

Chapter 10: Juvenile Court Records

[10.1] Overview

If a community sees youthful indiscretions as normal adolescent behavior and the juvenile court system as one of the community's methods of teaching, rehabilitating, and developing the youth of the community to be the leaders of tomorrow, then it is extremely important to review the impact a juvenile record has on the young people of the community, when they become adults. Will the record need to be reported on college applications, job applications, and rental applications, and be considered for enhanced sentencing when the child is an adult? How will that impact young Native adults?

Many states have moved from completely confidential records with automatic sealing and/or destruction of records upon completion of any probation once the child reaches adulthood to public records and sealing or expungement of some or all records, only on motion of the individual with proof of no criminal activity and completion of any juvenile court sentence, probation, or restitution. Some states will consider a juvenile's offenses under "three strikes laws," those laws that mandate harsher sentences on repeat offenders.

When considering juvenile records, one must consider both the records kept by the court and the records kept by law enforcement. A tribal nation should review its own customs and norms to determine who within the tribe and family of the juvenile should be involved in a juvenile case and have access to records.

It may be helpful to review [Section 2.5 Special Issues: D. Expungement and Destruction of Juvenile Records](#).

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10.2] Model Code Examples

(1989) BIA Tribal Juvenile Justice Code

1-20 JUVENILE RECORDS

1-20 A. Juvenile Court Records

A record of all hearings under this code shall be made and preserved. All juvenile court records shall be confidential and shall not be open to inspection to any but the following:

1. the child;
2. the child's parent, guardian or custodian;
3. the child's counsel;
4. the juvenile court personnel directly involved in the handling of the case; or
5. any other person by order of the court, having a legitimate interest in the particular case or the work of the court.

1-20 B. Law Enforcement Records

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement records shall be confidential and shall not be open to inspection to any but the following:

1. the child;
2. the child's parent, guardian or custodian;
3. the child's counsel;
4. law enforcement personnel directly involved in the handling of the case;
5. the juvenile court personnel directly involved in the handling of the case; or
6. any other person by order of the court, having a legitimate interest in the particular case or the work of the court.

1-20 C. Destruction of Records

When a child who has been the subject of any juvenile court proceeding reaches his or her eighteenth (18th) birthday, or the disposition order is terminated if the disposition order extends beyond his or her eighteenth (18th) birthday, the court shall order the clerk of the

court to destroy both the law enforcement records and the juvenile court records. The clerk of the court shall respond to all records inquiries as if no records had ever existed.

University of Washington
Center of Indigenous Research and Justice
[Model Tribal Juvenile Code](#)

CHAPTER 1 GENERAL PROVISIONS

1.10 RIGHTS OF PARTIES

1.10.120 Confidentiality

- (a) All Juvenile Court hearings and informal conferences held pursuant to this article shall be closed to the public
- (b) Only the Juvenile Court judges, juvenile case coordinators, juvenile presenting officers, counsel, law enforcement officers, witnesses, the parties, service providers and such family and friends of the child to whose presence the parties have no reasonable objection, may be present.
- (c) All records concerning a child are open to inspection only by his or her parent, custodian or guardian, their counsel or other legal representative, or other parties to related proceedings before the court.
- (d) With the consent of the court, records may be inspected by the child.
- (e) The name, picture, place of residence, or any other identifying information concerning any child, parent, custodian or guardian, or person appearing as a witness in any proceeding held pursuant to this article, shall not be published in any newspaper, newsletter, electronic publication, internet site, nor be given for any other publicity.
- (f) Unless otherwise provided in this article, and except as is necessary to conduct an investigation or properly adjudicate the matter, no person shall disclose any identifying information concerning a matter conducted pursuant to this title. The Juvenile Court judge shall so warn those in attendance at each proceeding held pursuant to this title.
- (g) Any person who violates any provision of this section maybe subject to a civil contempt order by the Juvenile Court.

1.05 RULES OF PROCEDURE

1.13.230 Use of Disposition and Evidence in Other Proceedings

The disposition of a child and evidence adduced in a hearing in the Juvenile Court may not be used against such child in any proceeding in any court other than for a proceeding for delinquency or a child in need of services, whether before or after reaching majority, except;

- (a) in the establishment of conditions of bail, plea negotiations, and sentencing in felony offenses; and
- (b) in such excepted cases, such records of dispositions and evidence shall be available to prosecutors, judges and the accused and may be used in the same manner as adult records.

[10.3] Tribal Code Examples

Sault Ste. Marie Tribal Code

CHAPTER 36: JUVENILE CODE

SUBCHAPTER X: ADDITIONAL MATTERS

36.1001 Juvenile Division Records.

A record of all hearings under this Chapter shall be made and preserved. All Juvenile Division records shall be confidential and shall not be open to inspection to any but the following:

- (1) The child.
- (2) The child's parent, guardian, or custodian.
- (3) The child's counsel.
- (4) The Juvenile Division personnel directly involved in the handling of the case.
- (5) Any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court.
- (6) The prosecutor.

36.1002 Law Enforcement Records.

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement records shall be confidential and shall not be open to inspection to any but the following:

- (1) The child.
- (2) The child's parent, guardian or custodian.
- (3) The child's counsel.
- (4) Law enforcement personnel directly involved in the handling of the case.

- (5) The Juvenile Division personnel directly involved in the handling of the case.
- (6) Any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court.
- (7) The prosecutor.

36.1003 Destruction of Records.

When a child who has been the subject of any Juvenile Division proceeding reaches his eighteenth (18th) birthday, the Court shall order the clerk of the Court to destroy both the law enforcement records and the Juvenile Division records. The clerk of the Court shall respond to all record inquiries as if no records had ever existed.

The Cherokee Code of the Eastern Band of the Cherokee Nation

Chapter 7A - JUVENILE CODE

ARTICLE I. - IN GENERAL

Sec. 7A-61.—Confidentiality of records.

- (a) The Clerk of Court shall maintain a complete record of all juvenile cases filed in his office to be known as the juvenile record, which shall be withheld from public inspection and may be examined only by order of the Judge, except that the juvenile, his parent, guardian, custodian or other authorized representative of the juvenile shall have a right to examine the juvenile's record. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recordings of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the Judge.
- (b) The court counselor shall maintain a record of the cases of juveniles under supervision by court counselors which shall include family background informational reports of social, medical, psychiatric, or psychological information concerning a juvenile; interviews with his family; or other information which the Judge finds should be protected from public inspection in the best interest of the juvenile.
- (c) The records maintained pursuant to subsection (b) may be examined only by order of the Judge except that the juvenile shall have the right to examine them.
- (d) Law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults except in proceedings when jurisdiction of a juvenile is transferred to Tribal court. Law enforcement records and files concerning juveniles shall

be open only to the inspection of the prosecutor, court counselors, the juvenile, his parent, guardian, or custodian.

- (e) All records and files maintained by the Division of Youth Services shall be withheld from public inspection and shall be open only to the inspection of the juvenile, professionals in that agency who are directly involved in the juvenile's case, and court counselors. The Judge authorizing commitment of a juvenile shall have the right to inspect and order the release of records maintained by the Division of Youth Services on that juvenile.
- (f) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the parents.
- (g) Nothing in the section shall preclude the necessary sharing of information among authorized agencies.

Sec. 7A-62.—Expunction of records of juveniles adjudicated delinquent and undisciplined.

- (a) Any person who has attained the age of 18 years may file a petition in the court where he was adjudicated undisciplined for expunction of all records of that adjudication.
- (b) Any person who has attained the age of 18 years may file a petition in the court where he was adjudicated delinquent for expunction of all records. Such petition shall be filed no sooner than two years after termination of the court's jurisdiction over the petitioner. The petition may be granted in the court's discretion provided the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the Tribe or any state.
- (c) The petition shall contain, but not be limited to, the following:
 - (1) An affidavit by the petitioner that he has been of good behavior since the adjudication, that he has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the Tribe or any state.
 - (2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
 - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was adjudicated delinquent or undisciplined. The petition shall be

served upon the prosecutor. The prosecutor shall have ten days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing on the petition.

- (d) If the Judge, after hearing, finds that the petitioner satisfies the conditions set out in subsections (a) and (b), he shall order and direct the Clerk of Court and all law enforcement agencies to expunge their records of the adjudication including all references to arrests, complaints, referrals, petitions, and orders.
- (e) The Clerk of the Court shall forward a certified copy of the order to the Chief of Police or other law enforcement agency.
- (f) Records of a juvenile adjudicated delinquent or undisciplined being maintained by a court counselor/intake counselor shall be retained or disposed of by the court.
- (g) Records of juveniles adjudicated delinquent or undisciplined being maintained by personnel at a residential facility operated by the Division of Youth Services shall be retained or disposed of as provided by this section.

Sec. 7A-63.—Effect of expunction.

- (a) Whenever a juvenile's record is expunged, with respect to the matter in which the record was expunged, the juvenile who is the subject of the record and his parent may inform any person or organization including employers, banks, credit companies, insurance companies, and schools that he was not arrested, he did not appear before the court and he was not adjudicated delinquent or undisciplined.
- (b) Notwithstanding subsection (a), in any criminal or delinquency case if the juvenile is the defendant and chooses to testify or if he is not the defendant but is called as a witness, the juvenile may be ordered to testify with respect to the fact that he was adjudicated delinquent.

Sec. 7A-64.—Notice of expunction.

Upon expunction of a juvenile's record the Clerk of the Court shall send a written notice to the juvenile at his last known address informing him that the record has been expunged and with respect to the matter involved, the juvenile may inform any person that he has no record. The notice shall inform the juvenile further that if the matter involved is a delinquency record, the juvenile may inform any person that he was not arrested or adjudicated delinquent except that upon testifying in a criminal or delinquency proceeding, he may be required by a Judge to disclose that he was adjudicated delinquent.

WHITE MOUNTAIN APACHE JUVENILE CODE

CHAPTER SEVEN DISPOSITION

(Section 7. 1 through 7.12 Omitted)

SECTION 7.13 RECORDS; PUBLICATION PROHIBITED

- A. The records of proceedings of the Juvenile Court shall be kept in a docket separate from other proceedings, and shall not be opened for inspection or copied by anyone other than the parties to the proceedings, the representatives of the court, and youth counselors having an interest therein, except upon order of the court.
- B. No part of the record shall be published by a newspaper or other agency disseminating news or information nor shall a newspaper or agency publish the name of a child charged in the Juvenile Court with being delinquent, in need of supervision or neglected.

SECTION 7.14 DESTRUCTION OF RECORDS

When a person who has been before the Juvenile Court in a delinquency or in need of supervision proceeding attains the age of eighteen, the court shall order the clerk to destroy all records of such proceedings involving such person.

[10.4] Tribal Code Commentary

The Sault Ste. Marie Code keeps juvenile records confidential, accessible only by the prosecutor, juvenile, the child's parent/guardian, the child's counsel, and those law enforcement and "juvenile court personnel actively involved in the case." Both law enforcement and juvenile court records are automatically destroyed at the child's eighteenth birthday or at the termination of the juvenile disposition order. Any inquiry into a child's records should be responded to as if no records exist. Obviously the Sault Ste. Marie Nation believes that the retention of records may lead to job discrimination, denial of educational opportunities, and even denial of military service. They allow a juvenile to start fresh when they reach eighteen with no criminal record.

The Eastern Band of Cherokee also keeps juvenile records confidential, only allowing the juvenile, parents, guardians or custodians, and personnel involved in the case to have access to records. However, they do not automatically destroy records when the juvenile reaches the age of eighteen. The Eastern Band of Cherokee require a juvenile to file a petition requesting expunction of the juvenile record. A juvenile who has been adjudged undisciplined may file the petition upon reaching the age of eighteen. The juvenile adjudged delinquent may file a petition for expunction only after waiting two years after the juvenile court had jurisdiction over the juvenile. In either case the juvenile must file an affidavit stating that he has had no further juvenile or criminal convictions, along with affidavits substantiating good character and reputation of the petition by two persons unrelated to the petitioner. The petition is served on the prosecutor, who has ten days to voice any objections to expunction of the records. The judge orders expungement of the records (law enforcement and

court) if the offender has not been adjudicated delinquent or convicted of a criminal act in the state or tribe. When the records are expunged, the offender can legally report that he was not arrested or adjudicated delinquent or undisciplined.

The White Mountain Apache Code also ensures confidentiality except for those involved in the proceeding. It instructs the clerk of court to destroy all records of juvenile proceedings when a juvenile reaches the age of eighteen.

[10.5] Exercises

The following exercises are meant to guide you in developing the handling of records section of the tribal juvenile code.

- Find and examine your juvenile code provisions governing the confidentiality and destruction of juvenile and law enforcement records—what are the requirements?
- Make a list of negative consequences for youth given existing law.
- What law changes, if any, would you propose to protect youth?

Read and Discuss*

Should tribal juvenile court proceedings and/or records be opened up to a certain extent (e.g., to law enforcement officials, service providers, and/or victims of crime) or to the public?

The National Association of Counsel for Children’s Board of Directors considered the following pros and cons of confidentiality in juvenile delinquency cases . . .

Pro-Confidentiality of Proceedings/Records

- Opening would impede rehabilitation of juveniles by foreclosing future education/work options
- Opening would deter juveniles from admitting delinquency (a key to the treatment process)
- Opening would cause public stigmatization of the child and family
- Insensitivity in the media about publishing the names of children and families
- Renown in the community (from publicizing the name) could actually reward a child

Pro-Opening of Proceedings/Records

- Need to punish children, including shame of public knowledge of delinquency
- Need to protect community, allowing them to know who the “dangerous juveniles” are

- Need to ensure that courts and law enforcement officials are basing decisions on complete information
- Lack of system accountability due to confidentiality, allowing system problems to go unaddressed
- Lack of community standards as to what is enough delinquency to warrant incarceration
- Public right of access to government functions, and lack of confidence in “secret” system

The NACC Position

- Neither absolute confidentiality nor total opening of juvenile court records and proceedings would be appropriate
- The presumption of confidentiality should remain
- Exception that judges should be allowed, on a case-by-case basis to open up proceedings and records to members of the media, researchers, and others with a bona fide interest in reporting on the juvenile court system and related systems to the public
 - After finding there would be no harm to the child
 - After an opportunity to be heard by the child’s counsel
- Conditioned on keeping the identity of reporters of neglect/abuse, and names/identifying and contact information of children and families not be made public
- Conditioned on judge being allowed to exclude media and observers from child victim/witness testimony and the choice to close all or part of the proceeding
- Identifying records of adjudication of juvenile delinquency should be made available to juvenile and criminal courts and law enforcement officials to ensure appropriate decision making

*Taken from the Policy Statement on the Confidentiality of Juvenile Court Proceedings and Records, National Association of Counsel for Children, April 25, 1998. Go to http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/policy/policy_statement_-_confident.pdf

What about expanding victim participation in the juvenile justice system?

Recent state enactments indicate that expanding victim participation in the juvenile justice system is an important policy issue

- Opening the courtroom to victims during juvenile hearings

- Informing victims of adjudicatory proceedings
- Requiring the judge to consider the interests of the victim when deciding to close juvenile proceedings
- Allowing the victims to be present and heard at predisposition or disposition proceedings

What about facilitating agency collaboration and information sharing among agencies that serve children?

Recent state action has recognized that many agencies that serve children may be better equipped to do so if provided with comprehensive access to a youth's records

- Recent policy initiatives expand access to juvenile records to youth corrections personnel, to courts, and to other agencies, and to school officials
- Some states, in response to a growing number of crimes committed by repeat youth offenders have created a collaborative, systemic approach to information sharing, e.g. the Serious Habitual Offender Comprehensive Action Program (SHOCAP)
 - Facilitates agency collaboration and information sharing to provide sanctions, treatment, and/or interventions

*Taken from "Juvenile Justice Reform Initiatives in the States (1994–1996)." Go to http://www.ojjdp.gov/pubs/reform/ch2_i.html