

Juvenile Justice Update™

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First Grader Who Shot Teacher in Virginia Is Among the Youngest School Shooters in US History

By David Riedman

Barely a week into the new year, a 6-year-old boy shot his teacher at Richneck Elementary School in Newport News, Virginia, becoming one of the youngest school shooters in the nation's history. While details of the case are still emerging, his teacher remains hospitalized with serious injuries. David Riedman, creator of the K-12 School Shooting Database (<https://k12ssdb.org>), discusses the relative rarity of school shooters under age 10 and the likely aftermath of the event.

How Rare Is It To Have a School Shooter This Young?

This is the 17th shooting involving a student under the age of 10 at a school since 1970—the first year for which my database keeps track. Most of these shootings were not intentional. But in 1975, a 9-year-old student at the Pitcher School in Detroit was in a fight with a 13-year-old, left campus, got a rifle from his house and came back to the school and shot the student in the head, killing him.

See *SHOOTER*, page 13

Record Sealing: Its Importance For Rehabilitation

By Judge Leonard Edwards (ret.)

"A female client in her 30s called a month ago. She was given 654.2 for a misdo battery on school grounds when she was 15 or 16. No other crimes in her life. She completed the 654.2 with no issues and the case was dismissed. She now has a master's degree in criminology and applied for her dream job. Case came up as an adult conviction. The code section even came up."

"Guy called me who is 53. He had a residential burglary at 17. He has purchased guns for hunting over the years and frequently hunts with his adult children. He went to purchase a new rifle as he had done many times before. This time, however, he was denied because of the 459. He never had his record sealed but at 53 it should have been destroyed anyway."¹

"When I was 17 my mother had a stroke in Korea, where she was in the military. I was staying with her. I'm the only family member she has, but they wouldn't place me with her as her guardian because of my record. So right now she's in a nursing home."²

¹ Two persons informing their attorney how their juvenile records impacted their lives. Under California law juvenile justice records are destroyed when the person reaches the age of 38. See Welfare and Institutions Code section 826(a).

² A youth's statement found in "Juvenile Records Undermine Youth Success," Juvenile Law Center, Philadelphia, 2018.

Introduction

The juvenile justice system was created to offer youths an opportunity to rehabilitate so they could become productive members of society. Those who created the juvenile court realized that juveniles are developing beings and should be treated differently from adults.³ While one purpose of juvenile law is to hold law violators accountable for their actions, the primary goal of the juvenile justice system is rehabilitation.⁴ As the California Attorney General's office stated:

This Section has been called a clear statement of the legislative policy to grant the errant juvenile a clean slate if he grows into a law-abiding adult.⁵

Our legal system understands that children make mistakes in their youth that they will not make in adult life. In fact, studies indicate that youth who violate the law will likely refrain from delinquent

³ Edwards, L., "The Juvenile Court and the Role of the Juvenile Court Judge," *Juvenile and Family Court Journal*, NCJFCJ, Reno, NV, 1992, Vol. 43, No. 2, at pp 3-4.

⁴ For example, see Welfare and Institutions Code sections 202(b) and 781.

⁵ 40 Op. Cal. Attorney Gen. 50, 52 (1962)

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behavior after contact with the juvenile justice system.⁶

After a youth has had contact with the juvenile justice system, it is difficult to start adult life with a clean slate. The principal problem is records of that contact will follow him or her indefinitely, with potential for harmful consequences well into adulthood. The records are held by the juvenile court, justice agencies,

an adult, and propose recommendations that will minimize the impact of these records on adults. It will argue that full rehabilitation is only possible when a person's juvenile record is sealed and expunged or destroyed.

Some Definitions

Most state laws declare that juvenile records are confidential. **Confidentiality** means that records cannot be accessed by the public, but there are exceptions for those who are permitted by law, such as

Those stops may include situations that go no further than a warning and include juveniles who run away from home and those who are truant from school. Juvenile probation departments will maintain records should law enforcement refer their department a case, and prosecutors will maintain records that reach their offices from probation or directly from law enforcement. The juvenile courts will maintain records of cases that are filed in their court. Schools often keep records of campus incidents that involve both criminal behavior and behavior breaking school regulations. Many businesses keep records of criminal behavior observed on their premises.

Even though these records are usually confidential, they may be available to law enforcement agencies, educational institutions, employers, the armed forces, businesses, and other organizations that are pathways to a productive life. These records are of interest to employers, landlords, and the military, among others. For example, the National Juvenile Defender Center reports that 94% of employers conduct some form of background check on applicants and 90% of landlords run checks on potential tenants.⁸ These records can be used to justify denying a young person educational or occupational opportunities for which he or she is otherwise qualified. The existence of a

Most states have inadequate procedures for sealing or expunging juvenile records.

educational institutions, and businesses where a crime may have been committed. These records may lead others to deny the young person access to opportunities.

The impact of juvenile records is an issue that has been neglected in the United States. Most states have inadequate procedures for sealing or expunging those records. The result is that the records may have a negative impact on an adult's efforts to live a productive life.

This paper will clarify definitions regarding records and record sealing, discuss the negative impact the existence of juvenile justice records may have on

justice agencies. Juvenile arrest records, for example, are confidential except for those persons and agencies in the juvenile and criminal justice systems who are administering the law. **Record sealing** means that the records are stored in such a way that access can occur only with a court order. **Record expungement** means that the records are destroyed and not available to anyone.⁷

Juvenile Records

Records of juveniles having contact with the juvenile justice system are created every day. Police departments stop juveniles for suspicious or criminal behavior and keep records of those contacts.

⁶ https://ncjj.org/news/22-08-12/NCJJ_bulletin_describes_the_official_juvenile_court_careers_of_more_than_160,000_youth_born_in_2000.aspx

⁷ *Op. cit.* footnote 6 at p. 52.

⁸ Teigen, A., "The Sometimes Lifelong Consequences of a Juvenile Record," *NCSL*, June 7, 2021.

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record by itself may be enough to deny an adult opportunities for advancement. People who become aware of a juvenile record may select another applicant who does not have a record.⁹ That is why the sealing and destruction of juvenile records is so important for the rehabilitative process.

Record Sealing and Expungement

Many states have procedures that make it possible for a youth to seal his or her record, but these procedures are often the same as for adults.¹⁰ Usually, the legal process involves the person applying to the court for an order to seal the juvenile record. This is an ineffective process for several reasons. First, most people do not take advantage of the sealing process in their state. They may not be aware of the sealing process, believe that their contact with the juvenile justice system did not create a record, or believe that whatever record was created will have no impact on their lives. Second, they do not act because the process is time consuming and can be expensive as some states require the applicant to hire an attorney, and most attorneys will charge the applicant for the work they do in court.

A study in California exemplifies the way that such a system works. In California, it used to be that an adult with a juvenile record had to petition the court to have his or her record sealed. The petition would be assigned to a probation officer who would investigate the applicant's records and then write a

report containing a recommendation for the court's consideration. There would be a court hearing at which the prosecuting attorney would appear and possibly the victim of the offense. Should the court grant the petition, the clerk of the court would send the court's order sealing the records to all entities holding the applicant's records. The court order informed each of them that the minor's records have been sealed by the juvenile court and that the agency or other record holder should destroy the records it holds regarding the named person. Usually the recipients of the court order would include law enforcement, probation, juvenile detention facilities, schools, and other agencies the applicant had contact with. The recipients might include schools that the applicant attended, businesses where the crime took place, or correctional institutions where the applicant may have been confined. Records collected by the Department of Motor Vehicles are not included in the record sealing process. The order would also state that applicants could legally respond to questions about their background that they had no juvenile record.¹¹

The old law did not work well. Very few who had contact with law enforcement or the juvenile court system took advantage of the law. Many assumed that there was no record, that it was confidential, or that the record would be sealed automatically.¹² This was particularly true when there were no court proceedings, and the contact was resolved in the field or with informal services.

Yet the records remained, and they were available to many people and agencies. These records have had a negative impact on adults seeking employment, attempting to join the armed forces, accessing higher education, applying for housing or student loans, obtaining licensing from certain programs such as nursing, and other efforts to improve their lives. Study after study demonstrate the detrimental effect juvenile

records have had on adults.¹³ Moreover, even though the records may have been labeled "confidential," some people will have access to them. In fact, there are companies and websites whose business is to collect criminal and juvenile records and make them available to employers, landlords, or others.¹⁴

The largely unfettered access to juvenile records has been acknowledged for decades by the courts and commentators.

The United States Supreme Court stated in 1967 that

"[I]t is frequently said that juveniles are protected by the process from disclosure of their deviational behavior.... This claim of secrecy, however, is more rhetoric than reality."¹⁵

As one California appellate court justice commented:

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

⁹ Schwartz, R.D. & Skolnick, J.H., "Two Studies in Legal Stigma," 10 *Department of Canadian Commission on Corrections*; reprinted in *The Presidential Commission on Law Enforcement and Administration of Justice: The Challenge of Crime in a Free Society* at pp 74-77.

¹⁰ Melissa Sickmund, the Director of the National Center for Juvenile Justice wrote the author recently: "We did some review of statutes for our presentation at the March JJ conference in Pittsburgh and I'll say that many statutes don't offer much to juveniles that's different from adults. The processes to request record protections are often very convoluted, requiring the youth to contact any agency that may have their record to determine if they have a record with that agency so the court knows who to notify in the event an expungement sealing decision is made. The rules are a deterrent to making a request." A copy of this email is available from the author.

¹¹ 40 Op. Cal. Attorney Gen 50-52 (1962); California Welfare & Institutions Code §786.5 (c); Edwards, L., Sagatun, I.J. "A Study of Juvenile Record Sealing Practices in California," 4 *Pepperdine Law Review* 543 (1976-1977)

¹² *Id.* As one probation officer informed the author: "Most persons who have probation contact either are not advised, forget, or don't care about their 781 rights, hence only a small fraction of records are sealed."

¹³ Nellis, A., "Addressing the Collateral Consequences of Convictions for Young Offenders," *The Champion*, NACDL, July/August 2011 at pp 20-27; "Failed Policies, Forfeited Futures: Revisiting A National Scorecard on Juvenile Records (2020)," *Juvenile Law Center*, July 2020, Philadelphia; Coleman, A., "Expunging Juvenile Records: Misconceptions, Collateral Consequences, and Emerging Practices," *Juvenile Justice Bulletin*, U.S. DOJ, Office of Juvenile Justice and Delinquency Prevention, December 2020; Funk, T.M. "A Mere Youthful Indiscretion? Reexamining the Policy of Expunging Juvenile Delinquency Records," *University of Michigan Journal of Law Reform*, Vol. 29, Issue 4, Summer 1996. Teigen, A., "The Sometimes Lifelong Consequences of a Juvenile Record," NCSL, 2021.

¹⁴ See Checkr.com; www.intelius.com; top4backgroundchecks.com; instantcheckmte.com; CheckPeople; Truthfinder.

¹⁵ *In re Gault*, 387 U.S. 1 (1967).

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country or obtain a position of honor and trust and he is immediately confronted with his juvenile record.”¹⁶

A related problem involves answering questions from potential employers, schools, the armed forces, and similar organizations. Even if a record is sealed, those with juvenile records may reveal those records when asked by someone either personally or on a written application. Many persons will respond that they do have a juvenile record, and that statement only starts the questioning.¹⁷ Many young persons will answer “truthfully” when asked about a juvenile record, even when that record has been sealed and the law specifically permits them to stay silent.

Legislative Efforts to Correct the System

Over the past decade the California legislature has passed several bills addressing record sealing.¹⁸ These laws have resulted in most records being sealed automatically when a youth reaches age 18.¹⁹ No petition to seal records is necessary, and the youth is informed that he or she can respond to questions about having a juvenile record that he/she does not have one. California has gone a step further. An additional statute makes it illegal for a prospective employer to ask an applicants if they have a juvenile record.²⁰ These innovative measures have resulted in California being rated the best state for protecting adults from having juvenile court records made public.²¹

The statutory changes have gone further. Recognizing that cases involving law violations that do not reach the juvenile court create records that the court is

likely not aware of, the legislature added Welfare and Institutions Code section 786.5.²² That section requires the probation department to take responsibility for sealing many such records. The statute states that if a minor substantially complies with the terms of a diversionary program, the probation department shall seal that record and inform law enforcement and any public or private agency operating a diversionary program to seal their records. The statute mandates that law enforcement and those agencies holding records seal those records and report back to the probation department of their compliance within 60 days of receiving that notification. Thereafter

court decision was reversed on appeal. The appellate court ruled that the restitution order could be converted into a civil judgment, and the record sealed. In the case of *In re G.F.* (2016) 12 Cal. App. 5th 1, the minor was granted informal supervision under Welfare and Institutions code section 654. He was successful and asked for record sealing. It was denied because section 786 does not apply to section 654. The trial court decision was reversed on appeal. The appellate court wrote that the law cannot deprive minors of record sealing relief by technicalities. It stated that the purpose of section 786 is to provide a streamlined sealing process after successful completion of probation. In the case

Many adults with a minor juvenile encounter in their past—no court proceedings, resolved in the field—assume that there is no record, or that it was confidential and sealed automatically, That’s generally not true.

the probation department shall notify the minor in writing that his record has been sealed and that the arrest or offense giving rise to the arrest and referral and participation in a diversion or supervision program is deemed not to have occurred. The individual may respond accordingly to an inquiry, application, or process in which disclosure of this information is requested or sought.

California appellate law reinforces the intent of these statutes. Examples abound. In the case of *In re Joshua R.* (2017) 7 Cal. App. 5th 864, the minor successfully completed probation, but the court refused to seal his record because under California Penal Code section 29820 the minor could not possess a gun until age 30, and an open record was deemed necessary to enforce this prohibition. The decision was reversed on appeal and the record ordered sealed per Welfare and Institutions Code section 786. The appellate court noted that the Firearm Form restrictions remain until the minor reaches thirty. In the case of *In re J.F.* (2016) 3 Cal. App. 5th 521, the minor had successfully completed probation, but had not paid restitution at age 22. The trial court denied record sealing. The trial

of *In re S.V.* (2017) 13 Cal. App. 5th 1174, the juvenile court sealed the minor’s record. A criminal defendant filed a request for disclosure of the record. The juvenile judge ordered a redacted portion to be released. The minor filed a Petition for Mandate which was granted. The appellate court ruled that there is no exception permitting discovery of these sealed records. The sealed proceedings are deemed not to have occurred. It further noted that the juvenile court should not even have inspected the sealed records.

These cases demonstrate how seriously the California appellate courts take the new record sealing statutes. In the first two of these cases, the appellate courts found a way to seal the records and still have the restrictions on gun possession and the restitution order remain in force. In those two cases the legislature followed up with statutes supporting the actions of the appellate court.²³

Exceptions to Sealing and Expungement

The record sealing process is very complex. As a result, there are a few

¹⁶ *In re Contreras*, 109 Cal. App. 2d 787, 789 (1952) cited in *People v. Dotson*, 46 Cal. 2d 891, 899 (1956)

¹⁷ Andre Coleman *op.cit.* footnote 7 at pp 5-9 discusses the collateral consequences of juvenile records including accessing educational services, obtaining employment, serving in the military, and finding and maintaining housing.

¹⁸ California Welfare and Institutions Code sections 781, 786(a), 786.5, 827, 827.9

¹⁹ For example, see Welfare and Institutions Code sections 786 & 827.95.

²⁰ California Labor Code Section 432.7(a)(2): This law is similar to legislation in North Carolina – N.C. Gen. Stat. Ann. § 15A-153(c).

²¹ “Failed Policies, Forfeited Futures: Revisiting a National Scorecard on Juvenile Records (2020),” Juvenile Law Center, Philadelphia, 2020.

²² California Welfare and Institutions Code section 786.5, West Publishing, 2022.

²³ See California Welfare and Institutions Code Section 786(g)(1)(J).

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exceptions to automatic sealing of juvenile records. The law permits opening a sealed record in a defamation case.²⁴ If the crime is a serious felony, the record will not be sealed automatically, but the young adult can apply to the court for a court order sealing for that record. Such an application would be heard by the juvenile court judge with other parties including the prosecuting attorney notified for the hearing.

There are additional exceptions regarding access to confidential juvenile records. For example, if there is a pending family law or probate case involving the person or his or her family, the records may be accessed and used, but only in the context of the family law or probate case.²⁵ Records relating to an Indian child may be transferred to the tribal court so long as the tribe agrees to maintain the documentation confidential consistent with state and federal law.²⁶ If the minor commits a serious or violent offense, the record relating to that offense will not be automatically sealed and may be distributed to law enforcement, but not to others.²⁷ The prosecutor also has access to sealed records in order to meet his or her obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.²⁸ Thereafter, the prosecutor must destroy those records. One problem remains: federal law enforcement agencies will not recognize a state court order, so there is no way to compel them to maintain juvenile records or permit access from others.²⁹

Implementation

One result of these legislative initiatives in California has been the attention to record sealing by juvenile court judges and the attorneys representing youths appearing before the court. Juvenile judges and attorneys talk to juveniles about how their records will be sealed

and what that means to their future. Many courts have developed informational documents that they give to youths as their cases are concluded. The information explains the law and what they can say in reply in situations where they are applying for a position, permit or license, dwelling, educational opportunity, or to a potential employer.³⁰

Oversight of the Record Sealing Process

Two difficulties remain: first, what oversight exists of the entire record sealing process, and how does a person know that his or her record was actually sealed, especially when the incident never reached the juvenile court? Fortunately, Welfare and Institutions Code section 786.5 addresses that situation. However, that section does not address the records created by law enforcement that do not reach the probation department.

What about the juvenile who was stopped by the police and given a warning? Or the runaway who was detained, but ultimately returned home? Or who stole something from a store and the store created a report that was forwarded to law enforcement but went no further? How does that person know whether the records created by a law enforcement agency or a business were sealed or expunged? In fact, there is no oversight of some "low visibility" situations when records are created but never reach the juvenile court. Yet these are records that may have an impact on that person's future. Oversight of record storage and destruction is necessary.

Second, we have discovered that some agencies do not seal the records in a timely manner. (In California it has primarily been the California Department of Justice that has failed to do so.) We learned that in one small county hundreds of cases were pending sealing despite receiving a court order, many for over a year. Further investigation revealed a similar pattern throughout the state.³¹ We also have reports of other law enforcement

agencies that are delaying the sealing after receiving a court order. One agency admitted that it was not a high priority given its other responsibilities. We would not have known this until a juvenile court clerk in that small county complained to the Presiding Juvenile Court Judge who then contacted the author.

There is no official oversight of the record sealing process in California (nor anywhere else). One approach may be to educate juvenile court clerks about their responsibility to contact record holders and remind them of the court order sealing the juvenile records of the youths the court has ruled on. If the agency does not respond in a timely fashion, the clerk should contact the presiding judge of the juvenile court.³² Another approach would be to create an ombudsperson who would monitor the record sealing process. Some oversight should be created. Some agencies are reluctant to seal records. In the legislative process enacting the changes mentioned earlier, there was strong opposition from law enforcement representatives and district attorneys' offices. They argue that effective law enforcement is enhanced by possession of juvenile records.

Summary

The entire juvenile justice system is built on a philosophy of rehabilitation and a second chance. For the system to work as intended, removing the overhanging history of a young person's offense is essential. But the old system of putting the burden on the youth to petition the court for an order sealing their juvenile record did not work. Persons with a juvenile record did not take advantage of the law, and their records remained open to the public. New legislation in California automatically seals juvenile records except for serious felonies; those records

global travel and licensing due to their record not being sealing.

It has been almost a year since I have received a sealing from DOJ and over two years since I have received them regularly.

Any advice on how to proceed would be appreciated.

Contact the author for additional details regarding the experiences in various California counties.

³² If a presiding judge wishes to discuss the actions we took in California, contact me by email at the address above.

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²⁴ Welfare and Institutions Code Section 781(b).

²⁵ See Welfare and Institutions Code Section 827.10.

²⁶ Welfare and Institutions Code Section 827.15.

²⁷ Welfare and Institutions Code Sections 827.2, 827.5, 827.6, 827.7 and 827.9.

²⁸ Welfare and Institutions Code Section 786.5(f) (2) (A).

²⁹ The author learned this from contact with the Federal Bureau of Investigation.

³⁰ If you would like copies of some of these materials, email the author at judgeleonardedwards@gmail.com.

³¹ For example, I received this email from another juvenile court clerk:

"Good Morning Judge Edwards:

It is a pleasure chatting with you again and I am thankful that I may have an advocate to help with these sealings. Recently I have had three people who have had issues with employment,

can be sealed but only by a court after a full hearing with other parties present. Low visibility contacts with law enforcement are also sealed, through actions by juvenile probation. Several exceptions permit the records to be disclosed in family or probate proceedings, but these records can only be used in the context of those legal proceedings and would otherwise remain confidential. Prosecutors also have the right to review sealed

juvenile records, but only for specific purposes.

The juvenile court was created in the belief that children are different from adults. They are developing beings and immature in many of their actions. Records of youthful delinquent behavior should be sealed so that persons can start adult life with a clean slate. State legislatures should pass legislation that automatically seals all juvenile records except for serious felony cases. Taking some of the steps that California has

taken will affirm the original purpose of the juvenile court, rehabilitation. Failure to do so will only start a person's adult life with a burden that may hinder them from success.

Judge Leonard Edwards (ret.) is a retired judge who served for 26 years in the Superior Court in Santa Clara County, California. His writings can be found at judgeleonardedwards.com. Questions can be sent to judgeleonardedwards@gmail.com. ■