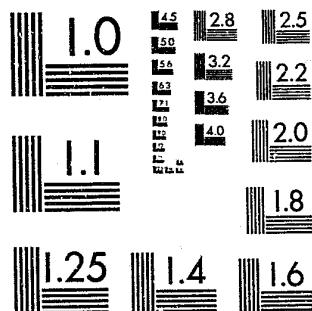


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CONFIDENTIALITY

A REVIEW OF THE PROVISIONS RELATING TO YOUTH IN MISSOURI

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

CONT. 1

93044

CONFIDENTIALITY

A REVIEW OF THE PROVISIONS RELATING TO YOUTH
IN MISSOURI

Prepared by

Missouri Juvenile Justice Review Committee

December 1981

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TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
PART I: CURRENT LAW/REGULATIONS/POLICIES	2
PART II: PROBLEMS WITH CURRENT STATUTES, REGULATIONS, AND POLICIES RELATING TO CONFIDENTIALITY	10
PART III: ISSUES RAISED BY OTHER GROUPS	14
PART IV: OPTIONS FOR MISSOURI	17
PART V: RECOMMENDATIONS	21
A. Definitions	22
B. Sanctions	24
C. Research and Data Collection	24
D. Access to Records	25
E. Fingerprinting/Photographing	29
F. Disposition of Records	32
G. Upon Final Disposition of Records	33
SUMMARY	34

INTRODUCTION

The confidential nature of juvenile records and proceedings pertaining particularly to those youth who are involved with the juvenile service system has provided a sense of privacy for some and has created a sense of concern and, sometimes, irritation for others. As part of its review of the juvenile service system in the State of Missouri, the Juvenile Justice Review Committee has determined that there is a very real need to address this issue.

Missouri, as most other states, currently has a multitude of statutes protecting the privacy of juveniles. The juvenile courts, the Division of Family Services, the Division of Youth Services, and the Department of Mental Health are all statutorily limited with regard to various aspects of confidentiality. At the same time, each of the forty-three (43) circuit courts operate off of local policies and procedures developed by the juvenile judge and circuit courts, and each of the state agencies have promulgated regulations and policies to further detail the guidelines provided by law. Interestingly enough, however, even though all of these service delivery systems have juveniles as clientele, no two statutory provisions are identical. On the contrary, there are inconsistencies and gaps.

In an effort to analyze the issue of confidentiality, the Review Committee has studied and assessed Missouri's state statutes, agency regulations, and agency policies regarding this topic. Further, the Committee has gathered statutes from other states that have either recently enacted new codes or that are recognized as attempting new and different approaches to the juvenile justice system. As a result of this examination, the Committee has developed a series of recommendations for change in a number of the current provisions regarding confidentiality.

This paper is intended to provide an overview of the current status of the law, agency regulations, and policies; a critical review of same; and a series of recommendations based on the option for change suggested by the Review Committee.

PART I: CURRENT LAW/REGULATIONS/POLICIES

The juvenile courts, the Division of Family Services, the Division of Youth Services, and the Department of Mental Health are statutorily defined and governed by Chapters 211, 210, 219, and 630-634 RSMo. respectively. In each of these chapters, there are currently provisions protecting the right to privacy of their clients, including, and occasionally limited to, juveniles.

In addition, each of the above juvenile service agencies are governed by specific rules and/or regulations. In the case of the juvenile courts, they are directed by the Supreme Court of Missouri, Rules of Practice and Procedure in Juvenile Courts, while the Division of Youth Services and Family Services are directed by the Code of State Regulations (CSR). On the other hand, the Department of Mental Health has developed Department Operating Regulations. All of the above have provisions which define agency approaches to some aspects of confidentiality in more specific terms than provided in the statutes.

Further, Juvenile Courts and state agencies have developed their own internal policies both formally and informally. These may take the form of policy manuals (be they for circuit, department, division, program, and/or facility), judicial interpretation, and/or unwritten procedures and agreements.

Outlined below are the statute and regulation citations as well as policies in synopsis form as they currently exist:

A. CONFIDENTIALITY

Several of the juvenile service agencies have statutory, regulatory and/or policy provisions that may cover a number of issues regarding confidentiality that are not generalized beyond one agency. These will be included in this section.

1. Juvenile Courts

- a. Section 211.171.5 RSMo. This subsection addresses the hearing process itself and defines the closed nature of such juvenile proceedings by excluding the general public.
- b. Supreme Court Rule 117.02. This rule restates the closed nature of the hearing process.
- c. Section 211.271 RSMo. This section addresses the confidential nature of juvenile court adjudications, juvenile court dispositions, records, reports, statements, and evidence relating to cases heard in the juvenile court. Basically, it also differentiates the terminology used in juvenile procedures from that used in the adult system.
- d. Section 211.321 RSMo. This section outlines the confidentiality

of juvenile court records and law enforcement records relating to juveniles and the process for the destruction or sealing of these records. It does allow for the release of information regarding certain types of offenses.

- e. Supreme Court Rules 122.02, 122.03, and 122.04 restate the confidential nature of juvenile court records, the restrictions placed upon law enforcement records of juveniles, and the processes for sealing or destroying such records.

2. Division of Family Services

- a. Section 210.150 RSMo. This section specifically cites those to whom records of the Division may be released as well as sanctions imposed upon those who violate this statute.
- b. Division Regulation 13 CSR 40-31.020. This regulation defines the information which will be released to the subject of CA/N report.
- c. Division Policy. Section VI, Subsection I of the DFS Social Service Manual (July 1980) addresses the issue of confidentiality, privileged communication, and record keeping.

3. Division of Youth Services

- a. Section 219.061.3 RSMo. This subsection relates to the provisions governing the disclosure of information by the Division.
- b. Division Regulation. 13 CSR 110-2.140. This rule regulates the disclosure of information contained in Division records relating to youth committed to the Division.
- c. Division Policy. Chapter II, Section 2, Subsection I of the DYS Social Service Manual (March 1976) reiterates the statute cited above excluding the mention of sanctions. There are also additional provisions for disclosure to others actively involved with the child or his family and the process for releasing this information.

4. Department of Mental Health

- a. Section 630.110.1(6) RSMo. This subsection defines patient's rights, including access to his medical and mental records, assuming that the head of the residential facility or day program does not feel that such information will negatively impact the patient's treatment.
- b. Department Operating Regulation No. 192. This regulation establishes the procedures to be followed when a patient/client requests access to medical records in the possession of a Department facility.

- c. Section 630.140 RSMo. This section states that department information and records are confidential and defines to whom information shall be released and to whom information may be released.
- d. Department Operating Regulation No. 172. This regulation establishes the open communication between and among the Department community-based facilities and school system.
- e. Section 630.145.1-2 RSMo. These subsections provide for release of certain information (i.e., the fact that a person is a patient, that he is seriously ill, or that he dies) to certain persons (i.e., next of kin, attorney, guardian or conservator) over and above provisions of 630.140.
- f. Section 631.150 RSMo. This section relates to the release of information when a patient, resident or client absconds from a facility without authorization.
- g. Department Operating Regulation No. 141. This regulation establishes a uniform system of notifying appropriate authorities of unauthorized absences.
- h. Section 630.167.3 RSMo. This subsection defines the confidential nature of the investigative report made when there has been a report or allegation of suspected abuse or neglect of a patient.
- i. Section 630.445.3 RSMo. This subsection relates to the non-identifying information that shall result from any audit completed on vendors or grantees.
- j. Section 632.425 RSMo. This section cites the waiver of physician-patient, psychologist-patient privileges of communication when detention proceedings are involved.
- k. Section 633.130.3 RSMo. This subsection requires progress reports every one hundred eighty (180) days for any resident of a mental retardation facility and states that "a copy of the evaluation and individualized habilitation plan shall be sent to any court having jurisdiction over the resident."

B. PHOTOGRAPHING AND FINGERPRINTING

1. Juvenile Court

- a. Section 211.151.2 RSMo. This subsection of the Juvenile Code states that the judge of the juvenile court must authorize all fingerprinting and photographing of juveniles taken into custody "for any purpose."
- b. Supreme Court Rule 122.01. This rule establishes that the taking of fingerprints and photographs of any juvenile taken

into custody must have the prior authorization of the juvenile court. It further states that the court may order the destruction of same.

- c. Local Policies. The forty-three (43) judicial circuits throughout the state may establish their own interpretation of and practical approach to this provision.

2. Division of Family Services

- a. Section 210.120 RSMo. While the statute does not provide for photographing of juveniles by Division personnel, this section does state that a physician shall arrange for photographs, if medically indicated, of a child coming before him as a result of possible abuse or neglect. Further, these photographs are forwarded to the Division.
- b. There is no current regulatory provision regarding fingerprinting or photographing of juveniles.
- c. Division Policy. While the policies, again, do not authorize Division personnel to photograph (through omission), reference is made to medical personnel being able to photograph juveniles who come to their attention through CA/N investigations.

3. Division of Youth Services

- a. There is no current statutory provision regarding fingerprinting or photographing juveniles.
- b. Division Regulation 13 CSR 110-2.120. This Rule instructs the Division to comply with Section 211.151.2 RSMo.
- c. There is no current Division policy provision regarding fingerprinting or photographing juveniles.

4. Department of Mental Health

- a. There is no current statutory provision regarding photographing juveniles.
- b. There is no current regulatory provision regarding photographing juveniles.

C. RESEARCH

1. Juvenile Courts

- a. Section 211.321.3 RSMo. The Juvenile Code does not specifically address the issue of research though this subsection does allow

for the release of non-identifying information for the purpose of data collection by those "persons or organizations authorized by law to compile statistics relating to juveniles."

- b. There is no current Supreme Court Rule regarding the release of information for research purposes.
- c. Local Policies. Some judicial circuits do release information for research purposes with the authorization of the judge by virtue of Section 211.321.1 RSMo., stating that such data can be disclosed to "persons having a legitimate interest" in the records and the proceedings of the court.

2. Division of Family Services

- a. Section 210.150.1(5) RSMo. This subsection authorizes the Division to release non-identifying information to those engaged in bona fide research.
- b. There is no current Division regulatory provision regarding release of information for research purposes.
- c. Division Policy. Section VI, Subsection 1, VIII A.3.b(1)(c) of the DFS Social Services Manual (July 1980) addresses the issue of disclosure for research purposes, citing the procedures for initiating such a project.

3. Division of Youth Services

- a. There is no current statutory provision for release of information for research purposes.
- b. There is no current Division regulatory provision for release of information for research purposes.
- c. Division Policy. The Division has access to the Research and Statistics Unit of the Department of Social Services for the purpose of conducting research; and the Unit, likewise, has access to Division records for the purpose of conducting research and compiling statistics for the Department. The Division will, further, allow research applicants outside the Department to conduct projects with limitation on information provided to such persons.

4. Department of Mental Health

- a. Section 630.055 RSMo. This section authorizes the Department to conduct research relating to causation, methods of improving "care, treatment, habilitation, and rehabilitation" and the "stigmatizing effects on persons" having been or being served by the Department. Further, it states that when practicable, the Department should use and cooperate with other state agencies and various state

universities.

- b. Section 630.140.3(4) RSMo. This citation directly addresses the ability ("may") to release information "to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations or similar studies." There is included a provision that the results of such research, audits, evaluations or studies will be non-identifying in content and nature.
- c. Section 630.192 RSMo. This section puts specific limits on biomedical and pharmacological research.
- d. Section 630.194 RSMo. This section outlines the duties and responsibilities of the Professional Review Committee with regard to approving research proposals.
- e. Section 630.198 RSMo. This section denotes the duties and responsibilities of the Research Review Committee, including their review of the project and guaranteeing that all participants have given informed consent regarding biomedical or pharmacological research.
- f. Section 632.010.2(5) RSMo. This subsection specifies that included in the duties and responsibilities of the Division of Comprehensive Psychiatric Services is the "sponsorship and encouragement of research into the causes, effects, prevention, treatment and rehabilitation of mental disorders and mental illness."

D. SANCTIONS

1. Juvenile Courts

- a. Section 211.431 RSMo. While the Juvenile Code does not specifically address penalties for the unauthorized release of information, this section states that anyone over seventeen years who violates any provision of Chapter 211 is guilty of a misdemeanor.
- b. There is no current Supreme Court Rule regarding sanctions for unauthorized disclosure of information.
- c. Local Policies. Various practices may exist among the circuits regarding disciplinary action taken by the juvenile judge regarding the unauthorized release of information.

2. Division of Family Services

- a. Section 210.150.2 RSMo. This subsection specifically defines unauthorized disclosure of information as a misdemeanor.

- b. There is no current Division regulatory provision regarding sanctions for unauthorized disclosure of information.
- c. Division Policies. Section VI, Subsection 1, VIII A.4 of the DFS Social Services Manual (July 1980) emphasizes the statutory provision cited above.

3. Division of Youth Services

- a. Section 219.061.3 RSMo. This subsection outlines the constraints on release of information and specifies the administrative action--up to and including dismissal--that could be taken should there be unauthorized disclosure.
- b. There is no current Division regulatory provision regarding sanctions for unauthorized disclosure of information.
- c. Division Policy. There is no reiteration of the statutory language in the Division Manual regarding sanctions.

4. Department of Mental Health

- a. There is no current statutory provision regarding sanctions relating to unauthorized disclosure of information.
- b. There are no current regulatory provisions within the Department regarding sanctions relating to unauthorized disclosure of information.

E. DISPOSITION OF RECORDS

1. Juvenile Courts

- a. Section 211.321.4 RSMo. This subsection gives the court broad and discretionary authority to order the sealing and destruction of court legal files, law enforcement records, and social files respectively, including loose and open-ended time frames for doing so.
- b. Supreme Court Rules 122.04. This rule restates the sealing and destruction provisions of 211.321.4.
- c. Local Policies. The forty-three (43) circuits may have different ways of implementing the statutory guidelines.

2. Division of Family Services

- a. There is no statutory provision in Chapter 210 RSMo. regarding the disposition of records.
- b. Division Regulations. 13 CSR 40-31.030 and 13 CSR 40-31.040. These

regulations set a length of time for retention of information relating to unsubstantiated and substantiated reports of CA/N respectively.

- c. Division Policy. Section VI, Subsection 1, VIII. A.5. of the DFS Social Services Manual (July 1980) outlines the types of information collected at which levels or entry points that shall be expunged within specific time frames.

3. Division of Youth Services

- a. There is no statutory provision in Chapter 219 RSMo. regarding the disposition of records.
- b. There is no current Division regulatory provision regarding the disposition of records.
- c. Division Regulations. Chapter VII, Section 7, Subsection L of the DYS Social Services Manual (March 1976) and "Case Records Policy Statement" (October 1980) address the issue of expunction of third party information upon the child's discharge from the Division and the process whereby Division information and records are ultimately destroyed with open-ended time provisions.

4. Department of Mental Health

- a. There is currently no statutory provision in Chapters 630-634 RSMo. for the disposition of records.
- b. Department Operating Regulation No. 83. This regulation grants authority for hospitals to destroy all records for patients discharged prior to 1920 and for patients who died prior to 1940.
- c. Department Operating Regulation No. 89. This regulation grants authority to destroy all inactive hospital records dated prior to 1928 and to destroy all future records as they become 40 years old.
- d. Department Policy. The various facilities of the Department have different policies regarding the retention and destruction of medical records with some retaining for only a ten year period.

PART II. PROBLEMS IN CURRENT STATUTES, REGULATIONS, AND POLICIES RELATING TO CONFIDENTIALITY

As evidenced in Part I, there are a multitude of problems and discrepancies in Missouri's current statutes, regulations and agency/court policies governing the area of confidentiality. The juvenile courts, the Division of Family Services, the Division of Youth Services, and the Department of Mental Health all have some statutory base for maintaining confidential records.

In addition, each promulgates its own policies and regulations relating to this issue. While the one hundred fifteen county offices of the Division of Family Services and the twenty-two residential facilities of the Division of Youth Services are centrally governed by agency policy with respect to confidentiality and disposition of records, each of the twenty-seven Department of Mental Health's facilities and forty-three judicial circuits has the authority to establish policies and operating procedures independent of any central requirement other than those provided by statute and rules or legislation.

A. LACK OF UNIFORM DEFINITION

First, there is no comprehensive definition of "confidentiality" in any statute or regulation pertaining to the above-mentioned agencies. The current approach is basically piecemeal in nature, addressing specific conditions or situations and defining certain procedures pertaining to those circumstances alone. Likewise, "records"--the major focus of confidentiality--are not clearly defined nor are all of the types of records under consideration (i.e., social, legal, agency, third party, etc.) clearly delineated in any of the statutes. The regulations and policies also vary as to extent and thoroughness in covering the variety of definitions, and there is no uniform format for addressing the definitions that are used across agency and court lines.

B. LACK OF CONSISTENCY

As already suggested, there is no consistent approach, be it statutory, regulatory, or by policy, to the issue of confidentiality across juvenile service agencies. Furthermore, the forty-three (43) circuits in the state may operate very differently in this area due to the broad discretionary power of the juvenile judge to release information or authorize certain procedures which touch upon the control of information or records. Current court policies and procedures may range anywhere from no release of any information at any stage of the proceedings to release of any and all information to that vague (and subject to interpretation) population known as those "persons having a legitimate interest."

Regulations and policies of the Division of Family Services do specify

those persons and agencies to whom data may be released, and there are provisions dictating the procedure for disclosure. However, even within this system, there appears to be a broad scope of authority to disclose, ranging from sharing full information during the investigative stage of CA/N cases to sharing only dispositional data developed by the Division with certain persons. Conflict often arises where the Division chooses to disclose information identical to that which the court may choose to hold as confidential.

The Division of Youth Services has a provision for sharing only its own information with certain persons (i.e., parents, guardians, next of kin) specified in both statute, regulation and policy. Its policies relating to disclosure to other agencies and persons not defined by statute is less clear and obligatory and, seemingly, subject to the discretion of administrative policy or Division personnel.

The Department of Mental Health has a provision for sharing its records and information with many groups or individuals being identified as authorized to have full or limited access. Yet records maintained in any court proceeding under Chapter 632 RSMo. are available only to the subject juvenile, parents or guardian, petitioner, and their respective attorneys. In addition, the court may order release of information only upon showing good cause or the court may impose other restrictions. Since many juveniles receive psychiatric services by court order under this section and also receive services from other agencies, conflict could arise in exchange of information.

Again, it is clear that the powers to release information range from the courts' extremely broad range of authority (defined differently across circuits) to the more closely restricted scope to whom the Division of Family Services, the Division of Youth Services, and the Department of Mental Health may release. Likewise, there are disparities in the types of information that may be released. As all of the information under discussion applies to one population--specifically juvenile--could it not be uniform and consistent?

C. PHOTOGRAPHING JUVENILES

The statutes, agency regulations, and policies again vary with regard to photographing juveniles. The Juvenile Code expressly states that only the juvenile judge may consent to the taking of photographs of a child. The circumstances around which this consent would be required are unclear, but the general interpretation appears to be that it applies to those situations in which a juvenile is being held in judicial custody for an offense that would be criminal in nature if committed by an adult. This interpretation may not be consistent across juvenile service agency boundaries.

The Division of Youth Services adheres strictly to the provisions of the Juvenile Code. While there is no statutory language providing for the

Division of Family Services to photograph children, agency policy does specify the following: Division personnel are not authorized to take photos, but medical staff may, indeed, photograph those children who come to their attention through CA/N examinations or investigations, ostensibly without authorization from anyone. Is this consistent with the Juvenile Code? Can such photographs taken by medical personnel then be admitted as evidence in a juvenile court proceeding?

D. RESEARCH

The Juvenile Code only provides for the release of information and data by the court "to persons or organizations authorized by law to compile statistics relating to juveniles." The power of the court to release such data for research purposes is not expressly stated but could be included under the phrase "persons having a legitimate interest," and is, thus, discretionary and subject to local court policies. However, there are no constraints specified as to the types of information, nature of information, and/or limitations of providing only non-identifying information.

The Division of Family Services and Department of Mental Health statutes and regulations/policies provide for release of information for research purpose. On the other hand, neither statute nor agency regulations stipulate provisions for such release by the Division of Youth Services. Should not and cannot the provisions for the release of information for both research and statistical gathering purposes be consistent across these agencies?

E. SANCTIONS

Violations of disclosure regulations and state statute by agency or court personnel are also addressed in various ways. The Juvenile Code provides that anyone who violates any provision of Chapter 211 RSMo. is guilty of a misdemeanor. There is also implied that such unauthorized disclosure could be perceived as contempt of court. Various court personnel policies among the circuits may address the issue in different ways with regard to administrative action that might be taken.

On the other hand, the statutes and regulations governing the Department of Mental Health make no provisions for penalties to be applied in the event confidentiality provisions are violated.

The Division of Family Services and the Division of Youth Services are both governed by statute. DFS violations are defined as misdemeanors and punishable by fine and/or imprisonment in county jail. DYS violations are subject to administrative action up to and including dismissal for the employee. While the agency regulations that do exist only appear to apply to Division employees, the Juvenile Code appears to cover anyone who might have access to and be in a position to disseminate juvenile records. Again, there appears to be no legitimate reason for the differential treatment accorded to various juvenile service system personnel.

F. DISPOSITION OF RECORDS

Again, stipulations governing the disposition of juvenile records vary between agencies and courts. The juvenile courts have statutory authority with regard to their records as well as those of law enforcement. Law enforcement records pertaining to juveniles are subject only to an order to seal as are court legal records while social records can be destroyed. However, there are no clear statutory provisions citing how records are to be destroyed; and the time frames for destruction or for sealing are open-ended beyond a designated period of retention. There is also existent an interjurisdictional void whereby if a child has been involved in two court systems, one court cannot enter an order affecting the other court. Section 211.321 RSMo. allows for release of information relating to cases of a specific nature when either a petition or a motion to modify has been sustained. However, there is no clear designation to whom or for what purpose such data may be released.

There is a broad statutory provision in Chapter 109 RSMo. (Public and Business Records) that grants authority to state agency heads to maintain records as well as to establish schedules of disposition for these records. Whether case records fall into the category of business records is subject to interpretation; and, as a result, the state agencies have elected to approach the issue of disposition of case records on an agency-by-agency basis. While the Division of Youth Services does, indeed, file record disposition schedules, the Division of Family Services and the Department of Mental Health have regulatory and policy provisions that determine their time periods for retention, destruction, and expunction. The only common time frame for state agency record retention would appear to be that required for federal (Title XX) audit purposes.

PART III. ISSUES RAISED BY OTHER GROUPS

Missouri's current statutes (cited previously) regulate both the juvenile courts and state agencies with regard to the confidential nature of proceedings and records involving juveniles. These provisions raise questions and concerns on the part of a variety of individuals and groups throughout the state. Several of these generalize their concerns to all of the agencies involved while others focus on the particular agencies that specialize in certain types of cases and situations. At present, the release of information to the groups ennumerated below is prohibited and/or limited.

- A. MEDIA. The media has frequently sought case information--particularly in those situations that have been somewhat sensational in nature. While the news media has a responsibility to the public to report the news, the issue of freedom of the press often comes into conflict with the philosophy of the juvenile code and the statutory proscriptions regarding divulging information pertaining to juveniles referred to the court. The courts and state agencies involved in services to juveniles share program policy and process information with the media, but individual case records are not shared nor released as directed by statute.
- B. POLICE. Law enforcement personnel are often interested in obtaining from the juvenile service agencies social and referral information which exceeds their particular area of investigation. In those areas in which they have been involved in an investigative role, they will also frequently seek follow-up or outcome data relating to the plans or activities of the court and/or agencies involved. Statute interpretation has generally limited these types of release of information with the exception of the investigative stage of CA/N cases involving the Division of Family Services.
- C. LEGISLATURE. Legislation and budget considerations affecting both the juvenile courts and state agencies are occasionally reactive to specific incidents that occur within any of these systems. In order to document their positions, legislators will seek specific case data.
- D. VICTIMS. The alleged victims of those referred to the juvenile courts frequently want to be parties to not only the adjudicatory phase of the court proceedings but to the dispositional process as well. In some instances, this desire is fostered by a need to know that the juvenile is receiving appropriate consequences and that the court is, indeed, taking steps to protect the community. Requests for case information by victims is also frequently tied to the practical considerations of insurance claims and civil suits.

- E. MANDATED AND PERMISSIVE REPORTERS. Those who are required by law as well as those who voluntarily report incidents of abuse and neglect to the Division of Family Services are frequently interested in the progress of the case investigation and outcome data.
- F. SCHOOLS. Educational institutions frequently seek additional socio-psychological information from the Division of Family Services and/or the juvenile court and, occasionally, from the Division of Youth Services and the Department of Mental Health when their pupils have been identified as clients of these agencies. While such information is not accorded to the school system, both the divisions and the courts require collateral information from schools. This one-sided exchange of information often raises concerns.
- G. ADULT CORRECTIONS. Authorities in the adult criminal justice system often seek information particularly from the juvenile courts and the Division of Youth Services when former clients of both graduate to this system. Adult correctional institutions maintain that background and prior institutional adjustment information would be helpful to their dealings with this population. Prosecutors and probation and parole personnel seek this data, asserting that they need a full accounting of the subject's "criminal" history in order to make sound and appropriate findings and recommendations for disposition in the adult system.
- H. COURTS (JUVENILE AND ADULT). The Division of Youth Services is frequently requested to release data to these courts regarding youth who have been under their jurisdiction. The Division currently takes the position that outcome information and/or case records will be shared freely when it will benefit the youth but must be subpoenaed when it could negatively impact the subject.

In addition to the potential conflict outlined above, when possible damaging information is sought by the adult court system regarding an ex-juvenile client, other issues arise when prosecutors and defense attorneys handling an adult offender seek information regarding a juvenile victim or companion. While there are legitimate concerns regarding right to discovery in preparing for a case in the criminal court, one must also be mindful of the potential impact upon the juvenile should case information from any juvenile service agency be shared in open court. Currently, the juvenile court and the state agencies all operate off of different policies regarding this situation and make various determinations regarding what, if any, information or records will be shared with those in the adult system. Not only does this create antagonism between the juvenile and adult courts, but, on occasion, between the juvenile service agencies themselves.
- I. RESIDENTIAL CARE PROVIDERS/FOSTER PARENTS. Those individuals, couples, and residential care providers that accept referrals from the juvenile

service agencies often request access to information regarding those children being placed in their care. These custodians would argue that they have a right to know the family background, specific problems, referral history, treatment approaches that have been attempted, psychiatric/psychological information, etc., relating to a child for whom they are assuming responsibility. On the other hand, the service agency may feel that such information may bias or prejudice the providers and potentially program them to respond to the juvenile in a particular way. Again, the various agencies approach this request based upon their own individual policies and can vary to some degree from office to office or circuit to circuit.

- J. SPECIAL INTEREST GROUPS. A variety of special interest groups have evolved over the years generally as a result of a particularly heinous offense or incident. They have generally insisted upon the "public's right to know" the identity of those involved, the nature of the proceedings being invoked with regard to the juvenile, the content of these proceedings, and outcome information.

PART IV. OPTIONS FOR MISSOURI

As previously addressed in this paper, there are a number of problems and concerns identified surrounding the issue of confidentiality as it is currently incorporated into Missouri's State Statutes, agency regulations, and juvenile court policies and procedures. Options for resolving the issue of confidentiality would appear to fall into four positions: (i) maintain the status quo, i.e., make no recommendations for legislative change and modification in juvenile service agency policies and procedures; (ii) develop a uniform approach to the issue involving all agencies and juvenile courts, i.e., make recommendations for legislative and policy changes broad enough that they would apply equally to all agencies and courts; (iii) develop a uniform approach to some aspects of the issue, leaving others to resolution on an agency-by-agency basis, i.e., make recommendations for legislative change regarding only those aspects which currently apply across agencies and leave specialized aspects to the juvenile service agencies dealing with certain functions to develop their own regulations and policies; or (iv) recommend that the issue be dealt with on an administrative level within the agencies involved and the juvenile courts, i.e., make no recommendations for legislative change and charge the administrators of the agencies and juvenile courts to develop agreement and resolution to this issue so that it is approached consistently across the juvenile service agency boundaries.

- A. NO CHANGE. One option available to decision makers in Missouri is to make no change in the current statutes, regulations and/or policies and procedures that are operative in the state regarding the issue of confidentiality. In choosing this option, one would be agreeing that the status quo is acceptable and that those currently having access to court records, the processes by which information is released, the limitations on fingerprinting and photogrpahing, the procedures for expunction and sealing of records, and sanctions regarding same are considered adequate and appropriate to meet the needs of the youth involved, the courts and agencies, and the community.

The advantages of this option include: 1) no new legislation would have to be drafted and adopted and 2) agency regulations and juvenile court policies and procedures would not have to be reformulated and then implemented. Record maintenance systems would remain the same, and all agency and court personnel would be familiar with the already existing practices.

The primary disadvantage of this option is that it represents no change in a system with which many are dissatisfied. The concerns regarding confidentiality that have been raised (i.e., courts and agencies protecting themselves over and above the child and the public's right to know vs. the child's right to protection of privacy) would not be addressed and these controversies could continue into the future.

- B. UNIFORM APPROACH TO THE ISSUE INVOLVING ALL AGENCIES AND COURTS. A second option available to decision makers is to make both legislative and policy changes that would encompass all agencies and juvenile courts with regard to record maintenance, release of information, access to records, photographing and fingerprinting, sealing and expunction, and sanctions. In supporting this approach, one would take the position that the same mandates should apply equally to all juvenile service agencies, and policies and procedures should be consistent throughout the juvenile system.

The advantages to this option include: 1) uniform and consistent practices among courts and agencies; 2) uniform criteria across agencies for release of/access to information; 3) uniform procedures for finger-printing and photographing where applicable; 4) uniform sanctions regarding the release of information; and 5) uniform and consistent time frames and procedures for expunction and/or sealing of records in all areas of the juvenile service arena.

The disadvantage of this approach would be that any language developed for this purpose that would encompass all agencies and courts would need to be sufficiently broad to incorporate all the functions and needs peculiar to each agency. The broad, vague and discretionary language currently operating in Missouri's statutes and some agency regulations have created much of the concern that currently exists on the part of the public.

- C. UNIFORM APPROACH REGARDING CERTAIN AREAS OF CONFIDENTIALITY; AGENCY/COURT REGULATIONS REGARDING PARTICULAR AREAS. The third option would be to cover those aspects of confidentiality that apply to all juvenile service agencies in statute and leave other areas that apply to specialized functions and responsibilities to agency regulations and court policies. In choosing this option, one would support a consistent approach in certain generalized areas relating to confidentiality while acknowledging the need to become specific and detailed regarding other areas which apply one to certain groups and instances.

The advantages of this option include: 1) consistent and uniform procedures and criteria for those provisions regarding confidentiality applying to all agencies and the courts 2) room for the agencies and courts to develop procedures and policies regarding those specialized functions peculiar to their system, and 3) latitude for agencies and courts to address details and specifics that would be difficult to incorporate into law.

The disadvantage of this approach is that it still provides for some inconsistencies among the various service delivery systems; and, therefore, there is a need for other persons to familiarize themselves with differing procedures.

- D. ADMINISTRATIVE SOLUTIONS AND AGREEMENTS. The fourth option for decision makers would be to make no legislative amendments, but rather to have the juvenile service agencies develop uniform and consistent policies and regulations which elaborate on and clarify the provisions provided by the current statutes. In opting for this approach, one would support the contention that the statutes provide the guidelines, and agencies and courts should have the latitude to develop and implement their own regulations--thus meeting their particular needs--while working in consort with one another.

The advantages of this option would include: 1) addressing the differing needs of the juvenile service agencies on an individualized basis; 2) developing consistent and uniform policies and procedures within each agency and within the court system; and 3) allowing courts and agencies to develop a consistent approach without mandating same by statute.

The disadvantages of this approach would be that: 1) agencies and courts may or may not be able to arrive at an agreement as to a consistent policy regarding this matter; 2) without the mandate, various components of the judicial system and/or agencies would not be bound to comply or cooperate; and 3) attempting to develop this coordinated and cooperative approach would require a great deal of commitment.

PART V. RECOMMENDATIONS

TABLE

CONSIDERATIONS RELEVANT TO CONFIDENTIALITY

CONSIDERATIONS	OPTION			
	No Change	Uniform Approach	Uniform/ Agency-Agency	Administrative Resolution
Requires legislative action	No	Yes	Yes	No
Requires planning for implementation	No	Yes	Yes	Yes
Requires training for implementation	No	Yes	Yes	Yes
Immediate implementation	Yes	No	No	No
Encompasses all agencies/courts	No	Yes	No	No
Provides for inconsistencies	Yes	No	Yes	Yes
Provides for uniformity	No	Yes	No	No
Increases uniformity	No	Yes	Yes	Unk.

In the previous four parts of this paper, the Missouri Juvenile Justice Review Committee has addressed the current status of laws, regulations, and agency policies impacting the confidentiality of youth involved in the juvenile service system; the problems and concerns regarding these provisions raised by both agency personnel and persons from various other sectors of the community; and various options for resolving the issues raised. Based upon the Committee's analysis of the confidentiality issue, we feel that, without question, there is a need for revision of some of the current statutes, regulations, and agency policies.

The following recommendations are based upon three philosophical assumptions. First, the Review Committee would suggest that there is a need for maximum consistency both within each of the juvenile service agencies as well as across agency boundaries. Secondly, there is a need for maximum freedom for the exchange of information between the agencies in the field and access to certain information by the involved parties being impacted by the services. Thirdly, there is a need for maximum sanctions for those found to be in violation of the confidentiality provisions.

Due to the purposes and functions of the various juvenile service agencies being addressed in this paper, the Review Committee would endorse Option C. As previously outlined, this option involves developing a uniform approach to those aspects of confidentiality that apply to all juvenile service agencies in statute and leaving other areas that apply to specialized functions and responsibilities to agency regulations and court policies.

While the ideal would be to create a uniform approach to this issue pertaining to all juvenile service agencies in all regards, the Committee feels that this option would not be appropriate or feasible for the following reasons. First, each of the agencies have unique duties and functions which need to be addressed on an individual basis. In addition, language that would attempt to cover all of the components of each system in each situation would, out of necessity, have to be very broad and general. This could create additional problems of interpretation and manipulation.

Option C presents a compromise of sorts in that those areas which can be dealt with across agency lines will be so approached statutorily. At the same time, the unique responsibilities attributed to each will not be lost or minimized, as they can still be maintained in statute and agency regulations and policies.

Consistent with the Review Committee's choice of Option C, the following recommendations are made regarding changes in the current state laws and agency regulations and policies. It should be noted that the language proposed in those sections designated as "Statute Applicable to..." are not drafted in formal legislative language. However, the Committee would suggest that the changes be adopted in the spirit of the proposed recommendation.

A. DEFINITIONS:

In order to achieve consistency across professional lines in definitions as they relate to issues of confidentiality, the following are recommended to be included in state statute:

1. Access - the right or privilege to receive information concerning a juvenile who is the subject of a juvenile service agency proceeding or record.
2. Administrative Regulations - the formal rules of policy and procedure of a juvenile service agency which are published and made known officially.
3. Child Caring Agency/Individual - any agency, public or private, or individual responsible for providing care and maintenance, treatment services, and/or other support services to a juvenile and/or the family of a child named as the subject of a record.
4. Confidentiality - the withholding of information from any manner of communication, public or private.
5. Destruction - the irrevocable act of causing total physical damage to information or records so that the contents therein may be permanently removed from any access.
6. Disclosure - the release, dissemination or distribution of information or the granting of access to information contained in any juvenile service agency proceeding or record.
7. Disposition of a Record - the decision to destroy, expunge or seal the record of a juvenile who is the subject of that record.
8. Dispositional Findings - the decision by a court or any agency by which a referral is closed, including but not limited to such options as dismissal, informal handling, formal action, transfer of custody, and case closing.
9. Expunction - the process of the destruction, obliteration or erasure of all information that can be used to identify the subject of a record.
10. Identifying Information - any information which is indexed or able to be retrieved by name, identifying code or number, address or other personal characteristic.
11. Juvenile Service Agency - includes any of the following: police, diversion units, courts, detention centers, Departments of Social Services and Mental Health, contracting agencies of the above, volunteers, and persons of public or private agencies having children committed to their care.
12. Maintenance - the existence and support of a record-keeping system for the collection and retention of information necessary to perform the duties of a juvenile service agency.
13. Privacy - the right to be free from unwarranted intrusion or interference by others.
14. Record - the means by which any information regarding a juvenile is collected and retained by a juvenile service agency, including index files, and other automated or manual maintenance systems.
 - a. Agency Records - include all documents, reports, evaluations and examinations, conclusions, recommendations, plans, and any other information regarding an agency's activities carried out on behalf of a juvenile.
 - b. Juvenile Court Records
 - (1) Legal Records - include, but are not limited to the court docket, petition, complaints, motions, transcripts of testimony, findings, orders, decrees, and any information or exhibits entered and accepted as evidence.
 - (2) Social Records - include all documents, reports, photographs, fingerprints, evaluations and examinations, conclusions, recommendations, plans and any information collected relative to a juvenile's history of offenses, behavior, and/or family background,
 - c. Law Enforcement Records - all reports and all automated or manual systems maintained by federal, state or local criminal justice agencies relating to the apprehension or detention of a juvenile in the investigation of a crime.
15. Research - the systematic investigation of information maintained by a juvenile service agency, undertaken for the purpose of establishing facts, principles or forecasts relative to the juvenile service field.
16. Sanctions - the penalties applied to any person found to be in violation of confidentiality provisions.
17. Sealing - the concealing of information that can be used to identify the subject of a record so that access is prohibited.
18. Subject of a Record - the individual(s) determined to be the primary juvenile(s) named in a referral, complaint, investigation, proceeding, legal or social record of a juvenile service agency.
19. Third Party Records - any report, psychological or psychiatric eval-

uation, social summary, medical examination, or any other records or information prepared for or disseminated to the maintaining agency by an individual or individuals external to the maintaining agency, except as provided by order or request of the court for the purpose of inclusion in the court record.

B. SANCTIONS

In order to provide for authorized access to information and to facilitate communication between juvenile service agencies, consistent penalties must be applied across professional boundaries for any violation of confidentiality protections. The Committee, therefore, recommends the following language to address this issue:

STATUTE APPLICABLE TO ALL JUVENILE SERVICE AGENCIES

Except as provided under sections relating to recommendations regarding the authorized access or release of information, any person who has authorized access to such information who discloses or makes use of, or knowingly permits the use of information concerning a juvenile who is or is suspected of being the subject of a referral, complaint, investigation, proceeding, or a legal, social, or agency record of any juvenile service agency shall be guilty of a Class A misdemeanor, and upon confirmation of the violation, may be subject to contempt action and/or administrative discipline up to and including dismissal. Any person so affected by the violation may sue in a civil court for the actual damages incurred.

C. RESEARCH AND DATA COLLECTION

It is broadly accepted that research is important in the juvenile service field for the growth of knowledge, the formulation and analysis of policy and the development of treatment interventions and service programs. However, a juvenile and his family's right to privacy is a greater importance, and information disclosed for purposes of research, evaluative or statistical study should be strictly controlled. As discussed earlier in this paper, the statutes regarding confidentiality and access to information for the purpose of research vary widely with regard to both the stringency of protection and the types of agencies covered.

The Committee recommends that enabling and regulatory laws should provide researchers access to information regarding juveniles but should be consistent in stringency and application across juvenile service agency lines. The following language is recommended:

STATUTE APPLICABLE TO ALL JUVENILE SERVICE AGENCIES

A juvenile service agency may release information to individuals or agencies engaged in legitimate research for educational, scientific or public purposes, provided that value to the specific agency or the juvenile service field can be demonstrated. Access to records or information for research purposes shall be permitted providing that identifying information regarding the subject and his family is not disclosed. Where consent is obtained to interview or examine individuals, recognized standards for human subject research shall be observed.

Regarding data collection for statistical purposes, the Committee recommends that a single body be given mandate and authority to collect statewide aggregates of data which will give accurate information as to the state of the juvenile service system in Missouri.

More specific recommendations regarding data collection will be addressed in a later paper.

D. ACCESS TO RECORDS

In order both to protect the privacy of a juvenile and his or her family and also to facilitate the necessary sharing of information between individuals and agencies providing services to the subject, the Committee believes that there are individuals or agencies who should have consistent general access to records. There are other instances where, depending upon the agency, the nature of the record or the person requesting information, there should be certain restrictions imposed.

1. Release Policy Applicable to All Juvenile Service Agencies. In instances where consistent access is recommended across agency lines, the following language is recommended:

STATUTE APPLICABLE TO ALL JUVENILE SERVICE AGENCIES

After the investigation of a referral, access to records and files of a juvenile service agency should be restricted to:

- a. The juvenile who is the subject of the record and his/her counsel.
- b. The parents, guardian, or primary caretaker of the juvenile who is the subject of the record and their counsel.

- c. The guardian ad litem of the juvenile named as subject of the record.
- d. Judges and appropriate staff of any juvenile court when essential to performing their responsibilities relative to the juvenile who is subject of the record.
- e. A child caring agency or individual who is directed to take custody of or be responsible for providing treatment or services to the juvenile and/or family of the child who is named as subject of the record.
- f. Appellate courts when reviewing a case relative to a juvenile who is the subject of the record.
- g. Individuals for the express purpose of conducting research, evaluative or statistical studies. Identifying information should be deleted.
- h. Authorized clerical or administrative staff of the maintaining agency when essential for administrative purposes.
- i. Information may be released for other purposes upon the written authorization of a child and/or parent with review by the attorney and/or guardian ad litem.

Juvenile service agencies shall be required to develop administrative safeguards to insure that the recommendations contained herein are protected by both policy and procedure.

2. Release of Information to Specified Others. In instances where information and/or access should be limited, the following recommendations are made:

- a. Local School Districts: It is our recommendation that records released to schools should be shared with discretion and should be restricted to information which will serve to enhance the educational program of the juvenile. The following language is recommended.

STATUTE APPLICABLE TO ALL JUVENILE SERVICE AGENCIES

A juvenile service agency may only disclose records of an educational or academic nature to local school districts or other educational institutions where a juvenile may be enrolled. Records of a social, diagnostic or dispositional nature shall not be disclosed unless specifically needed for

the development of educational plans or with the written authorization of the parent and/or child.

- b. Child Abuse and Neglect Investigations: Information necessary to make a disposition on a report of child abuse and neglect should be shared freely between any agency personnel who are actively involved in the investigation of the specific instance of abuse or neglect. Sharing of the specific allegations of the report alone should be restricted with the following language recommended:

STATUTE APPLICABLE TO THE DIVISION OF FAMILY SERVICES

Disclosure of the specific allegations of the report of child abuse or neglect shall be restricted to the following:

- (1) The juvenile named as subject of the report and his/her counsel.
- (2) The parents, guardian or primary caretaker and their counsel.
- (3) Law enforcement agencies when necessary to carry out their responsibilities relative to the specific report.
- (4) Judges, staff of the juvenile court, and prosecuting attorneys when essential to performing their responsibilities relative to the report.
- (5) Physicians or appropriate medical staff.
- (6) An appropriate child caring agency or individual who has been directed to take custody of the juvenile named in the report or to provide services to the juvenile, parents, guardian or primary caretaker.

The specific allegations of the report should otherwise remain confidential when gaining or disclosing information necessary to make a disposition on a child abuse or neglect report.

- c. Dispositional Information: There are instances when it is appropriate for a juvenile service agency to share dispositional information regarding a juvenile who is the subject of that disposition. We recommend that sharing of the disposition be restricted to the following situations:

- (1) Disposition of a Report of Child Abuse or Neglect. It is

appropriate to disclose information regarding the disposition of a report of child abuse or neglect to the mandated reporter. The following language is suggested:

STATUTE APPLICABLE TO DIVISION OF FAMILY SERVICES

Upon making a disposition on a report of child abuse or neglect, the Division of Family Services shall, when the report was made by a person required to report under Section 210.115, inform that person, upon his written request and verification of identification, of the general disposition of the report.

- (2) Disposition of a Juvenile Cause. The Committee believes that it is appropriate for the court to disclose information regarding the disposition of a juvenile cause to the alleged victims and involved law enforcement agencies. The following language is recommended:

STATUTE APPLICABLE TO THE JUVENILE CODE

The court may, upon request and verification of identification, disclose information regarding the disposition of a specific juvenile cause, to the alleged victim and to the law enforcement agency involved in the cause.

- (3) Release of Dispositional Information to Adult Correctional Facilities. It is appropriate for the juvenile court or the Division of Youth Services to disclose dispositional information to the Department of Corrections, the Division of Probation and Parole, and other adult correctional facilities. This information should be limited to that regarding a juvenile involved in a designated serious offense and within a certain time frame. The following language is recommended:

STATUTE APPLICABLE TO THE JUVENILE CODE

Records regarding the disposition of a juvenile cause shall not be disclosed to any federal, state, county or municipal adult correctional agency or facility except where the juvenile has been adjudicated for a serious violation (rape, sodomy, murder, kidnapping, robbery, arson, burglary, or any acts involving the rendering or threat of serious bodily harm), and, except where the information is requested no later than three years beyond the subject

juvenile's seventeenth birthday or by the twenty-first birthday should jurisdiction be extended beyond age seventeen or three years beyond the twenty-first birthday should jurisdiction be extended to that time.

- d. Courts of General Jurisdiction Where the Juvenile is not the Subject of the Proceedings: It is our recommendation that records may be necessary for consideration in judicial proceedings involving the prosecution of an adult or in the determination of custody issues. However, the protection of the child is of utmost importance in the decision to release such information. The following language is recommended:

STATUTE APPLICABLE TO ALL JUVENILE SERVICE AGENCIES

The legal record of a juvenile may be released in an adult proceeding when one or more parties of that proceeding have served the custodian of those records with a properly executed subpoena duces tecum. The social record of an agency, or portions thereof, may be released only after the filing of a motion in the juvenile court, proper notice, hearing and order of court by the juvenile court judge specifying the reasons why the record is necessary.

- e. Others: The Committee recommends that in order to protect the privacy and best interest of a juvenile served by a juvenile service agency, no records should be disclosed to certain individuals, agencies, or institutions often seeking the same for a variety of purposes. The following language is recommended:

STATUTE APPLICABLE TO ALL JUVENILE SERVICE AGENCIES

No information other than that previously defined regarding any juvenile who is the subject of a record maintained by any court, the Division of Family Services, the Department of Mental Health, or the Division of Youth Services shall be disclosed to any employer; potential employer; the military; any individual representing the media; any school or educational institution; licensing authorities, or credit agencies.

E. FINGERPRINTING/PHOTOGRAPHING

One of the rationales for allowing the fingerprinting or photographing

of juveniles within the juvenile justice system is to provide a means of positive identification. These two types of identification have been used by law enforcement agencies and accepted by the courts as a lawful means of establishing the identity of parties coming before the judicial system.

A second rationale for the use of photographs is to provide a tool for the preservation of evidence in child abuse/neglect cases for presentation as an exhibit before a judicial officer. Section 210.110 RSMo. specifically allows medical personnel to take such photos, and police department policies allow the taking of photos when there is evidence of violation of the law.

In the case of juveniles, two issues arise as to these processes. First, there is a distinct difference between the two purposes outlined above. Currently, the statute does not reflect this difference and subjects both situations to the same qualifications. Secondly, there is some concern regarding the issue of how to control the use of those materials once they are gathered and whether the materials, indeed, need to be controlled or protected in all instances.

Keeping these concerns in mind, the following changes in procedures and safeguards regarding identifying and evidentiary information with reference to juveniles are suggested:

1. Fingerprints No recommendations for change are made at this time.
2. Photographs

(a) Juvenile Court Delinquency Cases

- (1) A juvenile in judicial custody shall only be photographed with the authorization of the court and then only for criminal identification purposes where necessary for a pending investigation, provided, however, that this restriction shall not apply to juveniles certified for prosecution as adults.
- (2) Upon use of the photographs for identification purposes, the following shall occur:
 - (a) If there is no identification, all copies of the photographs and negatives shall be forwarded to the juvenile court where they will be destroyed forthwith.
 - (b) If there is a positive identification, all copies of the photographs and negatives shall be forwarded to the court pending disposition of the case and, thereafter, retained in the juvenile's social file or in the juvenile's legal file if same are introduced as evidence during a court hearing.
- (3) Photographs of a juvenile shall only be retained by the

juvenile court and shall not be sent to a central state or federal depository.

- (4) Photographs of juveniles being retained by the juvenile court may be inspected and used by law enforcement officials with the authorization of the court upon written request when necessary for the discharge of their official duties and when there is cause to believe that the juvenile has been involved in a subsequent offense.
- b. Juvenile Court Abuse Cases or Neglect Cases
- (1) The juvenile judge may authorize the photographing of any juvenile taken into custody as a victim of abuse or neglect.
 - (2) Photographs of a juvenile victim of abuse or neglect authorized by the court is subject to inspection by the Division of Family Services personnel and law enforcement personnel when necessary for the discharge of their official duties.
 - (3) Photographs of a juvenile victim of abuse or neglect authorized by the court shall be retained in the juvenile's social file or in the juvenile's legal file if introduced as evidence during a juvenile court hearing.
- c. Division of Family Services Abuse Cases or Neglect Cases
- (1) Division of Family Services personnel, court personnel, medical personnel or law enforcement officials may photograph juveniles who come to their attention as victims of abuse or neglect without prior authorization of the juvenile court.
 - (2) Reproductions of photographs of abuse or neglect victims taken by medical or law enforcement personnel shall be forwarded to the Division of Family Services and retained in the agency records or in the legal records if introduced as evidence during a court hearing.
- d. Juvenile Service Agency Adoption and Foster Care Cases
- (1) The agency may authorize the photographing of juveniles in their legal custody without prior authorization of the court when such photographs will be used for recognized purposes to further the placement of children in adoptive homes.
 - (2) The agency may authorize the photographing of juveniles as

in their legal custody without prior authorization of the court when such photographs emerge in the normal daily activities of the child. Such activities may include, but not be limited to, school year book photographs, family photographs, and photographs where the child is being recognized for achievement.

F. DISPOSITION OF RECORDS

Each juvenile service agency needs to develop mechanisms whereby records are disposed of after the juvenile is no longer involved in the juvenile service system. While it is important to retain some records for legal and statistical purposes, it is equally important that there be safeguards to protect the continued confidentiality of these records. Further, it is important that there be clearly specified time frames for the disposition of records. In accordance with its findings, the Review Committee would recommend the following changes:

1. Juvenile Courts and Law Enforcement

The court shall, either on its own motion, or upon application by the child or his representative, or upon application of the juvenile officer, enter an order to destroy all social histories, records and information other than the official court legal record and law enforcement records, and may enter an order to seal the official court legal record and law enforcement records within one month after the child reaches his seventeenth birthday and three years have elapsed since the last proceeding relating to a serious violation (rape, sodomy, murder, kidnapping, robbery, arson, burglary, or any acts involving the rendering or threat of serious bodily harm), unless jurisdiction of the court is extended beyond the child's seventeenth birthday. In the event jurisdiction has been extended, the court shall take such action within one month of the closing of the child's case and/or upon the child's twenty-first birthday if fewer than three years have elapsed since the last proceeding was disposed of by the court relating to a serious violation.

2. Division of Family Services

Regarding reports of child abuse or neglect in which no evidence of abuse or neglect is found by the Division, identifying information shall be retained for six months and then shall be removed from the records of the Division.

3. State Agencies

The Divisions of Family Services and Youth Services maintaining any record pertaining to a child who entered the agency system at an age under seventeen will close that record upon termination of services. Such records will be maintained for five years of

inactivity, and within one month after the five year period has elapsed such records will be destroyed (with the exception of the proposed section regarding abuse/neglect report records above).

G. UPON FINAL DISPOSITION OF RECORDS

Juveniles who have become involved in the juvenile service delivery systems in Missouri have been afforded a right to privacy during their period(s) of involvement. The Review Committee feels that this right extends beyond that time and that the predominate philosophy that has protected these persons as juveniles should continue to protect them as they attain adult status. Therefore, it is the recommendation of the Committee that the following statutory language be developed:

STATUTE APPLICABLE TO JUVENILE SERVICE AGENCIES

Upon the destruction or sealing of any juvenile service agency records (as outlined in Section F above), the violation of the law and/or prior agency involvement shall be treated as though it never occurred. All personal identification references shall be deleted, and the court, law enforcement officers, and agencies shall reply and the subject of the record may reply to any inquiry that no record exists with respect to such person. The subject of the record may authorize in writing the release of this information.

SUMMARY

The Missouri Juvenile Justice Review Committee has approached the issue of confidentiality and the role it plays in the juvenile justice system in the State in the following ways:

- Reviewing the current statutes and regulations currently in operation in Missouri;
- Reviewing and assessing statutes from other states as well as model codes;
- Recognizing the problems within the current structure as perceived by both system personnel and other interest groups in the community;
- Attempting to synthesize the needs of Missouri with the approaches adopted by other states;
- Developing options that can be considered by those empowered to initiate both statutory and regulatory change with regard to the juvenile service agencies under consideration; and
- Attaching specific recommendations to the Option chosen by the Committee as being the most practical and viable at this time.

It is the Review Committee's opinion that there is a need for change with regard to the current provisions relating to confidentiality. Based on an analysis of the materials mentioned above, the overview presented in this paper as well as the recommendations contained herein are intended to provide the decision makers in the State with a new sense of direction regarding this issue.

CONFIDENTIALITY

A REVIEW OF THE PROVISIONS RELATING TO YOUTH IN MISSOURI

EXECUTIVE SUMMARY

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

December 1981

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CONFIDENTIALITY

A REVIEW OF THE PROVISIONS RELATING TO YOUTH IN MISSOURI

EXECUTIVE SUMMARY

Prepared by

Missouri Juvenile Justice Review Committee

December 1981

U.S. Department of Justice
National Institute of Justice
93044

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INTRODUCTION

The confidential nature of juvenile records and proceedings pertaining particularly to those youth who are involved with the juvenile service system has provided a sense of privacy for some and has created a sense of concern and, sometimes, irritation for others. As part of its review of the juvenile service system in this State, the Missouri Juvenile Justice Review Committee (MJJRC) has determined that there is a very real need to address this issue.

PROBLEM STATEMENT

Missouri, as most other states, currently has a multitude of statutes protecting the privacy of juveniles. The juvenile courts, the Division of Family Services, the Division of Youth Services and the Department of Mental Health are all statutorily limited with regard to various aspects of confidentiality. At the same time, each of the forty-three (43) circuit courts operate off of local policies and procedures developed by the juvenile judge and circuit courts and each of the state agencies have promulgated regulations and policies to further detail the guidelines provided by law. Interestingly enough, however, even though all of these service delivery systems have juveniles as clientele, no two statutory provisions are identical. On the contrary, there are inconsistencies and gaps.

REVIEW PROCESS

The Review Committee has approached the issue of confidentiality and the role it plays in the juvenile service system in the State in the following ways:

- Reviewing the current statutes and regulations currently in operation in Missouri;
- Reviewing and assessing statutes from other states as well as model codes;
- Recognizing the problems within the current structure as perceived by both system personnel and other interest groups in the community;
- Attempting to synthesize the needs of Missouri with the approaches adopted by other states;
- Developing options that can be considered by those empowered to initiate both statutory and regulatory change with regard to the juvenile service agencies under consideration; and
- Attaching specific recommendations to the Option chosen by the Committee as being the most practical and viable at this time.

It is the Review Committee's opinion that there is a need for change with regard to a number of the current provisions relating to confidentiality. Based on an analysis of the materials mentioned above, the following summary of the Committee's recommendations is intended to provide the decision makers in the State with a new sense of direction regarding this issue.

RECOMMENDATIONS

The recommendations proposed by the MJJRC are based upon three philosophical assumptions. First, the Review Committee would suggest that there is a need for maximum consistency both within each of the juvenile service agencies as well as across

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PROBLEM STATEMENT	1
REVIEW PROCESS	1
RECOMMENDATIONS	1
A. Definitions	2
B. Sanctions	2
C. Research and Data Collection	2
D. Access to Records	3
E. Fingerprinting/Photographing	4
F. Disposition of Records	5
G. Upon Final Disposition of Records	6

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ACQUISITIONS

agency boundaries. Secondly, there is a need for maximum freedom for the exchange of information between the agencies in the field and access to certain information by the involved parties being impacted by the services. Thirdly, there is a need for maximum sanctions for those found to be in violation of the confidentiality provisions.

A. DEFINITIONS

In order to achieve consistency across professional lines in definitions as they relate to the issue of confidentiality, the Review Committee would recommend that definitions for the following be included in statute:

- Access
- Administrative Regulations
- Child Care Agency/Individual
- Confidentiality
- Destruction
- Disclosure
- Disposition of a Record
- Dispositional Findings
- Expunction
- Identifying Information
- Juvenile Service Agency
- Maintenance
- Privacy
- Record (Agency, Juvenile Court, Law Enforcement)
- Research
- Sanctions
- Sealing
- Subject of a Record
- Third Party Records

Further, the Review Committee has proposed definitions for each of the above terms.

B. SANCTIONS

The Committee recommends that, except as provided under sections relating to recommendations regarding the authorized access or release of information, any person who has authorized access to such information who discloses, makes use of, or permits the use of information concerning a juvenile who is or is suspected of being the subject of a referral, complaint, investigation, proceedings, or a legal, social or agency record of any juvenile service agency shall be guilty of a Class A misdemeanor and upon confirmation of the violation, may be subject to contempt action and/or administrative discipline up to and including dismissal. Any person affected by the violation may sue in a civil court for the actual damages incurred.

C. RESEARCH AND DATA COLLECTION

The Committee recommends that enabling and regulatory laws should provide researchers access to information regarding juveniles but should be consistent in stringency and application across juvenile service agency lines.

Regarding data collection for statistical purposes, the Committee recommends that a single body be given mandate and authority to collect statewide aggregates of data which will give accurate information as to the state of the juvenile service system in Missouri.

D. ACCESS TO RECORDS

In order both to protect the privacy of a juvenile and his or her family and also to facilitate the necessary sharing of information between individuals and agencies providing services to the subject, the Committee believes that there are individuals or agencies who should have consistent general access to records. There are other instances where, depending upon the agency, the nature of the record, or the person requesting information, there should be certain restrictions imposed.

1. Release Policy Applicable to All Juvenile Service Agencies.

In instances where consistent access is recommended across agency lines, the following is recommended:

After the investigation of a referral, access to records and files of a juvenile service agency should be restricted to:

- a. The juvenile who is the subject of the record and his/her counsel.
- b. The parents, guardian, or primary caretaker of the juvenile who is the subject of the record and their counsel.
- c. The guardian ad litem of the juvenile named as subject of the record.
- d. Judges and appropriate staff of any juvenile court when essential to performing their responsibilities relative to the juvenile who is the subject of the record.
- e. A child caring agency or individual who is directed to take custody of or be responsible for providing treatment or services to the juvenile and/or family of the child who is named as subject of the record.
- f. Appellate courts when reviewing a case relative to a juvenile who is the subject of the record.
- g. Individuals for the express purpose of conducting research, evaluative or statistical studies. Identifying information should be deleted.
- h. Authorized clerical or administrative staff of the maintaining agency when essential for administrative purposes.
- i. Information may be released for other purposes upon the written authorization of a child and/or parent with review by the attorney and/or guardian ad litem.

Juvenile service agencies shall be required to develop administrative safeguards to insure that these recommendations are protected by both policy and procedure.

2. Release of Information to Specified Others.

In instances where information and/or access should be limited, the following recommendations are made:

- a. Local School Districts: It is the Committee's recommendation that records released to schools should be shared with discretion and should be restricted to information which will serve to enhance the educational program of the juvenile.
- b. Child Abuse and Neglect Investigations: Information necessary to make a disposition on a report of child abuse and neglect should be shared freely between any agency personnel who are actively involved in the investigation of the specific instance of abuse or neglect. Sharing of the specific allegations of the report alone should be restricted to the following:
 - (1) The juvenile named as subject of the report and his/her counsel.
 - (2) The parents, guardian or primary caretaker and their counsel.
 - (3) Law enforcement agencies when necessary to carry out their responsibilities relative to the specific report.
 - (4) Judges, staff of the juvenile court, and prosecuting attorneys when essential to performing their responsibilities relative to the report.
 - (5) Physicians or appropriate medical staff.

- (6) An appropriate child caring agency or individual who has been directed to take custody of the juvenile named in the report or to provide services to the juvenile, parents, guardian or primary caretaker.

The specific allegations of the report should otherwise remain confidential when gaining or disclosing information necessary to make a disposition on a child abuse or neglect report.

c. Dispositional Information: The Committee recommends that sharing of the disposition be restricted to the following situations:

- (1) Disposition of a Report of Child Abuse or Neglect. It is appropriate to disclose information regarding the disposition of a report of child abuse or neglect to the mandated reporter upon the reporter's written request and verification of identification.

- (2) Disposition of a Juvenile Cause. The Committee believes that it is appropriate for the court to disclose information regarding the disposition of a juvenile cause to the alleged victim and the involved law enforcement agency upon request and verification of identification.

- (3) Release of Dispositional Information to Adult Correctional Facilities. It is appropriate for the juvenile court or the Division of Youth Services to disclose dispositional information to the Department of Corrections, the Division of Probation and Parole, and other adult correctional facilities. This information should be limited to that regarding a juvenile involved in a designated serious offense and within a certain time frame.

d. Courts of General Jurisdiction Where the Juvenile is not the Subject of the Proceedings. It is the Committee's recommendation that records may be necessary for consideration in judicial proceedings involving the prosecution of an adult or in the determination of custody issues. However, the protection of the child is of utmost importance in the decision to release such information. Therefore, it is recommended that the legal record of a juvenile may be released in an adult proceeding when a party of that proceeding has served the record custodian with a properly executed subpoena duces tecum. The social record of an agency, or portions thereof, may be released only after the filing of a motion in the juvenile court, proper notice, hearing and order of court by the juvenile court judge specifying the reasons why the record is necessary.

e. Others: The Committee recommends that in order to protect the privacy and best interest of a juvenile served by a juvenile service agency, no records should be disclosed to certain individuals, agencies, or institutions often seeking the same for a variety of purposes. These would include employers, potential employers, the military, any individual representing the media, any school or educational institution, licensing authorities, or credit agencies.

E. FINGERPRINTING/PHOTOGRAPHING

The following changes in procedures and safeguards regarding identifying and evidentiary information with reference to juveniles are suggested:

1. **Fingerprints.** No recommendations for change are made at this time.

2. **Photographs.**

a. Juvenile Court Delinquency Cases

- (1) A juvenile in judicial custody shall only be photographed with the authorization of the court and then only for criminal identification purposes where necessary for a pending investigation, provided, however, that this restriction shall not apply to juveniles certified for prosecution as adults.

- (2) Upon use of the photographs for identification purposes, the following shall occur:

(a) If there is no identification, all copies of the photographs and negatives shall be forwarded to the juvenile court where they will be destroyed forthwith.

(b) If there is a positive identification, all copies of the photographs and negatives shall be forwarded to the court pending disposition of the case and thereafter retained in the juvenile's social file or in the juvenile's legal file if same are introduced as evidence during a court hearing.

(3) Photographs of a juvenile shall only be retained by the juvenile court and shall not be sent to a central state or federal depository.

(4) Photographs of juveniles being retained by the juvenile court may be inspected and used by law enforcement officials with the authorization of the court upon written request when necessary for the discharge of their official duties and when there is cause to believe that the juvenile has been involved in a subsequent offense.

b. Juvenile Court Abuse Cases or Neglect Cases

(1) The juvenile judge may authorize the photographing of any juvenile taken into custody as a victim of abuse or neglect.

(2) Photographs of a juvenile victim of abuse or neglect authorized by the court are subject to inspection by the Division of Family Services personnel and law enforcement personnel when necessary for the discharge of their official duties.

(3) Photographs of a juvenile victim of abuse or neglect authorized by the court shall be retained in the juvenile's social file or in the juvenile's legal file if introduced as evidence during a juvenile court hearing.

c. Division of Family Services Abuse Cases or Neglect Cases.

(1) Division of Family Services personnel, court personnel, medical personnel or law enforcement officials may photograph juveniles who come to their attention as victims of abuse or neglect without prior authorization of the juvenile court.

(2) Reproductions of photographs of abuse or neglect victims taken by medical or law enforcement personnel shall be forwarded to the Division of Family Services and retained in the agency records or in the legal records if introduced as evidence during a court hearing.

d. Juvenile Service Agency Adoption and Foster Care Cases.

(1) The agency may authorize the photographing of juveniles in their legal custody without prior authorization of the court when such photographs will be used for recognized purposes to further the placement of children in adoptive homes.

(2) The agency may authorize the photographing of juveniles in their legal custody without prior authorization of the court when such photographs emerge in the normal daily activities of the child. Such activities may include, but not be limited to, school year book photographs, family photographs, and photographs where the child is being recognized for achievement.

F. DISPOSITION OF RECORDS

Each juvenile service agency needs to develop mechanisms whereby records are disposed of after the juvenile is no longer involved in the juvenile service system. In ac-

cordance with its findings, the Review Committee would recommend the following changes:

1. Juvenile Courts and Law Enforcement

The court shall, either on its own motion, or upon application by the child or his representative, or upon application of the juvenile officer, enter an order to destroy all social histories, records, and information, other than the official court legal record and law enforcement records, and may enter an order to seal the official court legal record and law enforcement records within one month after the child reaches his seventeenth birthday and three years have elapsed since the last proceeding relating to a serious violation (rape, sodomy, murder, kidnapping, robbery, arson, burglary, or any acts involving rendering or threat of serious bodily harm) unless jurisdiction of the court is extended beyond the child's seventeenth birthday. In the event jurisdiction has been extended, the court shall take such action within one month of the closing of the child's case and/or upon the child's twenty-first birthday if fewer than three years have elapsed since the last proceeding was disposed of by the court relating to a serious violation.

2. Division of Family Services

Regarding reports of child abuse or neglect in which no evidence of abuse or neglect is found by the Division, identifying information shall be retained for six months and then shall be removed from the records of the Division.

3. State Agencies.

The Divisions of Family Services and Youth Services maintaining any record pertaining to a child who entered the agency system at any age under seventeen will close that record upon termination of services. Such records will be maintained for five years of inactivity, and within one month after the five year period has elapsed such records will be destroyed (with the exception of the proposed section regarding Abuse/Neglect report records above).

G. UPON FINAL DISPOSITION OF RECORDS

It is the recommendation of the Committee that upon the destruction or sealing of any juvenile service agency records, the violation of the law and/or prior agency involvement be treated as though it never occurred. All personal identification references shall be deleted, and the court, law enforcement officers, and agencies shall reply and the subject of the record may reply to any inquiry that no record exists. The subject of the record may, however, authorize in writing the release of this information.

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