
FLORIDA	18 (no limits earlier act)	Prosecutor direct file authorization; 14 and violent felony; 16–17, felony or misdemeanor + prior felony. Prosecutor direct file required: age 16, violent felony and prior violent felony; or 3 prior juvenile commitments
GEORGIA	17	Prosecutor direct file required if age 13 in violent felony cases; reverse waiver authorization. Remand for sentencing if lesser charge conviction
HAWAII	18 (19 for earlier acts)	
IDAHO	18	Prosecutor direct file required in violent felony, drug dealing/possession; age 14
ILLINOIS	17	Direct file required: age 15 and murder, rape, armed robbery or drug trafficking/school
INDIANA	18 (21 for earlier acts)	Direct file required: age 16 + violent felony, gang activity or weapons violation
IOWA	18	
KANSAS	18	Direct file required: age 16 + felony + one prior felony
KENTUCKY	18	
LOUISIANA	17	Direct file authorization/mandatory waiver hearing; age 15 and violent felony; 16 + lesser violent felony
MAINE	18	
MARYLAND	18	Direct file required in capital (age 14) and violent felony (16); reverse waiver
MASSACHUSETTS	17 (18 for earlier acts)	
MICHIGAN	17	Direct file authorization: age 15 + violent felony, carjacking, or drug dealing
MINNESOTA	18 (21 for earlier acts)	Direct file required, murder 1; FTA for juvenile court disposition hearing in felonies
MISSISSIPPI	18 (20); 17 for felonies	Direct file required in life and weapon cases, reverse waiver hearing available
MISSOURI	17	
MONTANA	18 (21 for earlier acts)	
NEBRASKA	18	Prosecutor direct file authorization if felony or misdemeanor if age 16; reverse waiver
<i>continued . . .</i>		

**EXHIBIT 5 — Juvenile Court Age Limits and Concurrent Criminal Court Jurisdiction by State, 1994**

State	Age: Juvenile Court Limit	Discretionary or Mandatory Direct File/Reverse Waiver
<i>continued . . .</i>		
NEVADA	18 (21 for earlier acts)	Direct file required for murder or attempted murder
NEW HAMPSHIRE	18 (19 for earlier acts)	
NEW JERSEY	18	
NEW MEXICO	18	Direct file required; age 16 and murder 1
NEW YORK	16	Direct file required if 13–15 years/designated felonies; reverse waiver
NORTH CAROLINA	16	
NORTH DAKOTA	18 (20 for earlier acts)	
OHIO	18 (no limit earlier acts)	
OKLAHOMA	18	Direct file required: violent felony, drug trafficking and age 15–17; age 13, murder 1. Direct file authorization, violent crime or drug dealing, or felony with 3 priors, age 15. Reverse waiver to youth offender proceeding in juvenile court
OREGON	18	Direct file required: violent felony and age 15
PENNSYLVANIA	18 (21 for earlier acts)	Direct file required in homicide; reverse waiver hearing available
RHODE ISLAND	18 (21 for earlier acts)	
SOUTH CAROLINA	17	
SOUTH DAKOTA	18 (21 for earlier acts)	
TENNESSEE	18	Direct file authorization; violent felonies
TEXAS	17 (18 for earlier acts)	
UTAH	18 (21 for earlier acts)	Prosecutor direct file authorization: age 16, violent felonies; youth corrections custody authorized; recall hearing in juvenile court for some direct file cases. Youth corrections custody authorized; recall hearing in juvenile court for some direct file cases
VERMONT	18	Direct file required; age 14 and violent felony; reverse hearing. Prosecutor direct file authorization; 16 in any, 10 in violent felonies; reverse waiver hearing. Lesser crime conviction, return to juvenile court for disposition
VIRGINIA	18	
WASHINGTON	18	Direct file required; age 16, 17 + violent felony
WEST VIRGINIA	18	
WISCONSIN	18	
WYOMING	18	Prosecutor direct file authorization; 17, in any crime case; age 14 and violent felony or felony + 2 priors; reverse waiver hearing

**EXHIBIT 6 — State Laws Providing for Waiver to Adult Court, 1994**

State	Age Limits	Crime Limits	Other
ALABAMA	14 or older	None	
ALASKA	None	None	
ARIZONA	None	None	
ARKANSAS	14 or older	Felony	
CALIFORNIA	16 or older	None	Waiver presumed; specific violent felonies
COLORADO	14 or older	Felony	
CONNECTICUT	14 or older	Felony	Mandatory transfer: age 14 and capital crime or A, B felony + prior
DELAWARE	16; 14 or older	None; violent crimes	
FLORIDA	14 or older; none, if life	Felony or serious misdemeanor	
GEORGIA	15 or older; 13, if life	None	Mandatory transfer, age 15, burglary charge + 3 priors, remand hearing
HAWAII	16 or older	Violent felony or 2 prior felonies	Mandatory transfer: age 16 and class A felony + prior class A or 2 priors
IDAHO	14 or older	None	
ILLINOIS	13 or older		Mandatory transfer age 15 and forcible felony + prior
INDIANA	16 or older; 14, if heinous	Specified felonies	Presumed waiver if age 10 + homicide; age 16 + class A, B felony or C homicide. Mandatory transfer if felony + prior + prosecutor ask
IOWA	14 or older	None	
KANSAS	16 or older; 14, if A felony	None	
KENTUCKY	16 or older; 14, if A/B felony	C or D felony + priors	
LOUISIANA	14	Specified violent crimes	
MAINE	None	A,B,C felony	
MARYLAND	15 or older; none, if life	None	
MASSACHUSETTS	14 or older	Violent or felony + prior	Waiver presumed in violent cases
MICHIGAN	15 or older	Felony	
MINNESOTA	14 or older	None	Waiver presumed, specified cases and age 16
MISSISSIPPI	13 or older	None	Remand hearing after transfer available
MISSOURI	14 or older	None	
MONTANA	16 or older; 12, if homicide/rape	Violent felony	
<i>continued . . .</i>			

**EXHIBIT 6 — State Laws Providing for Waiver to Adult Court, 1994**

State	Age Limits	Crime Limits	Other
<i>continued . . .</i>			
NEBRASKA	No waiver	No waiver	Prosecutor discretion file and reverse waiver
NEVADA	16 or older	Felony	
NEW HAMPSHIRE	None	Felony	
NEW JERSEY	14 or older	Violent crimes, etc.	Waiver mandatory: age 14 + violent felonies or criminal gang
NEW MEXICO	No waiver	No waiver	Adult sentencing available to juvenile court if age 15 or older, violent or felony + priors
NEW YORK	No waiver	No waiver	
NORTH CAROLINA	13 or older	Felony	Mandatory waiver in class A felony and age 13
NORTH DAKOTA	14 or older	None	
OHIO	15 or older	Felony	Mandatory waiver if murder + prior murder
OKLAHOMA	None	Felony	
OREGON	15 or older	Felony	
PENNSYLVANIA	14 or older	Felony	
RHODE ISLAND	16 or older None	Felony – life sentence charge	Mandatory waiver; age 17 + violent felony
SOUTH CAROLINA	16 or older; 14, violent + prior	Felony or misdemeanor	
SOUTH DAKOTA	None	Felony	
TENNESSEE	16 or older; none, if violent	None	Remand hearing after transfer
TEXAS	15 or older	Felony	
UTAH	14 or older	Felony	
VERMONT	10 or older	Violent crime	
VIRGINIA	14 or older	Felony	Minimal waiver and remand hearing if violent felony
WASHINGTON	17 or older; 15, if A felony	Violent felony	
WEST VIRGINIA	16 or older; none, if violent	Felony + priors	Mandatory waiver for violent crimes
WISCONSIN	16; 14 if violent felony	None	
WYOMING	13 or older	None	

**EXHIBIT 7 — State Expungement Laws by Type of Law and Eligibility Requirements, 1994**

State	Age Eligibility	Expunge or Seal	Other Conditions
ALABAMA	Under 23; 23	Sealing; expungement	Subsequent conviction nullifies sealing
ALASKA	18 or release from custody	Sealing	Mandated
ARIZONA	18 or 23	Expungement	
ARKANSAS	21	Expungement	Mandatory
CALIFORNIA	18	Sealing; expungement	Expunge 5 years after sealing
COLORADO	None	Sealing	No serious felony
CONNECTICUT	16	Expungement	
DELAWARE	None	Expungement	
FLORIDA	24	Expungement	Serious crimes sealed only
GEORGIA	None	Sealing	
HAWAII	None	Expungement	
IDAHO	18	Sealing	
ILLINOIS	None	Expungement	No murder 1
INDIANA	22	Sealing	Mandated unless later felony
IOWA	21	Sealing	Fingerprints expunged
KANSAS	None	Expungement	Specified crimes excluded
KENTUCKY	None	Expungement	
LOUISIANA	17	Expungement	Specified crimes excluded
MAINE	None	Sealing	
MARYLAND	None	Sealing	Mandatory
MASSACHUSETTS	None	Sealing	
MICHIGAN	24	Set aside	Not applicable to life crimes
MINNESOTA	23	Expungement	
MISSISSIPPI	20	Sealing	
<i>continued . . .</i>			

**EXHIBIT 7 — State Expungement Laws by Type of Law and Eligibility Requirements, 1994**

State	Age Eligibility	Expunge or Seal	Other Conditions
<i>continued . . .</i>			
MISSOURI	17	Sealing	
MONTANA	18	Sealing	
NEBRASKA	None	Expungement	
NEVADA	None	Sealing	Mandatory at age 24
NEW HAMPSHIRE	19	Sealing	Mandatory
NEW JERSEY	None	Sealing	
NEW MEXICO	None	Sealing	
NEW YORK	16	Expungement	Designated felonies excepted
NORTH CAROLINA	16	Expungement	
NORTH DAKOTA	16	Expungement	
OHIO	None	Sealing	
OKLAHOMA	None	Sealing	
OREGON	None	Expungement	
PENNSYLVANIA	None	Expungement	
RHODE ISLAND			
SOUTH CAROLINA	18	Expungement	Nonviolent offenses only
SOUTH DAKOTA	None	Sealing	
TENNESSEE	18	Expungement	
TEXAS	None	Sealing	
UTAH	None	Expungement	
VERMONT	None	Sealing	
VIRGINIA	19	Expungement	Mandatory at 29
WASHINGTON	None	Sealing	Subsequent offense negates sealing
WEST VIRGINIA	19	Sealing	Mandatory
WISCONSIN			
WYOMING	18	Expungement	



Notes

1. Federal Bureau of Investigation, *Crime in the United States 1991*, Table 38 (1992).
2. The full report of the research funded under this grant will discuss more fully the issues of record confidentiality, "second chance," and record dissemination.
3. State advance legislation reports for 1994 were available as of January 15, 1995, for 44 States. Arkansas, Montana, Nevada, North Dakota, Oregon, and Texas did not hold legislative sessions in 1994. However, Oregon enacted relevant laws pursuant to a referendum vote in November. Advance sheets were not available for the year's complete legislative session in several States, including New York.
4. Unpublished ILJ survey in 1994 of State criminal history repositories.
5. Two States, Georgia and Iowa, in 1994 repealed their laws forbidding central holding of juvenile records. In 1994, Florida also repealed its law prohibiting the establishment of a juvenile history record that previously applied to legislative authority for central repository holding of juvenile fingerprints for identification purposes.
6. Four other States have enacted laws that authorize central collection and dissemination of juvenile offenders' fingerprints, but not juvenile record histories.
7. Only one State's laws limit prosecutor access to juvenile records after charges have been filed. See *Wash. Rev. Code* § 13.50.050(9). In South Carolina, the legislative scheme distinguishing between violent juvenile offenders and others for purposes of fingerprinting authority extends to the

prosecutor access provisions; only the former records are available to the prosecutor.

8. Mississippi law makes public records of youths with two dispositions for felony-level acts or unlawful possession of a firearm. Illinois law authorizes public access to juvenile dispositions for homicide, sexual assault, or, if age 13 or older, use of a firearm in commission of a felony. Illinois is also a signatory to the Interstate Compact on Gang Information authorizing public access to records of juveniles with dispositions for gang-related offenses. Florida makes public arrest reports of youths charged with felony-level acts who have three or more misdemeanor dispositions.

9. Minnesota law enacted in 1994 calls for dispositions of "extended jurisdiction juveniles" who have committed crimes that call for prison sentences under the guidelines to be counted as equal to adult crimes.

10. A second implementation issue is that enactment of a law authorizing a particular action (e.g., establishment of a central record repository) does not, by itself, mean that that action has been accomplished. In fact, two States (Alaska and Hawaii) that have central record authorities have not provided funding for this purpose.

11. See National Conference of State Legislatures, *1994 State Legislative Survey: Children, Youth and Family Issues*, December 1994.

12. The statutory language, "all persons," in the laws of New Hampshire and West Virginia may also be interpreted to include juveniles among those who may be fingerprinted. If this is the case, there are no limits on which juveniles may be fingerprinted that is distinct from the limits on adult arrestees.

13. Other States with sentencing guidelines that do not use the juvenile history to calculate sentences are Delaware, Tennessee, and Virginia. In Tennessee, however, practitioners report that the juvenile record may be considered in determining the specific sentence to be imposed from the sentence length range within the guidelines grid block.

14. Other States that have presumptive sentencing laws, but that do not include a juvenile record as a factor in sentencing, are Arizona and Colorado.

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NCJ 155506

Neal Miller, Principal Associate at the Institute for Law and Justice, is working on a larger project examining how adult criminal courts use defendants' juvenile records, from which this Research in Brief was developed. When completed, the full report of this research will be available from the National Criminal Justice Reference Service (NCJRS). Write NCJRS, Box 6000, Rockville, MD 20849-6000; call 800-851-3420; or e-mail askncjrs@ncjrs.aspensys.com.



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**NCJ 150855** The Kansas City Gun Experiment, NIJ Research in Brief.

**FS 000072** The Kansas City Gun Experiment, NIJ Update.

**NCJ 143498** Murder in Families, BJS Special Report.

**NCJ 148459** Partnerships To Prevent Youth Violence, BJA Bulletin.

**FS 000069** Preventing Interpersonal Violence Among Youth, NIJ Update.

**NCJ 150484** Preventing Interpersonal Violence Among Youth, An Introduction to School, Community, and Mass Media Strategies, NIJ Issues and Practices.

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