

Institute of Judicial Administration

American Bar Association

**Juvenile Justice Standards**



*STANDARDS RELATING TO*

*Juvenile Records and  
Information Systems*

Recommended by the  
IJA-ABA JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS

Hon. Irving R. Kaufman, *Chairman*

Approved by the  
HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, 1979

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## *Preface*

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The standards and commentary in this volume are part of a series designed to cover the spectrum of problems pertaining to the laws affecting children. They examine the juvenile justice system and its relationship to the rights and responsibilities of juveniles. The series was prepared under the supervision of a Joint Commission on Juvenile Justice Standards appointed by the Institute of Judicial Administration and the American Bar Association. Seventeen volumes in the series were approved by the House of Delegates of the American Bar Association on February 12, 1979.

The standards are intended to serve as guidelines for action by legislators, judges, administrators, public and private agencies, local civic groups, and others responsible for or concerned with the treatment of youths at local, state, and federal levels. The twenty-three volumes issued by the joint commission cover the entire field of juvenile justice administration, including the jurisdiction and organization of trial and appellate courts hearing matters concerning juveniles; the transfer of jurisdiction to adult criminal courts; and the functions performed by law enforcement officers and court intake, probation, and corrections personnel. Standards for attorneys representing the state, for juveniles and their families, and for the procedures to be followed at the preadjudication, adjudication, disposition, and postdisposition stages are included. One volume in this series sets forth standards for the statutory classification of delinquent acts and the rules governing the sanctions to be imposed. Other volumes deal with problems affecting nondelinquent youth, including recommendations concerning the permissible range of intervention by the state in cases of abuse or neglect, status offenses (such as truancy and running away), and contractual, medical, educational, and employment rights of minors.

The history of the Juvenile Justice Standards Project illustrates the breadth and scope of its task. In 1971, the Institute of Judicial Administration, a private, nonprofit research and educational organi-

zation located at New York University School of Law, began planning the Juvenile Justice Standards Project. At that time, the Project on Standards for Criminal Justice of the ABA, initiated by IJA seven years earlier, was completing the last of twelve volumes of recommendations for the adult criminal justice system. However, those standards were not designed to address the issues confronted by the separate courts handling juvenile matters. The Juvenile Justice Standards Project was created to consider those issues.

A planning committee chaired by then Judge and now Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit met in October 1971. That winter, reporters who would be responsible for drafting the volumes met with six planning subcommittees to identify and analyze the important issues in the juvenile justice field. Based on material developed by them, the planning committee charted the areas to be covered.

In February 1973, the ABA became a co-sponsor of the project. IJA continued to serve as the secretariat of the project. The IJA-ABA Joint Commission on Juvenile Justice Standards was then created to serve as the project's governing body. The joint commission, chaired by Chief Judge Kaufman, consists of twenty-nine members, approximately half of whom are lawyers and judges, the balance representing nonlegal disciplines such as psychology and sociology. The chairpersons of the four drafting committees also serve on the joint commission. The perspective of minority groups was introduced by a Minority Group Advisory Committee established in 1973, members of which subsequently joined the commission and the drafting committees. David Gilman has been the director of the project since July 1976.

The task of writing standards and accompanying commentary was undertaken by more than thirty scholars, each of whom was assigned a topic within the jurisdiction of one of the four advisory drafting committees: Committee I, Intervention in the Lives of Children; Committee II, Court Roles and Procedures; Committee III, Treatment and Correction; and Committee IV, Administration. The committees were composed of more than 100 members chosen for their background and experience not only in legal issues affecting youth, but also in related fields such as psychiatry, psychology, sociology, social work, education, corrections, and police work. The standards and commentary produced by the reporters and drafting committees were presented to the IJA-ABA Joint Commission on Juvenile Justice Standards for consideration. The deliberations of the joint commission led to revisions in the standards and commentary presented to them, culminating in the published tentative drafts.



The published tentative drafts were distributed widely to members of the legal community, juvenile justice specialists, and organizations directly concerned with the juvenile justice system for study and comment. The ABA assigned the task of reviewing individual volumes to ABA sections whose members are expert in the specific areas covered by those volumes. Especially helpful during this review period were the comments, observations, and guidance provided by Professor Livingston Hall, Chairperson, Committee on Juvenile Justice of the Section of Criminal Justice, and Marjorie M. Childs, Chairperson of the Juvenile Justice Standards Review Committee of the Section of Family Law of the ABA. The recommendations submitted to the project by the professional groups, attorneys, judges, and ABA sections were presented to an executive committee of the joint commission, to whom the responsibility of responding had been delegated by the full commission. The executive committee consisted of the following members of the joint commission:

Chief Judge Irving R. Kaufman, *Chairman*  
Hon. William S. Fort, *Vice Chairman*  
Prof. Charles Z. Smith, *Vice Chairman*  
Dr. Eli Bower  
Allen Breed  
William T. Gossett, Esq.  
Robert W. Meserve, Esq.  
Milton G. Rector  
Daniel L. Skoler, Esq.  
Hon. William S. White  
Hon. Patricia M. Wald, *Special Consultant*

The executive committee met in 1977 and 1978 to discuss the proposed changes in the published standards and commentary. Minutes issued after the meetings reflecting the decisions by the executive committee were circulated to the members of the joint commission and the ABA House of Delegates, as well as to those who had transmitted comments to the project.

On February 12, 1979, the ABA House of Delegates approved seventeen of the twenty-three published volumes. It was understood that the approved volumes would be revised to conform to the changes described in the minutes of the 1977 and 1978 executive committee meetings. The *Schools and Education* volume was not presented to the House and the five remaining volumes—*Abuse and Neglect*, *Court Organization and Administration*, *Juvenile Delinquency and Sanctions*, *Juvenile Probation Function*, and *Noncriminal*

*Misbehavior*—were held over for final consideration at the 1980 mid-winter meeting of the House.

Among the agreed-upon changes in the standards was the decision to bracket all numbers limiting time periods and sizes of facilities in order to distinguish precatory from mandatory standards and thereby allow for variations imposed by differences among jurisdictions. In some cases, numerical limitations concerning a juvenile's age also are bracketed.

The tentative drafts of the seventeen volumes approved by the ABA House of Delegates in February 1979, revised as agreed, are now ready for consideration and implementation by the components of the juvenile justice system in the various states and localities.

Much time has elapsed from the start of the project to the present date and significant changes have taken place both in the law and the social climate affecting juvenile justice in this country. Some of the changes are directly traceable to these standards and the intense national interest surrounding their promulgation. Other major changes are the indirect result of the standards; still others derive from independent local influences, such as increases in reported crime rates.

The volumes could not be revised to reflect legal and social developments subsequent to the drafting and release of the tentative drafts in 1975 and 1976 without distorting the context in which they were written and adopted. Therefore, changes in the standards or commentary dictated by the decisions of the executive committee subsequent to the publication of the tentative drafts are indicated in a special notation at the front of each volume.

In addition, the series will be brought up to date in the revised version of the summary volume, *Standards for Juvenile Justice: A Summary and Analysis*, which will describe current history, major trends, and the observable impact of the proposed standards on the juvenile justice system from their earliest dissemination. Far from being outdated, the published standards have become guideposts to the future of juvenile law.

The planning phase of the project was supported by a grant from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration. The National Institute also supported the drafting phase of the project, with additional support from grants from the American Bar Endowment, and the Andrew Mellon, Vincent Astor, and Herman Goldman foundations. Both the National Institute and the American Bar Endowment funded the final revision phase of the project.

An account of the history and accomplishments of the project

would not be complete without acknowledging the work of some of the people who, although no longer with the project, contributed immeasurably to its achievements. Orison Marden, a former president of the ABA, was co-chairman of the commission from 1974 until his death in August 1975. Paul Nejelski was director of the project during its planning phase from 1971 to 1973. Lawrence Schultz, who was research director from the inception of the project, was director from 1973 until 1974. From 1974 to 1975, Delmar Karlen served as vice-chairman of the commission and as chairman of its executive committee, and Wayne Mucci was director of the project. Barbara Flicker was director of the project from 1975 to 1976. Justice Tom C. Clark was chairman for ABA liaison from 1975 to 1977.

Legal editors included Jo Rena Adams, Paula Ryan, and Ken Taymor. Other valued staff members were Fred Cohen, Pat Pickrell, Peter Garlock, and Oscar Garcia-Rivera. Mary Anne O'Dea and Susan J. Sandler also served as editors. Amy Berlin and Kathy Kolar were research associates. Jennifer K. Schweickart and Ramelle Cochrane Pulitzer were editorial assistants.

It should be noted that the positions adopted by the joint commission and stated in these volumes do not represent the official policies or views of the organizations with which the members of the joint commission and the drafting committees are associated.

This volume is part of the series of standards and commentary prepared under the supervision of Drafting Committee IV, which also includes the following volumes:

**PLANNING FOR JUVENILE JUSTICE  
MONITORING**

# *Addendum of Revisions in the 1977 Tentative Draft*

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As discussed in the Preface, the published tentative drafts were distributed to the appropriate ABA sections and other interested individuals and organizations. Comments and suggestions concerning the volumes were solicited by the executive committee of the IJA-ABA Joint Commission. The executive committee then reviewed the standards and commentary within the context of the recommendations received and adopted certain modifications. The specific changes affecting this volume are set forth below. Corrections in form, spelling, or punctuation are not included in this enumeration.

1. Standards 4.3 A., B., and C. were amended by changing “record” to “information” so that notice of record retention need refer only to the record and need not specify the information contained therein.

2. Standard 5.4 was amended by adding the qualifying phrase, “except as modified by Standards 5.3, 5.6, and 5.7.” Subdivision E. was amended by adding an alternative to reevaluation every ninety days: a statement of the most recent review of the record and a warning that conditions may have changed since that review. Subdivision H. was amended by substituting for “a bona fide emergency” the requirement that a compelling health or safety need exists, in order to narrow the conditions for disclosure without consent.

3. Standard 5.7 A. was amended by adding “or” between subdivisions 1. and 2. to clarify the intention that the provisions be in the disjunctive, as set forth in the commentary.

4. Standard 18.1 was amended to add an exception to the prohibition against the use of juvenile records by third persons by expressly authorizing inquiries by the state youth authority when candidates are being considered for positions requiring ex-offenders.

5. Standard 18.4 C. was amended to permit juvenile records to be admitted in a criminal trial after waiver of juvenile court jurisdiction, provided the evidence is otherwise admissible in criminal trials.

Commentary was revised accordingly, including a statement that evidence should not be rendered inadmissible by its introduction during a waiver hearing.

6. Commentary to Standard 2.6 was revised by indicating that the requirement in the standard that each juvenile agency establish a procedure to correct a record and to give notice to juveniles and their families of the availability of such procedure is satisfied by written notice of their rights to access and to challenge the records, if the notice gives sufficient procedural information to enable them to initiate the process.

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# *Juvenile Records and Information Systems*

# Introduction

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Information systems, particularly automated systems, have been the subject of scrutiny and criticism in a number of recent books and reports. See A. Miller, *The Assault on Privacy* (1972); Report of the Secretary's Adv. Comm. on Automated Personal Data Systems, "Records, Computers and the Rights of Citizens" (HEW 1973). See also 5 U.S.C.A. § 552a (Privacy Act of 1974). Very little attention, however, has been given to the specific issues that arise in the context of systems that are designed to collect and use information pertaining to children. The few good articles on the subject generally focus on a particular institution, examine its recordkeeping practices and then criticize the recordkeeping practices of that institution. See, E. Lemert, "Records in Juvenile Court," *On Record* (Wheeler ed., 1969); Russell Sage Foundation, "Guidelines for the Collection, Maintenance & Dissemination of Pupil Records" (1970). While these articles are useful, they rarely articulate the major issues that generally arise whenever children are made the subject of a record—whether the record is made by a juvenile court, a school, a welfare department, or a health clinic. Therefore, this volume of standards undertakes to articulate the major issues that affect juveniles who are the subject of an information system.

This volume is structured so that it should provide a general framework of analysis for courts and agency directors who are attempting to design their information and recordkeeping systems so that the privacy interests of juveniles will be appropriately safeguarded and the flow of information will promote fair and efficient decisionmaking. Parts I through V of this volume articulate general standards pertaining to information uses and abuses and focus on the special issues that apply to juveniles. The remainder of the volume develops the relationship of the general standards in the more specific context of three special areas of concern: juvenile courts, social histories, and police records.

The design of any information system necessarily involves an analysis of how decisions are and should be made. While the validity and

reliability of a particular decision may depend on the insight and intuition of a particular decisionmaker, the general process of decision-making is usually no better than the quality of information provided to the persons who have the ultimate responsibility for making decisions. Providing information is not, however, the only purpose of an information system; other considerations, some of which conflict with the need for information, such as privacy interests and the costs of collecting and retaining information, must also be taken into account. When juveniles are the subject of an information system, a number of additional and unique considerations also arise:

I. *The nature of being a juvenile.* Juveniles often have less choice than adults about giving or consenting to the disclosure of information when requested to do so. Sometimes they have less choice because they are the captive subject of a particular institution, perhaps a school or welfare department, and, in such a context, when an adult makes a request for information, it is difficult for the child to resist. Resistance to a request for information is also difficult because juveniles are usually immature and lack the emotional, economic, and political power to meaningfully oppose a request from an adult. Also, most juveniles have parents, and their parents, supported by existing law, sometimes contribute to the problem of a juvenile's exercising choice with respect to information by making the choice for the juvenile without consulting him or her or, after consultation, by making the choice contrary to the juvenile's expressed wishes. Finally, juveniles usually have less mobility than adults so it is more difficult for them to escape from a community in which harmful information has cast them in an unfavorable light.

II. *The importance of information.* Historically, institutions which affect juveniles have often felt a need to collect large quantities of information before making decisions with respect to juveniles. This perceived need for information is manifested by the philosophy and jurisdiction of many juvenile courts. These courts have tended to focus upon the "needs of the juvenile" as much or more than the nature of the offense charged. They usually have broader jurisdiction than adult courts (including neglect, incorrigibility, dependency, etc.). They often utilize diversion and probation extensively. They tend to stress the importance of presentence and social investigation reports. And, they usually articulate the importance of "rehabilitation" rather than punishment. These practices of juvenile courts, rooted in a philosophy of social welfare, have produced information systems which generate great quantities of information and decisionmakers who feel uncomfortable without these quantities of information. See, Altman, "Watching Children," 10 *Trial* No. 3, 19 (1974). Juvenile courts have

rarely scrutinized the relationship between quality decisions and quantities of information and have rarely attempted to balance the need for information against the privacy and economic costs of collecting information.

III. *Government's special obligation.* Articulating the concept in terms of *parens patriae* or *in loco parentis*, all jurisdictions assume that government has a special legal obligation to protect juveniles. In order to fulfill that obligation, it is often assumed that governmental institutions must collect a maximum amount of information about juveniles and privacy and economic costs are rarely considered.

IV. *The role of maximum information.* It is a commonly held belief that more information will produce higher quality decisions. That belief seems to be particularly strong in juvenile institutions where a social welfare philosophy predominates. See, E. Lemert, "Records in Juvenile Court," *supra* at 356-57.

V. *The concept of privacy.* Although the parameters of a right of privacy are beginning to be defined for adults (see generally, HEW Report, "Records, Computers and the Rights of Citizens," *supra*), the concept continues to be elusive. It is a particularly elusive concept as applied to juveniles in the context of information systems. For example, if a record should be kept confidential, what does that mean when a juvenile is the subject of the record? Should the juvenile have access? Should his or her parents have access? Should a juvenile be able to keep something confidential from his or her parents? If so, at what age? Are an institution's *parens patriae* obligations consistent with both the privacy rights and expectations of a juvenile and those of his or her parents? What are the privacy needs and expectations of a juvenile? Are they different from those of an adult? If a person who is employed by a juvenile institution is given confidential information by a juvenile, does that person have an obligation to disclose that information to his or her employer (i.e. school psychologist or principal) or to the juvenile's parents? Can a juvenile be harmed more than an adult by the disclosure of adverse information? Surprisingly, these issues and many more have not been fully explained either by the literature or by existing institutions.

VI. *Consistency of institutional goals and privacy.* Particularly in the context of juvenile courts, the goal of privacy is generally regarded as consistent with the purpose of juvenile court intervention. Thus, most states have enacted laws providing that juvenile court records are not public records. *E.g.*, Minn. Stat. Ann. § 260.161(2). It is also generally provided that hearings in juvenile court are not open to the public. *E.g.*, Ga. Code Ann. § 24A-1801(c). Because of these laws and a general notion that labeling a juvenile and disclosing the

label may have severe negative consequences, see E. Schur, *Labeling Deviant Behavior* (1971), the design of an information system for juveniles can stress the privacy interests of juveniles without the adverse political repercussions that might arise if similar privacy interests were asserted for adults.

The special needs of juveniles and the unique issues, referred to above, that arise when juveniles are the subject of an information system are addressed throughout this volume. Most of the major issues are resolved consistent with a philosophy of nonintervention and reducing stigma, see generally E. Schur, *Radical Non-Intervention: Rethinking the Delinquency Problem* (1973), which is the philosophy of all of the volumes of the Juvenile Justice Standards Project. Some issues are resolved by drawing from recent federal legislation, e.g., 5 U.S.C.A. § 552a(1974), and adapting it to the needs of juveniles. Other issues are resolved consistent with the literature pertaining to decisionmaking theory.

In addition to the importance of designing an information system which is sensitive to the special needs of juveniles, this volume has two other major themes. First, there must be visibility of the information systems and practices of juvenile agencies. To promote visibility, each agency should be required to develop rules and regulations (Standard 2.2) and should be required to conduct periodic audits of information collection practices and policies (Standard 3.4). Furthermore, juveniles' privacy committees should be established (Standard 2.1) with the power to scrutinize information policies and practices. The second major theme of this volume is that the privacy interests of children will be most effectively served if agencies are required to scrutinize and justify their collection of information (see Standards 3.1-3.6) before they begin to address the questions concerning how to protect the information after it is retained (Standards 4.1-5.8).

This volume of standards was several years in production—from its original conception, to drafts and revisions, reporters' meetings, drafting committee meetings, subcommittee meetings, executive committee meetings, commission meetings, and editorial committee meetings. Its completion would have been more difficult without the able guidance and organizational talents of Daniel Skoler, Chairman of Drafting Committee IV. Several law students from Arizona State University also provided important assistance: Emily Jenkins Reed, Keith Gallagher, Jane Goldman, and Carolyn Kaluzniacki.

# *Standards*

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## *SECTION I: GENERAL STANDARDS*

### **PART I: DEFINITIONS**

#### **1.1 Juvenile agency.**

A juvenile agency is:

A. any court, other than a divorce court or a court determining adoptions, that has the legal authority to issue orders pertaining to the custody or liberty of a juvenile;

B. any publicly funded agency that has the legal authority to confer or deny clinical, evaluative, counseling, medical, educational, or residential services to a juvenile;

C. any private agency that is licensed to provide such services to a juvenile;

D. any private agency that has a contract with a public agency to provide such services to a juvenile; and

E. any private agency that regularly provides such services to juveniles as a result of referrals to the private agency by a public agency.

#### **1.2 Juvenile.**

A juvenile is any person under the age of eighteen or any person who, as a result of a delinquency or neglect petition, is subject either to an order of commitment or to conditions of probation or release that in any way restrict the liberty of the person.

#### **1.3 Juvenile record.**

A juvenile record is any record of or in the custody of a juvenile agency pertaining to a juvenile and maintained in a manner so that the juvenile is identified or may be identified. A juvenile record includes records maintained in any manner, automated or manual, and retrievable in any form: handwritten files, tape recordings, computer tapes, microfilm, or any other form.



#### 1.4 Parent.

A parent is a person with whom a juvenile regularly lives and who is the natural, adoptive, or surrogate parent of a juvenile.

#### 1.5 Surrogate parent.

A surrogate parent is an adult person who has been appointed by a court as legal guardian of the juvenile, or an adult person who has voluntarily assumed the role of parent with respect to the juvenile. A surrogate parent does not include an agency or institution, or a person employed by an agency or institution, to which the juvenile has been committed or referred by order of the court.

#### 1.6 Direct access.

Direct access is the right to enter the record room, file cabinet, or other place where juvenile records are stored, for the purpose of withdrawing a record so that it may be observed by an authorized person for an authorized purpose.

#### 1.7 Access.

Access is the right to view and photocopy a juvenile record but not the right to enter the place where the juvenile records are physically stored.

#### 1.8 Indirect access.

Indirect access is the right to receive information from a juvenile record but not the right to view or photocopy the actual record.

#### 1.9 Dissemination.

Dissemination is the provision of direct access, access, or indirect access to a juvenile record.

#### 1.10 Third person.

A third person is any agency or person other than:

A. the juvenile who is the subject of a juvenile record;

B. a parent or attorney of the juvenile; or

C. an employee of the juvenile agency that has custody of the juvenile's record.

#### 1.11 Centralized information system.

A centralized information system is an information system, whether automated or manual, in which two or more juvenile agencies participate for the purpose of gathering, storing, processing, or disseminating information pertaining to identified or identifiable juveniles.

## PART II: GENERAL POLICIES PERTAINING TO INFORMATION

### 2.1 Juveniles' privacy committee.

A. Each jurisdiction should establish by statute at least one juveniles' privacy committee. The members of the committee should include persons who have knowledge and expertise in juvenile advocacy, delivery of services to juveniles, information systems, and criminal justice agency activities affecting juveniles.

B. The committee should have the authority to examine and evaluate juvenile records and information issues pertaining to juveniles and the right to conduct such inquiries and investigations as it deems necessary.

C. The committee should periodically make recommendations concerning privacy, juvenile records, and information practices and policies pertaining to juveniles.

D. The committee should have the authority to receive automation statements submitted by juvenile agencies pursuant to Standard 4.6, in order to computerize juvenile records.

E. The committee should have the authority to receive proposals submitted by juvenile agencies to establish a centralized information system.

F. The committee should have the authority to commence civil actions against juvenile agencies for declaratory judgments, cease and desist orders, and other appropriate injunctive relief in cases involving the failure to promulgate written rules and regulations pursuant to Standard 2.2 or the improper collection, retention, or dissemination of a juvenile record or identifiable information pertaining to juveniles.

### 2.2 Rules and regulations.

A juvenile agency should develop written rules and regulations, consistent with these standards, governing the agency's collection, retention, and dissemination of information pertaining to juveniles. Copies of the rules and regulations should be filed with the juveniles' privacy committee and made available to the public.

### 2.3 Civil remedy.

The legislature of each jurisdiction should promulgate a statute making it a tort to improperly collect, retain, or disseminate information pertaining to juveniles. Improper collection, retention, or dissemination should be presumed if such acts are committed in violation of an applicable federal, state, or local law or in violation of a juvenile agency's duly promulgated rules or regulations. In such cases, a juvenile should be entitled to monetary compensation, if actual damages are incurred as a result of the improper collection, retention,

or dissemination of information; to an appropriate equitable remedy, if the improper act has not been corrected or there is a reasonable possibility that the improper act may be repeated; to punitive damages if it is established that the improper act was willful; and to attorneys' fees and other reasonably incurred litigation costs if the juvenile establishes that the collection, retention, or dissemination of information was improper.

#### 2.4 Criminal penalty.

The legislature of each jurisdiction should promulgate a statute making it a misdemeanor for any person to unlawfully and willfully obtain or attempt to obtain a juvenile record, or information from such a record; to unlawfully and willfully provide access, disclose, or attempt to communicate information from a juvenile record; or to unlawfully and willfully destroy or falsify information in or to be included in a juvenile record.

#### 2.5 Administrative sanctions.

The rules and regulations promulgated by a juvenile agency should provide for disciplinary sanctions to be imposed, including dismissal, where appropriate, for violation of any law or rule of the juvenile agency pertaining to the collection, retention, or dissemination of information and should further provide procedures for filing disciplinary complaints and for according a hearing to personnel who are the subject of a complaint.

#### 2.6 Correction of records; periodic audits.

A. The rules and regulations promulgated by each juvenile agency should establish a procedure by which a juvenile, or his or her representative, may challenge the correctness of a record and which further provides for notice to be given to each juvenile over the age of ten who is the subject of a juvenile record of the availability of such a procedure. Such notice should also be given to a parent of the juvenile if the parent has a right of access to the record pursuant to Standard 5.2.

B. The procedure established to provide an opportunity to challenge the correctness of a record should include the right to a hearing before an official of the juvenile agency who has the authority to make any corrections that may be necessary as a result of a challenge and should also include procedures by which a juvenile or his or her parents may file a statement of disagreement and explanation which will become a part of the record if the challenge is rejected.

C. Each juvenile agency should periodically conduct an audit to

verify that adequate controls have been established to ensure the accuracy and completeness of its juvenile records.

### 2.7 Training programs.

Each juvenile agency should provide training programs for its personnel and should develop operations manuals describing the laws, policies, and practices concerning the collection, retention, and dissemination of information pertaining to juveniles.

### 2.8 Researcher's privilege.

Statutes should be promulgated providing that information collected or retained by an approved researcher or evaluator is privileged.

## PART III: COLLECTION OF INFORMATION

### 3.1 Relationship of information and decisionmaking.

The rules and regulations promulgated by a juvenile agency governing the collection of information pertaining to juveniles should take into account that:

- A. too much as well as too little information can inhibit the process of decision;
- B. the need for information increases as the options available to the decisionmaker increase and decreases as the available options decrease; and
- C. information that is collected is often misused, misinterpreted, or not used.

### 3.2 Purposes of information collection.

A juvenile agency should only collect information with respect to juveniles if the information is being collected for proper purposes. Those purposes are limited to:

- A. making lawful decisions pertaining to juveniles;
- B. managing the agency effectively and efficiently;
- C. evaluating the agency; and
- D. approved research.

### 3.3 Standards for the collection of information.

A juvenile agency should only collect information pertaining to an identifiable juvenile if:

- A. reasonable safeguards have been established to protect against the misuse, misinterpretation, and improper dissemination of the information;

B. the information is both relevant and necessary to a proper purpose for collecting the information;

C. the information will be utilized within a reasonable period of time for a proper purpose;

D. an evaluation (conducted pursuant to Standard 3.4) indicates that it would be reasonable to rely upon the type of information for the purposes for which it is collected;

E. the cost of collecting the information, considered in relation to the significance of the purpose for collecting the information, does not appear to be excessive;

F. the collection of the information does not involve an invasion of privacy; and

G. it is reasonable to expect that the information collected will be accurate.

### 3.4 Periodic evaluation of information collection practices and policies.

A juvenile agency should periodically prepare or cause to be prepared a written evaluation of its policies and practices with respect to the collection of information pertaining to juveniles. Each such evaluation should include consideration of the following:

A. the specific information that is being collected;

B. the cost of collecting the information;

C. the reliability of the information that is being collected;

D. the purpose of collecting the information;

E. the extent to which the information collected is used for the purposes for which it is collected;

F. the validity of relying upon the information for the purposes for which it is collected;

G. the extent to which or the risk that the information is or may be misused or misinterpreted;

H. the extent to which the information is regarded as private or the means of collecting the information may be regarded as an invasion of privacy;

I. the extent to which the information is necessary for making a particular decision;

J. the effect of making decisions in individual cases without the information.

The written evaluation should be a public record and available to the public and consumers of the agency's services.

### 3.5 Information collected for research or evaluation.

A. A juvenile agency should permit the collection of information for purposes of research or evaluation.

B. Any person who, for purposes of research or evaluation, seeks to collect information from or concerning an identifiable juvenile should file a formal written application, pursuant to Standard 5.6, with the juvenile agency that will provide access to the juvenile or to information concerning the juvenile.

C. Any person who seeks to collect information from or concerning an identifiable juvenile, pursuant to this standard, should obtain the written consent of the juvenile, if the juvenile is emancipated or over the age of fifteen, and his or her parents after informing them of the purposes for which the information is to be collected, the safeguards that have been established to ensure the security of the information, and the right of the juvenile or his or her parents to refuse their consent to the collection of such information.

D. A juvenile and his or her parents need not be informed and their consent need not be obtained if the information is collected in a manner so that it cannot be linked with an identifiable juvenile or the information is not of a personal nature.

### 3.6 Collection of personal information.

A juvenile agency should not collect information of a personal nature from a juvenile without first informing the juvenile, if over the age of ten, of the agencies or persons who have a right of access to the information that may be collected. If information of a personal nature is to be collected from a juvenile not over the age of ten, a parent of the juvenile should be so informed.

## PART IV: RETENTION OF INFORMATION

### 4.1 Information retention as a separate decision.

The decision of a juvenile agency to retain information in written form or in a form so that it may be retrieved by third persons is a separate decision which should be made in addition to the initial decision to collect the information.

### 4.2 Standards for the retention of information.

The decision of a juvenile agency to retain information pertaining to an identifiable juvenile, in written form or in any other retrievable form, should be based upon a determination that:

- A. the information is collectible, as set forth in Standard 3.3;
- B. the information is accurate;
- C. it is reasonable to expect that the information will be utilized at a later time;
- D. reasonable safeguards have been established to protect against

the misuse, misinterpretation, and improper dissemination of the information; and

E. it is likely that retaining the information in written or other retrievable form will ensure that the information will be recalled more accurately; or

F. the information has been collected as a part of a formal judicial or administrative proceeding.

#### 4.3 Duty of disclosure of record retention.

A juvenile agency should not retain a juvenile record without making a reasonable effort to notify in writing the juvenile who is the subject of the record and a parent of the juvenile, if a parent has a right of access to the record pursuant to Standard 5.2, that:

A. the record has been retained;

B. there is a right of access to the record; and

C. there is a right to challenge the accuracy of the record as well as the agency's right to retain the record.

#### 4.4 Retention of administrative data.

Information collected by a juvenile agency for the purpose of making internal administrative decisions or for the purpose of internal evaluation should not be retained in a form so that individual juveniles may be identified unless such identification is necessary for internal purposes during the period of evaluation.

#### 4.5 Limited use of labels.

A juvenile record should not include summary conclusions or labels describing an identified juvenile's behavioral, social, medical, or psychological history or predicting an identified juvenile's future behavior, capacity, or attitudes unless the underlying factual basis, meaning, and implications are explained in terms that are understandable to a nonprofessional person, and their use is necessary.

#### 4.6 Retention of information in computers.

A. The decision by a juvenile agency to use a computerized system to store information pertaining to identifiable juveniles should be subject to evaluation and comment by a juveniles' privacy committee.

B. Before a juvenile agency utilizes a computerized information system pertaining to identifiable juveniles, it should submit an "automation statement" to a juveniles' privacy committee for evaluation and comment.

C. The "automation statement" should include a detailed description of the system to be utilized, the data to be stored in the system,

the purposes of the system, the quality controls to be provided, access and dissemination provisions, methods for protecting privacy and ensuring system and personnel security, provision for an independent audit, and estimated costs of establishing and maintaining the system.

D. The data included in a computerized system pertaining to identifiable juveniles should be objective and factual and should not include data of a subjective or predictive nature.

E. A proposed computerized system should satisfy the following criteria:

1. the ability of the juvenile agency to deliver services to juveniles will be substantially enhanced by the proposed computerized system;

2. the proposed system includes only the minimum objective data necessary to accomplish the purposes of automation;

3. the proposed system is designed to ensure the accuracy, confidentiality, and security of the data to be included in the system;

4. the proposed system is programmed to ensure compliance with Standard 3.3 (pertaining to the collection of information), Standard 4.2 (pertaining to the retention of information), and Part V (pertaining to the dissemination of information);

5. the juveniles whose records are to be computerized are identified by an arbitrary nonduplicating number instead of by name; and

6. the economic and privacy costs of automation are less than the benefits to be obtained by automation.

F. A juveniles' privacy committee should publicize the fact that an "automation statement" has been filed, make the statement available to interested citizens, groups, and agencies, and provide an opportunity for the receipt of comments and evidence with respect to the statement and the juvenile agency that has proposed the system.

G. After evaluating a proposed computerized system, the juveniles' privacy committee should issue a written evaluation and that evaluation should be a public record.

#### 4.7 Centralized recordkeeping limited.

A. The legislature of each jurisdiction should promulgate a statute prohibiting juvenile agencies from utilizing centralized information systems in which information pertaining to identified juveniles is or may be shared, or through which individual information systems are or may be linked, except as provided in Standard 4.7 B.

B. The only data that should be stored in a centralized information system are the minimum data necessary to identify the juvenile, the



names of those agencies that have provided or will provide services to the juvenile or his or her family, and the dates that those services were or will be provided.

C. Before any centralized information system is utilized that contains the minimum data authorized by subsection B. and before any information system is designed to provide for the sharing or linking of juvenile record information, a proposal for the information system should be submitted to a juveniles' privacy committee for evaluation and comment.

## PART V: DISSEMINATION OF INFORMATION

### 5.1 Direct access limited to designated personnel.

Direct access to a juvenile record should be limited to those clerical and professional persons specifically designated by the chief administrator of each juvenile agency. The number of persons so designated should be kept to a minimum based upon a criterion of necessity.

### 5.2 Access by the juvenile and his or her representatives.

A juvenile, his or her parents, and the juvenile's attorney should, upon request, be given access to all records and information collected or retained by a juvenile agency which pertain to the juvenile except:

A. if the information is likely to cause harm, the provisions of Standard 5.5 should be applied; and

B. if the information or record has been obtained by a juvenile agency (other than a juvenile court) in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, and the juvenile has a legal right to receive those services without the consent of his or her parents, then the information or record should not in any way be disclosed or disseminated to the juvenile's parents unless the written consent of the juvenile is obtained and the juvenile has been fully informed of his or her right not to have the information or record disclosed to his or her parents.

### 5.3 Access by agency personnel.

The personnel of a juvenile agency should not be given access or indirect access to a juvenile record possessed by the agency except for the purpose of providing services to the juvenile or for other proper agency purposes.

### 5.4 Access by third persons.

Except as permitted by Standards 5.3, 5.6, and 5.7, access or indirect access to a juvenile record should only be accorded to a third

person under the following circumstances:

A. the juvenile, if over the age of ten, is informed of the specific information to be disclosed, the purposes of disclosure, and the possible consequences of disclosure; and

B. a parent of the juvenile is informed of the specific information to be disclosed, the purposes of disclosure, and the possible consequences of disclosure, except, a parent should not be so informed if the parent does not have a right of access to the information pursuant to Standard 5.2; and

C. the juvenile, if emancipated or over the age of fifteen, or, if his or her parent is not informed of the proposed disclosure in accordance with subsection B., has consented to the proposed disclosure of the information; and

D. a parent of the juvenile has consented to the proposed disclosure in those instances in which consent of the juvenile is not required by subsection C.; and

E. the juvenile agency that has possession of the information has reevaluated the information within the past ninety days and has determined that, to the best of its knowledge, the information is accurate, or the record contains a clear and conspicuous statement of the last date the record was reviewed for accuracy and completeness, and also a warning that conditions may have changed since that date; and

F. the juvenile agency that has possession of the information has determined that disclosure of the information to the third person is appropriate; and

G. the third person to whom access or indirect access is to be accorded executes a written nondisclosure agreement or promises to execute such an agreement within forty-eight hours; or

H. a compelling health or safety need exists, consent is not reasonably obtainable pursuant to subsection C. above, and disclosure is made to a court for the purpose of obtaining consent.

### 5.5 Special obligation when information may be harmful.

If it is determined by a professional person who has been assigned responsibility for a juvenile or his or her case that disclosure of certain information is likely to cause severe psychological or physical harm to the juvenile or his or her parents, the professional person should either:

A. arrange to provide professional counseling for the juvenile and his or her parents so that, upon disclosure of the potentially harmful information, the family will have the appropriate professional support; or

B. withhold the potentially harmful information from the juvenile and his or her parents until that information has been disclosed to an

independent representative of the juvenile, selected by the juvenile, so that the representative may make an independent judgment of whether the information is accurate and disclosure of the information to the juvenile or his or her parents is necessary; or

C. delete the potentially harmful information from all records of the juvenile agency and ensure that the information will not be used in any way against the juvenile.

#### 5.6 Access for research or evaluation.

A. Any person who seeks access to or information from juvenile records for purposes of research or evaluation should file a formal written application with the juvenile agency that has custody of the records. A copy of the application should also be sent to the juveniles' privacy committee.

B. The juvenile agency should approve the application if, after considering the views of the juveniles' privacy committee, and after examining the application, the applicant, and such other information that may be available, the juvenile agency is satisfied that:

1. the applicant has adequate training and qualifications to undertake the proposed research or evaluation project;

2. the proposed project is to be undertaken for valid educational, scientific, or other public purposes;

3. the application includes an acceptable and detailed description of the proposed project including a specific statement of the information required and the purpose for which the project requires the information;

4. the proposed project is designed to preserve the anonymity of the juveniles who are the subject of records or information to which access is sought;

5. the applicant has agreed in a sworn statement not to reproduce any information from a juvenile record, except for internal purposes, and has agreed not to disclose any information from a juvenile record to an unauthorized person; and

6. the applicant has agreed to provide a list of the names and addresses of each person who will be a member of the staff of the proposed project and to provide a sworn statement, signed by each of them, not to disclose any information from a juvenile record to an unauthorized person.

C. Before approving or disapproving an application for research or evaluation, the juvenile agency should make written findings with respect to the criteria set forth in subsection B.

D. Upon approving or disapproving an application, the written findings and conclusion with respect to the application should be filed with the juveniles' privacy committee.

E. Any final reports, findings, or conclusions of the research or evaluation project should be a public record and should be presented so that individual juveniles cannot be identified either directly or indirectly.

F. A juvenile agency that approves a research or evaluation project and the juveniles' privacy committee should have the right to inspect any approved project. If at any time the juvenile agency has reason to believe that the project is not being carried forward as agreed or is being conducted in a manner contrary to the research application, it should terminate the project's access to records or impose such other restrictions as may be necessary and proper.

G. If an application filed pursuant to this standard is disapproved, the applicant should be given the right to appeal the disapproval to a court of general jurisdiction.

#### 5.7 Access to juvenile records for law enforcement or judicial purposes limited.

A. Access to juvenile records should not be provided to a law enforcement agency by a juvenile agency unless:

1. the consent of the juvenile who is the subject of the record or his or her parents is obtained in accordance with Standard 5.4; or

2. a judge determines, after *in camera* examination of the record of a designated juvenile, that such access is relevant and necessary.

B. Juvenile records should only be produced for a legal proceeding pursuant to a subpoena.

C. Juvenile records, other than records retained by or for a juvenile court, and the information contained therein, should not be admissible in any proceeding unless:

1. the juvenile who is the subject of the record or his or her parents consent to the disclosure of the record or information in accordance with Standard 5.4 and the record or information is otherwise admissible; or

2. a judge determines, after examining the record or information *in camera*, that the record or information is not all or a part of a social or psychological history (prepared by or for a juvenile agency other than a juvenile court), that it is relevant and necessary for the purpose of the proceeding, and that the admission of the record or information is warranted notwithstanding that its admission may be inconsistent with the juvenile's expectation of privacy.

D. In cases in which a juvenile's record is admitted pursuant to subsection C. 2., the reasons for its admission should be set forth in writing and made a part of the record.

### 5.8 Destruction of records.

A. The rules and regulations of a juvenile agency should provide for the periodic destruction of its juvenile records based upon appropriate criteria such as: the death of the subject of the record, the age of the record, the likelihood that the record will not be useful to the agency or the juvenile in the future and the benefits to be derived from retaining the record are outweighed by the risk that its further retention may cause harm to the juvenile if it is improperly disseminated.

B. Whenever possible, a juvenile agency should provide an opportunity to the juvenile who is the subject of a record to obtain a copy of the record before it is destroyed if further retention of the record by the juvenile might be useful.

## *SECTION II: SPECIFIC STANDARDS FOR JUVENILES' SOCIAL AND PSYCHOLOGICAL HISTORIES*

### PART VI: DEFINITION

#### 6.1 Social or psychological histories.

A social or psychological history is information retained in any retrievable form by a juvenile agency, pertaining to an identifiable juvenile's family, social, or psychological background, for the purposes of:

- A. providing counseling to the juvenile;
- B. making a decision whether to confer or deny a service, a placement, or other benefit to the juvenile;
- C. predicting whether the juvenile will engage in future antisocial conduct; and
- D. determining the disposition of a juvenile case either before or after the juvenile has been adjudicated neglected or delinquent.

### PART VII: PREPARATION OF SOCIAL HISTORIES

#### 7.1 Duty to inform of history preparation.

A. Before information is collected for the purpose of preparing a social or psychological history of a juvenile, the juvenile, if over the age of ten, and, if required by subsection B., a parent of the juvenile should be informed of:

- 1. the purposes of the history;
- 2. the persons and agencies that are likely to be provided access to the history;

3. the persons and agencies that are likely to be contacted to provide information for the history;

4. the persons and qualifications of the persons who will prepare the history; and

5. the right of the juvenile, his or her parents, or representative to deny consent to the preparation of the history when such consent is required by Standard 7.2.

B. A parent of the juvenile who is to be the subject of the history should be given the information required by Standard 7.1 A. unless the juvenile agency which is preparing the history or causing it to be prepared is an agency other than a juvenile court or other than an agency acting for a juvenile court and the history is to be prepared in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile which the juvenile has a legal right to receive without parental consent.

#### 7.2 Consent to prepare history; when required.

Before information is collected for the purpose of preparing a social or psychological history of a juvenile by or for a juvenile agency, other than a juvenile court, consent should be obtained from:

A. the juvenile;

1. if the history is to be prepared in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile which the juvenile has a legal right to receive without parental consent, or

2. if the juvenile is emancipated or over the age of fifteen;

B. a parent of the juvenile if the history is to be prepared in connection with the provision of services to the juvenile, which services may only be provided upon obtaining parental consent.

### PART VIII: RETENTION OF SOCIAL HISTORIES

#### 8.1 Duty to account for and ensure the security of social histories.

A juvenile agency that prepares or has received a copy of a social or psychological history of a juvenile should:

A. ensure that the history is stored in a secure place to which only authorized personnel have access and which is separate from legal records, administrative records, and records pertaining to adults; and

B. retain a log of all requests for information from or copies of the history, the identity of each person making a request, the dates of the request, the reasons for the request, and the disposition of the request.

## PART IV: DISSEMINATION OF SOCIAL HISTORIES

### 9.1 Providing access to social histories.

A. A juvenile agency that has prepared or that has received a copy of a social or psychological history should provide access to the history to the juvenile, his or her parents, and the juvenile's attorney, in accordance with Standards 5.2 and 5.5. If the native language of the juvenile or his or her parents is not English, the history should be appropriately translated. If the history contains professional language or other information that may not be understood by the juvenile or his or her parents, the history should be explained to them by the appropriate professional.

B. A social or psychological history of a juvenile, and the contents of such a history, are confidential and should not be disseminated by a juvenile agency to any person, except as provided in subsection A., unless the consent of a parent and/or juvenile is obtained pursuant to Standard 5.4.

C. A juvenile agency that has prepared a social or psychological history for another agency or that releases a copy of the history to a third person should not release the history in summary form. A detailed factual explanation of any diagnosis or conclusion should be set forth and labels should only be included in accordance with Standard 4.5. A statement, *e.g.*, that a juvenile is mentally retarded or schizophrenic, without a detailed description of the symptoms, the instruments and methods utilized in evaluation, and the extent of evaluation, should not be released.

## PART X: DESTRUCTION OF SOCIAL HISTORIES

### 10.1 Duty to destroy history.

A. If a juvenile agency, other than an institution or court that has custody or control of the juvenile, possesses a social or psychological history of a juvenile, and the juvenile thereafter becomes eighteen years of age, the juvenile agency should send a written notice to the juvenile at his or her last known address informing him or her that the history will be destroyed within thirty days unless the juvenile files a written objection to the destruction.

B. Such juvenile agency that possesses a social or psychological history of a juvenile should destroy that history and all references to it, if the juvenile does not object, within thirty days after notice is sent, pursuant to subsection A., except that in the case of a juvenile who is subject to the custody or control of a court or institution be-

yond the age of eighteen, the history and all references to it should be destroyed within 180 days after the juvenile has been released from such custody or control.

C. If a juvenile agency has “closed” the case of a juvenile who is the subject of a history, it may destroy that history and all references to it prior to the juvenile’s eighteenth birthday.

D. Before destroying a history pursuant to this standard, the juvenile agency should provide a copy of that history to the juvenile if the juvenile can be located and if he or she so requests.

E. Upon destruction of a history, the juvenile agency should notify all other agencies to which it has sent copies of the history and they should immediately destroy all notations or references in their files that a history has been prepared.

### *SECTION III: SPECIFIC STANDARDS FOR THE RECORDS OF JUVENILE COURTS*

#### **PART XI: LEGISLATION**

##### **11.1 Need for comprehensive legislation.**

The legislature of each jurisdiction should promulgate a comprehensive statute regulating the practices and policies of juvenile courts with respect to the collection, retention, dissemination, and use of information and records pertaining to juveniles.

##### **11.2 Purposes of comprehensive legislation.**

The purposes of comprehensive legislation pertaining to juvenile court records should be to:

A. establish a system of organizing and controlling the collection and retention of juvenile records and information pertaining to juveniles;

B. protect juveniles from the adverse consequences of disclosure of juvenile records;

C. establish safeguards to protect against the misuse, misinterpretation, and improper dissemination of juvenile records;

D. limit the collection and retention of juvenile records so that unnecessary and improper information is not collected or retained;

E. limit the information and juvenile records that may be disseminated to and used by third persons;

F. provide juveniles and their parents with maximum access to juvenile records pertaining to them;



- G. regulate and provide for access to juvenile records by researchers and monitors; and
- H. provide for the timely destruction of juvenile records.

## PART XII: RECORDS OF JUVENILE COURTS

### 12.1 Duty to keep records.

A. Each juvenile court should maintain or cause to be maintained accurate, complete, and up-to-date records of all proceedings involving juveniles.

B. Records of legal proceedings involving juveniles should be kept separate from probation records.

C. Records of legal proceedings should at least include summary records, case indexes, case files, and statistical reports as set forth in Part XIII.

## PART XIII: RECORDS OF LEGAL PROCEEDINGS

### 13.1 Summary records.

A. Each juvenile court should maintain or cause to be maintained a "summary record" of all proceedings of the court in which a juvenile is the subject of the proceedings and should designate a person to be responsible for such records.

B. The "summary record" should be limited to objective data and should include such information as the nature of the complaint, a summary of all formal proceedings, and the result of all proceedings.

C. The "summary record" should not include:

1. records maintained by probation officers;
2. information of a subjective or evaluative nature; or
3. the name and address of the juvenile and his or her parents or other data of a similar identifying nature.

D. The "summary record" of each juvenile should be assigned a number when the matter is first referred to the court and that number should thereafter appear on all documents, records, and files of the court pertaining to the juvenile.

E. The "summary records" of active and closed cases should be maintained separately in a secure place that is separate from the place where similar records are maintained for adults.

### 13.2 Case indexes.

A. Each juvenile court should maintain indexes to its active and

closed cases and should designate a person to be responsible for such indexes.

B. The indexes should be maintained alphabetically, by the name of the juvenile, and should include only the following information: the name, address, and age of the juvenile, the name and address of the juvenile's parents, and the number assigned to the matter pursuant to Standard 13.1 D.

C. The personnel of each juvenile court who are provided direct access to the case indexes should be designated in writing by the court and the number of such persons should be limited to ensure that access to records may be meaningfully regulated and carefully controlled.

D. The personnel of each juvenile court should not maintain or develop any system, other than the official indexes, for indexing court files and records.

E. The indexes of active and closed cases should be maintained separately in a secure place that is separate from the place where similar indexes are maintained for adults.

### 13.3 Case files.

A. Each juvenile court should maintain a "case file" on each case in which a juvenile is the subject of a complaint or petition and should designate a person to be responsible for such files.

B. The "case file" on each case should include such formal documents as the complaint or petition, summonses, warrants, motions, legal memoranda, judicial orders or decrees, but not social histories.

C. The case files of active and closed cases should be maintained separately in a secure place that is separate from the place where similar files are maintained for adults.

### 13.4 Statistical reports.

A. Each juvenile court should prepare a monthly and annual statistical report of all proceedings of the court involving juveniles. The statistical report should include a maximum amount of aggregate data so that all of the proceedings of the court will be fully reported.

B. The chief justice of the highest court of each jurisdiction or his or her designee should develop standardized forms for collecting and reporting the data to ensure uniformity.

## PART XIV: PROBATION RECORDS

### 14.1 Responsibility for and manner of retention.

A. All documents, reports, memoranda, and other information

pertaining to a juvenile received or prepared by probation officers should be placed in either a "temporary probation file" or a "permanent probation file."

B. Each juvenile court or agency should designate a person to be responsible for all probation files, the collection of information by or for probation officers, and the dissemination of information from probation files.

C. The probation files of active and closed cases should be maintained separately in a secure place that is separate from the place where the probation files of adults are maintained.

#### 14.2 Temporary probation files.

A. A "temporary probation file" should contain all unverified or unevaluated information which is being collected for an active case and all working papers and notes of the probation officer to whom the case has been assigned.

B. Upon meeting the criteria set forth in Standard 14.3, information included in a temporary probation file may be placed in the "permanent probation file." In any case, all information collected and retained in the "temporary probation file" should be destroyed within three months after it is collected or within ten days after the case has been closed, whichever is sooner.

#### 14.3 Permanent probation files.

A. Before any information may be included in a "permanent probation file" a probation officer should determine that the information is verified and accurate.

B. A "permanent probation file," and the information included therein, should be the only file or information that is provided to a judge by a probation officer for purposes of the disposition of a case.

#### 14.4 Duty to inform of probation investigation.

Before commencing an investigation of a juvenile, a probation officer should provide a parent of the juvenile and/or the juvenile with information pertaining to the investigation in accordance with Standard 7.1.

#### 14.5 Duty to review and explain contents of report.

A. Before providing his or her report or recommendations or any information from the "permanent probation file" to a court, a probation officer responsible for the case should review and explain the contents of the report and file with the juvenile, his or her parents, and the juvenile's attorney (if the juvenile has an attorney) except, if

disclosure of certain information is likely to cause harm, disclosure should be governed by Standard 5.5.

B. If the native language of the juvenile or his or her parents is not English, the report and contents of the file should be translated or reviewed, and explained to them in their native language.

C. The juvenile and his or her parents should be informed that they have a right, and they should be given an opportunity to exercise their right, to make additions or corrections to the report and, if they do so, those additions or corrections should either be incorporated into the report or noted in an appendix to the report.

#### 14.6 Duty to regulate information practices of outside agencies.

A juvenile court should ensure that every agency, organization, or department to which a juvenile is referred for care, treatment, or services has established and implemented written rules and regulations that protect the confidentiality and security of the records of the juveniles who have been referred by the court and that are consistent with the principles of these standards.

### PART XV: ACCESS TO JUVENILE RECORDS

#### 15.1 General policy on access.

A. Juvenile records should not be public records.

B. Access to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention.

#### 15.2 Access to case files.

A. Each juvenile court should provide access to a "case file" to the following persons:

1. the juvenile who is the subject of the file, his or her parents, and his or her attorney;

2. the prosecutor who has entered his or her appearance in the case;

3. a party, and if he or she has an attorney who has entered an appearance on his or her behalf, the attorney;

4. a judge, probation officer, or other professional person to whom the case has been assigned or before whom a proceeding with respect to the juvenile is pending or scheduled; and

5. a person who is granted access for research purposes in accordance with Standard 5.6.

B. A person who is a member of the clerical or administrative staff of a juvenile court, who has been previously designated in writing by the court, may be given direct access to a "case file" if such access is needed for authorized internal administrative purposes.

C. A juvenile court should not provide access to nor permit the disclosure of information from a "case file" except in accordance with this standard.

### 15.3 Access to summary records.

A. Each juvenile court should provide access to "summary records" to the following persons:

1. those persons enumerated in Standard 15.2 A.;
2. the state juvenile correctional agency, if the juvenile is detained by or is otherwise subject to the custody or control of the agency;
3. the state department of motor vehicles, provided that the information given to the department is limited to information relating to traffic offenses that is specifically required by statute to be given to the department for the purpose of regulating automobile licensing;
4. a law enforcement agency for the purpose of executing an arrest warrant or other compulsory process or for the purpose of a current investigation.

B. A juvenile court should notify the law enforcement agency that arrested the juvenile or that initiated the filing of the complaint or petition of the final disposition of the case after such information is entered in the "summary record."

C. A juvenile court may provide direct access to a "summary record" to those persons enumerated in Standard 15.2 B.

D. A juvenile court should not provide access to nor permit the disclosure of information from a "summary record" except in accordance with subsections A. and B. of this standard.

E. A probation officer or other professional person may provide indirect access to a "summary record" with the written consent of the juvenile and his or her parents if the disclosure of summary information pertaining to the juvenile's record is necessary for the purpose of securing services or a benefit for the juvenile.

### 15.4 Access to probation records.

A. Each juvenile court should provide access to a "temporary probation file," in accordance with Standard 9.1, to the juvenile who is

the subject of the file, his or her parents, and his or her attorney and may permit the disclosure of information from a “temporary probation file” to other persons but only if such disclosure is necessary and for the sole purpose of verifying the information.

B. Each juvenile court should provide access to a “permanent probation file,” in accordance with Standard 9.1, to the juvenile who is the subject of the file, his or her parents, and his or her attorney.

C. Each juvenile court should provide access to a “permanent probation file” to those persons enumerated in Standard 15.2 A., subsections 2., 4., and 5., and Standard 15.3 A. 2.

D. A person who is a member of the clerical, administrative, or professional staff of the probation office of a juvenile court, who has been previously designated in writing by the court, may be given direct access to a probation file if such access is needed for authorized internal administrative purposes.

E. A juvenile court may permit the disclosure of information from a “permanent probation file” to:

1. a person, agency, or department, with respect to a juvenile who has been committed to the care of the person, agency, or department;

2. a person, agency, or department that is providing or may provide services to the juvenile, upon obtaining the written consent of the juvenile or his or her parents after informing the juvenile and his or her parents of the information to be disclosed and the purposes of disclosure and provided further that the information that is disclosed is limited to the information necessary to provide or secure the services involved.

F. A juvenile court should not provide access to nor permit the disclosure of information from a probation file except in accordance with this standard.

### 15.5 Access for research and evaluation.

Each juvenile court should accord access to its juvenile records for the purpose of research and monitoring in accordance with Standard 5.6.

### 15.6 Secondary disclosure limited.

A person, other than the juvenile, his or her parents, and his or her attorney, who is accorded access to information, pursuant to Section III of these standards, should not disclose that information to any other person unless that person is also authorized to receive that information pursuant to this Section.

### 15.7 Waiver prohibited.

The consent of a juvenile, his or her parents, or his or her attorney should not be sufficient to authorize the dissemination of a juvenile record to a person who is not specifically accorded the right to receive such information, pursuant to this Part, except as provided in Standard 15.4 E. 2.

### 15.8 Nondisclosure agreement.

Any person, other than the juvenile who is the subject of a juvenile record, his or her parents, and his or her attorney, to whom a juvenile record or information from a juvenile record is to be disclosed, should be required to execute a nondisclosure agreement in which the person should certify that he or she is familiar with the applicable disclosure provisions and promise not to disclose any information to an unauthorized person.

## PART XVI: CORRECTION OF JUVENILE RECORDS

### 16.1 Rules providing for the correction of juvenile records.

Rules and regulations should be promulgated which provide a procedure by which a juvenile, or his or her representative, may challenge the correctness of a record and which further provide for notice of the availability of such a procedure to be given to each juvenile who is the subject of a record.

## PART XVII: DESTRUCTION OF JUVENILE RECORDS

### 17.1 General policy.

It should be the policy of juvenile courts to destroy all unnecessary information contained in records that identify the juvenile who is the subject of a juvenile record so that a juvenile is protected from the possible adverse consequences that may result from disclosure of his or her record to third persons.

### 17.2 Cases terminating prior to adjudication of delinquency.

In cases involving a delinquency complaint, all identifying records pertaining to the matter should be destroyed when:

- A. the application for the complaint is denied;
- B. the complaint or petition is dismissed; or
- C. the juvenile is adjudicated not delinquent.

### 17.3 Cases involving an adjudication of delinquency.

In cases in which a juvenile is adjudicated delinquent, all identify-

ing records pertaining to the matter should be destroyed when:

- A. no subsequent proceeding is pending as a result of the filing of a delinquency or criminal complaint against the juvenile;
- B. the juvenile has been discharged from the supervision of the court or the state juvenile correctional agency;
- C. two years have elapsed from the date of such discharge; and
- D. the juvenile has not been adjudicated delinquent as a result of a charge that would constitute a felony for an adult.

#### 17.4 Cases involving a neglect petition.

In cases involving a neglect petition, all identifying records pertaining to the matter should be destroyed when:

- A. no subsequent proceeding is pending as a result of the filing of a neglect petition or delinquency complaint against the juvenile;
- B. the juvenile is no longer subject to a disposition order of the court; and
- C. the youngest sibling is older than sixteen years of age.

#### 17.5 Providing notification of destruction to other agencies.

A. Whenever a juvenile's record is destroyed pursuant to this Part, the juvenile court should notify:

- 1. the chief of police of the department that arrested the juvenile or made application for the petition or complaint that was filed;
- 2. the commissioner of the state correctional agency if the juvenile was committed to the agency;
- 3. the commissioner of the state probation department; and
- 4. any other agency or department that the juvenile court has reason to believe may have either received a copy of any portion of the juvenile's record or included a notation regarding the juvenile's record in its own records.

B. Upon receipt of notification pursuant to subsection A., the person, agency, or department should search its records and files and destroy any copies or notations of the juvenile's record that have been destroyed by the juvenile court.

#### 17.6 Providing notice of destruction to the juvenile.

A. Before destroying a juvenile's record, the juvenile court should offer to provide a copy of that record to the juvenile if he or she can be located.

B. Upon destroying a juvenile's record, the juvenile court should send a written notice to the juvenile at his or her last known address informing him or her that the juvenile court record has been destroyed and that the juvenile may inform any person that, with



respect to the matter involved, he or she has no record and, if the matter involved is a delinquency complaint, the juvenile may inform any person that he or she was not arrested or adjudicated delinquent except that, if he or she is not the defendant and is called as a witness in a criminal or delinquency case, the juvenile may be required by a judge to disclose that he or she was adjudicated delinquent.

#### 17.7 Effect of destruction of a juvenile record.

A. Whenever a juvenile's record is destroyed by a juvenile court, the proceeding should be deemed to have never occurred and the juvenile who is the subject of the record and his or her parents may inform any person or organization, including employers, banks, credit companies, insurance companies, and schools that, with respect to the matter in which the record was destroyed, he or she was not arrested, he or she did not appear before a juvenile court, and he or she was not adjudicated delinquent or neglected.

B. Notwithstanding subsection A., in any criminal or delinquency case, if the juvenile is not the defendant and is called as a witness, the juvenile may be ordered to testify with respect to whether he or she was adjudicated delinquent and matters relating thereto.

### PART XVIII: USE OF JUVENILE RECORDS

#### 18.1 Use of juvenile records by third persons.

Public and private employers, licensing authorities, credit companies, insurance companies, banks, and educational institutions should be prohibited from inquiring, directly or indirectly, and from seeking any information relating to whether a person has been arrested as a juvenile, charged with committing a delinquent act, adjudicated delinquent, or sentenced to a juvenile institution, except the state agency or department responsible for juvenile justice may be authorized to inquire and seek such information pertaining to persons being considered for positions requiring ex-offenders.

#### 18.2 Application forms.

All applications for licenses, employment, credit, insurance, or schooling, used by a licensing authority, employer, credit company, insurance company, bank, or educational institution, which seek information concerning the arrests or convictions or criminal history of the applicant should include the following statement: "It is unlawful for a licensing authority, employer, credit company, insurance company, bank, or educational institution to ask you, directly or indi-

rectly, whether you have been arrested as a juvenile, charged with committing a delinquent act, adjudicated a delinquent, or sentenced to a juvenile institution. If you have been asked to disclose such information, you should report that fact to the state attorney general. If you have a juvenile record, you may answer that you have never been arrested, charged, or adjudicated delinquent for committing a delinquent act or sentenced to a juvenile institution.”

### 18.3 Response to juvenile record inquiries.

If a person who is not authorized to receive record information pertaining to a juvenile seeks such information, the person to whom the request for information is made should inform the person who seeks the information that no record exists. If the information is sought on behalf of an employer, credit company, insurance company, bank, licensing authority, or educational institution, the person to whom the request for information was made should report the matter to the state attorney general.

### 18.4 Admissibility of juvenile records.

An adjudication of any juvenile as a delinquent, or the disposition ordered upon such an adjudication, or any information or record obtained in any case involving such a proceeding, should not be lawful or proper evidence against such juvenile for any purpose in any proceeding except:

A. in subsequent proceedings against the same juvenile for purposes of disposition or sentencing, if the record of the prior proceeding has not been destroyed;

B. in an appeal of the same case, information or records obtained for or utilized in the initial trial of the matter should be admissible upon appeal, if the information or record is otherwise lawful and proper evidence; and

C. in a criminal trial involving the same matter after waiver of juvenile court jurisdiction. Evidence not otherwise admissible in a criminal trial is not made admissible by its being introduced at the waiver hearing.

## *SECTION IV: STANDARDS FOR POLICE RECORDS*

### PART XIX: GENERAL

#### 19.1 Rules and regulations.

A. Each law enforcement agency should promulgate rules and

regulations pertaining to the collection, retention, and dissemination of law enforcement records pertaining to juveniles.

B. Such rules and regulations should take into account the need of law enforcement agencies for detailed and accurate information concerning crimes committed by juveniles and police contacts with juveniles, the risk that information collected on juveniles may be misused and misinterpreted, and the need of juveniles to mature into adulthood without the unnecessary stigma of a police record.

#### 19.2 Duty to keep complete and accurate records.

A. All information pertaining to the arrest, detention, and disposition of a case involving a juvenile should be complete, accurate, and up to date.

#### 19.3 Allocation of responsibility for record-keeping.

Each law enforcement agency should designate a specific person or persons to be responsible for the collection, retention, and dissemination of law enforcement records pertaining to juveniles.

#### 19.4 Retention of records in a secure and separate place.

Each law enforcement agency should maintain law enforcement records and files concerning juveniles in a secure place separate from adult records and files.

#### 19.5 Duty to account for release of law enforcement records.

Law enforcement agencies should keep a record of all persons and organizations to whom information in the law enforcement records pertaining to juveniles has been released, the dates of the request, the reasons for the request, and the disposition of the request for information.

#### 19.6 Juveniles' fingerprints; photographs.

A. Law enforcement officers investigating the commission of a felony may take the fingerprints of a juvenile who is referred to court. If the court does not adjudicate the juvenile delinquent for the alleged felony, the fingerprint card and all copies of the fingerprints should be destroyed.

B. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of the juvenile in custody, he or she may fingerprint the juvenile regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken should be

immediately destroyed. If the comparison is positive and the juvenile is referred to court, the fingerprint card and other copies of the fingerprints should be delivered to the court for disposition. If the juvenile is not referred to court, the prints should be immediately destroyed.

C. If the court finds that a juvenile has committed an offense that would be a felony for an adult, the prints may be retained by the local law enforcement agency or sent to the [state depository] provided that they be kept separate from those of adults under special security measures limited to inspection for comparison purposes by law enforcement officers or by staff of the [state depository] only in the investigation of a crime.

D. A juvenile in custody should be photographed for criminal identification purposes only if necessary for a pending investigation unless the case is transferred for criminal prosecution.

E. Any photographs of juveniles, authorized under subsection D., that are retained by a law enforcement agency should be destroyed:

1. immediately, if it is concluded that the juvenile did not commit the offense which is the subject of investigation; or

2. upon a judicial determination that the juvenile is not delinquent; or

3. when the juvenile's police record is destroyed pursuant to Standard 22.1.

F. Any fingerprints of juveniles that are retained by a law enforcement agency should be destroyed when the juvenile's police record is destroyed pursuant to Standard 22.1.

G. Willful violation of this standard should be a misdemeanor.

### 19.7 Statistical reports.

A. Each law enforcement agency should prepare a monthly and annual statistical report of crimes committed by juveniles and of the activities of the agency with respect to juveniles.

B. The statistical report should include a maximum amount of aggregate data so that there can be meaningful analysis of juvenile crime and the activities of the agency with respect to juveniles.

C. The principal state law enforcement agency of each state should develop standardized forms for collecting and reporting data to insure uniformity.

### 19.8 Juveniles' privacy committee.

A juveniles' privacy committee should have authority with respect to law enforcement records pertaining to the arrest, detention, and disposition of cases involving juveniles that is commensurate with the authority of the committee set forth in Standard 2.1.

**PART XX: ACCESS TO POLICE RECORDS****20.1 Police records not to be public records.**

Records and files maintained by a law enforcement agency pertaining to the arrest, detention, adjudication, or disposition of a juvenile's case should not be a public record.

**20.2 Access by the juvenile and his or her representatives.**

A juvenile, his or her parents, and the juvenile's attorney should, upon request, be given access to all records and files collected or retained by a law enforcement agency which pertain to the arrest, detention, adjudication, or disposition of a case involving the juvenile.

**20.3 Disclosure to third persons.**

A. Information contained in law enforcement records and files pertaining to juveniles may be disclosed to:

1. law enforcement officers of any jurisdiction for law enforcement purposes;
2. a probation officer, judge, or prosecutor for purposes of executing the responsibilities of his or her position in a matter relating to the juvenile who is the subject of the record;
3. the state juvenile correctional agency if the juvenile is currently committed to the agency;
4. a person to whom it is necessary to disclose information for the limited purposes of investigating a crime, apprehending a juvenile, or determining whether to detain a juvenile;
5. a person who meets the criteria of Standards 5.6 and 5.7.

B. Information contained in law enforcement records and files pertaining to a juvenile should not be released to law enforcement officers of another jurisdiction unless the juvenile was adjudicated delinquent or convicted of a crime or unless there is an outstanding arrest warrant for the juvenile.

C. Information that is released pertaining to a juvenile should include the disposition or current status of the case.

**20.4 Warnings and nondisclosure agreements.**

Prior to disclosure of information concerning a juvenile to a law enforcement agency outside of the jurisdiction, that agency should be informed that the information should only be disclosed to law enforcement personnel, probation officers, judges, and prosecutors who are currently concerned with the juvenile. The outside agency

should also be informed that the information will not be disclosed unless the agency is willing to execute a nondisclosure agreement.

#### 20.5 Response to police record inquiries.

The response and procedure for answering inquiries regarding the police record of a juvenile should be in accordance with Standard 18.3.

### PART XXI: CORRECTION OF POLICE RECORDS

#### 21.1 Rules providing for the correction of police records.

Each law enforcement agency should promulgate rules and regulations permitting a juvenile or his or her representative to challenge the correctness of a police record pertaining to the juvenile.

### PART XXII: DESTRUCTION OF POLICE RECORDS

#### 22.1 Procedure and timing of destruction of police records.

Upon receipt of notice from a juvenile court that a juvenile record has been destroyed or if a juvenile is arrested or detained and has not been referred to a court, a law enforcement agency should destroy all information pertaining to the matter in all records and files, except that if the chief law enforcement officer of the agency, or his or her designee, certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner.

# *Standards with Commentary*

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## *SECTION I: GENERAL STANDARDS*

Section I of these standards is designed to set forth general principles pertaining to the collection, retention, and dissemination of information regarding children. Sections II, III, and IV supplement the general principles of Section I and serve to demonstrate the application of the general principles to specific areas of concern: social histories, juvenile courts, and police.

### **PART I: DEFINITIONS**

#### **1.1 Juvenile agency.**

A juvenile agency is:

A. any court, other than a divorce court or a court determining adoptions, that has the legal authority to issue orders pertaining to the custody or liberty of a juvenile;

B. any publicly funded agency that has the legal authority to confer or deny clinical, evaluative, counseling, medical, educational, or residential services to a juvenile;

C. any private agency that is licensed to provide such services to a juvenile;

D. any private agency that has a contract with a public agency to provide such services to a juvenile; and

E. any private agency that regularly provides such services to juveniles as a result of referrals to the private agency by a public agency.

#### *Commentary*

*Scope.* The definition of juvenile agency determines the scope of these standards. Those agencies that are within the definition should

be governed by this volume; other agencies may want to rely upon this volume for guidance but they are not formally included.

Most agencies that regularly provide services to juveniles, such as juvenile courts, schools, health clinics, and social service agencies, would be within the definition of juvenile agency. The only agencies that are excluded are those private agencies that are not licensed, that do not receive governmental funds and that do not do business with a governmental agency either formally or regularly. It is expected that there will be very few agencies that do not fit within the definition since most agencies that provide services to juveniles are licensed or receive financial support from a governmental unit. The definition of juvenile agency is written so as to include federal agencies and agencies funded or licensed by federal agencies which otherwise satisfy the definitional requirements of a juvenile agency.

*Theory.* The theory of excluding those few private agencies that are not within the definition is two-fold. First, if the agency is totally private—unlicensed, without public funding, and without public business—the justification for imposing standards for records and information is not very compelling and would have to depend totally on the somewhat overused theory of *parens patriae*. Secondly, it is likely that those few agencies that are excluded will be small, perhaps underfunded and, therefore, without the personnel or finances to support the implementation of some of the standards. See, e.g., Standard 3.4. Thus, the reach of these standards is circumscribed primarily to prevent costly regulation from forcing smaller agencies out of the market for providing services to juveniles. The effect is to leave unregulated the totally private sector of the market which is traditionally unregulated.

*Court.* Any court that has the legal authority to issue orders pertaining to the custody or liberty of a child includes all juvenile courts, family courts, criminal courts, and courts of general jurisdiction in which such authority is retained. The principal court to be affected will be juvenile court which is the subject of specific standards in Section III as well as the general standards in Section I. Courts dealing with divorces, legal separations, and adoptions are expressly excluded. Although these courts often deal with important issues which affect children, these proceedings are not included within this volume only because the focus of this volume is juvenile court records.

*Publicly funded agency.* The term “publicly funded agency” should be construed to include all governmental units and their subdivisions and all private agencies that receive funds from a governmental unit for the purpose of providing services to juveniles.



*Private agency.* The term “private agency” is used several times within the definition of “juvenile agency.” The term should be construed to include all nonpublic organizations that provide services to juveniles, such as private schools, hospitals, mental health clinics, and community multiservice centers. Doctors, psychologists, social workers, etc., who practice individually or in a small group practice, whether or not incorporated, should not be considered a “private agency” for the same reason (stated above) that all private agencies are not included within the scope of the definition of juvenile agency.

*Law enforcement agency.* Law enforcement agencies are not included within the definition of juvenile agency because, unlike other agencies that are regularly involved with children, a principal function of police agencies is not the provision of services to juveniles but rather the gathering of information pertaining to law enforcement and social protection in general. Those law enforcement functions involve policy considerations that are somewhat different from the considerations pertaining to other agencies that have a more explicit mandate to provide services. Because of the differences, law enforcement agencies are not included within the definition of juvenile agency which has the effect of making Section I of these standards inapplicable to police. Instead, specific standards for law enforcement agencies have been developed in Section IV.

## 1.2 Juvenile.

A juvenile is any person under the age of eighteen or any person who, as a result of a delinquency or neglect petition, is subject either to an order of commitment or to conditions of probation or release that in any way restrict the liberty of the person.

### *Commentary*

*Rationale of age selection.* The age of eighteen has been selected to define “juvenile” (“juvenile” and “juveniles” are used interchangeably) because it is the age of majority in most jurisdictions; it is also the age by which most persons graduate from secondary school and usually the maximum age for juvenile court jurisdiction to attach. Since school systems and juvenile courts are the primary institutions that collect records on juveniles, the eighteen-year-old cutoff date ensures that the recordkeeping practices of both institutions are included.

*Extension beyond age limitation.* The definition of juvenile also includes persons who, as a result of a delinquency or neglect petition, have their liberty restricted beyond the age of eighteen by a juvenile

court or juvenile correctional authority. The definition of juvenile includes such persons because of the law in many states which provides for the extension of juvenile court jurisdiction beyond the age of eighteen, if the jurisdiction of the court attaches prior to the age of eighteen, and because of laws permitting juvenile correctional institutions to retain custody of a juvenile beyond the age of eighteen. These standards are also intended to apply in those jurisdictions which retain some form of dependency proceeding.

The phrase "any way restrict the liberty of the person" should be interpreted liberally to apply to any restriction, no matter how minimal, imposed as a condition of release because the intent of the definition is to include all persons who are subject to the control of a juvenile court or juvenile correctional authority. It is not intended, however, that the definition will include persons who are over the age of eighteen and who continue to be subject to the jurisdiction of an adult court or correctional authority as a result of a waiver of jurisdiction by a juvenile court.

*Application to schools.* The definition of juvenile has not been extended to include any person who attends an elementary or secondary school because of the problem of distinguishing adult education programs and extension programs from regular education programs. In those jurisdictions where the various types of programs can clearly be distinguished, it would be possible to include within the definition of juvenile any person who attends a regular elementary or secondary education program. Such a definition would assure that identical recordkeeping practices are established for all persons within the same institution but would extend the scope of these standards to persons who are clearly not juveniles. In any case, it is anticipated that schools will probably voluntarily apply the same standards to all of their students and records because of the administrative ease of applying and implementing one set of standards, rather than several.

### 1.3 Juvenile record.

A juvenile record is any record of or in the custody of a juvenile agency pertaining to a juvenile and maintained in a manner so that the juvenile is identified or may be identified. A juvenile record includes records maintained in any manner, automated or manual, and retrievable in any form: handwritten files, tape recordings, computer tapes, microfilm, or any other form.

#### *Commentary*

*Identifiable records.* This volume is primarily concerned with the collection, retention, and dissemination of the records of individual

juveniles. Therefore, the term “juvenile record” is used to include only records in which a juvenile is “identified or may be identified.” A juvenile is “identified” if a record is organized upon the basis of his or her name; he or she “may be identified” if the record is organized upon the basis of data, such as a social security number, which can be readily linked to the juvenile’s name. Fingerprints and photographs are intended to be included within the definition of juvenile record.

*Unofficial records.* The record of a juvenile becomes a “juvenile record” once it is in the custody of a juvenile agency; therefore, it is irrelevant whether a juvenile agency initiated or created the record.

A record is in the “custody” of a juvenile agency if it is maintained by any person employed or officially associated with the agency in connection with the business of the agency. A record should be deemed to be within the custody of the agency if it in any way involves an identifiable juvenile served by agency personnel on agency business. In other words, the term record should be construed so that the purpose of this volume, to control recordkeeping practices pertaining to all juvenile records, is effectively served. The development of unofficial or private recordkeeping systems by agency personnel to avoid compliance with standards is inconsistent with the intent of the terms “record” and “custody” used in the definition.

#### 1.4 Parent.

**A parent is a person with whom a juvenile regularly lives and who is the natural, adoptive, or surrogate parent of a juvenile.**

#### *Commentary*

The term “parent” is defined to include those persons who are usually regarded as parents, the natural or adoptive parents of a juvenile, as well as the surrogate parents of a juvenile, a concept which is defined in Standard 1.5. The phrase “with whom the juvenile regularly lives” is used to modify the definition of parent to exclude persons who may not live with the juvenile, such as the putative father of an illegitimate child and a person who has moved out of the home whether pursuant to a divorce or formal separation or otherwise. The exclusion has the effect of preventing separated parents from having access or making decisions with respect to information pertaining to the juvenile. *E.g.*, Standard 5.2. The purpose of the exclusion is to limit the risk that parents who, because they are not living with the juvenile, may make decisions regarding information that are not consistent with the best interests of the child. In those instances in which there is a harmonious relationship between

the separated parent and the parent with whom the child regularly lives, it is assumed that the separated parent, if he or she so desires, can adequately affect information decisions indirectly through the juvenile or the juvenile's other parent.

### 1.5 Surrogate parent.

A surrogate parent is an adult person who has been appointed by a court as legal guardian of the juvenile, or an adult person who has voluntarily assumed the role of parent with respect to the juvenile. A surrogate parent does not include an agency or institution, or a person employed by an agency or institution, to which the juvenile has been committed or referred by order of the court.

#### *Commentary*

*Concept.* The concept of surrogate parent is made a part of these standards in recognition of the fact that many children live with adults who are not their natural parents. See generally Maas and Engler, *Children in Need of Parents* (1959); Child Welfare League of America, *The Need for Foster Care* (1969). It is a concept similar to that of "common-law adoptive parent" developed in J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* (1973) and utilized to describe "those psychological parent-child relationships which develop outside of either placement by formal adoption or by the initial assignment of a child to his biological parents." *Id.* at 27. It is also a concept that is consistent with the common law concept of "in loco parentis." See, e.g., Woerner, *The American Law of Guardianship* 36-38 (1897). See also Jeffries, "Equitable Adoption: They Took Him Into Their Home and Called Him Fred," 58 *Va. L. Rev.* 727 (1972).

*Purpose.* The purpose of the concept of surrogate parent is to provide a parental role for those adults who in fact have assumed the role of parent whether or not that fact has been legally validated by formal guardianship proceedings. Here, that parental role involves matters relating primarily to access to information and to providing consent for the collection, retention, or dissemination of information. Although, in some instances, it may be difficult for a juvenile agency to determine whether an adult is a surrogate parent, the concept should be liberally construed and applied to any situation that reasonably meets the criteria and in which both the child and the adult with whom he or she lives claim that the adult has assumed the role of parent.

*Scope.* The scope of the concept of surrogate parent is not in-

tended to extend to agencies, institutions, or persons employed by those agencies or institutions. In those instances, where normally there does not exist that parent-child relationship found in a family environment, there is a risk that information concerning the child will be used for institutional or public purposes rather than for the private purposes of the child. To protect against that risk, agencies, institutions, and their personnel are excluded from the definition. The exclusion clearly applies to state correctional facilities and to private institutions to which a child might be committed as a condition of probation. In situations which are less clear, where, for example, a child is placed in the custody of a child welfare agency, which in turn places the child in one of its foster or group homes, the question of whether the foster parent is a surrogate parent should be answered by first asking the child whom he or she regards and trusts as a parent and then addressing whether the foster parent is more like an institutional parent or psychological parent in terms of the purpose of the definition, to exclude those for whom there is a risk of misuse of information pertaining to the child.

#### 1.6 Direct access.

Direct access is the right to enter the record room, file cabinet, or other place where juvenile records are stored, for the purpose of withdrawing a record so that it may be observed by an authorized person for an authorized purpose.

#### 1.7 Access.

Access is the right to view and photocopy a juvenile record but not the right to enter the place where the juvenile records are physically stored.

#### 1.8 Indirect access.

Indirect access is the right to receive information from a juvenile record but not the right to view or photocopy the actual record.

#### 1.9 Dissemination.

Dissemination is the provision of direct access, access, or indirect access to a juvenile record.

#### 1.10 Third person.

A third person is any agency or person other than:

A. the juvenile who is the subject of a juvenile record;

B. a parent or attorney of the juvenile; or

C. an employee of the juvenile agency that has custody of the juvenile's record.

*Commentary*

The terms "direct access," "access," and "indirect access" are used to indicate three levels of access to information that may be provided by these standards. The term "dissemination" is used as a collective term to describe all three levels of access. The term "third party" is self-explanatory.

**1.11 Centralized information system.**

A centralized information system is an information system, whether automated or manual, in which two or more juvenile agencies participate for the purpose of gathering, storing, processing, or disseminating information pertaining to identified or identifiable juveniles.

*Commentary*

The centralization of information systems increases the risk of misuse of information, and the use of such systems is, therefore, limited by Standard 4.7. The definition of "centralized information system" is intended to encompass all collective systems for gathering, storing, processing, or disseminating information pertaining to identified or identifiable children. The term should be liberally construed to apply to any joint or shared system of record collection because of the special risks involved when equipment, facilities, or personnel are shared by different agencies in connection with the gathering, storing, processing, or dissemination of information.

**PART II: GENERAL POLICIES PERTAINING TO INFORMATION****2.1 Juveniles' privacy committee.**

A. Each jurisdiction should establish by statute at least one juveniles' privacy committee. The members of the committee should include persons who have knowledge and expertise in juvenile advocacy, delivery of services to juveniles, information systems, and criminal justice agency activities affecting juveniles.

B. The committee should have the authority to examine and evaluate juvenile records and information issues pertaining to juveniles and the right to conduct such inquiries and investigations as it deems necessary.

C. The committee should periodically make recommendations concerning privacy, juvenile records, and information practices and policies pertaining to juveniles.

D. The committee should have the authority to receive automation

statements submitted by juvenile agencies pursuant to Standard 4.6, in order to computerize juvenile records.

E. The committee should have the authority to receive proposals submitted by juvenile agencies to establish a centralized information system.

F. The committee should have the authority to commence civil actions against juvenile agencies for declaratory judgments, cease and desist orders, and other appropriate injunctive relief in cases involving the failure to promulgate written rules and regulations pursuant to Standard 2.2 or the improper collection, retention, or dissemination of a juvenile record or identifiable information pertaining to juveniles.

### *Commentary*

*Historical antecedents.* The concept of a security and privacy council to study and review questions of individual privacy and system security in connection with a prototype adult computerized criminal history system was first recommended by Project SEARCH in 1971. Project SEARCH, *Technical Memorandum No. 3: A Model State Act for Criminal Offender Record Information* (May 1971). That concept has been enacted into law in Massachusetts, Mass. Gen. Laws ch. 6 § 170, in connection with an adult criminal information system and it has been a part of recently proposed federal legislation. *E.g.*, H.R. 61, 94th Cong., 1st Sess. § 301 (1975). See also, National Advisory Commission on Criminal Justice Standards and Goals, *Criminal Justice System*, Standard 8.1 (1973); and Act of December 31, 1974, P.L. 93-579, §§ 5-7, 88 Stat. 1905 (Privacy Act of 1974 creating a Privacy Protection Study Commission). Although the SEARCH proposal and the other legislation to which reference has been made involve only adult criminal record systems and automated systems, the analogy to juvenile records and the need to institutionalize a concern for privacy and security interests should be evident whether the records are included in a manual or an automated system and whether the records involve juveniles or adults. Indeed, the special status of being a juvenile, which includes a lack of economic and political power and a need for assistance to protect against institutional and adult overreaching, makes the case for a juveniles' privacy committee that much stronger.

*Functions.* The primary purposes of a juveniles' privacy committee are to institutionalize within government a special concern for juveniles and their right of privacy and to make information and privacy issues more visible. To accomplish that purpose, the committee is giv-

en the general authority to examine and evaluate information issues pertaining to juveniles, to conduct investigations and to make recommendations; and the specific authority to receive automation and centralization plans (including plans to expand existing systems) and to commence litigation. Special attention is given to automation and centralization plans because of the sensitive privacy issues that arise in both contexts. See, commentary to Standards 4.6 and 4.7.

The alternative of providing the committee with broad regulatory power over all juvenile information systems was considered but rejected because of both the cost and the difficulty of promulgating specific regulations for a vast array of private and public agencies that provide services to juveniles. In those jurisdictions in which the funds are available or where it is possible to delegate regulatory authority to an agency with respect to some information systems, particularly in the public sector, a more comprehensive model should be considered.

*Structure.* The standard recommends that at least one privacy committee should be established in each state. In some states, the geography, diversity, or concentrations of population in several distinct locations may indicate that another model should be developed, perhaps including regional committees or subcommittees. In those states that have established a Security and Privacy Council with respect to adult information systems, a juveniles' privacy committee could be established as a subcommittee of the council.

The standard does not state the relationship between a juveniles' privacy committee and existing state agencies that have regulatory authority with respect to juveniles. In some states it may be possible to establish a committee within an existing state agency; in many states, it will be preferable to create an independent committee to avoid problems of vested interests and problems that inevitably arise if a committee within one agency of state government is asked to regulate the activities of another state agency. For a discussion of the possible need for an independent information agency on the federal level, as opposed to providing an existing agency with regulatory authority over information questions, see A. Miller, *Assault on Privacy* 244-49 (1972).

*Authority to commence legal action.* Subsection F. gives juveniles' privacy committees the specific authority to commence actions against juvenile agencies whose information systems and practices are not in conformity with the applicable statutes, rules, and regulations. Since it is anticipated that many agencies with existing information systems may not be in compliance on the effective date of applicable statutes, rules, and regulations, a juveniles' privacy committee should



grant such agencies a reasonable opportunity to comply before commencing an action.

## 2.2 Rules and regulations.

A juvenile agency should develop written rules and regulations, consistent with these standards, governing the agency's collection, retention, and dissemination of information pertaining to juveniles. Copies of the rules and regulations should be filed with the juveniles' privacy committee and made available to the public.

### *Commentary*

The development of rules and regulations pertaining to its information practices by each juvenile agency serves the purpose of providing visibility to recordkeeping and privacy issues. Rules and regulations, because they must be thought about and articulated, also serve the purpose of promoting better management and a measure of rationality in recordkeeping practices which, in the past, have too often been disorganized, unregulated, and the product of irrationality and a total lack of management. See generally, *On Record: Files and Dossiers in American Life* (Wheeler ed., 1969).

The promulgation of rules and regulations with respect to recordkeeping practices has been recommended by virtually every group and commentator that has recently examined data collection issues. See, e.g., Report of Secretary's Advisory Committee on Automated Personal Data Systems, U.S. Dept. of Health, Education and Welfare, *Records, Computers and the Rights of Citizens* 138 (1973); National Advisory Commission on Criminal Justice Standards and Goals, *Criminal Justice System* 119 (1973); Project SEARCH, *Technical Memorandum No. 4: Model Administrative Regulations for Criminal Offender Record Information* (1972). This standard, calling for the development of rules and regulations, therefore, applies the recommendations that have been made in other contexts to all those agencies which serve children. Compare 5 U.S.C.A. § 552(a) (f) (1974) (the Privacy Act of 1974).

For the reasons set forth in the commentary to Standard 2.1, each juvenile agency, rather than a single regulatory body, is called upon to promulgate its own regulations. A certain degree of uniformity and consistency should nonetheless result because each agency's regulations should be consistent with these standards. In addition, copies of the regulations of each agency will be placed on file with the juveniles' privacy committee which, acting pursuant to its powers to con-

duct inquiries, make recommendations, and institute litigation (see Standard 2.1) should ensure that no particular agency deviates substantially from the scope or purpose of these standards.

### 2.3 Civil remedy.

The legislature of each jurisdiction should promulgate a statute making it a tort to improperly collect, retain, or disseminate information pertaining to juveniles. Improper collection, retention, or dissemination should be presumed if such acts are committed in violation of an applicable federal, state, or local law or in violation of a juvenile agency's duly promulgated rules or regulations. In such cases, a juvenile should be entitled to monetary compensation, if actual damages are incurred as a result of the improper collection, retention, or dissemination of information; to an appropriate equitable remedy, if the improper act has not been corrected or there is a reasonable possibility that the improper act may be repeated; to punitive damages if it is established that the improper act was willful; and to attorneys' fees and other reasonably incurred litigation costs if the juvenile establishes that the collection, retention, or dissemination of information was improper.

#### *Commentary*

This standard recommends the creation of a civil remedy to compensate persons who are the subject of a record which has been improperly collected, retained, or disseminated.

This standard is similar to recent federal legislation pertaining to records, the Privacy Act of 1974, 5 U.S.C.A. § 552(a) (g). The Privacy Act, like Standard 2.3, authorizes equitable and compensatory remedies and the imposition of attorney's fees and litigation costs if the plaintiff prevails. In cases involving willful conduct, Standard 2.3 authorizes punitive damages; the Privacy Act in such cases mandates a minimum recovery of \$1,000. The Privacy Act approach, specifying a minimum recovery, could be incorporated into a punitive damage section of specific legislation; it offers the advantage of greater certainty and that certainty could serve as both a guide for courts and perhaps a more effective deterrent to improper practices.

The Report of the Secretary's Advisory Committee on Automated Personal Data Systems, *Records, Computers and the Right of Citizens* (H.E.W. 1973) also recommends the creation of civil remedies to provide redress in cases of "unfair information practices." *Id.* at 50. See also, Project SEARCH, *Technical Memorandum No. 3: A Model State Act for Criminal Offender Record Information* § 13 (May 1971); 15

U.S.C.A. § 1681n (The Fair Credit Reporting Act) (providing for compensatory and punitive damages and attorneys' fees).

#### 2.4 Criminal penalty.

The legislature of each jurisdiction should promulgate a statute making it a misdemeanor for any person to unlawfully and willfully obtain or attempt to obtain a juvenile record, or information from such a record; to unlawfully and willfully provide access, disclose, or attempt to communicate information from a juvenile record; or to unlawfully and willfully destroy or falsify information in or to be included in a juvenile record.

#### *Commentary*

Standard 2.4 recommends that legislatures promulgate a specific statute making it a misdemeanor for persons to "willfully" and "unlawfully" obtain, disclose, destroy or falsify information contained in a juvenile record. The purpose of the standard is to establish a disincentive, in addition to civil and administrative sanctions, to deter unlawful information practices and to reflect the community's moral outrage at such unlawful practices. In recommending this section, the arguments against overcriminalization (*e.g.*, N. Morris and G. Hawkins, *The Honest Politician's Guide to Crime Control* [1970]) have been considered and rejected for two reasons. First, a criminal sanction is thought to be necessary both to demonstrate symbolically the seriousness of the concern for unlawful uses of information and to deter unlawful practices. Second, the utilization of a criminal sanction in the area of improper uses of information is fairly well accepted, and therefore the issue is not the creation of a new criminal sanction but the continuation of an existing sanction. See generally, 5 U.S.C.A. § 552a(i) (Privacy Act of 1974); P.L. 93-83, 87 Stat. 197 § 524(c) (Crime Control Act of 1973); 15 U.S.C.A. §§ 1681(g) and (r) (Fair Credit Reporting Act); *Project SEARCH, Technical Memorandum No. 3: A Model State Act for Criminal Offender Record Information* § 14 (May 1971); Report of the Secretary's Advisory Committee on Automated Personal Data System, U.S. Dept. of HEW, *Records, Computers, and the Rights of Citizens* 50 (1973). Criminal sanctions for improper uses of information from juvenile records are presently a part of a number of juvenile codes, *e.g.*, New Mexico Code § 13-14-42 (D), and is recommended as a part of the Department of Health, Education and Welfare's *Model Act for Family Courts and State-Local Children's Programs* (Sheridan and Beaser eds.) §§ 45(d), 46(c), and 47(e).

## 2.5 Administrative sanctions.

The rules and regulations promulgated by a juvenile agency should provide for disciplinary sanctions to be imposed, including dismissal, where appropriate, for violation of any law or rule of the juvenile agency pertaining to the collection, retention, or dissemination of information and should further provide procedures for filing disciplinary complaints and for according a hearing to personnel who are the subject of a complaint.

### *Commentary*

This standard provides that the rules and regulations promulgated by a juvenile agency should include an explicit system of administrative sanctions to be imposed in the case of improper use of information. The purpose of the standard is primarily to establish an additional disincentive to limit the likelihood of improper employee conduct in connection with information disclosure. The system of sanctions could include reprimand, suspension, and dismissal for specific violations. Administrative sanctions could also be developed to control the practices of third persons or agencies which receive information from a juvenile agency. See, 28 C.F.R. §§ 20.25, 20.38 (May 20, 1975), providing for fund cut-off and cancellation of the right to receive information in the event of illegal use of criminal history information.

## 2.6 Correction of records; periodic audits.

A. The rules and regulations promulgated by each juvenile agency should establish a procedure by which a juvenile, or his or her representative, may challenge the correctness of a record and which further provides for notice to be given to each juvenile over the age of ten who is the subject of a juvenile record of the availability of such a procedure. Such notice should also be given to a parent of the juvenile if the parent has a right of access to the record pursuant to Standard 5.2.

B. The procedure established to provide an opportunity to challenge the correctness of a record should include the right to a hearing before an official of the juvenile agency who has the authority to make any corrections that may be necessary as a result of a challenge and should also include procedures by which a juvenile or his or her parents may file a statement of disagreement and explanation which will become a part of the record if the challenge is rejected.

C. Each juvenile agency should periodically conduct an audit to verify that adequate controls have been established to ensure the accuracy and completeness of its juvenile records.

### Commentary

Creating a mechanism by which the subject of a record may challenge its correctness is a major reform of recordkeeping practices and is a provision in all of the recent major legislation relating to records and privacy. See 5 U.S.C.A. § 552a(d) (Privacy Act of 1974), providing generally for the correction of personal records maintained by federal agencies; 20 U.S.C.A. § 1232g(a) (2) (Family Educational Privacy Act of 1974), providing for the correction of school records; 15 U.S.C. § 1681i (Fair Credit Reporting Act), providing for the correction of credit and employment reports; 28 U.S.C.A. § 3771(b) (Crime Control Act of 1973), providing for the correction of criminal history records.

Proposals that individuals should have the right to challenge the completeness and accuracy of their personal records maintained by agencies have been made on numerous occasions. See Russel Sage Foundation, *Guidelines for the Collection, Maintenance & Dissemination of Pupil Records* § 3.3 (1969); Project SEARCH, *Technical Memorandum No. 3: A Model State Act for Criminal Offender Record Information* § 11 (1971); Project on Law Enforcement Policy and Rulemaking, *Model Rules for Law Enforcement: Release of Arrest and Conviction Records*, Rules 701-703 (1974); A. Miller, *The Assault on Privacy* 261, 262 (1972); Report of the Secretary's Advisory Committee on Automated Personal Data Systems, Department of Health, Education & Welfare, *Records Computers and the Rights of Citizens* 63 (1973).

Standard 2.6, which provides that a juvenile or his or her representative should have an opportunity to challenge the correctness of a juvenile record of which he or she is the subject, is derived from the recent legislation and proposals referred to in the previous paragraphs. The purpose of the standard is to provide a mechanism by which the accuracy of juvenile records may be further ensured. Providing procedures for correcting records will, however, be costly, Miller, *supra* at 261. Moreover, there may be "staggering conceptual problems in devising an objective standard for defining the outer boundaries of one 'whole' truth." Karst, "The Files: Legal Controls Over the Accuracy and Accessibility of Stored Personal Data," 31 *Law & Contemp. Probs.* 343, 355 (1966). Nonetheless, the economic costs and conceptual difficulty are deemed to be worth the price here (and with respect to other similar legislation and proposals) because of the harm to children that could result from the dissemination of uncorrected records. *Cf.*, Miller, *supra* at 262. A written general notice to juveniles and their parents of their right to have access to, and to challenge the correctness of, the record would satisfy the standard, provided the notice

gives sufficient procedural information to enable them to initiate the access process.

Subsection C., which requires juvenile agencies to conduct periodic audits of their records to ensure accuracy and completeness, is included because most children will not have the knowledge, capacity, or ability to take advantage of the challenge provisions of subsections A. and B. *Cf.*, Karst, *supra* at 358; Miller, *supra* at 262. Provisions for conducting periodic audits have been included in the recent Department of Justice Regulations, under the Crime Control Act of 1973, 28 C.F.R. § 20.21(e). Periodic audits are also a healthy administrative practice.

## 2.7 Training programs.

Each juvenile agency should provide training programs for its personnel and should develop operations manuals describing the laws, policies, and practices concerning the collection, retention, and dissemination of information pertaining to juveniles.

### *Commentary*

Standard 2.7, providing that juvenile agencies should establish training programs and operations manuals regarding records and information systems, serves the purpose of ensuring that agency personnel are educated to perform consistent with established laws and policies. The training program function is of central importance because the best laws and policies become relatively meaningless without trained personnel who are aware of those laws and policies and their purposes. The Report of the Secretary's Advisory Committee on Automated Personal Data Systems, Dept. of H.E.W., *Records, Computers and the Rights of Citizens* 54 (1973) recommends training programs indirectly by stating that agencies should "take affirmative action to inform each of its employees" of all information practices, policies, and requirements. See also, 28 C.F.R. § 20.21(f) (8) (regulations to the Crime Control Act of 1973); 5 U.S.C.A. § 552a(e) (9), Privacy Act of 1974; Russel Sage Foundation, *Guidelines for the Collection, Maintenance and Dissemination of Pupil Records* § 3.0(1969).

## 2.8 Researcher's privilege.

Statutes should be promulgated providing that information collected or retained by an approved researcher or evaluator is privileged.

### *Commentary*

This standard calls for the establishment of a statutory privilege for researchers and evaluators who have collected data on juveniles. The

purpose of the standard is to ensure that researchers cannot be compelled by judicial, legislative, or administrative bodies to give information pertaining to identifiable juveniles which has been collected or retained in connection with a research project approved under Standard 5.6. This privilege should specifically encompass a researcher's records as well as his or her personal testimony (*see Branzberg v. Hayes*, 408 U.S. 665 [1972] construed by the Court to immunize only the informant); and the privilege should expressly not be deemed to be waived by virtue of the child or his or her parents having consented to the research. See generally, Nejelski and Lerman, "A Researcher-Subject Testimonial Privilege," 1971 *Wis. L. Rev.* 1085; Nejelski and Peyser, "A Researcher's Shield Statute," in *Protecting Individual Privacy in Evaluation Research*, Committee on Federal Agency Evaluation Research, National Research Council, National Academy of Sciences, 1975, Appendix B (hereinafter "Researcher's Shield Statute").

The need to encourage evaluation and research, discussed in the commentary to Standards 3.5 and 5.6, is the primary justification for a research privilege. See Nejelski and Finsterbusch, "The Prosecutor and the Researcher," 21 *Social Problems* No. 1, at 3 (1973), supporting a privilege for all researchers; and Gottfredson, "Research, Who Needs It," 17 *Crime and Delinq.* 11 (1971). The theory is that without an assurance of confidentiality, important research projects may be jeopardized or may not be undertaken, because a subject is unlikely to be candid with regard to personal, sensitive, or incriminating information; a conscientious researcher will not undertake controversial research if there is a chance that he or she will be made an unwilling agent of a prosecutor; and, the potential for invasion of privacy is too great to warrant the research absent the assurance of confidentiality. See commentary to Standard 5.6; *Merrikan v. Cressman*, 364 F. Supp. 913 (E.D. Penn. 1973). See also, Nejelski and Peyser, "A Researcher's Shield Statute," *supra*.

The case for a research privilege, articulated forcefully by Nejelski and Lerman in "A Researcher-Subject Testimonial Privilege," *supra* and by Nejelski and Peyser in "A Researcher's Shield Statute," *supra* is even more compelling when the subject of the research is a juvenile. First, by virtue of being a juvenile, the protection provided by consent is probably minimal because juveniles generally lack the maturity and foresight to be fully aware of the implications of their consent or of the disclosure of certain information. Moreover, given the authority figure of a researcher, it is questionable whether consent is ever a truly voluntary act. Secondly, the consequences of disclosure are potentially more damaging for a juvenile than for an adult. A juvenile generally lacks power and mobility and is less able to affect

established relationships. Thus, if information which negatively affects a relationship is revealed, perhaps relating to a juvenile's attitude toward his or her parents, neighborhood, or school, a child is less able to remedy it by moving to another school or neighborhood or by choosing a new set of relationships. Finally, where the subjects of research are juveniles, who are usually prosecuted in a juvenile rather than a criminal court, the public interest argument of allowing subpoenas to ensure the effective prosecution of crime is not as compelling (although it can still be argued that effective prosecution of juveniles for committing antisocial acts serves important, even if different, societal goals).

The primary argument against the creation of a researcher-subject privilege is that there is a tendency against expanding testimonial privileges, because the effect of withholding evidence is to undermine the truth-discerning process. See Robinson, "Testimonial Privilege and the School Guidance Counselor," 25 *Syracuse L. Rev.* 911 (1974); McCormick, *Evidence* 156-60 (1972). In *Branzberg v. Hayes, supra*, the Supreme Court recognized this trend in denying newsmen a First Amendment privilege against grand jury subpoenas. Nonetheless, some courts in balancing the interests at stake have recognized the need for a privilege. One recent example of a judicial recognition of this need occurred when the attorney general of New York sought to subpoena records of the Attica Commission. *Fisher v. Citizen's Committee*, 72 Misc. 2d 595, 339 N.Y.S. 2d 853 (Sup. Ct. 1973), upholding researcher privilege on "public interest" grounds. But see, *United States v. Doe*, 460 F.2d 328 (1st Cir. 1972). In addition, some legislatures have recognized the need for a research privilege. Maryland, Md. Code Ann. art. 35 § 101 (1971), and New York, N.Y. Civ. Rts. Law § 79 (McKinney 1972), for example, have statutes that protect specific data associated with only a small minority of individuals. Congress, pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970, gave the Secretary of HEW and the U.S. Attorney General authority to grant a testimonial privilege to persons "engaged in research on the use and effect of drugs." See generally, "Researcher's Shield Statute," *supra* at B-16 and B-20.

A second argument against the creation of a researcher-subject privilege is that the researcher has a duty as a scientist, and to the public, to make his or her data available for reanalysis, evaluation, and comment by others and, the creation of a privilege will interfere with this obligation and perhaps provide an excuse for nondisclosure of data for otherwise proper and important purposes. This problem is exacerbated when research is conducted by a government agency which utilizes its research findings to support or oppose certain policy



decisions and then resists disclosure of the data that supposedly supports its findings. See, *A Researcher's Shield Statute*, *supra* at B-1. While there is no easy answer to the problem of nondisclosure, this standard proceeds upon the assumption that the need for confidentiality to encourage research outweighs the risk that the privilege will be utilized for improper purposes. Moreover, it should be emphasized that a researcher privilege should not protect against the disclosure of aggregate data, nor should it protect against the disclosure of data which is coded and from which all personal identifiers have been removed.

To summarize, this volume of standards is premised upon the principle that confidentiality of identifiable data is an important goal of the juvenile justice system. This standard, which calls for a privilege for researchers, is a logical mechanism for ensuring the realization of that goal.

### PART III: COLLECTION OF INFORMATION

#### 3.1 Relationship of information and decisionmaking.

The rules and regulations promulgated by a juvenile agency governing the collection of information pertaining to juveniles should take into account that:

A. too much as well as too little information can inhibit the process of decision;

B. the need for information increases as the options available to the decisionmaker increase and decreases as the available options decrease; and

C. information that is collected is often misused, misinterpreted, or not used.

#### *Commentary*

Standard 3.1 provides some elaboration of the scope of the rules and regulations, discussed in Standard 2.2 and the commentary thereto, in the context of information collection by juvenile agencies. The focus of the standard is upon two salient issues: the relationship between information and decisionmaking; and the relationship between information collection and information misuse.

It has recently been observed that: "An organization should record only information that has a clear-cut relevance to its concerns." Report of the Secretary's Advisory Committee on Automated Personal Data Systems, U.S. Dept. of HEW, *Records, Computers and the Rights of Citizens* 6 (1973), hereafter HEW Report. Yet decisionmak-

ers often rely upon the assumption that the more information they have the better, or more correct, their decisions will be. Bartlett and Green, "Clinical Prediction: Does One Sometimes Know Too Much?" 13 *J. Counseling Psych.* 267 (1966). Then, acting upon that assumption, their practice is to accumulate more and ever more information in an effort to insure a "perfect" decision, based on a "total picture" of the child. However, the adverse effects of unlimited information have been little considered. For example, the sheer bulk of material can convey an impression that the juvenile's record is "bad." Unanalyzed accumulations of data may be redundant in some aspects and consequently present a distorted or unjust view of the juvenile. Too much information may even interfere with the decisionmaking process itself.

A number of commentators have recently asserted that too much information can overload the human mind and unnecessarily lengthen and adversely affect the decisionmaking process. See, L. Wilkins, *Social Deviance* (1964); Miller, "The Magical Number Seven, Plus or Minus Two: Some Limits on our Capacity for Processing Information, 63 *Psychological Review* 81 (1956). They also assert that excess information serves merely to bolster the decisionmaker's confidence in his or her own decision, Bartlett and Green, *supra* at 268, or to reinforce a preliminary determination that has already been made on the basis of the four or five most salient items of the information previously assimilated; the excess information rarely changes the preliminary determination. R. Burnham, *A Theoretical Basis for a Rational Case Decision System in Corrections*, Ph.D. Dissertation, Univ. of Calif. (1969). Furthermore, excess information is at best unnecessary, time-consuming and inefficient, and at worst undermines the very purpose of referring to information, which is to make just and accurate decisions. Moreover, "most managers do not need more of relevant information nearly as badly as they need less of irrelevant raw data." HEW Report, *supra* at 23.

Since collected information is often not used, some organizations have begun to make an overt effort to use less information to make decisions. These groups concentrate on "crucial bits" of information which, they have found, are the most accurately predictive items of information. *On Record* (Wheeler ed., 1969). This trend should be acknowledged and, in appropriate situations, followed by juvenile agencies.

In some situations the decisionmaker may have only two options. When this is so, four or five items of information will usually form the basis for the decision, and more items will only be used to reinforce the decisionmaker's confidence in the decision. L. Wilkins,

*Information Overload: Peace or War with the Computer* (1973). However, where more options are available, more items of information will often be required by the decisionmaker. Long, "Pre-decisional Search in Concept Formation: The Effects of Problem Complexity," 15 *Psychological Record* 15 (1965).

Unnecessary information ought not to be collected most obviously because it is inefficient and a waste of agency resources. In addition, the potential for an invasion of privacy and misuse of even necessary items of information exists in any information-collection situation. Also, the stigmatization and stereotyping which can result from certain items of information may contribute to a worsening of the child's problems, rather than their amelioration. See E. Schur, *Radical Non-Intervention: Rethinking the Delinquency Problem* 113-26 (1973); Skolnick, "Two Studies of Legal Stigma," 10 *Social Problems* 133 (1962).

When even necessary information must be scrutinized carefully to determine if the need for the information outweighs the risk that its collection or retention may be counter-productive, it seems clear that in a situation involving superfluous information, the child's privacy interest and the danger of misuse certainly outweigh whatever value is assigned to the confidence a decisionmaker might gain from superfluous information. Thus, by placing controls on the accumulation of unnecessary information at the collection stage, a juvenile agency would be averting some of the danger of misuse of information before it becomes real, and yet not interfering substantially with the decisionmaking process.

The intended effect of agencies' articulating guidelines for the collection of information is that of making the process of collection more visible, rational, and reviewable. Formulating an express policy of information-collection should insure that indiscriminate collection of information is replaced by a conscious practice of limiting the information collected to relevant, necessary, and lawfully collectible information. Such a thoughtful limitation on information should contribute to the accuracy and utility of juveniles' records, and further the interests of privacy and fairness.

### 3.2 Purposes of information collection.

A juvenile agency should only collect information with respect to juveniles if the information is being collected for proper purposes. Those purposes are limited to:

- A. making lawful decisions pertaining to juveniles;
- B. managing the agency effectively and efficiently;

- C. evaluating the agency; and
- D. approved research.

### *Commentary*

It should be evident that because of the economic and privacy costs involved in the collection of information, juvenile agencies should only collect information for a purpose. Cf. Rept. of the Sec.'s Adv. Comm. on Automated Personal Data Systems, U.S. Dept. of HEW, *Records, Computers and the Rights of Citizens* 6 (1973), hereafter HEW Report. Thus it is appropriate not only to limit the collection of information to certain explicit purposes, but also to ask juvenile agencies to formulate their policies and rules in accordance with those purposes. Yet, where guidelines pertaining to information collection exist at all, they generally do not have an expressed theoretical basis. The implicit basis is usually no more complex than "the more information, the better." See E. Lemert, "Records in the Juvenile Court" in *On Record* 356-57 (Wheeler, ed. 1969).

An examination of juvenile records in at least some juvenile courts indicates that some information which is collected in fact serves no purpose. See, S. Wheeler, "Problems and Issues in Record-keeping" in *On Record* 10-13 (Wheeler, ed. 1969). Thus, by limiting the collection of information to proper purposes, omnivorous information collection for its own sake which tends to perpetuate itself, and which poses a threat to freedoms and privacy rights, should be minimized. However, the risk of excessive collection of information comes not just because of the "packrat mentality," or the need to feel confident in decisions irrespective of cost or the effect of excess information upon the quality of decisions. The risk also occurs because of the recent growth of automation, which has turned recordkeepers into specialized technicians, who often form a barrier between the information collectors and the users of information. As a result, "the presence of a specialized group of data processing professionals in an organization can create a constituency within the organization whose interests are served by any increase in data use, without much regard for the intrinsic value of the increased use." HEW Report, *supra* 22. See also, A. Miller, *Assault on Privacy* 34-38 (1972). Therefore, to counteract these tendencies, Standard 3.2 limits information collection to those general purposes that are related to the needs of juvenile agencies.

The four purposes enunciated in Standard 3.2 are those which may rationally be derived from an overall goal of providing services to juveniles. The first purpose, that of making lawful decisions about a

juvenile, affects the juvenile directly and is the primary *raison d'être* of most juvenile agencies. The second and third purposes enhance the provision of services to juveniles indirectly, since collecting information for evaluative or management purposes improves an agency's functioning and thereby improves the delivery of services. Collecting information for proper research purposes should also relate to improving the capacity of agencies to provide more effective services.

If information is collected without reference to explicit purposes, it will be haphazardly collected and it is unlikely to be used. See, S. Wheeler, *supra* at 13-14. Moreover, the collection of information which will never be used is inefficient and unnecessarily subjects the juvenile to the dangers of invasion of privacy, the misuse of his or her record, stigma, and stereotyping. See commentary to Standard 3.1.

Standards 3.2 and 3.3 express in detail the policy considerations which should govern the formulation of agency rules and regulations. Guidelines should be aimed at keeping the collection of information directed toward the four purposes set forth here, and circumscribed by the limits set forth in Standard 3.3.

### 3.3 Standards for the collection of information.

A juvenile agency should only collect information pertaining to an identifiable juvenile if:

A. reasonable safeguards have been established to protect against the misuse, misinterpretation, and improper dissemination of the information;

B. the information is both relevant and necessary to a proper purpose for collecting the information;

C. the information will be utilized within a reasonable period of time for a proper purpose;

D. an evaluation (conducted pursuant to Standard 3.4) indicates that it would be reasonable to rely upon the type of information for the purposes for which it is collected;

E. the cost of collecting the information, considered in relation to the significance of the purpose for collecting the information, does not appear to be excessive;

F. the collection of the information does not involve an invasion of privacy; and

G. it is reasonable to expect that the information collected will be accurate.

#### *Commentary*

This standard makes explicit the limits and boundaries which should be observed by a juvenile agency in the collection of informa-

tion about an identifiable juvenile. "Identifiable juvenile" means either that the name of the juvenile appears along with the information that is collected or that the name of the juvenile can be discovered by linking collected data (such as a social security number) with other information. See commentary to Standard 1.3. Examples of information that does not pertain to identifiable juveniles would include statistical data, such as the number and ages of children in a day care center or the average period of institutionalization of children in detention, as well as information that is collected on a completely anonymous basis.

The reasonable safeguards that should be established to safeguard information (subsection A.) comprise: A. limiting the retention of information, as detailed in Part IV; B. limiting access to the information, as set forth in Part V; and where appropriate, other safeguards, such as storage of the information in a secure place, informing the juvenile of the record, correction of the record, and destruction of records (Parts VII, X, XIV, XVI, XVII, XIX, XXI, and XXII).

The requirement of relevance to a proper purpose (subsection B.) has been explored in the commentary to Standard 3.2; comments on the uselessness of collecting unnecessary information have been detailed in Standard 3.1.

Two reasons stand behind the requirement that the information be used within a reasonable time (subsection C.). Much information becomes less accurate over time; it becomes outdated. It is then subject to the same objections which will be made to inaccurate information. Even if the information continues to be accurate over time, its existence in recorded form gives rise to the dangers of unauthorized access to and misuse of the information. If the information is not collected for use within a reasonable time, it is both unnecessary and irresponsible to subject the child to these dangers at all, so the information in this category should simply not be collected.

The requirement that it be reasonable to rely upon the type of information for the purposes for which it is collected (subsection D.) acts as an additional assurance of relevance. See commentary to Standards 3.1 and 3.2. The type of information should have been found to be predictive based on the agency's experience, as evaluated according to Standard 3.4. Reference should also be made to experience tables to assure that the type of information is a predictive factor for the purposes for which it is collected. Without reference to prediction-accuracy measures, decisions may be made on the bases of myths and stereotypes which are probably misleading. See generally, *On Record* (Wheeler ed., 1969). Moreover, the relationship between information and purpose is often unclear, and the facts about the relationship are needed to make any reliance on the information justifiable. See A.

Cicourel, *The Social Organization of Juvenile Justice* 27 ff. (1967); Miller and Tripodi, "Information Accrual and Clinical Judgments," 12 *Social Work* 63 (1967).

Subsection E. establishes a balancing test whereby the economic cost to the agency or the potential cost to the juvenile of collecting information is weighed against whatever benefit might be derived from collecting the information. Potential costs to the juvenile are those of invasion of privacy, the danger of stigmatization, and the risk of misuse of the information. Potential benefits relate to the possible uses of the information that is being sought.

Any information which involves an invasion of privacy should not be collected (subsection F.). Agency guidelines should be expected to incorporate state and constitutional law with respect to invasion of privacy as it develops. See *Merriken v. Cressman*, 364 F. Supp. 913 (E.D. Penn. 1973). Compare *Piazzola v. Watkins*, 442 F.2d 284 (5th Cir. 1971) and *People v. Overton*, 20 N.Y.2d 360, 283 N.Y.S.2d 22 (1967).

The requirement of a reasonable expectation of accuracy (subsection G.) is important because inaccurate information can only harm the child, the decisionmaking process, and the agency's delivery of services. Thus, information that is clearly rumor or gossip must be avoided. If information is collected from an interview, a goal of accuracy is important because interviews are particularly susceptible to distortion, omission, and manipulation of data. See Wilkie, "A Study of Distortions in Recording Interviews," 8 *Social Work* 31 (1963). Moreover, once recorded, the information, whether accurate or not, tends to acquire authority and permanence, merely by virtue of being recorded. Therefore, to avoid many of the problems involved in modifying or correcting a record, accuracy in the initial collecting and recording stages should be emphasized.

To be collectible, information must meet all seven of the criteria set forth in this standard. The effect of defining the parameters of permissible information collection should be to minimize the existence of inaccurate, irrelevant, and unnecessary information in juveniles' records, and to minimize the risks inherent in the existence of records pertaining to children.

This standard is not intended to preclude the collection of information pertaining to the sibling of a juvenile who is the subject of a record when the collection of such information is appropriate and collection is undertaken in accordance with this standard.

### **3.4 Periodic evaluation of information collection practices and policies.**

**A juvenile agency should periodically prepare or cause to be pre-**

pared a written evaluation of its policies and practices with respect to the collection of information pertaining to juveniles. Each such evaluation should include consideration of the following:

- A. the specific information that is being collected;
- B. the cost of collecting the information;
- C. the reliability of the information that is being collected;
- D. the purpose of collecting the information;
- E. the extent to which the information collected is used for the purposes for which it is collected;
- F. the validity of relying upon the information for the purposes for which it is collected;
- G. the extent to which or the risk that the information is or may be misused or misinterpreted;
- H. the extent to which the information is regarded as private or the means of collecting the information may be regarded as an invasion of privacy;
- I. the extent to which the information is necessary for making a particular decision;
- J. the effect of making decisions in individual cases without the information.

The written evaluation should be a public record and available to the public and consumers of the agency's services.

### *Commentary*

A juvenile agency should regularly evaluate its information collection policies and practices for two major reasons: A. in order to provide a guide for its own evaluation and improvement of its operations; and B. in order to provide a public statement so that interested citizens and public officials can monitor its operations.

The first reason, evaluating information collection policies and practices for the agency's own use, is important for a number of reasons. Any system of rules and regulations becomes outdated with time, as conditions change. By conducting a periodic audit to see how well agency practices fit the real situation, the agency will be rethinking its procedures and will be able to change any procedures that do not accomplish the desired objectives. Self-policing is often more effective than are external controls in eliminating bureaucratic abuses that may have continued through mere inertia. It provides a regular opportunity to insert rationality and efficiency into the information-collection system. The agency's self-evaluation should serve to point out areas in which information collection practices or policies may



have become either inefficient, or no longer directed toward the purposes of Standard 3.2, or violative of the limits expressed in Standard 3.3, so that deviations can be corrected.

The second reason, providing public accountability for the agency's information-collection policies and practices, is equally important. Public accountability is intended to serve as a quality control on the agency's functioning, insuring that abuses will be corrected by the concerned representatives of the public, if agency officials have been too lax about redirecting their agency's operations. Public monitors will be enabled by periodic reports to assess the collection system's effectiveness, its concern for the interests of juveniles, and its cost to the public. The concepts of public accountability and freedom of information are critical to the democratic system, and their effectuation is critical to the continued functioning of that system.

The ten considerations included in Standard 3.4 provide a general framework for the agency's report, spelling out the minimum assessments which should be made. The last seven considerations are discussed in the commentary to Standards 3.1, 3.2, and 3.3. The first three deserve additional comment. In evaluating the specific information that is being collected (subsection A.) the agency should examine the types of information it is routinely collecting and determine whether the information satisfies the guidelines set forth in Standard 3.3.

The cost of collecting different types of information (subsection B.) should be determined so that both the agency itself and public monitors can evaluate whether continuing to collect each type of information is worth the investment. Although it will be difficult to assess the precise costs of collecting specific types of data, it should be possible to assess the aggregate cost incurred by an agency to collect information in general, and perhaps the costs of collecting certain routine kinds of information, by asking agency personnel to estimate how their time is allocated to specific activities and then assessing the cost of that time allocation.

The reliability of the information collected (subsection C.) requires not only an assessment of its accuracy, the importance of which has been discussed in the commentary to Standard 3.3, but also an evaluation of the collection and recording techniques employed by the agency. If interviews are used, are the interviewers trained to administer unbiased interviews? Are interview forms that may have been developed slanted toward eliciting a specific answer? Are the responses recorded verbatim or in a multiple-choice form? By evaluating such issues, the many ways in which information can be distorted in the collection process can be explored and minimized.

### 3.5 Information collected for research or evaluation.

A. A juvenile agency should permit the collection of information for purposes of research or evaluation.

B. Any person who, for purposes of research or evaluation, seeks to collect information from or concerning an identifiable juvenile should file a formal written application, pursuant to Standard 5.6, with the juvenile agency that will provide access to the juvenile or to information concerning the juvenile.

C. Any person who seeks to collect information from or concerning an identifiable juvenile, pursuant to this standard, should obtain the written consent of the juvenile, if the juvenile is emancipated or over the age of fifteen, and his or her parents after informing them of the purposes for which the information is to be collected, the safeguards that have been established to ensure the security of the information, and the right of the juvenile or his or her parents to refuse their consent to the collection of such information.

D. A juvenile and his or her parents need not be informed and their consent need not be obtained if the information is collected in a manner so that it cannot be linked with an identifiable juvenile or the information is not of a personal nature.

#### *Commentary*

Research, responsibly undertaken, is vital to ensure the appropriate development of juvenile agencies, to maximize the benefits to be derived from allocating limited resources to juveniles, and to ensure that the decisions made by juvenile agencies are as fair, accurate, reliable, and valid as possible. Therefore, as discussed in the commentary to Standard 5.6, each juvenile agency should encourage research and evaluation. However, it must be recognized that the collection of information for purposes of research can conflict with the need to protect the privacy of juveniles.

To accommodate the need for research and the privacy interests of juveniles, this standard requires the filing of a written research application in accordance with Standard 5.6. The standard also requires, in most instances, that the consent of the juvenile and his or her parents be obtained. The value judgment that is made is that the interest in research is not great enough to outweigh the juvenile's privacy interest. The justification for the consent for research requirement is analogous to the consent requirement for access by third persons to information about an identifiable juvenile (Standard 5.4).

Because it is recognized that there may be significant costs incurred, involving both money and time, whenever informed consent

is required, subsection D. provides that there is no obligation to obtain consent if the information is collected in a manner so that it cannot be linked to an "identifiable juvenile" (see, commentary to Standard 1.3 for discussion of the term "identifiable juvenile") or if the information is not of a personal nature. Under those circumstances, the privacy costs are minimal and consent would not serve to protect any significant interest.

Since personal identifiers are included in information collected for research much more often than is necessary, Rept. of the Secy's Advisory Comm. on Automated Personal Data Systems, U.S. Dept. of HEW, "Records, Computers, and the Rights of Citizens," 90-95 (1973) (hereinafter HEW Report), it is assumed that the consent requirement will have some, but not major, impact upon most research proposals. Moreover, many tactics, such as coding and numbering, can be used to avoid the use of identification. See, Reubhausen and Brim, "Privacy and Behavioral Research," 65 *Colum. L. Rev.* 1200-1205 (1965). When, however, the consent requirement does operate to make research more difficult, the extra difficulty of obtaining consent is the reasonable price to be paid for insuring children's privacy. See, National Adv. Comm. on Crim. Justice Standards & Goals, *Criminal Justice System* 118 (1973).

Researchers themselves consider it good practice to obtain a subject's consent to research. See, Nelson and Grunebaum, 128 *Am. J. Psychiatry* 1358-1362 (1972), and Reubhausen and Brim, *supra* at 1200. In addition, consent can operate to give greater validity to the research by insuring greater accuracy of the information obtained (HEW Report, *supra* at 90-95) because, when a subject's consent is obtained, he tends to trust the researcher and be more truthful in providing information.

The required written consent of parent and child is intended to apply for each research proposal, rather than blanket releases, in order to insure an intelligent and knowing consent, and in order to prevent an evisceration of the consent requirement.

In furtherance of the goal of an intelligent and knowing consent, an agency must also inform the child and his or her parents of the purposes and safeguards of the research. The importance of being informed about situations concerning personal information is outlined in the commentary to Standard 4.3.

Properly exercised, the consent power can also operate as a check on research, insuring that it conforms to the standards for research expressed in Standard 5.6.

### 3.6 Collection of personal information.

A juvenile agency should not collect information of a personal nature from a juvenile without first informing the juvenile, if over the age of ten, of the agencies or persons who have a right of access to the information that may be collected. If information of a personal nature is to be collected from a juvenile not over the age of ten, a parent of the juvenile should be so informed.

### *Commentary*

This standard provides that personal information should not be collected from a juvenile without first informing the juvenile of other persons who may have a right to be informed about what the juvenile has stated. The standard is designed to be applicable in the context of nonprivileged communications, perhaps between a juvenile and a school adviser or a mental health counselor or a probation officer. The purpose of the standard is to attempt to protect against situations in which a juvenile may (for whatever reason) have an expectation that a communication will be confidential when, in fact, there may be an obligation that the person who receives the information inform either the juvenile's employer, the juvenile's parents, or some other third person.

The need to inform a child of the fact that any personal information that may be revealed may be disclosed to others even arises in the context of traditionally privileged communications where a psychiatrist, for example, is making an evaluation of a juvenile for an institution (school, court, etc.), or the privilege is deemed inapplicable to disclosures to the juvenile's parents. In such situations, it has been recommended that the juvenile be informed of possible disclosures to third persons. Malmquist, "Problems of Confidentiality in Child Psychiatry," 35 *Am. J. Orthopsychiatry* No. 4, 787, 797 (1965). Such a recommendation is also made forcefully in Ladd, "Counselors, Confidences and the Civil Liberties of Clients," 50 *Personnel & Guidance J.* No. 4, 261-68 (1971).

## PART IV: RETENTION OF INFORMATION

### 4.1 Information retention as a separate decision.

The decision of a juvenile agency to retain information in written form or in a form so that it may be retrieved by third persons is a separate decision which should be made in addition to the initial decision to collect the information.

### *Commentary*

The decision whether to retain information in retrievable form is clearly a decision which can be made separate from and in addition to the decision to collect the information. This standard, therefore, adopts the position that the decisions should be severable. The reasons for this position are several. First, information is sometimes sought under the impression that it will be useful and relevant but, after it is gathered, it is immediately apparent that the information is useless or irrelevant. Second, information is sometimes collected only for immediate use and there is no need to retain it in retrievable form. Third, sometimes information that would otherwise be useful should not be retained because it is clear that it will be misunderstood or misused.

Notwithstanding the fact that the decision to collect and the decision to retain information are clearly of a different order, agencies often do not regard the decisions as severable. Moreover, an examination of the records of various agencies indicates that information collected is often retained through mere inertia, without a conscious decision to retain or a consideration of the possible consequences of the retention. See generally S. Wheeler, "Problems and Issues in Record-keeping" in *On Record* (Wheeler, ed. 1969). Also, there is often a reluctance to destroy or dispose of information once it has been recorded, which comes as much from a reverence for the printed word as from a disinclination to waste the effort that was expended in collecting information. Since records tend to acquire authority and permanence by their very existence, the reluctance to destroy records should be outweighed by consideration of the risks involved in unnecessary retention of data.

If the provisions of Part III fail to screen out information that should not have been collected, or if information loses its relevance over time, this standard should insure that such information is not retained and should further the goal of making the recordkeeping process more rational, visible, and reviewable.

#### 4.2 Standards for the retention of information.

**The decision of a juvenile agency to retain information pertaining to an identifiable juvenile, in written form or in any other retrievable form, should be based upon a determination that:**

- A. the information is collectible, as set forth in Standard 3.3;**
- B. the information is accurate;**
- C. it is reasonable to expect that the information will be utilized at a later time;**

D. reasonable safeguards have been established to protect against the misuse, misinterpretation, and improper dissemination of the information; and

E. it is likely that retaining the information in written or other retrievable form will ensure that the information will be recalled more accurately; or

F. the information has been collected as a part of a formal judicial or administrative proceeding.

### *Commentary*

Information in written or retrievable form is permanently recorded, and because of its form and permanence, it is powerful. Its power lies in the authority it carries with it, and in the risk of abuse or misuse that accompanies it. See, Wheeler, "Problems and Issues in Record-keeping," *On Record* 4-6 (Wheeler ed., 1969). Because of its power, the decision to retain information should be carefully and thoughtfully made.

This standard provides an additional check on information held by an agency to insure that it meets the standards of necessity, accuracy, relevance, and respect for the privacy rights of children detailed in Standard 3.3 and the commentary thereto. It further provides an accuracy check at a point in time after the collection has taken place. The accuracy of the information cannot be predicted before collection as well as it can be determined after collection. See, commentary to Standard 4.1.

Information should also be of continuing usefulness and its retention necessary, so a determination that it will be used in the future should be made. Such a determination should reduce the amount of information retained, making the information easier to use as well as guarding against the potential of misuse.

If accuracy of recall is made more likely by retention of information in retrievable form (subsection E.), the information should be recorded (subject to the criteria of subsections A. through D.) to enhance the decisionmaking process. However, if the information has been collected only for immediate use and will not be reused within a reasonable period of time, then there is no independent justification for making a record because of the risks and costs of recordkeeping and the lack of benefit to be derived from retention.

The purpose of subsection F., which is really an exception to subsections A. through E., is to permit the retention of evidence (usually in the form of a transcript) transcribed during the course of an official proceeding, such as a trial or administrative hearing. In such

a context, it is intended that the usual rules of evidence should govern the receipt of evidence and that other statutes or internal rules should govern the retention of the evidence for appeal, review, or other proper purposes.

#### 4.3 Duty of disclosure of record retention.

A juvenile agency should not retain a juvenile record without making a reasonable effort to notify in writing the juvenile who is the subject of the record and a parent of the juvenile, if a parent has a right of access to the record pursuant to Standard 5.2, that:

- A. the record has been retained;
- B. there is a right of access to the record; and
- C. there is a right to challenge the accuracy of the record as well as the agency's right to retain the record.

#### *Commentary*

In view of the profound effects that records can have on the lives of their subjects, the juvenile's interest in being informed of the retention of information concerning him or her is substantial. Such information may influence decisions concerning the juvenile, may limit or expand his or her options, may shape views of the juvenile held by the people with whom he or she has dealings, may, in short, influence the course of his or her life. See, E. Lemert, "Records in the Juvenile Court," *On Record* 372 (Wheeler ed., 1969).

Recently, the trend toward informing subjects about their records has gained momentum. From credit reports to personnel records, legislation (see, 5 U.S.C.A. 3552a(d)(1), the Privacy Act of 1974) and public reports (see Rept. of the Sec.'s Adv. Comm. on Automated Personal Data Systems, U.S. Dept. of HEW, "Records, Computers and the Rights of Citizens" (1973) (hereafter HEW Report) have forced recordkeepers to open their files to the subjects of those files.

In effectuation of the aim of giving the juvenile knowledge and some measure of control over his or her record, the three subsections of Standard 4.3 provide for notification to the juvenile of the fact of his or her record and of his or her rights in connection with it. Exercise of the right of access to a record (see, Standards 5.2 and 5.4) serves to inform a juvenile of the specific information on record concerning him or her. Knowing this information, the juvenile will be better able to exercise intelligently the right of consent to dissemination of the information to third persons (Standard 5.4). And, in order to protect himself or herself from the potential harm inac-

curate information may cause, the juvenile may challenge the correctness of the information (Standard 2.6). See 5 U.S.C.A. § 552a(d)(2). The juvenile may also question whether the agency may legitimately retain certain information at all. For instance, if information violates the collection standard (Standard 3.3) or the retention standard (Standard 4.2), it should not be retained. The juvenile thereby acts as another check on the agency's information collection and retention practices, as well as a guardian of his or her own rights and interests.

Standard 4.3 is consistent with the trend of full disclosure. It is also consistent with recommendation III(2) of the HEW Report, *supra* at 59, which provides for record subjects to be notified of the existence of a record. However, the HEW Report would only provide such notice and disclosure upon request. See also, 5 U.S.C.A. § 552a(f)(1). This standard does not require a request because of the particular vulnerability of juveniles and their general lack of knowledge, power, and money, all of which would tend to make a request unlikely to occur: the failure to request disclosure could also undermine the purpose of the disclosure provisions. Moreover, while notice problems may be substantial for agencies serving adults, the primary agencies that serve juveniles, schools, and juvenile courts have juveniles as a captive audience to whom they can provide notice easily. Undeniably, there will be costs in providing disclosure to all subjects of a record but such costs are outweighed by the benefits of full disclosure and the risks that arise for juveniles about whom inaccurate or improper records may be retained. In recognition of the cost problem, there is no requirement (although it is preferable) to notify the juvenile's parents.

#### 4.4 Retention of administrative data.

**Information collected by a juvenile agency for the purpose of making internal administrative decisions or for the purpose of internal evaluation should not be retained in a form so that individual juveniles may be identified unless such identification is necessary for internal purposes during the period of evaluation.**

#### *Commentary*

When a juvenile agency collects data solely for internal administrative purposes, that data should be retained in anonymous form. As was pointed out in the commentary to Standard 3.5, identifiable data is seldom required for research purposes, and the same proposition applies to internal agency purposes. Even in those situations in



which it might be argued that the retention of identifiable data would be useful, the privacy interest of the juvenile and the risk of misuse of the information outweigh the limited and questionable advantages of retaining identifiable data. In those few instances where identifiable data must be used, it may be kept during the period of evaluation but should not be retained thereafter.

#### 4.5 Limited use of labels.

A juvenile record should not include summary conclusions or labels describing an identified juvenile's behavioral, social, medical, or psychological history or predicting an identified juvenile's future behavior, capacity, or attitudes unless the underlying factual basis, meaning, and implications are explained in terms that are understandable to a nonprofessional person, and their use is necessary.

#### *Commentary*

Recent literature about juveniles and their interactions with various agencies and institutions has suggested that the use of labels to describe a condition, problem, or the conduct of a juvenile may have severe negative repercussions. See generally, E. Schur, *Labeling Deviant Behavior* (1971); Payne, "Negative Labels—Passageways and Prisons," 19 *Crime and Delinq.* 33 (1973); A. Mahoney, "The Effect of Labeling Upon Youths in the Juvenile Justice System: A Review of the Evidence," 8 *Law & Society Rev.* 583 (1974). The reason for concern is that conclusions and labels about a juvenile are especially liable to misunderstanding and misuse. They are efficient tools in thinking and communicating, yet because they are such an easy shorthand for complex problems, the temptation to use them too often is great. As a result, the use of labels becomes the lazy alternative to individual descriptions of juveniles and develops out of a tendency to stereotype and categorize. Therefore, the use of labels should be resisted whenever possible in order to avoid the risk of misuse or misinterpretation, not only by less well-informed persons, but also by other professionals. As recently observed with respect to psychiatric reports: "All too often the psychiatrist uses words and concepts that not only the layman is at a loss to understand, but which are unclear to other psychiatrists." B. Danto, "Writing Psychiatric Reports for the Court," 17 *Int'l J. Offender Therapy & Comp. Crim.* No. 2, 123 (1973). And, even if, "the more academically oriented forensic psychiatrist may resent his expertise not being appreciated, . . . he should realize that his written reports should serve effective communication." *Id.* These admonitions apply

as well to the psychologist, the social worker, the teacher, and the probation officer and constitute the basis for this standard.

#### 4.6 Retention of information in computers.

A. The decision by a juvenile agency to use a computerized system to store information pertaining to identifiable juveniles should be subject to evaluation and comment by a juveniles' privacy committee.

B. Before a juvenile agency utilizes a computerized information system pertaining to identifiable juveniles, it should submit an "automation statement" to a juveniles' privacy committee for evaluation and comment.

C. The "automation statement" should include a detailed description of the system to be utilized, the data to be stored in the system, the purposes of the system, the quality controls to be provided, access and dissemination provisions, methods for protecting privacy and ensuring system and personnel security, provision for an independent audit, and estimated costs of establishing and maintaining the system.

D. The data included in a computerized system pertaining to identifiable juveniles should be objective and factual and should not include data of a subjective or predictive nature.

E. A proposed computerized system should satisfy the following criteria:

1. the ability of the juvenile agency to deliver services to juveniles will be substantially enhanced by the proposed computerized system;

2. the proposed system includes only the minimum objective data necessary to accomplish the purposes of automation;

3. the proposed system is designed to ensure the accuracy, confidentiality, and security of the data to be included in the system;

4. the proposed system is programmed to ensure compliance with Standard 3.3 (pertaining to the collection of information), Standard 4.2 (pertaining to the retention of information), and Part V (pertaining to the dissemination of information);

5. the juveniles whose records are to be computerized are identified by an arbitrary nonduplicating number instead of by name; and

6. the economic and privacy costs of automation are less than the benefits to be obtained by automation.

F. A juveniles' privacy committee should publicize the fact that an "automation statement" has been filed, make the statement

available to interested citizens, groups, and agencies, and provide an opportunity for the receipt of comments and evidence with respect to the statement and the juvenile agency that has proposed the system.

G. After evaluating a proposed computerized system, the juveniles' privacy committee should issue a written evaluation and that evaluation should be a public record.

### *Commentary*

Standard 4.6 provides that before a juvenile agency computerizes its juvenile records (or expands an existing system), a juveniles' privacy committee (hereafter the committee) should review and comment upon the planned system. It then provides a procedure for evaluating computerization proposals: an "automation statement" is to be filed with the committee (subsection B.); an opportunity for comment is provided (subsection F.); the proposal is then evaluated against certain general criteria (subsections C. through E.); and written comments are made (subsection G.).

The concept of ensuring visibility and special concern for decisions regarding the use of computers is not novel. In the context of criminal histories, the concept has been proposed by Project SEARCH, Technical Report No. 2, "Security and Privacy Considerations in Criminal History Information" 34 (1970) and the National Advisory Commission on Criminal Justice Standards and Goals "Criminal Justice System" 44-45 (1973). See also, Mass. Gen. Laws ch. 6 § 177. It has also been recommended that a federal regulatory agency be established with authority over all computer-privacy issues. See, A. Miller, *The Assault on Privacy* 244-53 (1971). But see Rept. of the Sec.'s Adv. Comm. on Automated Personal Data Systems, U.S. Dept. of HEW, "Records, Computers and the Rights of Citizens" 42-43 (1973) (hereafter HEW Report), rejecting the federal agency approach as too complicated and costly.

The need for special treatment and concern for computerized records has been the subject of voluminous commentary. See A. Westin, *Data Banks in a Free Society* (1972); A. Miller, *supra*; Hearings Before the Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Ninety-Second Congress, "Federal Data Banks, Computers and the Bill of Rights" (1971). In addition, the Congress of the United States recently made the following "finding" in the preamble to the Privacy Act of 1974: "The increasing use of computers . . . has greatly magnified the harm to individual privacy that can occur from any collection, maintenance,

use, or dissemination of personal information.” Act of December 31, 1974, P.L. 93-579 § 2, 88 Stat. 1896. The primary reason for concern about the use of computers is that computers challenge the traditional constraints of manual systems by tremendously enlarging the capacity to store information, facilitating access and dissemination of information, and creating a class of technical processors who are often remote from both the users and suppliers of information. HEW Report, *supra* at 12. On the other hand, the use of computers may also produce certain benefits by compelling managers to focus on the cost of information collection and retention, enhancing the capacity for research, evaluation and efficient management, and providing an opportunity to develop hardware and software systems to secure data from improper disclosure that would not be possible in a manual system. Nonetheless, error, malfunction, improper disclosure, and privacy are problems that become magnified by the use of computers (A. Miller, *supra* at 41-53) warranting the imposition of special constraints. “The science-fiction mystique surrounding cybernetics has tended to create an illusion of computer impregnability” (*id.* at 41) and the argument that is sometimes made that “computerizing personal information will result in greater protection for file privacy than yesterday’s manila folder” (*id.* at 42) must be recognized for what it is: an illusion in today’s world, with today’s people, and with today’s technology. It is recognized that an improved technology may be developed in the future. But, for the present, this standard mandates that degree of caution which should both enhance the proper use of computers and discourage their improper use.

For the reasons that have been stated, this standard proceeds upon the premise that the use of computers by juvenile agencies should be the subject of special scrutiny. That premise is fortified by the special concerns that arise when the subjects of computerized records are juveniles, because juveniles need special protection from unnecessary stigma and from the risk that their opportunity to grow and mature into adults will be constrained by a “prison of records.” See M. Altman, “Juvenile Information Systems: A Comparative Analysis,” 24 *Juvenile Justice* No. 4, at 2 (1974).

The form of special scrutiny for the use of computers by juvenile agencies, evaluation and comment by a privacy committee, is derived from the model first developed by Project SEARCH, Technical Report No. 2, *supra* at 35. That model provides for considerable flexibility for individual agencies, in that each agency is left with the responsibility of deciding whether and what to computerize, subject to the criteria of subsections C. through E. The principal substantive limitation, that data included in an automated system

should be objective and factual, not subjective or predictive (subsection D.), is designed to ensure that certain kinds of sensitive and personal information (the major portion of most social histories) is not computerized. Social histories should not be included because computerization and its economic costs very often make data management a primary goal of a service agency causing "unnecessary constraints . . . on the gathering, processing, and output of data with the result that the system becomes rigid and insensitive to the interests of data subjects." HEW Report, *supra* at 13. That rigidity and insensitivity, which often manifests itself by a format of predetermined multiple-choice type options for categories of information, creates special risks, not unlike that of labeling. See Standard 4.5 and the commentary thereto. Moreover, to be most useful and effective, social histories will contain evaluative data, often based upon clinical intuition, and they should therefore be written in a fully descriptive and informative manner. As stated by a Canadian commission: "Computers are most efficient when dealing with information that can be quantified and systemized; information that is intuitive, ambiguous, or emotional is much more difficult to computerize. As a consequence, computers may reinforce the importance in the decision-making process of the technocrat over the humanist, the objective over the subjective." A Report of a Task Force Established Jointly By Department Communications/Department of Justice, "Privacy and Computers" 119 (1972).

Subsection E. of Standard 4.6 sets forth the substantive criteria which define the parameters of an acceptable computerized system. The criteria include a determination of need, enhancement of service, objectivity, security, cost, and programmed compliance with Standards 3.3, 4.2, and Part V. In addition, subsection E. 5. provides that juveniles should not be identified by name, but rather by an arbitrary nonduplicating number, in order to further guard against the risk of improper access which is magnified by the use of a computerized system.

Subsections F. and G. provide a mechanism for preventing improper use of computerized systems by mandating public disclosure of a proposed computerized system (or the expansion of an existing system), permitting comment to be received from interested citizens, and requiring the publication of the findings of the privacy committee. It is anticipated that in most instances this process of public disclosure and input will prevent and protect against the development of improper systems. If such a process does not produce an acceptable result, the privacy committee retains the right to seek equitable relief under Standard 2.1 F.

#### 4.7 Centralized recordkeeping limited.

A. The legislature of each jurisdiction should promulgate a statute prohibiting juvenile agencies from utilizing centralized information systems in which information pertaining to identified juveniles is or may be shared, or through which individual information systems are or may be linked, except as provided in Standard 4.7 B.

B. The only data that should be stored in a centralized information system are the minimum data necessary to identify the juvenile, the names of those agencies that have provided or will provide services to the juvenile or his or her family, and the dates that those services were or will be provided.

C. Before any centralized information system is utilized that contains the minimum data authorized by subsection B. and before any information system is designed to provide for the sharing or linking of juvenile record information, a proposal for the information system should be submitted to a juveniles' privacy committee for evaluation and comment.

#### *Commentary*

The Report of the Secretary's Advisory Committee on Automated Personal Data Systems, U.S. Dept. of HEW, "Records, Computers and the Rights of Citizens" (1973) has observed that "public concern about . . . combinations of data through linkings and mergers of files is well founded." *Id.* at 21. The pressure for centralization comes from the high cost of storing and processing information particularly in automated systems. But, as in the case of computers, the centralization of information systems magnifies all of the problems and risks of an individual recordkeeping system: a single error, malfunction, or improper dissemination from a centralized system, since there are likely to be more bits of information stored and more persons who have access, is likely to cause more harm than similar problems that may develop in a single agency system. For these reasons, Standard 4.7 places special constraints on the development of centralized information systems.

Subsections A. and B. provide that the centralization of information should be limited to the development of indexes of the services provided to juveniles. Under this standard, a centralized index could be developed and organized on the basis of a juvenile's name and could include a list of the agencies that have provided services to a juvenile and the dates of those services. The benefit of such a system is that it would provide an opportunity for agencies to avoid duplication of services by referring to the listed agencies and inquiring as

to the specific services previously provided. Access to information from the record of another juvenile agency would, however, still depend upon the consent of the juvenile or his or her parents, obtained pursuant to Standard 5.4.

Subsection C. provides for evaluation and comment on a centralization plan by a juveniles' privacy committee. The system of review should be identical to that established for computers in Standard 4.6 and serves similar purposes of providing for independent assessment, visibility, and public input.

This standard is not intended to apply to the development of child abuse reporting systems although it must be recognized that such systems, especially when they are centralized and automated, involve all of the same risks to privacy that other information systems create. The issues pertaining to child abuse reporting systems are discussed in the *Abuse and Neglect* volume.

## PART V: DISSEMINATION OF INFORMATION

### 5.1 Direct access limited to designated personnel.

Direct access to a juvenile record should be limited to those clerical and professional persons specifically designated by the chief administrator of each juvenile agency. The number of persons so designated should be kept to a minimum based upon a criterion of necessity.

#### *Commentary*

This standard limits "direct access" (see Standard 1.6) to clerical and professional staff who are specifically designated by the chief administrator of an agency. The number of persons so designated are to be the minimum number that are necessary to ensure efficient access to records for proper purposes. The chief administrator ought to designate the persons by a written memorandum to the entire staff so that everyone will be on notice regarding who is permitted to have direct access to which records. In large agencies which maintain a number of different systems of records, it may be appropriate to develop more than one list of persons who are designated to have direct access to particular records.

This standard will change the practice of some agencies which permit any staff member to have direct access to any agency record. Such a practice is not permitted by this standard because unrestricted direct access by all staff creates an additional risk of improper dissemination and use. In addition, by limiting direct access to desig-

nated persons, the purpose of these standards, to ensure that access is permitted only if there is a proper purpose and only if access is necessary, is thereby served.

This standard is consistent with, although somewhat more restrictive than, recent statutes and regulations pertaining to recordkeeping. *E.g.*, Privacy Act of 1974, 5 U.S.C.A. § 552(a)(b), access by agency employees limited to situations where there is a "need" and access is in the "performance of their duties"; Family Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § 1232(g)(b)(1)(A), access by school employees to school records limited to those with a "legitimate educational interest."

## 5.2 Access by the juvenile and his or her representatives.

A juvenile, his or her parents, and the juvenile's attorney should, upon request, be given access to all records and information collected or retained by a juvenile agency which pertain to the juvenile except:

A. if the information is likely to cause harm, the provisions of Standard 5.5 should be applied; and

B. if the information or record has been obtained by a juvenile agency (other than a juvenile court) in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, and the juvenile has a legal right to receive those services without the consent of his or her parents, then the information or record should not in any way be disclosed or disseminated to the juvenile's parents unless the written consent of the juvenile is obtained and the juvenile has been fully informed of his or her right not to have the information or record disclosed to his or her parents.

### *Commentary*

A central provision in all recent legislation pertaining to record-keeping and privacy is that the subject of a record or his or her representative should have access to the subject's record. See 5 U.S.C.A. § 552(a)(d)(1) (Privacy Act of 1974). Such a provision is strongly recommended by the Report of the Secretary's Advisory Committee on Automated Personal Data Systems, U.S. Dept. of HEW, "Records, Computers and the Rights of Citizens," 61-62 (1973) (hereinafter HEW Report). Such a provision is also the trend in recent legislation pertaining to juvenile court records (see commentary to Standard 15.4) and police records (see commentary to Standard 20.2). Likewise, the Fair Credit Reporting Act requires that consumer reporting agencies inform the subject of a record as to its contents. 15 U.S.C.A. § 1681g(a). (The failure of the Fair Credit Reporting Act to provide



that the subject of a record may copy, as well as be informed of, its contents is criticized in the "HEW Report," *supra* at 70.)

The one recent major piece of legislation which does not provide a subject with the right of access to his or her record is the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. § 1232g) if the subject of the school record is under the age of eighteen. In such instances, the juvenile's parents have a right of access; and, the juvenile has no right of access until he or she is eighteen. The reason that a juvenile under eighteen is not given a right of access is not evident either from the Act itself or its legislative history.

Presumably, Congress assumed that, since there is usually an identity of interest between the juvenile and his or her parents, providing an exclusive right of access to the parents is sufficient. Moreover, since many juveniles will be too young to understand and perhaps cope with adverse information contained in records, Congress may have assumed that it would be better to limit access to the parents.

This standard rejects the model of the Family Educational Rights and Privacy Act of 1974 and instead provides that a juvenile should have personal access, upon request, to all records containing information about him or her. In the event disclosure of the information could cause harm to the juvenile, special protections are provided in Standard 5.5. In addition, a parent of a juvenile is not given a right of access to all information pertaining to his or her child; in limited situations where a juvenile has the right to receive designated services without parental consent, the parent has no right to receive information with respect to those services. This special provision is designed to make access rights consistent with the substantive law of a jurisdiction which may provide that a juvenile may receive certain services, such as venereal disease treatment, drug or pregnancy counseling, etc., without parental consent. The theory of precluding parental access to information in these limited contexts is, therefore, to ensure that the juvenile's right to receive the service is protected. If, for example, a jurisdiction decides that it is important enough to allow juveniles to be treated for venereal disease, irrespective of parental consent, then to ensure that the juvenile will not be deterred by the threat of parental disclosure, it is the juvenile's prerogative and not that of the agency to determine whether the parents will be informed of the treatment.

It is important to note that parental access to information is precluded in the narrowest of circumstances: A. the juvenile must have the right to receive the service without parental consent; and B. the service provided must be "counseling, psychological, psychiatric, or medical." Thus, a parent would have a right to obtain

records of his or her child's academic performance from a school, even if the juvenile has the right to receive an education under state law without parental consent, because educational services are not one of the special services designated in subsection B. Likewise, a parent would have a right of access to the records of the juvenile's school counselor unless the jurisdiction promulgated a law providing that a juvenile had the right to receive such counseling without parental consent.

Providing a juvenile with personal access to his or her records is discussed more specifically in the context of probation records in juvenile court (commentary to Standard 15.4), social histories (commentary to Standard 9.1), and police records (commentary to Standard 20.2). Providing a juvenile with access follows logically from a decision to notify a child of the existence of a record pertaining to him or her (see commentary to Standard 4.3), provides the mechanism for seeking correction of a record when necessary (see Standard 2.6 and the commentary thereto), and is designed to promote the accuracy of records and the fairness and validity of decisions that are made upon the basis of information contained in records. Giving access only to the juvenile's parents is deemed inadequate to serve these purposes because, in many instances, there may be a conflict between the juvenile and his or her parents or the parents may, in some instances, be unable, unwilling, or not sufficiently interested to review a record for a juvenile. In most instances, of course, the parent will be the primary person to protect the juvenile's interests; and this standard, therefore, gives the juvenile's parent a right of access in most instances.

### 5.3 Access by agency personnel.

The personnel of a juvenile agency should not be given access or indirect access to a juvenile record possessed by the agency except for the purpose of providing services to the juvenile or for other proper agency purposes.

#### *Commentary*

This standard provides that internal agency personnel should not have unlimited access to agency records: access should be limited and accorded solely for the purpose of providing services to the juvenile who is the subject of the record or for other proper agency purposes (such as monitoring services, evaluating personnel, etc.). See also Standards 15.2 B., 15.3 C., 15.4 D.

The purpose of this standard is to limit the risk of misuse of information by providing that even agency personnel should not be given

access to a record unless they need it for some proper purpose. For further discussion of the purposes for limiting access in this context, see commentary to Standard 5.1.

#### 5.4 Access by third persons.

Except as permitted by Standards 5.3, 5.6, and 5.7, access or indirect access to a juvenile record should only be accorded to a third person under the following circumstances:

A. the juvenile, if over the age of ten, is informed of the specific information to be disclosed, the purposes of disclosure, and the possible consequences of disclosure; and

B. a parent of the juvenile is informed of the specific information to be disclosed, the purposes of disclosure, and the possible consequences of disclosure, except, a parent should not be so informed if the parent does not have a right of access to the information pursuant to Standard 5.2; and

C. the juvenile, if emancipated or over the age of fifteen, or, if his or her parent is not informed of the proposed disclosure in accordance with subsection B., has consented to the proposed disclosure of the information; and

D. a parent of the juvenile has consented to the proposed disclosure in those instances in which consent of the juvenile is not required by subsection C.; and

E. the juvenile agency that has possession of the information has reevaluated the information within the past ninety days and has determined that, to the best of its knowledge, the information is accurate, or the record contains a clear and conspicuous statement of the last date the record was reviewed for accuracy and completeness, and also a warning that conditions may have changed since that date; and

F. the juvenile agency that has possession of the information has determined that disclosure of the information to the third person is appropriate; and

G. the third person to whom access or indirect access is to be accorded executes a written nondisclosure agreement or promises to execute such an agreement within forty-eight hours; or

H. a compelling health or safety need exists, consent is not reasonably obtainable pursuant to subsection C. above, and disclosure is made to a court for the purpose of obtaining consent.

#### *Commentary*

This standard establishes two basic prerequisites for the disclosure of juvenile records to third persons (defined in Standard 1.10): A. in-

forming the parent and/or juvenile of the proposed disclosure; and, B. obtaining the consent of the parent and/or juvenile prior to disclosure. These two prerequisites do not apply, however, in certain specific contexts. They do not generally apply to juvenile court records (see Standards 15.1-15.4) because of the nature of the court's role which requires that certain designated persons (see, Standards 15.2-15.4) have access to records without obtaining consent. The principle applied in that context is that the need for access in juvenile court outweighs the juvenile's interest in controlling disclosure. For the same reason, access for purposes of other legal proceedings must be governed by other criteria (see Standard 5.7) and separate criteria for disclosure for research and evaluation are also set forth (see, Standard 5.6). For a general discussion of the importance of consent and permitting a data subject to participate in the decision whether to share data with an outside agency, see "HEW Report," *supra* at 38-63. Compare, Family Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § § 1232g(a)(A)(5)-(6); Privacy Act of 1974, 5 U.S.C.A. § 552a(a). A complete discussion of the role and importance of obtaining consent before disclosing a social history to a third person appears in the commentary to Standard 9.1.

In addition to consent, this standard also specifies that any information that is disseminated should be current and accurate (subsection E.) and that the agency should determine that disclosure is appropriate (subsection F.). The latter requirement of appropriateness should not be used to thwart the wishes of a juvenile or his or her parents when they have consented to the disclosure of information. The subsection is designed solely for the purpose of preventing disclosure in situations in which the juvenile or his or her parents may have given nominal consent to disclosure but it is apparent that such consent was obtained by the coercive pressures of a third person who is seeking access to the information in a context in which disclosure would not benefit the juvenile.

Subsection G. requires that a juvenile agency making disclosure to a third person obtain a nondisclosure agreement from that third person either prior to or immediately after release of the information. Obtaining a nondisclosure agreement after, as opposed to before, the release of information should be the exception and should only be permitted when there is both a need to release the information immediately and an inability to obtain prior execution of an agreement. The purpose of such an agreement is to provide an additional control over the disclosure of juvenile records. See, Standards 14.6 and 20.4 and the commentary thereto.

Provision for disclosure without consent in emergency situations

where consent is unobtainable is derived from the Privacy Act of 1974, 5 U.S.C.A. § 552a(a)(G) (“compelling health or safety needs”).

### 5.5 Special obligation when information may be harmful.

If it is determined by a professional person who has been assigned responsibility for a juvenile or his or her case that disclosure of certain information is likely to cause severe psychological or physical harm to the juvenile or his or her parents, the professional person should either:

A. arrange to provide professional counseling for the juvenile and his or her parents so that, upon disclosure of the potentially harmful information, the family will have the appropriate professional support; or

B. withhold the potentially harmful information from the juvenile and his or her parents until that information has been disclosed to an independent representative of the juvenile, selected by the juvenile, so that the representative may make an independent judgment of whether the information is accurate and disclosure of the information to the juvenile or his or her parents is necessary; or

C. delete the potentially harmful information from all records of the juvenile agency and ensure that the information will not be used in any way against the juvenile.

### *Commentary*

The two extreme positions with respect to disclosure of a juvenile record to the subject of the record, are complete nondisclosure versus turning over the complete raw file upon request. Neither of these positions is acceptable. The alternative of nondisclosure is unacceptable because secret files are or should be considered as contrary to basic democratic principles. See, “HEW Report,” *supra* at 41, 57-61. While nondisclosure would be acceptable in the private sector—where there is an opportunity for an individual to choose his or her counselor, therapist, etc., to enter into a contract for services, and to bargain for disclosure—nondisclosure by a juvenile agency (defined in Standard 1.1) is an unacceptable policy for juveniles, because often the juvenile is a captive client who cannot meaningfully choose a service or bargain over disclosure, and the service is provided by a public agency.

The alternative of simply turning over a file to a juvenile upon request is also unacceptable in most circumstances. If the file contains a social history, at a minimum, it should be explained to the juvenile in a way so that it can be understood. See Standard 9.1. See also Riscalla, “The Captive Psychologist and the Captive Patient,”

3 *Prof. Psychology* No. 4, 375-79 (1972). Preferably, it will also be written with minimal professional jargon so that at least a parent can readily understand its meaning. See Standards 4.5 and 9.1 C. See also, Fischer, "Paradigm Changes Which Allow Sharing of Results," 3 *Prof. Psychology* No. 4, 364-69 (1972). Without at least explaining a file, particularly a social history, the risk of misunderstanding is too high; and the benefits of disclosure would be minimal. In some instances, however, explanation and limiting professional jargon will not be enough; conversations with social workers, probation officers, psychologists, etc., throughout the country have revealed that there are some cases where the disclosure of sensitive information would be and has been harmful to juveniles. These cases are not common, but they seem to occur enough times so that they are not unusual. In such instances it could be argued that disclosure should be left to the discretion of the professional. However, that alternative is also undesirable because it creates an undue risk that harmful and perhaps inaccurate information will be used against a juvenile without an opportunity to correct or explain it. Instead, Standard 5.5 sets forth three other alternatives which appear in order of preferability: A. providing counseling to the family in connection with disclosure; B. disclosing the information to an independent professional who represents the juvenile (perhaps a lawyer, if available) who will have the responsibility for determining whether to disclose the information and/or determining whether it is accurate; and C. deleting the information while ensuring that it is not utilized for the purpose of making any decision with respect to the juvenile.

The three alternatives are deemed to be the most acceptable methods of dealing with the very difficult issue of disclosing harmful information. While the first alternative is costly, it is still the best way of responding to a request for disclosure because it avoids the undesirable process of making a decision based upon secret information; it reduces the risk of relying upon inaccurate information; and it reduces the likelihood that harm will result to a juvenile from disclosure. The third alternative, deleting the information and not using it, will become most attractive when the information is of marginal relevance; disclosure is likely to be destructive; and counseling is likely to be too costly or unproductive.

### 5.6 Access for research or evaluation.

**A. Any person who seeks access to or information from juvenile records for purposes of research or evaluation should file a formal written application with the juvenile agency that has custody of the records. A copy of the application should also be sent to the juveniles' privacy committee.**

B. The juvenile agency should approve the application if, after considering the views of the juveniles' privacy committee, and after examining the application, the applicant, and such other information that may be available, the juvenile agency is satisfied that:

1. the applicant has adequate training and qualifications to undertake the proposed research or evaluation project;

2. the proposed project is to be undertaken for valid educational, scientific, or other public purposes;

3. the application includes an acceptable and detailed description of the proposed project including a specific statement of the information required and the purpose for which the project requires the information;

4. the proposed project is designed to preserve the anonymity of the juveniles who are the subject of records or information to which access is sought;

5. the applicant has agreed in a sworn statement not to reproduce any information from a juvenile record, except for internal purposes, and has agreed not to disclose any information from a juvenile record to an unauthorized person; and

6. the applicant has agreed to provide a list of the names and addresses of each person who will be a member of the staff of the proposed project and to provide a sworn statement, signed by each of them, not to disclose any information from a juvenile record to an unauthorized person.

C. Before approving or disapproving an application for research or evaluation, the juvenile agency should make written findings with respect to the criteria set forth in subsection B.

D. Upon approving or disapproving an application, the written findings and conclusion with respect to the application should be filed with the juveniles' privacy committee.

E. Any final reports, findings, or conclusions of the research or evaluation project should be a public record and should be presented so that individual juveniles cannot be identified either directly or indirectly.

F. A juvenile agency that approves a research or evaluation project and the juveniles' privacy committee should have the right to inspect any approved project. If at any time the juvenile agency has reason to believe that the project is not being carried forward as agreed or is being conducted in a manner contrary to the research application, it should terminate the project's access to records or impose such other restrictions as may be necessary and proper.

G. If an application filed pursuant to this standard is disapproved, the applicant should be given the right to appeal the disapproval to a court of general jurisdiction.

*Commentary*

The guidelines for research access to agency records delineated in this standard attempt to advance the legitimate goals of research without jeopardizing the privacy interests of the juveniles to whom the information sought refers.

That research has value is a proposition that hardly needs stating. Research is essential to improvement of the provision of services by juvenile agencies. See Nelson and Richardson, "Perennial Problems in Criminological Research," 71 *Crime & Delinq.* 23 (1971); Nat. Adv. Comm. on Criminal Justice Standards and Goals, "Criminal Justice System" 118 (1973) (hereinafter "Criminal Justice System"); Vinter, "The Juvenile Court as an Institution," *Task Force Report: Juvenile Delinquency and Youth Crime* 84 (1967); Lemert, "The Juvenile Court—Quest and Realities," *Task Force Report: Juvenile Delinquency and Youth Crime* 105 (1967); and Nejeski and La Pook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going, If You Don't Know Where You Are?" 12 *Am. Crim. L. Rev.* 9-31 (1974). Research is necessary to explore and define the relationships between information and the desired result in decision-making situations. Knowledge about these relationships will enable decisionmakers to choose appropriate data upon which to rely in making decisions, an ability which is a concern of Standard 3.3.

Research should be accompanied by appropriate safeguards on confidentiality and anonymity of the juveniles who are the subjects of the information sought by the researcher. See "Criminal Justice System," *supra* at 118. The goal of the agency should be to insure that all research which uses the agency's records is responsible research, and that the researchers handle the information from the records no less responsibly than the agency itself is required to handle it. To this end, the agency is provided with control over the initiation and termination of research, and provided further with guidelines which should insure the smallest possible risk of invasion of privacy or misuse of the information. The seven subsections of this standard enunciate specific requirements for researchers. If any one of the subsections is violated, the agency is empowered to terminate or restrict the continuation of the research.

The power of an agency to approve or reject a research application is not intended to restrict the access of researchers to the information in the agency's possession. As long as the guidelines pertaining to confidentiality are observed, reasonable latitude should be given to researchers to collect information needed for research. Moreover, because of the importance of responsible research, juvenile agencies should be willing to cooperate with researchers, particularly by assist-



ing in assembling needed data. While cooperation and assembling data will sometimes cost an agency money and time, agencies should recognize that such costs, so long as reasonable, are necessary to assume as a portion of the cost of providing effective service to juveniles.

This standard is intended to permit the news media to have access to juvenile records if they otherwise qualify as researchers. See commentary to Standard 15.2.

#### 5.7 Access to juvenile records for law enforcement or judicial purposes limited.

A. Access to juvenile records should not be provided to a law enforcement agency by a juvenile agency unless:

1. the consent of the juvenile who is the subject of the record or his or her parents is obtained in accordance with Standard 5.4; or

2. a judge determines, after *in camera* examination of the record of a designated juvenile, that such access is relevant and necessary.

B. Juvenile records should only be produced for a legal proceeding pursuant to a subpoena.

C. Juvenile records, other than records retained by or for a juvenile court, and the information contained therein, should not be admissible in any proceeding unless:

1. the juvenile who is the subject of the record or his or her parents consent to the disclosure of the record or information in accordance with Standard 5.4 and the record or information is otherwise admissible; or

2. a judge determines, after examining the record or information *in camera*, that the record or information is not all or a part of a social or psychological history (prepared by or for a juvenile agency other than a juvenile court), that it is relevant and necessary for the purpose of the proceeding, and that the admission of the record or information is warranted notwithstanding that its admission may be inconsistent with the juvenile's expectation of privacy.

D. In cases in which a juvenile's record is admitted pursuant to subsection C. 2., the reasons for its admission should be set forth in writing and made a part of the record.

#### *Commentary*

This standard applies the general principle of limiting access to juvenile records (Standards 5.1 and 5.4) to the subjects of disclosure, to law enforcement agencies, and to the admissibility of juvenile records other than juvenile court records (the admissibility of records

and information collected by or for a juvenile court is discussed in Standard 18.4 and the commentary thereto).

Subsection A. provides that law enforcement agencies should not be given access to juvenile records unless either consent or a judicial order is obtained. Compare Family Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § 1232g(a)(2)(B). The purpose of limiting disclosure to law enforcement agencies is generally the same as limiting access by other third persons. See, Standards 5.4, 15.1-15.5 and the commentary thereto.

Subsection C. provides for the admission of juvenile records, other than juvenile court records and social histories, into evidence only if subpoenaed (subsection B.) and only if a court determines *in camera* that the records are relevant and necessary to the proceeding and that the reasons for admission outweigh the child's expectations of privacy. This provision is designed to accommodate the basic policy of nonaccess and confidentiality with the needs for access to juvenile records that may arise during litigation, particularly when the child is a party or witness.

## 5.8 Destruction of records.

A. The rules and regulations of a juvenile agency should provide for the periodic destruction of its juvenile records based upon appropriate criteria such as: the death of the subject of the record, the age of the record, the likelihood that the record will not be useful to the agency or the juvenile in the future, and the benefits to be derived from retaining the record are outweighed by the risk that its further retention may cause harm to the juvenile if it is improperly disseminated.

B. Whenever possible, a juvenile agency should provide an opportunity to the juvenile who is the subject of a record to obtain a copy of the record before it is destroyed if further retention of the record by the juvenile might be useful.

### *Commentary*

Information collection and retention by juvenile agencies creates many risks, the primary risks being labeling, stigma, violations of privacy, misuse, and misinterpretation. Reducing these risks is a basic theme of this volume of standards. See, *e.g.*, Standards 2.1, 2.2, 3.1-3.3, 4.2, 4.5, and the commentary thereto. It also is a basic theme of many recent articles and books. See generally HEW Report, "Records, Computers and the Rights of Citizens," *supra*; A. Miller, *The Assault on Privacy* (1972); E. Schur, *Labeling Deviant Behavior*

(1971); Payne, "Negative Labels—Passageways and Prisons," 19 *Crime & Delinq.* 33 (1973). Building upon this theme, Standard 5.8 calls for the destruction of juvenile record information when it becomes irrelevant or otherwise useless (compare Standard 3.3, subsections B. and C.; Standard 4.2 C.); outdated (compare Standard 4.2 B.); or the benefits of continued retention are outweighed by the risk of improper dissemination (compare Standard 4.2 D.).

Most of the literature on the sealing or destruction of juvenile records has focused on juvenile court records (e.g., Gough, "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status," 1966 *Wash. U.L.J.* 147, 168-90 (hereafter "Expungement of Adjudication Records") or juvenile police records. E.g., Note, "Juvenile Police Record-Keeping," 4 *Colum. Human Rts. L. Rev.* 461, 480-81 (1972). In some instances, however, the need for destruction of records has been referred to in a more general context. Professor Miller, for example, states:

Unless there is a clear and compelling reason to preserve [extremely sensitive personal information], it should be destroyed when the purpose for which it was generated has been achieved. Admittedly, this is contrary to our natural instincts but it seems essential if personal privacy is to be preserved. A. Miller, *The Assault on Privacy*, *supra* at 264.

The HEW Report, "Records, Computers and the Rights of Citizens," *supra* at 57, recommends the "elimination" of data when they are "no longer timely."

Proposals for the sealing or destruction of court records have sometimes been severely criticized. See, Kogan and Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," 61 *J. of Crim. and Pol. Sc.* 378 (1970) (hereafter Kogan and Loughery). This criticism has been based upon both technical and philosophical objections. First, it is asserted that the terminology in present legislation, particularly the terms "seal" and "expunge," lack "precision in definition [and] consensus as to meaning." *Id.* at 379. It is for this reason that this standard uses the term "destruction" so that the confusion which has been created in many jurisdictions will cease to be a problem. (As used here, the term "destruction" means either the actual physical destruction of the record or the total removal and destruction of all identifiers and links to identifiers so that the subject of the record cannot be discovered.) Second, it is asserted that the present practices are "impractical, unworkable, and unenforceable." *Id.* at 383. The difficulties and inconsistencies that are encountered under the present system are not, however, without solution. These standards, for example, if promulgated nationally, can eliminate the problem of removing information from a record in

another jurisdiction. In addition, more adequate laws can be promulgated to control inquiries about and uses of juvenile records (see Standards 18.1-18.4); a juveniles' privacy committee (Standard 2.1) can seek to prevent noncompliance (Standard 2.1 F.) and to investigate loopholes; and destruction can be made mandatory rather than discretionary. See, Standard 17.2.

A third reason that is asserted against sealing and expungement statutes is that "the system sanctions deceit—it institutionalizes a lie." Kogan and Loughery, *supra* at 385. Stated somewhat differently:

There are values of a constitutional dimension that are compromised by any attempt on the part of government to erase records of historical data that are true. One who consciously lies in rewriting history bears a weighty burden of justification; it will be recalled that Orwell's all-knowing state did so for perfectly benevolent reasons. While such considerations may not make "expungement" legislation unconstitutional, they deserve serious consideration in striking the legislative balance. Karst, "The Files: Legal Controls Over the Accuracy and Accessibility of Stored Personal Data," 31 *Law and Contemp. Problems* 343, 359 (1966).

This assertion that government should not sanction lies is a rhetorical overstatement of the issues raised by destruction. Destruction is not a "conscious lie"; it is only authorization for removal of the historical record of some past event. The fact that the past event occurred is not denied by destruction; destruction merely serves another governmental policy which is deemed to be more important than keeping records. It also takes into account the reality that people often misuse historical data, including data that are no longer timely, and by eliminating the record, the social policy of ensuring that government does not contribute to misuse of a record which it has generated is, thereby, served. Finally, even if destruction is deemed to serve a policy of changing perception of an historical fact, the means of accomplishing that change of perception does not seem qualitatively different from changing the term criminal to delinquent, arrest to detention, conviction to adjudication, or jail to training school.

A final reason that is asserted against destruction is that it will interfere with research. Kogan and Loughery, *supra* at 386. But most research can be undertaken from records from which identifiers have been destroyed. See Standard 5.6 and the commentary thereto. Moreover, if agencies were more diligent about collecting quality aggregate data, the need for research into old records where subjects are identified would be considerably reduced. Destruction will, undoubtedly, make some research more difficult, but the difficulty

created is not worth the cost of indefinitely keeping identifiable records.

For the reasons that are stated above, this standard requires the destruction rather than the continued retention of juvenile records. For a further discussion of the issues raised by destruction and the existing law, see the commentary to Standards 17.1-17.3 (pertaining to court records).

## *SECTION II: SPECIFIC STANDARDS FOR JUVENILES' SOCIAL AND PSYCHOLOGICAL HISTORIES*

Section II of these standards governs social histories, a special kind of record that is defined in Standard 6.1. Section II is designed to supplement Section I, the general standards, by providing greater specificity to a special area of concern.

An effort to promulgate statutes, standards, and rules or regulations pertaining to social histories should begin with the general standards of Section I. Then, the more specific provisions of Section II should be utilized to supplement the more general provisions of the previous Section.

### PART VI: DEFINITION

#### 6.1 Social or psychological histories.

A social or psychological history is information retained in any retrievable form by a juvenile agency, pertaining to an identifiable juvenile's family, social, or psychological background, for the purposes of:

- A. providing counseling to the juvenile;
- B. making a decision whether to confer or deny a service, a placement, or other benefit to the juvenile;
- C. predicting whether the juvenile will engage in future antisocial conduct; and
- D. determining the disposition of a juvenile case either before or after the juvenile has been adjudicated neglected or delinquent.

#### *Commentary*

This standard defines a social or psychological history (hereafter a social history) for the purpose of Section II of these standards, which establishes certain added measures of control over the preparation, retention, dissemination, and destruction of social histories. These

added measures of control are provided because social histories tend to include a higher degree of evaluative content than other reports and the type of evaluation included may create problems of labeling and stereotyping which can be particularly destructive in terms of the development of and securing opportunities for an individual child. See, E. Schur, *Radical Non-Intervention: Rethinking the Delinquency Problem* 119-26 (1973). In addition, social histories tend to include very personal information, the disclosure of which may cause embarrassment and an invasion of privacy.

Social histories are utilized in various contexts. In the juvenile court, they are utilized most often in connection with the disposition of a case, but in some instances they may be utilized for the purpose of making a diversion decision prior to adjudication. See, Krasnow, "Social Investigation Reports in the Juvenile Court: Their Uses and Abuses," 12 *Crime & Delinq.* 151-53 (1963). For a description of the usual content of a juvenile court social history, see, J.H. McDonough, *Juvenile Court Handbook* 41 (1970). Social histories are also utilized by schools for purposes of counseling or providing special programs and by social welfare agencies and clinics for the purpose of providing counseling and other services to juveniles and families. Often, social histories are gathered for psychiatrists, psychologists, and psychiatric social workers, and are called psychological assessments.

The professional standards for social histories, particularly in the context of psychological assessment, have been stated on numerous occasions. *E.g.*, Silber, "Clinical Psychology—Its Role and Methods" *Readings in Law and Psychiatry* 146 (Allen, Ferster, and Rubin eds., 1975). But the interpretation of empirical data in a social history is a "complex process" because "the clinician must draw hypotheses about the personality of the person on the basis of data, and as soon as he does that, he leaves the world of the verifiable, and enters the region of inference" which requires "clinical experience and skill." *Id.* Unfortunately, experience and skill are sometimes lacking and overburdened and underpaid professionals may prepare social histories that include inaccuracies and conclusions that are totally subjective and unsupported either because of a lack of supporting data or because the professional is not skilled in making the kinds of evaluations or predictions that are included. See, E. Lemert, "Legislating Change in the Juvenile Court," *Delinquency and Social Policy* 202 (Lerman ed., 1970). Particularly in these situations, the disclosure of a social history may have severe consequences. See Schur, *supra* at 118-26; Payne, "Negative Labels—Passageways and Prisons," 19 *Crime & Delinq.* 33 (1973).

A social history, as defined by Standard 6.1, includes only informa-

tion that is retained in "retrievable form." Thus, information which is not recorded is not part of a social history. Also, recorded information is not a social history unless it is retained by a juvenile agency (see Standard 1.1). The intent of this provision is to exempt social histories of juveniles that are not retained by juvenile agencies; it is not, however, the intent either to permit juvenile agencies to prepare a social history and then turn it over to a nonjuvenile agency for "retention" or to permit the preparation or receipt of a social history which is kept for a short period of time, but not "retained" by a juvenile agency.

## PART VII: PREPARATION OF SOCIAL HISTORIES

### 7.1 Duty to inform of history preparation.

A. Before information is collected for the purpose of preparing a social or psychological history of a juvenile, the juvenile, if over the age of ten, and, if required by subsection B., a parent of the juvenile should be informed of:

1. the purposes of the history;
2. the persons and agencies that are likely to be provided access to the history;
3. the persons and agencies that are likely to be contacted to provide information for the history;
4. the persons and qualifications of the persons who will prepare the history; and
5. the right of the juvenile, his or her parents, or representative to deny consent to the preparation of the history when such consent is required by Standard 7.2.

B. A parent of the juvenile who is to be the subject of the history should be given the information required by Standard 7.1 A. unless the juvenile agency which is preparing the history or causing it to be prepared is an agency other than a juvenile court or other than an agency acting for a juvenile court and the history is to be prepared in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile which the juvenile has a legal right to receive without parental consent.

### *Commentary*

The Report of the Secretary's Advisory Committee on Automated Personal Data Systems, "Records, Computers and the Rights of Citizens" (HEW 1973) provides that organizations should:

Inform an individual asked to supply personal data for the system whether he is legally required, or may refuse, to supply the data requested, and also of any specific consequences for him, which are known to the organization, of providing or not providing such data.  
*Id.* at 59.

This standard builds upon the above recommendation of the Secretary and the general principle set forth in Standard 5.2. As stated further in the HEW Report:

This requirement is intended to discourage organizations from probing unnecessarily for details of people's lives under circumstances in which people may be reluctant to refuse to provide the requested data. It is also intended to discourage coercive collection of personal data. . . .  
*Id.* at 59.

In the context of sensitive social histories (see commentary to Standard 6.1), where the data subject is a juvenile who, because he or she is a juvenile, is more likely to be unaware of a right to refuse to give information to an adult (who may also be a teacher or counselor) and is more likely to be unaware of the possible consequences of disclosing personal information, full disclosure is particularly imperative.

The provisions of subsection B. are parallel to the provisions of Standard 5.4 B. with respect to the obligation also to inform a parent of the juvenile, except in cases in which the juvenile's social history is to be prepared in connection with services which the juvenile has the right to obtain without parental consent. See, commentary to Standard 5.2.

## 7.2 Consent to prepare history; when required.

Before information is collected for the purpose of preparing a social or psychological history of a juvenile by or for a juvenile agency, other than a juvenile court, consent should be obtained from:

A. the juvenile;

1. if the history is to be prepared in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile which the juvenile has a legal right to receive without parental consent, or

2. if the juvenile is emancipated or over the age of fifteen;

B. a parent of the juvenile if the history is to be prepared in connection with the provision of services to the juvenile, which services may only be provided upon obtaining parental consent.



### Commentary

This standard requires that before a social history may be prepared by or for a juvenile agency other than a juvenile court, consent must be obtained from either the juvenile or his or her parents or both, depending upon the nature of the services provided and the age of the juvenile. If the social history is to be prepared by or for a juvenile court as part of its intake procedures or investigation, Standard 2.11 of *The Juvenile Probation Function: Intake and Predisposition Investigative Services* volume includes the applicable standard with respect to consent. It should also be noted that this standard is intended to supplement Standards 3.1-3.6. Compare Standard 5.4 and the commentary thereto.

In most instances, the consent of the parents will be required before a social history may be undertaken. When the juvenile is over the age of fifteen, his or her consent is also required, and if the juvenile has the right to receive the service without the consent of parents, obtaining the juvenile's consent for preparation of the history is all that is necessary. The requirement of consent, at least in the context of social histories in which an adult is the subject, is well accepted. As stated in a position statement of the American Psychological Association, "Psychological Assessment and Public Policy," 25 *Amer. Psychologist* 264, 266 (1970): "The right of an individual to decline to be assessed or to refuse to answer questions he considers improper or impertinent has never been and should not be questioned." This standard applies that general principle to juveniles by requiring parental consent, if the juvenile is very young and therefore often less capable of exercising a right to consent in a meaningful way, and consent of the juvenile if he or she is older.

## PART VIII: RETENTION OF SOCIAL HISTORIES

### 8.1 Duty to account for and ensure the security of social histories.

A juvenile agency that prepares or has received a copy of a social or psychological history of a juvenile should:

A. ensure that the history is stored in a secure place to which only authorized personnel have access and which is separate from legal records, administrative records, and records pertaining to adults; and

B. retain a log of all requests for information from or copies of the history, the identity of each person making a request, the dates of the request, the reasons for the request, and the disposition of the request.

### Commentary

For the reasons set forth in the commentary to Standard 6.1, the sensitive nature of social histories requires that special precautions be taken to ensure their proper use and to limit the risks of misuse. To accomplish these purposes, social histories should be stored in a secure place which is separate from the place where other records are stored. An identical requirement is established for probation records in Standard 14.1; and its purpose is discussed further in the commentary to Standard 13.1.

This standard also requires that a log be maintained to reflect requests for access to a social history and the disposition of the request. The purpose of such a provision is to permit an agency to easily audit its disclosure practices and to permit a juvenile or a parent to determine to whom the juvenile's social history has been disclosed. The Privacy Act of 1974, 5 U.S.C.A. § 552a(c), contains a similar provision. See Standard 19.5 and the commentary thereto. See also, "HEW Report," *supra* at 56.

## PART IX: DISSEMINATION OF SOCIAL HISTORIES

### 9.1 Providing access to social histories.

A. A juvenile agency that has prepared or that has received a copy of a social or psychological history should provide access to the history to the juvenile, his or her parents, and the juvenile's attorney, in accordance with Standards 5.2 and 5.5. If the native language of the juvenile or his or her parents is not English, the history should be appropriately translated. If the history contains professional language or other information that may not be understood by the juvenile or his or her parents, the history should be explained to them by the appropriate professional.

B. A social or psychological history of a juvenile, and the contents of such a history, are confidential and should not be disseminated by a juvenile agency to any person, except as provided in subsection A., unless the consent of a parent and/or juvenile is obtained pursuant to Standard 5.4.

C. A juvenile agency that has prepared a social or psychological history for another agency or that releases a copy of the history to a third person should not release the history in summary form. A detailed factual explanation of any diagnosis or conclusion should be set forth and labels should only be included in accordance with Standard 4.5. A statement, *e.g.*, that a juvenile is mentally retarded or schizophrenic, without a detailed description of the symptoms, the

instrument and methods utilized in evaluation, and the extent of evaluation, should not be released.

### *Commentary*

The provisions governing subject access to juvenile records, Standards 5.2 and 5.5, are specifically made applicable to social histories by subsection A. of this standard. Standard 15.4 A., providing for subject access to probation records, and the commentary thereto, are also particularly relevant to this standard.

Sharing social history information with a client has been a controversial issue for psychologists, psychiatrists, counselors, and social workers. See, Brodsky, "Shared Results and Open Files with the Client," 3 *Prof. Psychology* No. 4, 362-64 (1972). (See also the three articles following the Brodsky article, hereinafter cited collectively as *Symposium*.) "Traditionally the sharing of a client's files with the client himself has been only minimally considered, and when discussed at all, the practice has been seen as unethical, irresponsible, or at the least questionable." *Id.* at 362. Sometimes the reluctance to permit disclosure is articulated in terms of labeling theory and the fear that disclosure will produce a self-fulfilling prophecy. Anastasi, "Psychology, Psychologists, and Psychological Testing," 22 *Amer. Psychologist* 297, 298 (1967); Payne, "Negative Labels—Passageways and Prisons," 19 *Crime & Delinq.* 33, 39 (1973). On other occasions, the reluctance is supported in terms of the fragile nature of some clients, Brodsky, *supra* at 362. Other less persuasive reasons are also sometimes asserted. See generally, "Symposium," *supra*.

While disclosure of social histories to clients can create real problems, especially without the protective mechanisms of Standard 5.5, full disclosure is now being recommended in the recent literature. See generally, "Symposium," *supra*. See also, "HEW Report," *supra* at 59. Full disclosure is also required of federal agencies by the Privacy Act of 1974, 5 U.S.C.A. § 552a(d). Subsection A. is consistent with this trend and legislation. In order to ameliorate the potentially harmful effects which might be caused by disclosure of certain adverse information, subsection A. incorporates Standard 5.5, providing for counseling, disclosure to an independent representative, or deletion of the information in certain limited situations. In addition, the standard requires translation and explanation of the history to further guard against the difficulties that could arise as a result of disclosure. A conference is recommended by McCarthy, "Ethical and Professional Considerations in Reporting of Test Infor-

mation," in Barnett, *Readings in Psychological Tests and Measurements*, 29-30 (1964).

The issues raised by subsection B., providing for disclosure to persons other than a juvenile or parent only with the juvenile's consent, as set forth in Standard 5.4, are also controversial. See, Shah, "Privileged Communications, Confidentiality and Privacy," 1 *Prof. Psychology* 159-64 (1970); Geiser and Rheingold, "Psychology and the Legal Process: Testimonial Privileged Communications," 19 *Amer. Psychologist* 831-37 (1964). Subsection B. deals with these issues by requiring the consent of the juvenile or his or her parents. This model is not without its difficulties because the juvenile is often a captive client; there is sometimes a conflict between the juvenile and his or her parents; and the person responsible for preparing the social history often owes allegiance to his or her employer (i.e., school guidance counselor to principal). Nonetheless, a consent model is deemed to be the preferable model which will provide for maximum protection to the juvenile and minimize the impact of disclosure of harmful information. Compare, 5 U.S.C.A. § 552a(b) (Privacy Act of 1974).

Subsection C., which prohibits the release of social histories in summary form and limits the use of labels, serves the purpose of reducing the risk of misinterpretation that becomes particularly great when a third person, perhaps a lay person or a person from another discipline, reads a social history that has been prepared by another person and which does not fully explain the bases for a particular assessment, the types of instruments utilized to evaluate a juvenile, or the precise meaning and implications of a particular diagnosis. See commentary to Standards 4.5 and 6.1. For a discussion of the importance of elaboration and clarity (as opposed to summary conclusions) in a psychiatric report, see, S. Pollack, "Psychiatric Consultation for the Court," in *The Psychiatric Consultation* 277-78 (W. Mendel and P. Solomon ed. 1968). A proposed format for psychiatric reports is also included. *Id.* at 282-83.

## PART X: DESTRUCTION OF SOCIAL HISTORIES

### 10.1 Duty to destroy history.

A. If a juvenile agency, other than an institution or court that has custody or control of the juvenile, possesses a social or psychological history of a juvenile, and the juvenile thereafter becomes eighteen years of age, the juvenile agency should send a written notice to the juvenile at his or her last known address informing him or her that

the history will be destroyed within thirty days unless the juvenile files a written objection to the destruction.

B. Such juvenile agency that possesses a social or psychological history of a juvenile should destroy that history and all references to it, if the juvenile does not object, within thirty days after notice is sent, pursuant to subsection A., except that in the case of a juvenile who is subject to the custody or control of a court or institution beyond the age of eighteen, the history and all references to it should be destroyed within 180 days after the juvenile has been released from such custody or control.

C. If a juvenile agency has “closed” the case of a juvenile who is the subject of a history, it may destroy that history and all references to it prior to the juvenile’s eighteenth birthday.

D. Before destroying a history pursuant to this standard, the juvenile agency should provide a copy of that history to the juvenile if the juvenile can be located and if he or she so requests.

E. Upon destruction of a history, the juvenile agency should notify all other agencies to which it has sent copies of the history and they should immediately destroy all notations or references in their files that a history has been prepared.

### *Commentary*

This standard provides for the destruction of social histories at various stated times, depending upon the age of the juvenile, whether he or she is in custody, and whether continued retention of the record is useful. Under this standard, most social histories will be destroyed upon the juvenile’s eighteenth birthday except if the juvenile is in custody at his or her eighteenth birthday; then, the history may be retained until 180 days after he or she is released from custody. The term “custody or control” is intended to include probation or any other condition of release in which the juvenile remains subject to the supervision of a court or some other institution. Provision is also made for earlier destruction of a social history (subsection C.) if the agency determines that retention of the history is no longer necessary.

The destruction of social histories is a particularly important provision because continued retention increases the risk of misuse. That risk needs to be reduced to a minimum with respect to social histories because of the sensitive nature of many such documents. See commentary to Standard 6.1. The policy reasons for destruction are set forth in the commentaries to Standards 5.8 and 17.1. The fact that, in some instances, a person may want his or her social history

retained, because treatment may continue during adulthood, is recognized by subsection A., which allows for continued retention of a social history if the juvenile objects to its destruction. In addition, a juvenile is given the opportunity to obtain a copy of the history (subsection D.) for possible future use. As is the case with other juvenile records, social histories may be destroyed by removing all identifiers and linking information from the document. Some agencies may prefer that method of destruction in order to preserve some records for research purposes.

### *SECTION III: SPECIFIC STANDARDS FOR THE RECORDS OF JUVENILE COURTS*

Section III of these standards governs juvenile records maintained by juvenile courts. The term "juvenile record" is defined in Standard 1.3; juvenile court is not defined but it is intended to include those courts that have traditionally been responsible for delinquency, neglect, dependency, and termination of parental rights proceedings. In some jurisdictions, juvenile courts are called family courts.

Section III of these standards is intended to supplement Section I, the general standards, by providing greater specificity in the context of particular records maintained by a particular institution. An effort to promulgate statutes, standards, rules, or regulations pertaining to juvenile court records should include consideration of Section I as well as Section II.

## PART XI: LEGISLATION

### 11.1 Need for comprehensive legislation.

The legislature of each jurisdiction should promulgate a comprehensive statute regulating the practices and policies of juvenile courts with respect to the collection, retention, dissemination, and use of information and records pertaining to juveniles.

#### *Commentary*

Most states have enacted legislation providing that juvenile court records are not public records, *e.g.*, Minn. Stat. Ann. § 260.161(2) and further providing that an adjudication of delinquency is not a conviction of a crime. *E.g.*, Mass. Gen. Laws ch. 119 § 53. But see Iowa Code Ann. § 232.54 ("The legal record of the juvenile court shall be a public record . . ."). Some states have enacted legislation

requiring juvenile courts to maintain certain records, *e.g.*, Alaska Stat. § 47.10.090(a), while other states require the destruction of some records under certain circumstances. *E.g.*, Ariz. Rev. Stat. § 8-247. However, the legislative scheme of all of the states, with respect to juvenile records, lacks comprehensiveness (see, M. Altman, "Juvenile Information Systems: A Comparative Analysis," 24 *Juv. Justice* No. 4, 4-8 [1974]) and, because of that lack of comprehensiveness, even the narrow and generally accepted purpose of providing for the confidentiality of juvenile records, to reduce the risk that disclosure will interfere with rehabilitative goals and result in collateral disabilities, is not effectively accomplished. See generally H. Miller, *The Closed Door* (1972); E. Sparer, *Employability and the Juvenile Arrest Record* (1966). Therefore, Standard 11.1 calls for the promulgation of a comprehensive juvenile record statute in each state; and Section III of this volume, together with Section I, establishes the minimum standards for such legislation.

### 11.2 Purposes of comprehensive legislation.

The purposes of comprehensive legislation pertaining to juvenile court records should be to:

A. establish a system of organizing and controlling the collection and retention of juvenile records and information pertaining to juveniles;

B. protect juveniles from the adverse consequences of disclosure of juvenile records;

C. establish safeguards to protect against the misuse, misinterpretation, and improper dissemination of juvenile records;

D. limit the collection and retention of juvenile records so that unnecessary and improper information is not collected or retained;

E. limit the information and juvenile records that may be disseminated to and used by third persons;

F. provide juveniles and their parents with maximum access to juvenile records pertaining to them;

G. regulate and provide for access to juvenile records by researchers and monitors; and

H. provide for the timely destruction of juvenile records.

### *Commentary*

The general legislative purposes of comprehensive legislation regulating the collection, retention, dissemination, and use of juvenile records are set forth in Standard 11.2. Discussion of each of

these purposes is set forth within the commentary to the succeeding standards within this Section.

## PART XII: RECORDS OF JUVENILE COURTS

### 12.1 Duty to keep records.

A. Each juvenile court should maintain or cause to be maintained accurate, complete, and up-to-date records of all proceedings involving juveniles.

B. Records of legal proceedings involving juveniles should be kept separate from probation records.

C. Records of legal proceedings should at least include summary records, case indexes, case files, and statistical reports as set forth in Part XIII.

#### *Commentary*

1. *Duty to keep records.* The juvenile courts of most states are required by statute to maintain a record of all proceedings, e.g., Fla. Stat. Ann. § 39.12, and to comply with this requirement, most juvenile courts utilize a summary docket book, usually consisting of a list of all formal court proceedings and the results of those proceedings. The problem with this practice is that the records of juvenile courts are then incomplete in that they do not reflect a substantial number of cases that are resolved by adjustment, diversion, or some other informal, as opposed to formal, disposition. On the one hand, the failure of juvenile courts to maintain records of informal proceedings serves a purpose of avoiding a formal record for the juvenile, thereby reducing the risk of stigma attaching to the informal contact. See E. Lemert, "Records in the Juvenile Court" in *On Record: Files and Dossiers in American Life* 373-75 (S. Wheeler ed., 1969). However, without a record of informal proceedings, it is impossible to measure the success of particular methods of informal disposition, to evaluate the caseload and operation of the court, or to follow up on the case of an individual child. Therefore, notwithstanding the risk of stigma, the requirement of Standard 12.1, to maintain a "complete" record, is intended to include "all" proceedings, informal and formal; the problem of stigma is dealt with by other standards which limit the use and disclosure of juvenile records and require their destruction upon dismissal of the case.

Juvenile court records that are maintained should be "accurate, complete, and up-to-date." Yet, an examination of juvenile court



record systems has indicated that too often records are neither accurate, nor complete, nor up-to-date. See generally E. Lemert, *supra*. Sometimes those records are inaccurate in that they do not report the results of a case after appeal; at other times they may be misleading because of inadequate record-keeping practices. Therefore, the requirement of accuracy, completeness and up-to-dateness, combined with periodic evaluations and audits of information practices (Standards 2.6 and 3.4), subject access to records (Standards 15.2-15.4) and the right to make corrections (Standard 2.6), is expressly included to serve the general purpose of ensuring the quality of juvenile records.

2. *Separation of records.* Most juvenile courts, as a matter of practice, separate their probation-social history type records from the official records of proceedings conducted before the court. Sometimes the records are separated simply because the organizational structure of the court is such that the probation and clerk's offices are independent entities and the records of each are accordingly separated. In other instances, the records are separated because they are used differently, because policies on access and dissemination are different, or because it is felt that storing social histories with legal records increases the risk of improper disclosure of social histories which are almost always subject to more rigorous controls than legal records. It is for these latter reasons that the standards call for the separation of legal and probation records.

## PART XIII: RECORDS OF LEGAL PROCEEDINGS

### 13.1 Summary records.

A. Each juvenile court should maintain or cause to be maintained a "summary record" of all proceedings of the court in which a juvenile is the subject of the proceedings and should designate a person to be responsible for such records.

B. The "summary record" should be limited to objective data and should include such information as the nature of the complaint, a summary of all formal proceedings, and the result of all proceedings.

C. The "summary record" should not include:

1. records maintained by probation officers;
2. information of a subjective or evaluative nature; or
3. the name and address of the juvenile and his or her parents or other data of a similar identifying nature.

D. The "summary record" of each juvenile should be assigned a number when the matter is first referred to the court and that num-

ber should thereafter appear on all documents, records, and files of the court pertaining to the juvenile.

E. The "summary records" of active and closed cases should be maintained separately in a secure place that is separate from the place where similar records are maintained for adults.

### *Commentary*

1. *Nature and purpose.* The "summary record" is the equivalent of the docket that is presently maintained by most juvenile courts. It is usually limited and should be limited to objective data such as the date of the complaint, the nature of the complaint (*i.e.*, delinquency-burglary second degree), pretrial release status, the disposition of motions and the case, etc. The primary purpose of the "summary record" is to provide quick information with respect to a juvenile's case. It also serves as a useful record from which certain quantitative data may be gathered for calendaring, management, and statistical purposes.

The development of "summary records" by juvenile courts was probably a carry-over from the recordkeeping model of criminal courts in which docket books are public records, serve the purpose of providing the public and press with information about court activity and particular cases, and thereby protect a defendant and the public from the secret filing and disposition of cases. However, since juvenile court records are not open to the public and proceedings are usually closed, the justification for the maintenance of "summary records" by juvenile courts is not as compelling. It is, therefore, a realistic option for juvenile courts to consider phasing out their "summary records" to serve the purpose of avoiding the risk that such records, because they are "summary," can be misconstrued. If "summary records" were eliminated, the summary information that is needed for management and statistical purposes could then be retained in anonymous form.

2. *Protective provisions.* The provision (subsection A.) that each juvenile court designate a person (in most instances it will be the chief court administrator or clerk) to be responsible for the "summary records" serves the purpose of delegating responsibility and promoting accountability.

The requirement of objective data, and the specific exclusion of information from probation records and other evaluative data (subsection C.), serve the purpose of eliminating the risk that a summary of, for example, social history type information, because it is summarized, will be misleading to a person to whom access is provided.

The exclusion of a juvenile's name and other identifying data from a summary record (subsection C.) is intended to add an extra measure of protection against the improper disclosure of summary information. That measure of protection is provided because a person seeking improper access to a summary record will first have to secure the number of a juvenile's case from an index and then secure access to the summary record files. The assumption is that this two-step process will make improper access more difficult and therefore less likely to occur. It is also a system that many courts presently utilize because dockets are often maintained chronologically rather than alphabetically by name.

The "summary record" is to include only the record of "formal proceedings" (subsection B.) and, thus, the records of informal contacts, diversion, etc., are to be kept separately. The reason for the separation is to limit the risk that the lumping of informal and formal records will lead to misuse and stigma attaching to informal contacts. See commentary to Standard 12.1.

The final protection for "summary records" is that they be kept in a secure place, with active and closed cases, as well as adult records, maintained separately (subsection E.). The purpose of security is self-evident; the purpose of separation is to further ensure the attainment of the more rigorous confidentiality requirements pertaining to juvenile records. Separation of adult and juvenile records is presently required by statute in many states. *E.g.*, Pa. Stat. Ann. ch. 11 § 245. Application of the separation requirement in the context of automation raises difficult questions but it should at least mean different access codes and different programs to ensure the confidentiality and proper use of juvenile records.

### 13.2 Case indexes.

A. Each juvenile court should maintain indexes to its active and closed cases and should designate a person to be responsible for such indexes.

B. The indexes should be maintained alphabetically, by the name of the juvenile, and should include only the following information: the name, address, and age of the juvenile, the name and address of the juvenile's parents, and the number assigned to the matter pursuant to Standard 13.1 D.

C. The personnel of each juvenile court who are provided direct access to the case indexes should be designated in writing by the court and the number of such persons should be limited to ensure that access to records may be meaningfully regulated and carefully controlled.

D. The personnel of each juvenile court should not maintain or develop any system, other than the official indexes, for indexing court files and records.

E. The indexes of active and closed cases should be maintained separately in a secure place that is separate from the place where similar indexes are maintained for adults.

### *Commentary*

All juvenile courts presently maintain some form of indexing system to their cases and this standard continues the basic practice.

The data to be included in the "case index" are limited to basic identifying data so that the index does not become a form of "summary record." Inclusion of the number of the cases in the index provides the link from the name of a particular juvenile to his or her "summary record" and perhaps to other records. If more than one case pertains to an individual juvenile, the index should include the numbers of both cases.

Many of the provisions of Standard 13.2 are similar to those in Standard 13.1—designation of responsible person, separation of records, need for security—and serve the same purposes. The additional provisions, which require the specific designation of persons who are accorded direct access (subsection C.) and the elimination of private unofficial indexes (subsection D.), are included to further ensure that an indexing system, the key to access to other records, is not misused.

### 13.3 Case files.

A. Each juvenile court should maintain a "case file" on each case in which a juvenile is the subject of a complaint or petition and should designate a person to be responsible for such files.

B. The "case file" on each case should include such formal documents as the complaint or petition, summonses, warrants, motions, legal memoranda, judicial orders or decrees, but not social histories.

C. The case files of active and closed cases should be maintained separately in a secure place that is separate from the place where similar files are maintained for adults.

### *Commentary*

Every juvenile court presently maintains a file of the official legal documents and court orders that are entered in each case; here, that file is called a "case file." The types of documents to be included in

the "case file" are indicated in subsection B. and are noteworthy primarily because they reemphasize that social histories should not be stored with other documents that are a part of the legal proceedings.

It is anticipated that the person designated to be responsible for "case files" is likely to be the same person who is made responsible for "summary records" and "case indexes."

#### 13.4 Statistical reports.

A. Each juvenile court should prepare a monthly and annual statistical report of all proceedings of the court involving juveniles. The statistical report should include a maximum amount of aggregate data so that all of the proceedings of the court will be fully reported.

B. The chief justice of the highest court of each jurisdiction or his or her designee should develop standardized forms for collecting and reporting the data to ensure uniformity.

#### *Commentary*

Although some juvenile courts may collect adequate data, juvenile courts generally have produced insufficient information to permit meaningful evaluation of their programs and activities. See Nejeski and LaPook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going, If You Don't Know Where You Are?" 12 *Amer. Crim. L. Rev.* 9, 10 (1974). Therefore, to promote meaningful, effective, and continuous evaluation, juvenile courts should regularly prepare detailed statistical reports. Those reports should include a maximum amount (maximum should be emphasized) of aggregate data; not only should they include information that focuses on juveniles (i.e., the number of juveniles waiving their right to a trial for each kind of charge), but they should also focus upon the activities of court personnel and particular programs (i.e., the number of juveniles and kinds of cases in which particular judges deny pretrial release or order the institutionalization of a juvenile).

The data that is gathered for the statistical reports should be anonymous, and copies of the reports should be made available to any interested citizen so that external, as well as internal evaluation, is encouraged. Standardized forms should be established and utilized to permit comparison of the activities of the various courts. In addition, each court should be encouraged, and should feel free, to gather additional data, particularly with respect to any unique programs, so that as much information as possible is available for evaluation purposes.

## PART XIV: PROBATION RECORDS

## 14.1 Responsibility for and manner of retention.

A. All documents, reports, memoranda, and other information pertaining to a juvenile received or prepared by probation officers should be placed in either a "temporary probation file" or a "permanent probation file."

B. Each juvenile court or agency should designate a person to be responsible for all probation files, the collection of information by or for probation officers, and the dissemination of information from probation files.

C. The probation files of active and closed cases should be maintained separately in a secure place that is separate from the place where the probation files of adults are maintained.

*Commentary*

1. *Concept and purpose.* The concept of separating information into temporary and permanent files is derived from "Guidelines for the Collection, Maintenance and Dissemination of Pupil Records," published by the Russell Sage Foundation in 1970. The purpose of separating information into temporary and permanent files is to emphasize the distinction between unverified or unevaluated information and information that is both accurate and relevant to a particular case.

Establishing a system of temporary and permanent probation files, as well as criteria for the quality of information that may be included in permanent files (Standard 14.3), is based upon the need to upgrade the quality of probation records and the quality of decisionmaking with respect to juveniles. That need has been documented on many occasions and reported in numerous studies. See generally, E. Lemert, "Records in the Juvenile Court," *On Record: Files and Dossiers in American Life* (Wheeler ed., 1969). See also, Krasnow, "Social Investigation Reports in the Juvenile Court: Their Uses and Abuses," *12 Crime & Delinq.* 151 (1966).

2. *Allocation of responsibility.* The purpose of designating a specific person to be responsible for probation files is identical to the parallel provisions of Standards 13.1-13.3. In most juvenile courts, the designated person will be the chief probation officer or the director of court services. The allocation of specific responsibility to a designated person does not mean exclusive responsibility; rather, it means chief administrative responsibility. Thus, responsibility for specific tasks, such as maintaining files or disseminating information, may be delegated, but the designated person is ultimately responsible for the conduct of those to whom tasks have been delegated.

3. *Separation and security.* The purposes of separation and security have been discussed in the commentary to Standard 13.1.

#### 14.2 Temporary probation files.

A. A “temporary probation file” should contain all unverified or unevaluated information which is being collected for an active case and all working papers and notes of the probation officer to whom the case has been assigned.

B. Upon meeting the criteria set forth in Standard 14.3, information included in a temporary probation file may be placed in the “permanent probation file.” In any case, all information collected and retained in the “temporary probation file” should be destroyed within three months after it is collected or within ten days after the case has been closed, whichever is sooner.

#### *Commentary*

1. *Models.* The concept and purpose of a temporary probation file is discussed in the commentary to Standard 14.1. A number of models for implementation of the concept are possible. Under one model, all information that is gathered could be placed in a temporary file, then periodically evaluated, and then, as information is verified and otherwise qualified under Standard 14.3, transferred to the permanent file. Under a second model, all information could be retained in a temporary file and only the final probation report (which would have to satisfy the criteria of Standard 14.3) would be placed in the permanent file. The latter model might be easier to implement administratively, particularly in courts in which the caseloads and paper work is already burdensome. However, under that model, final probation reports would have to be prepared within three months in order to satisfy the time limitation of subsection B.

2. *Examples.* One example of the type of information that should be placed in a temporary file is a school report that, during a recent period of time, a juvenile appeared “spaced out” and “listless” leading a teacher to believe that the juvenile was “under the influence of drugs.” Such information should be kept in the temporary file pending further investigation which might include further interviews with the juvenile, his or her parents and associates, and perhaps a physical examination. Another example of information that should be kept in the temporary file, pending further investigation, is a statement from a police officer that the juvenile is believed to be responsible for a number of recent acts of vandalism. A third example of information that should be kept in the temporary file, pending further testing and evaluation, is a report that the juvenile is mentally retarded.

3. *Time limitations.* Destroying information in a temporary probation file (subsection B.) within ten days after a case is closed ensures that unverified or irrelevant information is not retained when, because the case is closed, there could be no purpose for keeping such information, particularly with the attendant risk of misuse that exists whenever there is a record. The three-month limitation on the retention of information in the temporary probation file of an active case is designed to keep some minimal pressure on probation officers to review, verify, and update their files, to provide more than a reasonable period of time for probation officers to verify and evaluate information, and to place some reasonable limitation on the retention of unverified or irrelevant information.

### 14.3 Permanent probation files.

A. Before any information may be included in a "permanent probation file" a probation officer should determine that the information is verified and accurate.

B. A "permanent probation file," and the information included therein, should be the only file or information that is provided to a judge by a probation officer for purposes of the disposition of a case.

#### *Commentary*

1. *Purpose.* Standard 14.3, which establishes quality controls for permanent probation files, is designed to incorporate and adapt the provisions of Standard 4.2 to the specific context of juvenile court probation records. The purposes of these provisions—to improve information gathering and retention practices and the quality of decisions—is discussed in previous commentary. The importance of requiring that probation reports include verified and accurate information is substantial, because of the kinds of information usually included in probation reports, see, J. H. McDonough, *Juvenile Court Handbook* 41 (1970); the critical importance of probation reports to the decisionmaking process of juvenile courts, see, Krasnow, "Social Investigation Reports in the Juvenile Court: Their Uses and Abuses," 12 *Crime & Delinq.* 151, 151-53 (1966); and the documented inadequacy and general lack of quality of a large percentage of probation reports, see, E. Lemert, "Legislating Change in the Juvenile Court," *Delinquency and Social Policy* 202 (P. Lerman ed., 1970).

2. *Implications.* The particular requirements of verification and accuracy mean that a probation officer must assume the responsibility of carefully investigating, screening, and exercising professional judgment with respect to the quality of information included in a perma-



nent file. Those are decisions that professional probation officers, even with substantial caseloads, are presently making. The fact that those decisions must be made by probation officers emphasizes that a probation officer may not rely on either the judge, or disclosure and the adversary process, to provide a corrective mechanism for possible inaccuracies that may appear in a permanent file.

The principal argument against giving a substantial screening responsibility to probation officers is that a judge, who has the ultimate responsibility for making critical decisions, such as sentencing decisions, will be deprived of the opportunity to evaluate personally that information which is screened out by the probation officer and will therefore have less information to make an informed decision. While this is indeed a real risk, it is not likely that there will be any real loss, because more information (particularly of questionable quality) does not necessarily improve the capacity to make decisions (see Standard 3.1 A. and the commentary thereto), because probation officers always and necessarily select only very limited information to include in their reports from a vast quantity of data that is or may be available about the juvenile's entire life; and too often that limited information is selected to reinforce a predetermined conclusion or the expected decision of a judge, see, E. Schur, *Radical Non-Intervention: Rethinking the Delinquency Problem* 121-23 (1973) and E. Lemert, *supra* at 202; and because a probation officer's decision that certain information should not be considered because it is unverified or inaccurate is the kind of decision presently made by professional probation officers.

3. *Opinion and fact.* Although probation reports usually include a vast range of information, see, J. McDonough, *Juvenile Court Handbook* 41 (1970), the kinds of information included are often classified as fact or interpretation and perhaps opinion. One author distinguishes hard data, soft data, and intermediate data in psychiatric reports: J. Rubin, "The Psychiatric Report" in R. Allen, *Readings in Law and Psychiatry* 125-28 (1975). The distinction between fact, interpretation, and opinion is often difficult to discern, and is sometimes debated as a metaphysical issue. See generally, H. Meyerhoff, *The Philosophy of History in Our Time* 120-224 (1959). See also, C. Langlois, *Introduction to the Study of History* 221 (1898): "Facts which we did not see, described in language which does not permit us to represent them in our minds with exactness, form the data of history." Notwithstanding the difficulty and the debate, information included in a permanent file, whether regarded as fact, interpretation, or opinion, should meet the criteria of Standard 14.3. If the information is clearly an opinion (i.e., that a juvenile lacks

maternal affection), the file should indicate whose opinion is given: the underlying bases for the opinion should be set forth; and the probation officer should verify that the person whose opinion is given in fact has that opinion.

4. *Format.* Information should be written in a form that is understandable and that reduces the risk of misinterpretation; the use of professional jargon, labels, and oversimplified summaries should be limited. See Standard 4.5 and the commentary thereto. Information, for example, that a juvenile has a sociopathic personality, that he or she has a poor school record, that he or she comes from a broken home, or that he or she has an 85 I.Q. (statements which rarely, if ever, should appear in a probation report because they are easily misinterpreted) should always be presented in the context of a detailed description and analysis of the child's behavior, academic performance, home background, or intellectual capacity. This more detailed and comprehensive format serves not only a purpose of limiting the risk that a decisionmaker will misconstrue information and then make an improper decision, but also makes disclosure to the juvenile and his or her representatives more meaningful. See Standard 15.4.

5. *Reference to sources.* A probation file should include a notation as to the sources of information which serves as a further check on the quality of information; when the source is noted, a subsequent user of the information has the option of reverifying it. Including source references within the file is a different issue, serving somewhat different purposes than disclosure of sources to the subject of the record which is discussed in the commentary to Standard 15.4.

6. *Exclusive information.* Subsection B. provides that for purposes of the disposition of a case the only file or information that a probation officer should disclose to the judge is the permanent probation file. This subsection serves several purposes. First, it assures that a judge, faced with a critical dispositional decision, will be given only that information which has met the quality controls of subsection A. Second, it precludes the possibility that a probation officer could circumvent subsection A. by not putting certain information in the permanent file and disclosing it to the judge orally. Third, by limiting the provisions of subsection B. to dispositional decisions, probation officers are provided the flexibility of utilizing other information at other stages of the proceedings, such as at a pretrial release hearing. The reason that subsection B. is limited to dispositional decisions is that in the pretrial context there is sometimes not enough time to fully verify and evaluate information that should be utilized. Certainly, every attempt should be made to satisfy the quality control criteria of subsection A. on all occasions, but in the event that to do so

would not be feasible, the probation officer may utilize the available information and then should expressly indicate what information has not been adequately verified and what information could be inaccurate.

It could be argued that because of the constraints of subsections A. and B. a probation officer might be precluded from providing valuable (even if speculative) information that might be beneficial to a juvenile. For example, a probation officer might hear at the last minute (and not have an opportunity to verify) that a juvenile recently had a “drug problem” but had completed a successful program of rehabilitation at a local storefront “drop-in” center. In such a case, without verification, the information could not be included in the permanent file. However, the probation officer would still have two options: he or she could ask for a continuance to verify new significant information (the preferable choice) or he or she could advise defense counsel to be sure to inform the court.

#### **14.4 Duty to inform of probation investigation.**

Before commencing an investigation of a juvenile, a probation officer should provide a parent of the juvenile and/or the juvenile with information pertaining to the investigation in accordance with Standard 7.1.

#### *Commentary*

Standard 14.4 incorporates the disclosure and consent requirements of Standard 7.1; the discussion in the commentary to that standard should therefore be read in conjunction with this standard.

#### **14.5 Duty to review and explain contents of report.**

A. Before providing his or her report or recommendations or any information from the “permanent probation file” to a court, a probation officer responsible for the case should review and explain the contents of the report and file with the juvenile, his or her parents, and the juvenile’s attorney (if the juvenile has an attorney) except, if disclosure of certain information is likely to cause harm, disclosure should be governed by Standard 5.5.

B. If the native language of the juvenile or his or her parents is not English, the report and contents of the file should be translated or reviewed, and explained to them in their native language.

C. The juvenile and his or her parents should be informed that they have a right, and they should be given an opportunity to exercise their right, to make additions or corrections to the report and, if they

do so, those additions or corrections should either be incorporated into the report or noted in an appendix to the report.

### *Commentary*

The review provisions of Standard 14.5, the obligation to translate or explain a report to a juvenile and his or her parents in their native language and the provision for corrections or additions to be made to a probation report are designed to make the disclosure provisions of Standard 15.4 effective and meaningful. The underlying premise here is that the risk of acting upon misinformation, particularly in the context of probation reports, which most often include very subjective and evaluative data, is substantially reduced by providing an opportunity for review, explanation, and correction. Secondly, it is a major premise that the chances for a successful rehabilitative effort are enhanced by a policy of openness which includes review, explanation and correction.

The justification for full disclosure is discussed in the commentary to Standards 5.2, 9.1, and 15.4; the commentary to Standard 5.5 is a discussion of potentially harmful information and the need for special procedures for such information.

### **14.6 Duty to regulate information practices of outside agencies.**

A juvenile court should ensure that every agency, organization, or department to which a juvenile is referred for care, treatment, or services has established and implemented written rules and regulations that protect the confidentiality and security of the records of the juveniles who have been referred by the court and that are consistent with the principles of these standards.

### *Commentary*

It is a primary purpose of these standards to provide for the security and privacy of juvenile records. To further ensure the accomplishment of that purpose, juvenile courts are given the responsibility of ensuring that the agencies to which they refer juveniles have enacted written guidelines that are consistent with the confidentiality and security provisions of these standards. In most instances, those referral agencies will be "juvenile agencies." See Standard 1.1 and the commentary thereto. In such cases, the role of the juvenile court will in effect be to confirm that the referral agencies are implementing the standards to which they are already subject. In those rare instances in which a juvenile is referred to an agency that is not a "juvenile agen-

cy," a condition of the referral will have to be the establishment and implementation of adequate rules. While it is true that such a requirement may preclude the possibility of some referrals, it is expected that such a result will occur only rarely and, in any case, the importance of protecting the privacy interests of juveniles outweighs the minimal loss of services.

## PART XV: ACCESS TO JUVENILE RECORDS

### 15.1 General policy on access.

A. Juvenile records should not be public records.

B. Access to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention.

#### *Commentary*

The principle that juvenile court records should be confidential and, therefore, should not be public records is well accepted and is an express part of the law of most states. See, A. Gough, "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status," 1966 *Wash. U.L.Q.* 147, 169 n. 98. However, it has been observed that: "The hard facts of the everyday world do not add up to full compliance with the spirit and the letter of the law or its idealistic foundations." A. Sussman, "The Confidentiality of Family Court Records," 45 *Social Serv. Rev.* No. 4, 455 (1971). See also Note, "Juvenile Delinquents: The Police, State Courts and Individualized Justice," 79 *Harv. L. Rev.* 775, 800 (1966). Notwithstanding this problem of widespread noncompliance, confidentiality is regarded as a worthwhile goal to pursue in order to limit the risk that labels and stigma may undercut the purposes of juvenile court intervention and cause children to be denied opportunities for which they would otherwise be eligible. See Faust, "Delinquency Labeling—Its Consequences and Implications," 19 *Crime & Delinq.* 41 (1973); Payne, "Negative Labels—Passageways and Prisons," 19 *Crime & Delinq.* 33 (1973). To accomplish the goal of confidentiality and to thereby bring theory and practice into accord, strict control over access to and the use of juvenile records is made both a general policy of these standards and a specific part of a number of the individual standards that follow.

## 15.2 Access to case files.

A. Each juvenile court should provide access to a "case file" to the following persons:

1. the juvenile who is the subject of the file, his or her parents, and his or her attorney;
2. the prosecutor who has entered his or her appearance in the case;
3. a party, and if he or she has an attorney who has entered an appearance on his or her behalf, the attorney;
4. a judge, probation officer, or other professional person to whom the case has been assigned or before whom a proceeding with respect to the juvenile is pending or scheduled; and
5. a person who is granted access for research purposes in accordance with Standard 5.6.

B. A person who is a member of the clerical or administrative staff of a juvenile court, who has been previously designated in writing by the court, may be given direct access to a "case file" if such access is needed for authorized internal administrative purposes.

C. A juvenile court should not provide access to nor permit the disclosure of information from a "case file" except in accordance with this standard.

### *Commentary*

1. *General.* Standard 15.2 incorporates the general policy of limiting access to juvenile court records by specifying that only certain persons have a right of access to "case files." The standard should be construed so that disclosure to the specified persons is mandatory and prohibited as to any other person. The specified persons are limited to three categories: parties, subsections A. 1., A. 2., and A. 3.; court personnel, subsections A. 4. and B.; and researchers, subsection A. 5. These categories of persons are usually provided access either as a matter of practice, express state law (e.g., N. M. Stat. Ann. § 13-14-42), or a general statute granting access to persons with a "legitimate interest." E.g., Mich. Stat. Ann. § 27.3178. By expressly providing access to researchers (subsection A. 5., which incorporates Standard 5.6), the standards seek to avoid the uncertainty that exists under present state law, which often either does not refer to research access or might include research under the general category of "legitimate interest." But see, S. D. Compiled Laws Ann. § 26-8-33, expressly providing for access to persons "conducting pertinent research studies."

2. *Persons excluded.* The basic principle governing the provision of

access to juvenile records is that access should be provided only when there is a "need to know." Consistent with that principle, access to case files is not provided for juvenile correctional agencies or other agencies that are providing services to a child even though statutes in a number of states presently authorize such access. *E.g.*, N. M. Stat. Ann. § 13-14-42. The reason for excluding such agencies is that they do not have any need to know (and for that reason it would appear that they never seek) what is contained in the case file, which includes only official and legal documents. They may need to know other information pertaining to juveniles, but that is dealt with in other standards.

Law enforcement agencies are also not included within the class of agencies that should be provided access to case files. The reasons for the exclusion are the same as stated above. In addition, under present law, police agencies are not expressly included within any of the statutes pertaining to access to case files.

Finally, it should be noted that reporters are not to be given access to court records under Standard 15.2 although, in appropriate circumstances, they may qualify as researchers under Standard 5.6. For an example of high quality research by reporters see, D. L. Bartlett and J. B. Steele, *Crime and Injustice* (a series published in the *Philadelphia Inquirer* in 1973). The question of news media publicity about juvenile court proceedings has been the subject of some debate. See H. Brucker, "The Right to Know About Juvenile Delinquents," 23 *Fed. Prob.* No. 4, 20 (1959) (pro), and C. Gardner, "Publicity and Juvenile Delinquents," 23 *Fed. Prob.* No. 4, 23 (1959) (con). See also, G. Geis, "Publication of the Names of Juvenile Felons," 23 *Mont. L. Rev.* 141 (1962). Most states have no statute governing the issue, others approach the issue in terms of a prohibition against publication, which creates the problem of a confrontation with the press. Standard 15.2 allocates the responsibility to juvenile courts to limit access to their own records, thereby avoiding the issue of exercising direct control over the contents of a publication (the question of whether juvenile hearings should be open to the public and therefore the press is dealt with in the *Adjudication* volume). The reasons for not providing the media access to juvenile records is consistent with the general policy of confidentiality enunciated in this volume. See Standard 15.1 and the commentary thereto. Moreover, even though the policy of confidentiality limits the ability of the press to provide an otherwise valuable public service of monitoring a public institution, the benefits of publicity (including arguments of deterrence) are regarded as less than the cost of publicity which reduces the chances for the success of juvenile court intervention.

3. *Waiver, appeals, and other cases.* In the cases which commence as a juvenile proceeding and are transferred to a criminal court for prosecution as an adult, or in cases which are appealed, either for a *de novo* trial or otherwise, the provisions of subsections A. 4. and B. are intended to permit the "case file" to be transferred as otherwise provided by law.

In instances in which a juvenile is charged with a subsequent juvenile offense, either in the same court or another court, subsection A. 4. permits disclosure to a "judge, probation officer, or other professional person to whom the case has been assigned."

### 15.3 Access to summary records.

A. Each juvenile court should provide access to "summary records" to the following persons:

1. those persons enumerated in Standard 15.2 A.;
2. the state juvenile correctional agency, if the juvenile is detained by or is otherwise subject to the custody or control of the agency;
3. the state department of motor vehicles, provided that the information given to the department is limited to information relating to traffic offenses that is specifically required by statute to be given to the department for the purpose of regulating automobile licensing;
4. a law enforcement agency for the purpose of executing an arrest warrant or other compulsory process or for the purpose of a current investigation.

B. A juvenile court should notify the law enforcement agency that arrested the juvenile or that initiated the filing of the complaint or petition of the final disposition of the case after such information is entered in the "summary record."

C. A juvenile court may provide direct access to a "summary record" to those persons enumerated in Standard 15.2 B.

D. A juvenile court should not provide access to nor permit the disclosure of information from a "summary record" except in accordance with subsections A. and B. of this standard.

E. A probation officer or other professional person may provide indirect access to a "summary record" with the written consent of the juvenile and his or her parents if the disclosure of summary information pertaining to the juvenile's record is necessary for the purpose of securing services or a benefit for the juvenile.

#### *Commentary*

1. *General.* The basic disclosure policies for case files, set forth in Standard 15.2, are applied to this standard on summary records.



2. *Correctional agencies.* Under subsection A., a state correctional agency should be given access to information, but only with respect to juveniles committed to the agency. The purpose of providing summary record information to a correctional agency is that its decision with respect to placement or a treatment program may in some instances have to depend upon the nature of the offense for which the juvenile was committed. The reason for limiting a correctional agency's access to the summary records of juveniles who are then in the custody of the agency is that if a juvenile is not subject to the custody or control of the agency, the agency could not have any legitimate need for the information.

3. *Department of motor vehicles.* Subsection A. 3. allows information pertaining to traffic offenses to be provided to a state department of motor vehicles for the purpose of regulating automobile licensing. Such access is explicitly provided for in a number of state statutes (e.g., Mass. Gen. Laws ch. 119 § 58B) and permits a motor vehicle department to make decisions regarding the granting, suspension, or revocation of a driver's licence based, at least in part, upon a juvenile's record involving traffic offenses. Under this standard, a motor vehicle department would not have access to any record, other than a record of traffic offenses. Thus, for example, a record of drug or alcohol use, not involving automobiles, could not form the basis of a license suspension or revocation. The reason for the limitation in such cases is that it is too speculative to predict that a juvenile who is convicted of drug use not involving a car is any more likely to drive a car improperly or while under the influence than a juvenile who has not been convicted.

4. *Law enforcement agencies.* Subsection B. provides that the law enforcement agency that initiated a case should be given information on the final disposition of the case. The purpose of providing such access is so that police records will be accurate and up-to-date and will not be limited to arrest information, which is often misleading in cases where the charges are later dismissed or otherwise disposed of in a manner that is different from the booking charge. In addition, under subsection A. 4., police may be given summary information for the purpose of executing an arrest warrant or other compulsory process or for the purpose of conducting a current investigation. Thus, for example, in a case in which a juvenile is charged with robbery while armed with a gun and an arrest warrant is issued, the court should provide the police with information pertaining to the nature of the offense, the juvenile's last known address, his or her description, etc., so that the police may execute the warrant safely and expeditiously.

5. *Employers, educational institutions, etc.* Employers (public and

private), schools, licensing authorities, credit agencies, insurance companies, etc., are not expressly included within the class of persons or agencies who may be given access to a summary record, and it is the intent of this standard to exclude such persons or agencies from receiving any information regarding a juvenile's contact with the police or a juvenile court. By prohibiting juvenile court records from being used for proprietary purposes, the standards continue the basic general policy of present state law of limiting access to such records and making a juvenile court's contact with a juvenile essentially a private matter. See Altman, "Juvenile Information Systems: A Comparative Analysis," 24 *Juv. Justice* No. 4, 2, 4 (1974); Coffee, "Privacy Versus Parens Patriae," 57 *Cornell L. Rev.* 571, 590 (1972); commentary to Standard 20.3. The basic general state policy of prohibiting access to juvenile court records for proprietary purposes, e.g., Purdon's Pa. Stat. Ann. ch. 11 § 50-334, has recently been incorporated into federal law by the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C.A. § 5038, and is recommended for adoption by the two model acts pertaining to juvenile courts. Uniform Juvenile Court Act § 54 (1968); "Model Acts for Family Courts and State-Local Children's Programs" § 30(c), Department of Health, Education and Welfare (Sheridan and Beaser eds.).

It can, of course, be argued that in some cases involving employment (a day care center wants to know whether a prospective employee has been previously adjudicated delinquent for a sex offense involving younger children); an application for credit (a credit company wants to know if a person seeking credit has previously been adjudicated delinquent for passing a bad check or fraud); or an application for a license (a bar association wants to know whether a prospective lawyer has been previously adjudicated delinquent for theft or public intoxication); the private interest (and perhaps the public interest) in access to information from the juvenile court outweighs the individual's interest (and perhaps the public interest) of privacy, of continuing the process of self-rehabilitation by securing legitimate opportunities, and of outgrowing the consequences of youthful bad judgment. While this argument can, indeed, be forceful in extreme cases, it is rejected by this standard for three reasons. First, as previously stated, juvenile courts have never regularly made information available for proprietary purposes, and it does not appear that employers, credit companies, etc., have unnecessarily suffered as a result. Second, the trend of recent legislation (see the legislation referred to in the previous paragraph), even legislation pertaining to adult police records, has been to limit disclosure for proprietary purposes. Thus, the regulations of the Crime Control Act of 1973, 28 C.F.R.

§ 20.21(b) (2), prohibit disclosure of an adult record to private agencies unless a statute specifically provides for exclusion based upon previous criminal conduct. See also, Project on Law Enforcement Policy and Rulemaking, "Model Rules for Law Enforcement: Release of Arrest and Conviction Records," Rule 401 (1974). Third, there is no reason that public funds should be expended to retain and retrieve information for proprietary purposes especially when there are substantial risks that disclosure of juvenile records to private sources will result in misuse or use that is contrary to the rehabilitative purposes of the juvenile court. See the commentary to Standard 20.2 for discussion and references to studies and opinion regarding the harm caused by release of arrest and conviction records.

#### 15.4 Access to probation records.

A. Each juvenile court should provide access to a "temporary probation file," in accordance with Standard 9.1, to the juvenile who is the subject of the file, his or her parents, and his or her attorney and may permit the disclosure of information from a "temporary probation file" to other persons but only if such disclosure is necessary and for the sole purpose of verifying the information.

B. Each juvenile court should provide access to a "permanent probation file," in accordance with Standard 9.1, to the juvenile who is the subject of the file, his or her parents, and his or her attorney.

C. Each juvenile court should provide access to a "permanent probation file" to those persons enumerated in Standard 15.2 A., subsections 2., 4., and 5., and Standard 15.3 A. 2.

D. A person who is a member of the clerical, administrative, or professional staff of the probation office of a juvenile court, who has been previously designated in writing by the court, may be given direct access to a probation file if such access is needed for authorized internal administrative purposes.

E. A juvenile court may permit the disclosure of information from a "permanent probation file" to:

1. a person, agency, or department, with respect to a juvenile who has been committed to the care of the person, agency, or department;

2. a person, agency, or department that is providing or may provide services to the juvenile upon obtaining the written consent of the juvenile or his or her parents after informing the juvenile and his or her parents of the information to be disclosed and the purposes of disclosure and provided further that the information that is disclosed is limited to the information necessary to provide or secure the services involved.

**F. A juvenile court should not provide access to nor permit the disclosure of information from a probation file except in accordance with this standard.**

### *Commentary*

1. *Temporary files.* Subsection A. places severe restrictions on the dissemination of a temporary probation file, limiting access rights to the juvenile and his or her representatives. Such strict controls are established because temporary files contain working notes and unverified information (Standard 14.2), the kinds of information that create the greatest risk of misuse and misinterpretation. Information from a temporary file may, however, be disclosed by a probation officer to a third person for the purpose of verification. Such disclosure should, of course, be made only when "necessary" and only in a manner that will limit the risk of misuse or misinterpretation. A typical example of such disclosure might occur in a case in which a probation officer receives a report from a court clinic suggesting the possibility that a juvenile is retarded. To confirm the accuracy of this suggestion, an inquiry might be made of the juvenile's school, and, in some instances, it might be necessary to disclose the previously obtained report in order to probe the accuracy of the school's perception of the juvenile.

2. *Disclosure to third persons.* Subsections C. and E. establish strict limits for access to permanent probation files by third persons, designating those specific categories of persons who may be given access. The strict access limitations are consistent with the general policy of limited access enunciated in Standard 15.1 and with the policy stated by the United States Children's Bureau in *Standards for Juvenile and Family Courts* 117 (Sheriden ed., 1966): "Because social records contain so many matters affecting the intimate, personal affairs of individuals, they require a greater degree of protection than that recommended in the case of legal records."

The categories of third persons who are designated for access to a permanent probation file are exclusively those persons who are generally regarded as having a "need to know" the contents of such a highly confidential file. Access by those persons enumerated in subsection C. is intended to be a matter of right; for those persons enumerated in subsection E. access is discretionary, and that discretion should only be exercised both if there is a "need to know" and if disclosure would not unnecessarily impair a child's need to keep the information confidential.

"Parties" are provided access to case files in Standard 15.2 A. 3. but

not to probation files in subsection C. The theory of exclusion is that a person or agency that has initiated an action against a juvenile has neither a substantial interest in disclosure nor a need to know the contents of a highly confidential probation report.

3. *Disclosure to the juvenile and his or her representatives.* At least fifteen states have enacted a statute or court rule specifically providing that a juvenile or his or her attorney is to be given access to the juvenile's probation report. *E.g.*, Wash. Rev. Code § 13.04.090. Another thirteen states have laws providing that any record, presumably including probation reports, may be opened to the juvenile, his or her parents, or his or her attorney with the permission of the court. *E.g.*, Wis. Stat. Ann. § 48.26. Two states, Wyoming and Colorado, provide for such access and also for the right to cross-examine the author of a probation report. Provision for access to probation reports by the juvenile or his or her attorney is also made in the Uniform Juvenile Court Act and the Legislative Guide for Drafting Family and Juvenile Court Acts § 45 (U.S. Children's Bureau, No. 472, 1969). And, an examination of the general practice of juvenile courts indicates that nearly all courts or their probation offices will disclose at least the final probation report to the juvenile or his or her representative. See Skoler and Tenney, "Attorney Representation in Juvenile Court," 4 *J. Family Law* 77, 86-87 (1964).

By providing a juvenile, his or her parents, and the child's attorney with access to a probation report, Standard 15.4 B. is consistent with the legislative trend and the practice in most juvenile courts. It is also consistent with the trend toward providing for full disclosure of adult presentence reports. See Proposed Amendments to Rule 32(C) (3) and the Advisory Committee Note; Ariz. Rules of Crim. Procedure, Rule 15; Amer. Bar Ass'n, *Standards Relating to Sentencing Alternatives and Procedures* § 4.4 (Approved Draft, 1968); American Law Institute, "Model Penal Code" § 7.07(5); President's Comm'n on Law Enf. and Admin. of Justice, "The Challenge of Crime in a Free Society" 145 (1967).

The arguments for and against disclosure of adult presentence reports have been restated on many occasions. *E.g.*, Amer. Bar Ass'n, *Standards Relating to Sentencing Alternatives and Procedures*, § 4.4, commentary at 214-25 (Approved Draft, 1968). Those arguments apply as well to juvenile probation records. In addition, the constitutional arguments for disclosure of juvenile records, because of *Kent v. United States*, 383 U.S. 541 (1966), are that much more compelling. See, *United States ex rel Turner v. Rundle*, 402 F.2d 599 (3d Cir. 1968), right of access to social history in waiver proceeding is constitutionally mandated. But see *Stanley v. Peyton*, 292 F. Supp. 209

(W.D. Va. 1968). Moreover, the policy arguments for disclosure of juvenile probation files are also more compelling because of the unique significance of probation reports to the juvenile court process (President's Comm'n on Law Enf. and Admin. of Justice, "Task Force Report: Juvenile Delinquency and Youth Crime" 33 [1967]), and because the provision of effective assistance of counsel to juveniles, often made difficult by counsel's inability to communicate effectively, to secure meaningful information, and to gain the confidence of his or her juvenile client, depends that much more on obtaining as much information as possible about the juvenile and the case.

The proposed amendment to Rule 32 of the Federal Rules of Criminal Procedure and the ABA Standards, *supra*, exempt certain diagnostic, confidential, and harmful information from mandatory disclosure. Standard 15.4, however, exempts only information that would be harmful to the juvenile. See, Standard 9.1 and the commentary thereto. The reason for the distinction, which is basically confined to confidential information and information that might be harmful to others (diagnostic information and information harmful to the juvenile are covered by Standards 5.5 and 9.1), is that disclosure is far more important for a juvenile than for an adult, for the reasons that have been previously stated, as well as for the reason that a deprivation of liberty or change of custody is likely to have a more serious psychological impact on a juvenile than on an adult. See generally, Goldstein, Freud, and Solnit, *Beyond the Best Interests of the Child* (1973). In addition, full disclosure is much more the practice in juvenile than in adult courts, and there are more states with statutes compelling full disclosure of juvenile probation reports than adult reports. The recently enacted amendment to the Federal Juvenile Delinquency Act, 18 U.S.C. § 5038, for example, provides for full disclosure of probation reports to a juvenile's attorney without any of the exceptions of Rule 32 of the adult Rules of Criminal Procedure. See also, Standard 9.1 and the commentary thereto.

### 15.5 Access for research and evaluation.

Each juvenile court should accord access to its juvenile records for the purpose of research and monitoring in accordance with Standard 5.6.

#### *Commentary*

Juvenile courts have a special obligation to make their records available for responsible research and evaluation because they are public agencies which assume a vital role in the lives of many juve-

niles. Therefore, the provisions of Standard 5.6 are made specifically applicable to juvenile courts. The need for research and the procedures for controlling access for research purposes are elaborated upon in the commentary to Standard 5.6.

### 15.6 Secondary disclosure limited.

A person, other than the juvenile, his or her parents, and his or her attorney, who is accorded access to information, pursuant to Part XV of these standards, should not disclose that information to any other person unless that person is also authorized to receive that information pursuant to this Section.

#### *Commentary*

Standard 14.6 requires juvenile courts to ensure that the information practices of the agencies to which they refer juveniles are consistent with the confidentiality and security principles set forth in this volume. This standard complements Standard 14.6 by providing that outside agencies which receive juvenile record information, whether or not a service is provided, are bound by the disclosure provisions of Standards 15.1-15.8.

### 15.7 Waiver prohibited.

The consent of a juvenile, his or her parents, or his or her attorney should not be sufficient to authorize the dissemination of a juvenile record to a person who is not specifically accorded the right to receive such information, pursuant to this Part, except as provided in Standard 15.4 E. 2.

#### *Commentary*

The general principle pertaining to access to juvenile records is set forth in Standard 5.4: access should generally be permitted, if there is consent and if disclosure is "appropriate." However, this standard, which applies only to juvenile court records, prohibits disclosure to persons who are not allowed access under Standards 15.2-15.5 even if the consent of the juvenile and his or her parents is obtained. The only exception to this rule applies in situations in which the information is disclosed for the purpose of securing a service for the juvenile's benefit. Standard 15.4 E. 2.

The purpose of this standard is to preclude employers, etc., from obtaining access to a juvenile record by requiring the juvenile to consent to disclosure. Because of Standard 18.1 (proscribing the use of juvenile records) and Standard 18.2 (providing for warnings on appli-

cation forms), this standard should be invoked infrequently. Nonetheless, the standard is included as an added measure of protection against improper access. The standard does not prohibit the juvenile from disclosing information to any other person; it only precludes juvenile courts from disclosing information to unauthorized persons, at the request of the juvenile, except as provided in Standard 15.4 E. 2.

### 15.8 Nondisclosure agreement.

Any person, other than the juvenile who is the subject of a juvenile record, his or her parents, and his or her attorney, to whom a juvenile record or information from a juvenile record is to be disclosed, should be required to execute a nondisclosure agreement in which the person should certify that he or she is familiar with the applicable disclosure provisions and promise not to disclose any information to an unauthorized person.

#### *Commentary*

The purpose of nondisclosure agreements is discussed in the commentary to Standards 5.4 G. and 20.4.

## PART XVI: CORRECTION OF JUVENILE RECORDS

### 16.1 Rules providing for the correction of juvenile records.

Rules and regulations should be promulgated which provide a procedure by which a juvenile, or his or her representative, may challenge the correctness of a record and which further provide for notice of the availability of such a procedure to be given to each juvenile who is the subject of a record.

#### *Commentary*

This standard is based upon Standard 2.6. The precedent and reasons for providing a mechanism for correcting records is discussed in the commentary to Standard 2.6.

## PART XVII: DESTRUCTION OF JUVENILE RECORDS

### 17.1 General policy.

It should be the policy of juvenile courts to destroy all unnecessary information contained in records that identify the juvenile who is the subject of a juvenile record so that a juvenile is protected from the possible adverse consequences that may result from disclosure of his or her record to third persons.



*Commentary*

Almost every state has a law which prohibits public access to juvenile court records. Gough, "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status," 1966 *Wash. U. L. Q.* 147, 169 (hereafter, "A Problem of Status"). These laws, however, have not generally accomplished their purpose of preventing employers, schools, social agencies, etc., from relying on juvenile records. *Id.* at 170-74; Altman, "Juvenile Information Systems: A Comparative Analysis," 24 *Juv. Justice* No. 4, 1, 4 (1974) (hereafter, "Juvenile Information Systems"). As a result, thirty states have already promulgated statutes designed to implement further the general policy of nonaccess to records. Various called sealing or expungement laws, these statutes either establish a mechanism for closing records (sealing) or destroying records (expungement). Perhaps because sealing a record provides minimal added protection when the state policy already has been to limit public access to records, nineteen states have also provided for the destruction of records under certain circumstances. These statutes vary considerably: Connecticut (Conn. Gen. Stat. Ann. § 17-72a) provides for mandatory destruction; in California (Welf. and Inst. Code § 781), destruction is left to the discretion of the court; and New Jersey (N.J. Code ch. 2A § 4-39.1) excludes certain serious crimes from its general destruction provisions. Compare, 18 U.S.C. § 5038, providing for sealing and not destruction.

While some commentators have criticized sealing and expungement laws—see, Kogan and Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," 61 *J. Crim. L.C. & P.S.* 378 (1970)—such laws are now well accepted in the context of juvenile courts. There is a need to have laws which do more than declare a policy of nonaccess (Gough, "A Problem of Status," *supra* at 170); and the problems with existing laws can be reduced by improved and more comprehensive legislation. See commentary to Standard 5.8. The real question, therefore, is not whether there should be sealing and expungement provisions; rather, it is what provisions are most likely to ensure that a jurisdiction's policy of nonaccess is efficiently and fairly executed.

The choice between sealing (which means securing a record in a manner to ensure nondisclosure while preserving the record itself) and destruction (which means at a minimum destroying all personal identifiers in the record and at a maximum destroying the entire record) is a choice between protecting history and reducing the risk of stigma caused by disclosure to the lowest level. Many of the arguments against destruction are discussed in the commentary to Stan-

dard 5.8. Another argument made in support of sealing is that there are some instances when the juvenile may want the actual historical record to use for his or her own benefit. For example, if a juvenile is charged with a notorious crime that receives a lot of publicity, destroying the record may not destroy memories and the juvenile may want the actual record to prove that he or she was found not guilty of the crime charged. The argument for destruction acknowledges that destruction brings with it the inevitable hard case where the juvenile will not be able to reconstruct history by relying upon the actual record. However, in favor of destruction, it is argued that, historically, juvenile courts were always supposed to keep their records private, but somehow they have managed to "leak" to employers, credit companies, etc. H. Miller, *The Closed Door* (1972); See also *In re Gault*, 387 U.S. 1, 24-25 (1967). Moreover, the instances in which a juvenile will want to use an old record for his or her benefit are minimal, and the risk of improper disclosure that arises whenever records are retained outweighs the benefits of retention in the few cases in which such records could be useful. Moreover, if a person wants a copy of his or her record for his or her own purposes, he or she should be given a copy before it is destroyed. See Standards 5.8 B. and 17.6 A.

### 17.2 Cases terminating prior to adjudication of delinquency.

In cases involving a delinquency complaint, all identifying records pertaining to the matter should be destroyed when:

- A. the application for the complaint is denied;
- B. the complaint or petition is dismissed; or
- C. the juvenile is adjudicated not delinquent.

#### *Commentary*

This standard provides for the automatic and mandatory destruction of court records in a delinquency case if the juvenile is not adjudicated delinquent. The standard is modeled upon Conn. Laws § 17-72a (1969), which provides: "Whenever a child is dismissed as not delinquent, all police and court records pertaining to such charge shall be ordered erased immediately, without the filing of a petition." An alternative model of requiring a petition to be filed by the juvenile and/or giving the court discretion whether to order destruction was rejected for two reasons. First, "Without an automatic, self-executory statute, only those with sufficient interest, knowledge, or money are fully assured of statutory protection." Note, "Juvenile Police Record-Keeping," 4 *Colum. Human Rts. L. Rev.* 461, 480 (1972). As a result,

a survey of a number of jurisdictions indicates that sealing and expungement statutes are rarely utilized if relief is dependent on the filing of a petition. See also, Gough, "A Problem of Status," *supra* at 176. Second, present case law suggests that destruction is required particularly if the charges were not supported by probable cause. See *Henry v. Looney*, 65 Misc. 2d 759, 317 N.Y.S.2d 848 (Sup. Ct. 1971); Altman, "Juvenile Information Systems," *supra* at 8-9. Thus, while this standard will require the destruction of records in some cases in which the courts have not generally ordered such relief (cases which are dismissed but there was probable cause for the arrest), the rationale for destruction supports a broader application of such a remedy in all cases included within this standard because the state interest in retaining a record in a case which is dismissed is outweighed by both the privacy interests of the juvenile (which include privacy and an interest in not being denied opportunities based upon the existence of a record) and the public interest in protecting juveniles from stigma and in promoting a juvenile's reintegration and rehabilitation.

### 17.3 Cases involving an adjudication of delinquency.

In cases in which a juvenile is adjudicated delinquent, all identifying records pertaining to the matter should be destroyed when:

- A. no subsequent proceeding is pending as a result of the filing of a delinquency or criminal complaint against the juvenile;
- B. the juvenile has been discharged from the supervision of the court or the state juvenile correctional agency;
- C. two years have elapsed from the date of such discharge; and
- D. the juvenile has not been adjudicated delinquent as a result of a charge that would constitute a felony for an adult.

#### *Commentary*

This standard applies the general principles supporting destruction of juvenile records (see Standards 5.8 and 17.1 and the commentaries thereto) to delinquency cases in which there has been an adjudication. As provided in Standard 17.2, destruction is automatic; and the filing of a petition is not required. See commentary to Standard 17.2. However, in cases in which there has been an adjudication, four criteria must be met before a record will be destroyed: 1. no new charges have been filed; 2. the juvenile is no longer subject to supervision ordered by a juvenile court; 3. the juvenile has been released from the court's supervision for two years; and 4. the juvenile was not adjudicated delinquent for committing what would constitute a felony offense for an adult.

Essentially, this standard provides for the destruction of court records when a juvenile has been convicted of committing a nonfelony offense. A two-year waiting period after release is required because it was believed to be a long enough period to indicate that the juvenile will be less likely to become involved in a juvenile or criminal court matter and a short enough period so that the protective purposes of destruction are served. See Note, "Juvenile Police Record-Keeping," *supra* at 480; Uniform Juvenile Court Act § 57 (a) (1) (1968).

The destruction of a child's felony conviction record in juvenile court is not authorized by this standard. While some states have passed laws which permit destruction of juvenile felony conviction records (see Ore. Rev. Stat. § 419.586, 12A Mo. Laws § 211.321; 5 Fla. Laws § 39.12), this standard does not so provide because the state interest in retaining the record of adjudication of a serious crime for law enforcement and sentencing purposes is regarded as greater than the interests which support destruction in other circumstances. See commentary to Standards 5.8 and 17.1. Provision for sealing a juvenile's record of a felony adjudication was considered and rejected because sealing was not regarded as an added measure of protection in the context of stringent criteria regulating access to (Standards 15.1-15.8) and controlling the use of (Standards 18.1-18.4) juvenile court records.

#### 17.4 Cases involving a neglect petition.

In cases involving a neglect petition, all identifying records pertaining to the matter should be destroyed when:

A. no subsequent proceeding is pending as result of the filing of a neglect petition or delinquency complaint against the juvenile;

B. the juvenile is no longer subject to a disposition order of the court; and

C. the youngest sibling is older than sixteen years of age.

#### *Commentary*

In cases involving neglect, there are two reasons (other than research) for retaining records: 1. for use in a subsequent case involving the same juvenile; and 2. for use in a subsequent case involving a sibling. In both instances, the records gathered previously should contain relevant information with respect to present neglect, parental fitness, and the appropriateness of continuing parental custody. For these reasons, records in a neglect case should be preserved until the youngest sibling is sixteen years of age and there is neither a proceeding pending nor a disposition order that is in effect. Once the young-

est sibling becomes sixteen years old, there is little likelihood of a subsequent neglect proceeding; and the reasons for destroying records, set forth in the commentary to Standards 5.8 and 17.1, then become applicable.

### 17.5 Providing notification of destruction to other agencies.

A. Whenever a juvenile's record is destroyed pursuant to this Part, the juvenile court should notify:

1. the chief of police of the department that arrested the juvenile or made application for the petition or complaint that was filed;
2. the commissioner of the state correctional agency if the juvenile was committed to the agency;
3. the commissioner of the state probation department; and
4. any other agency or department that the juvenile court has reason to believe may have either received a copy of any portion of the juvenile's record or included a notation regarding the juvenile's record in its own records.

B. Upon receipt of notification pursuant to subsection A., the person, agency, or department should search its records and files and destroy any copies or notations of the juvenile's record that have been destroyed by the juvenile court.

#### *Commentary*

This standard requires the juvenile court to notify the appropriate agencies that a juvenile's record has been destroyed. Upon receipt of such a notice, the agency is then required to destroy its references to the juvenile's record. The purpose of the standard is to ensure that, when an order requiring destruction is entered by a juvenile court, the efficacy of the order will not be minimized by allowing other agencies (particularly police) to retain a copy of the record, thereby subverting the purpose of the initial decree. Connecticut (§ 17-72a) similarly provides for notification to "all persons, agencies, officials, or institutions known to have information pertaining to the delinquency proceedings" and the removal of "all references" in "all agency, official, and institutional files." See also Ore. Rev. Stat. § 419.586. The ineffectiveness of a statutory scheme which does not provide for destruction of all records is noted in Kogan and Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," 61 *J. Crim. L.C. & P.S.* 378, 383-85 (1970).

### 17.6 Providing notice of destruction to the juvenile.

A. Before destroying a juvenile's record, the juvenile court should

offer to provide a copy of that record to the juvenile if he or she can be located.

B. Upon destroying a juvenile's record, the juvenile court should send a written notice to the juvenile at his or her last known address informing him or her that the juvenile court record has been destroyed and that the juvenile may inform any person that, with respect to the matter involved, he or she has no record and, if the matter involved is a delinquency complaint, the juvenile may inform any person that he or she was not arrested or adjudicated delinquent except that, if he or she is not the defendant and is called as a witness in a criminal or delinquency case, the juvenile may be required by a judge to disclose that he or she was adjudicated delinquent.

### *Commentary*

Subsection A. provides that a juvenile should be given an opportunity to obtain a copy of his or her record before it is destroyed. The reasons for this provision are discussed in the commentary to Standard 17.1.

Subsection B. provides for notice to be given to a juvenile of the effect of an order of destruction under Standard 17.7. The notice should be provided in a form and manner that will ensure that a juvenile is aware of his or her rights under Standard 17.7.

### **17.7 Effect of destruction of a juvenile record.**

A. Whenever a juvenile's record is destroyed by a juvenile court, the proceeding should be deemed to have never occurred and the juvenile who is the subject of the record and his or her parents may inform any person or organization, including employers, banks, credit companies, insurance companies, and schools that, with respect to the matter in which the record was destroyed, he or she was not arrested, he or she did not appear before a juvenile court, and he or she was not adjudicated delinquent or neglected.

B. Notwithstanding subsection A., in any criminal or delinquency case, if the juvenile is not the defendant and is called as a witness, the juvenile may be ordered to testify with respect to whether he or she was adjudicated delinquent and matters relating thereto.

### *Commentary*

Subsection A. provides further protection to a juvenile who has become enmeshed in juvenile court proceedings. First, it declares that, once a juvenile's record is ordered destroyed, "the proceeding should be deemed to have never occurred." Second, it authorizes the

juvenile to deny both the existence of a record (which is true once the record is destroyed) and the existence of any of the events (arrest, adjudication, detention, etc.) which were the subject of the record.

Subsection A. seeks to ensure that a juvenile will not suffer any disabilities once his or her record is destroyed. It recognizes that destruction of a record can be meaningless if a prospective employer, for example, may inquire and a juvenile must respond to inquiries about his or her past juvenile record. Such a provision is strongly criticized by some authors. See Kogan and Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," *supra* at 385. See also commentary to Standard 5.8. While it is true that a law which authorizes the denial of a fact is not desirable in an ideal world, there is no other alternative which will ensure complete protection for the juvenile. It could be argued that Standards 18.1-18.2 (prohibiting inquiries about juvenile records) provide sufficient protection; but, it appears that merely limiting inquiry is not sufficient in a world in which the seekers of information are already difficult to control. See generally A. Miller, *The Assault on Privacy* (1972). It could also be argued that the ends do not justify the means. However, if the right to deny the existence of a record is related to a juvenile in a manner so that it is perceived as a reward for staying out of trouble and as a recognition that the record loses any meaning (and therefore may be denied), if the juvenile succeeds in controlling his or her conduct for a period of time, then it is less likely that authorizing the juvenile to represent that he or she does not have a record and that he or she was never arrested will assume any symbolic significance in the juvenile's life or convey the impression that the courts are hypocritical. Since most juveniles view the legal process as somewhat mystifying, denying the existence of a record is not likely to be any more understood or misunderstood than the right to remain silent or the hearsay rule. Moreover, it would not be sufficient to provide that a juvenile may deny the existence of a record (once destroyed) but not the underlying facts because it has been held that a statute which prohibits employers from denying jobs based upon a juvenile record is not violated so long as the employer makes his decision based upon the underlying facts, rather than the record itself. *Cacchiola v. Hoberman*, 31 N.Y. 2d 287, 291 (1972) (concurring opinion).

Sixteen states already have promulgated laws which provide that, once a juvenile record is sealed or destroyed, "it shall be deemed to have never occurred." See Cal. Welf. and Inst'n's Code § 781; Ga. Code Ann. § 24A-3504(C); Colo. Rev. Stat. § 19-1-112(2)(d). See also, Uniform Juvenile Court Act § 57(C). Subsection A. is, therefore, consistent with the recent legislative trend.

Subsection B. is designed to incorporate *Davis v. Alaska*, 415 U.S. 308 (1974), in which the Supreme Court held that a defendant's sixth amendment right to confront a witness against him or her outweighs the juvenile's and public interest in maintaining the confidentiality of a juvenile record. Subsection B. should not be construed any more broadly than required by the sixth amendment. See Standard 18.4 and the commentary thereto. See also, Fed. R. Evid. § 609 (d) (1974).

## PART XVIII: USE OF JUVENILE RECORDS

### 18.1 Use of juvenile records by third persons.

Public and private employers, licensing authorities, credit companies, insurance companies, banks, and educational institutions should be prohibited from inquiring, directly or indirectly, and from seeking any information relating to whether a person has been arrested as a juvenile, charged with committing a delinquent act, adjudicated delinquent, or sentenced to a juvenile institution, except the state agency or department responsible for juvenile justice may be authorized to inquire and seek such information pertaining to persons being considered for positions requiring ex-offenders.

#### *Commentary*

This standard prohibits employers, public and private, and other designated organizations from inquiring into a juvenile's record. The purpose of this standard is to place controls upon those who seek information, thereby complementing Standards 15.1-15.4, which establish controls over the possessors of information. The intent is to preclude various institutions from developing their own private information systems which might provide some of the record information to which they should not have access. The intent is also to reduce the pressure that is inevitably felt by government agencies that are continuously asked to provide records and information. If inquiry is banned, those who are likely to perceive that they are being denied what they need should be less likely and less willing to try to circumvent nondisclosure provisions. To accomplish that result, the various institutions are not only precluded from acquiring record information directly from criminal justice agencies, but they also may not seek such data indirectly from the juvenile or from a private association that may be in the business of collecting and selling such information. Thus, the terms "directly or indirectly," "any information," and "relating" should be broadly construed to ensure that the purposes of the standard will be realized.



## 18.2 Application forms.

All applications for licenses, employment, credit, insurance, or schooling, used by a licensing authority, employer, credit company, insurance company, bank, or educational institution, which seek information concerning the arrests or convictions or criminal history of the applicant should include the following statement: "It is unlawful for a licensing authority, employer, credit company, insurance company, bank, or educational institution to ask you, directly or indirectly, whether you have been arrested as a juvenile, charged with committing a delinquent act, adjudicated a delinquent, or sentenced to a juvenile institution. If you have been asked to disclose such information, you should report that fact to the state attorney general. If you have a juvenile record, you may answer that you have never been arrested, charged, or adjudicated delinquent for committing a delinquent act or sentenced to a juvenile institution."

### *Commentary*

Fourteen states have statutes which specifically provide that a juvenile's record "does not impose any civil disability" or "disqualify the child in any civil service application or appointment." Texas Code ch. 51 § 51.13. See also, Ohio Code § 2151.358; Fla. Laws ch. 39 § 39.10(4). The National Council on Crime and Delinquency's Model Act for the Annulment of a Conviction of Crime, 8 *Crime & Delinq.* 100 (1962), would require that application forms include a provision which precludes inquiry into annulled convictions; and, Massachusetts has a similar provision with respect to sealed records of convictions. Mass. Gen. Laws, ch. 276 § 100A. Standard 18.2 is based upon these statutes and applies them to the specific context of juvenile records. By requiring application forms to include a statement about a juvenile's disclosure rights, the policies of nonaccess, Standards 15.1-15.4, and nonuse, Standard 18.1, are made more meaningful and more likely to succeed. It should be noted that, for purposes of this standard, "employer" includes all branches of the United States armed services.

## 18.3 Response to juvenile record inquiries.

If a person who is not authorized to receive record information pertaining to a juvenile seeks such information, the person to whom the request for information is made should inform the person who seeks the information that no record exists. If the information is sought on behalf of an employer, credit company, insurance company, bank, licensing authority, or educational institution, the person

to whom the request for information was made should report the matter to the state attorney general.

### *Commentary*

The response to an unauthorized inquiry, "no record exists," is a standard provision in many juvenile codes which provide for the sealing or expungement of records. See, Uniform Juvenile Court Act § 57(C) (1968); Ky. Rev. Stat. § 208.275(4). It is, therefore, included in this volume to provide a uniform response to inquiries about juvenile records by persons who are not given access by Standards 15.1-15.4.

#### 18.4 Admissibility of juvenile records.

An adjudication of any juvenile as a delinquent, or the disposition ordered upon such an adjudication, or any information or record obtained in any case involving such a proceeding, should not be lawful or proper evidence against such juvenile for any purpose in any proceeding except:

A. in subsequent proceedings against the same juvenile for purposes of disposition or sentencing, if the record of the prior proceeding has not been destroyed;

B. in an appeal of the same case, information or records obtained for or utilized in the initial trial of the matter should be admissible upon appeal, if the information or record is otherwise lawful and proper evidence; and

C. in a criminal trial involving the same matter after waiver of juvenile court jurisdiction. Evidence not otherwise admissible in a criminal trial is not made admissible by its being introduced at the waiver hearing.

### *Commentary*

Seventeen states have promulgated statutes which generally prohibit the use of juvenile records and information obtained for juvenile courts in subsequent legal proceedings. *E.g.*, Mass. Gen. Laws ch. 119 § 60. The purpose of these statutes is to prohibit the use of information collected for one purpose (juvenile court proceedings) to be used for another purpose. Such a prohibition is regarded as a basic tenet of a code for fair information practices. See Report of the Secretary's Adv. Comm. on Automated Personal Data Systems, "Records, Computers and the Rights of Citizens," 61-62 (HEW 1973). The existing statutes, however, are often not comprehensive enough to accomplish their purpose. For example, Ohio Code § 2151.38 provides: "The

disposition of a child under the judgment rendered or any evidence given in court is not admissible as evidence against the child in any other case or proceeding in any other court" except for the purpose of sentencing. The problem with this Ohio statute, which is typical of others, is that it only prohibits the later use of the "*disposition*" and "*evidence given*" as "*evidence*" in another "*court.*" Thus, this statute does not appear to prohibit the later admission into evidence of juvenile records and information collected for a juvenile court proceeding, but not introduced into evidence in the juvenile court; arguably, the record of a prior adjudication, as opposed to the disposition, is admissible; and all evidence and information collected in a juvenile proceeding would appear to be admissible in a subsequent administrative proceeding (because the statute bars only admission in another "court"). See also, Fla. Code ch. 39 § 39.12 (barring subsequent admissibility of all "court records" in all "other civil or criminal proceedings" of "records" and testimony" but silent as to other information); Ore. Rev. Stat. § 419.567(3) (barring the subsequent admissibility of all "information" but only if it "appears in the records of the case").

This standard is designed to provide a more comprehensive standard than the statutes referred to in the preceding paragraph and to eliminate many of the ambiguities in existing law. The standard is written broadly to encompass *all* information and records, including the adjudication and disposition; and it is intended to preclude their subsequent admissibility in "any proceeding" (except as provided in subsections A., B., and C.) whether or not the record or information was introduced into evidence in juvenile court. Although the language of the standard precludes subsequent use against "the same child," it is intended to apply to proceedings which may occur when the juvenile becomes an adult, as well as when he or she is a juvenile. Compare *Mitchell v. Gladden*, 366 P.2d 907 (Ore. 1961). The importance of maintaining the confidentiality of juvenile records is a major theme of this volume (see Standard 15.1); and this standard seeks to adapt existing legislative provisions to ensure that the purposes of confidentiality, to limit stigma and the disabilities which may result from disclosure, are thereby served.

Subsection A. permits juvenile records and information (if not destroyed pursuant to Standards 17.2 and 17.3) to be used in a subsequent juvenile or criminal proceeding against the same juvenile for purposes of sentencing or disposition. Such a provision occurs in all existing statutes, *e.g.*, Ore. Rev. Code § 419.567(3); and the use of a juvenile record for such purposes is well established. The theory of permitting a person's prior juvenile record to be used in a subsequent sentencing proceeding is that a prior record of involvement in

criminal activity is regarded as so relevant and necessary to a sentencing decision that the usual reasons for exclusion do not outweigh the reasons for admission. The exclusion of prior record information, if the person's juvenile record has been destroyed, is based upon the same policy reasons that initially supported the destruction of the juvenile record (see commentary to Standards 17.2 and 17.3): a juvenile's prior involvement in nonfelony activity is deemed irrelevant to any subsequent decision once two years have elapsed from discharge by the juvenile court. While it could be argued here that subsequent adjudication or conviction indicates that the initial destruction decision was erroneous, the problem of reconstructing a destroyed record accurately, plus the fact that the prior record will necessarily be somewhat stale because of the passage of time, makes a policy of exclusion more appropriate. For the same reasons, a jurisdiction may want to consider establishing a rule against use of a person's juvenile felony record in a subsequent sentencing proceeding if the adjudication is more than a stated number of years old and there have been no intervening adjudications or convictions.

Subsection B., providing for the admission of a juvenile's record and information contained in the record in an appeal of the same case, whether the appeal is on the record or *de novo*, if the evidence is otherwise admissible, is designed to permit the operation of the appellate process in accordance with the usual appellate rules of the jurisdiction. See *Comm. v. A Juvenile*, 280 N.E. 2d 144 (Mass. 1972).

Subsection C. specifically provides that the use of information obtained for or used in a waiver proceeding in juvenile court is admissible in the subsequent criminal trial. There is a conflict in the present case law pertaining to this issue. Compare, *Harling v. United States*, 295 F.2d 161 (D.C. Cir. 1961), and *Comm. v. Wallace*, 346 Mass. 9 (1963), with *State v. Arbeiter*, 449 S.W.2d 627 (Mo. 1970), and *State v. Gullings*, 416 P.2d 311 (Ore. 1966). That conflict has particularly focused on the admissibility of a confession obtained from a juvenile by the police and introduced in the juvenile's criminal trial after waiver of juvenile court jurisdiction. The position taken by this standard is that such evidence should be admitted in a criminal trial. The exclusion of such evidence depends upon whether it would be admitted or excluded in a criminal trial regardless of whether it was introduced at the waiver hearing. Evidence otherwise admissible should not be rendered inadmissible by being presented at a waiver hearing.

The admissibility of juvenile records is discussed further in Standard 5.7 and the commentary thereto.

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#### SECTION IV: STANDARDS FOR POLICE RECORDS

Section IV of these standards is intended to apply to criminal history records maintained by police and pertaining to juveniles. Unlike Sections II and III of these standards, which are intended to supplement Section I in the context of particular kinds of records, social histories (Section II) and juvenile court records (Section III), Section IV includes self-contained standards pertaining to police. Police agencies are specifically excluded from Section I by virtue of the definition of juvenile agency. See Standard 1.1 and the commentary thereto. The reason for excluding law enforcement agencies from Section I is explained in the commentary to Standard 1.1. However, some law enforcement agencies may wish to consider and adopt many of the applicable provisions of Section I, *e.g.*, Standard 3.4.

Section IV is not intended to be a comprehensive set of standards governing information systems and practices of police; rather, the purpose is to include a narrow set of standards governing criminal histories. Standards pertaining to criminal histories are included in this volume because of the close relationship between these kinds of records and court records and because of the need to coordinate policies with respect to court and police records. Other questions relating to information systems and practices of police, such as standards pertaining to investigation and the collection of information and standards pertaining to the collection of and access to information for purposes of evaluation of police agencies is included in the *Police Handling of Juvenile Problems* volume.

### PART XIX: GENERAL

#### 19.1 Rules and regulations.

A. Each law enforcement agency should promulgate rules and regulations pertaining to the collection, retention, and dissemination of law enforcement records pertaining to juveniles.

B. Such rules and regulations should take into account the need of law enforcement agencies for detailed and accurate information concerning crimes committed by juveniles and police contacts with juveniles, the risk that information collected on juveniles may be misused and misinterpreted, and the need of juveniles to mature into adulthood without the unnecessary stigma of a police record.

*Commentary*

The development of rules and regulations by each law enforcement agency, pertaining to its law enforcement records concerning juveniles, serves the purpose of providing visibility to recordkeeping and privacy issues and of promoting rational and consistent recordkeeping practices. See commentary to Standard 2.2. The general desirability of rulemaking by police is stated in the ABA Standards, *The Urban Police Function* § 4.3 (1973). The feasibility of police rules pertaining to adult criminal histories is demonstrated by the *Model Rules: Release of Arrest and Conviction Records* (Project on Law Enforcement Policy and Rulemaking 1974) (hereafter *Model Rules of Law Enforcement*) and the Model Act and Regulations of Project SEARCH. See also, the Regulations of the Department of Justice, promulgated pursuant to the Crime Control Act of 1973, 42 U.S.C. 3701 et. seq., which provide that the purpose of rules is "[t]o assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the completeness, integrity, accuracy and security of such information and to protect individual privacy." 28 C.F.R. § 20.1. See generally, National Adv. Comm. on Criminal Justice Standards and Goals, *Criminal Justice System* (1973) (hereafter *Criminal Justice System*).

The development of rules and regulations by law enforcement agencies pertaining to the records of juveniles will serve purposes that are similar to rules pertaining to adults. The rules for juveniles may, however, be different in some respects from the rules for adults because juveniles may need, and the purposes of juvenile court intervention may require, more stringent protections against dissemination and misuse, because of a social policy of ensuring against unnecessary stigma for juveniles and a more substantial state interest in providing for the rehabilitation of juveniles. The rules that are developed must, however, also take into account that law enforcement agencies need complete and accurate information concerning crimes committed by juveniles for purposes of investigation, identification, and maintaining criminal statistics. See "The Arrest Record in New York City Public Hiring: An Evaluation," 9 *Colum. J. of Law & Soc. Prob.* 442, 454 (1973). The counterbalancing risk that information may be misused and misinterpreted, and the need of juveniles to mature into adulthood without the unnecessary stigma of a police record, are critical factors that should be considered along with the state's interest in the collection, retention, and dissemination of juvenile data. Thus it must be recognized that "the interest of the state in being well informed is not absolute." Coffee, "Privacy Versus Parens

Patriae: The Role of Police Records in the Sentencing and Surveillance of Juveniles," 57 *Cornell L. Rev.* 571, 620 (1972).

### 19.2 Duty to keep complete and accurate records.

A. All information pertaining to the arrest, detention, and disposition of a case involving a juvenile should be complete, accurate, and up to date.

#### *Commentary*

The records that are maintained by police, pertaining to the arrest, detention, or disposition of a case involving a juvenile, should meet a standard of accuracy and completeness. Too often agency records pertaining to juveniles do not meet or even approach these standards. See E. Lemert, "Records in the Juvenile Court," *On Record: Files and Dossiers in American Life*, 373-75 (Wheeler ed., 1969). See also Coffee, "Privacy Versus Parens Patriae," 57 *Cornell L. Rev.* 571, 583-85 (1972), citing a New York study which concluded that a high percentage of police records on juveniles were either wrong or ambiguous. Therefore, this standard is included to ensure the quality of juvenile records compiled by law enforcement agencies. See commentary to Standard 12.1. The regulations to the Crime Control Act of 1973 (42 U.S.C. 3701 et. seq.), 28 C.F.R. § § 20.21a, 20.37, similarly require criminal justice agencies to set forth operational procedures to ensure that criminal history record information is complete and accurate.

### 19.3 Allocation of responsibility for recordkeeping.

Each law enforcement agency should designate a specific person or persons to be responsible for the collection, retention, and dissemination of law enforcement records pertaining to juveniles.

#### *Commentary*

The purpose of each law enforcement agency designating a specific person or persons to be responsible for the collection, retention and dissemination of law enforcement records pertaining to juveniles is to change the practice of some agencies which permit any staff member to have direct access to any agency record. Such unrestricted access creates an additional risk of improper dissemination and use. This standard also serves the purpose of ensuring that access is permitted only if there is a proper purpose and only if access is necessary. The

allocation of specific responsibility to a designated person does not mean exclusive responsibility; rather, it means chief administrative responsibility. This administrative responsibility can, of course, be delegated, but the designated person is ultimately responsible for the conduct of those to whom tasks have been delegated. See commentary to Standard 14.1. To ensure confidentiality and security of criminal history record information, the Crime Control Act of 1973 regulations provide that wherever criminal history record information is collected, stored, or disseminated, a criminal justice agency shall "select and supervise all personnel authorized to have direct access to such information." 28 C.F.R. § 20.21(f)(5). A more specific standard is Reg. 10, Project SEARCH, "Technical Memorandum No. 4: Model Administrative Regulations for Criminal Offender Record Information" (March 1972) (hereafter SEARCH Regulations) which requires all persons involved in operating a records information system to receive not less than 7 1/2 hours of instruction concerning the proper use of the information system. A proposal that a full-time professional be designated to be responsible for police juvenile records is made in Note, "Juvenile Police Record-keeping," 4 *Colum. Hum. Rts. L. Rev.* 461, 482 (1972). See also, *Criminal Justice System* § 8.7 (proposing a system which combines "personnel clearances" with a "sensitivity classification system").

#### 19.4 Retention of records in a secure and separate place.

Each law enforcement agency should maintain law enforcement records and files concerning juveniles in a secure place separate from adult records and files.

#### *Commentary*

As stated in the commentary to Standard 13.1, the reason for separation of records is to limit the risk of misuse when juvenile and adult records are combined. Separation ensures the attainment of the more rigorous confidentiality requirements pertaining to juvenile records. Many states now require separation of juvenile and adult records. See Note, "Juvenile Police Record-keeping," 4 *Colum. Hum. Rts. L. Rev.* 461, 472 (1972).

In some instances, when not separated by statutory requirement, the agency structure is such that it is simply more efficient to separate the juvenile and adult records. In other instances, the adult and juvenile records are separated because they are used differently, or because of different policies on access and dissemination. The separation requirement in the context of automation raises difficult ques-



tions, but it should at least mean different access codes and different programs to ensure the confidentiality and proper use of juvenile records.

This standard, like the regulations of the Crime Control Act of 1973, includes a provision requiring the security of juvenile police records. 28 C.F.R. § 20.21(f)(1)-(9). See also, "Criminal Justice System" §§ 8.6, 8.7; Reg. 6, SEARCH Regulations. The purpose of security is to protect against misuse and misappropriation.

### 19.5 Duty to account for release of law enforcement records.

Law enforcement agencies should keep a record of all persons and organizations to whom information in the law enforcement records pertaining to juveniles has been released, the dates of the request, the reasons for the request, and the disposition of the request for information.

#### *Commentary*

In order that the recipients of information from law enforcement records pertaining to juveniles may be informed of any destruction or sealing of a record, of any change in the status of record information, and of any correction of record inaccuracy, this standard requires agencies to maintain a complete record of all persons and organizations receiving juvenile record information. The SEARCH Regulations, Reg. 15, and the Privacy Act of 1974 (5 U.S.C.A. § 552a[c]), contain a similar provision. See also, Project on Law Enforcement Policy and Rulemaking, Rule 503, "Model Rules for Law Enforcement: Release of Arrest and Conviction Records" (1973).

### 19.6 Juveniles' fingerprints; photographs.

A. Law enforcement officers investigating the commission of a felony may take the fingerprints of a juvenile who is referred to court. If the court does not adjudicate the juvenile delinquent for the alleged felony, the fingerprint card and all copies of the fingerprints should be destroyed.

B. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of the juvenile in custody, he or she may fingerprint the juvenile regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken should be immediately destroyed. If the comparison is positive and the juvenile is referred to court, the fingerprint card and other copies of the

fingerprints should be delivered to the court for disposition. If the juvenile is not referred to court, the prints should be immediately destroyed.

C. If the court finds that a juvenile has committed an offense that would be a felony for an adult, the prints may be retained by the local law enforcement agency or sent to the [state depository] provided that they be kept separate from those of adults under special security measures limited to inspection for comparison purposes by law enforcement officers or by staff of the [state depository] only in the investigation of a crime.

D. A juvenile in custody should be photographed for criminal identification purposes only if necessary for a pending investigation unless the case is transferred for criminal prosecution.

E. Any photographs of juveniles, authorized under subsection D., that are retained by a law enforcement agency should be destroyed:

1. immediately, if it is concluded that the juvenile did not commit the offense which is the subject of investigation; or
2. upon a judicial determination that the juvenile is not delinquent; or
3. when the juvenile's police record is destroyed pursuant to Standard 22.1.

F. Any fingerprints of juveniles that are retained by a law enforcement agency should be destroyed when the juvenile's police record is destroyed pursuant to Standard 22.1.

G. Willful violation of this standard should be a misdemeanor.

### *Commentary*

This standard, which is derived from and is very similar to section 56 of the Uniform Juvenile Court Act (1968) and section 47 of the Model Acts for Family Court (Department of Health, Education and Welfare, Sheridan and Beaser, eds.), provides for the fingerprinting and photographing of juveniles by police under limited circumstances.

A limited survey of jurisdictions suggests that it has been the police practice in the past to fingerprint and photograph juveniles under the same standards as applied to adults. However, more recent statutes and the model acts apply more restrictive standards for photographing and fingerprinting juveniles, apparently on the theory that the process of fingerprinting (in particular) may be more traumatic for a juvenile than for an adult and that the retention of fingerprints may stigmatize a juvenile and interfere with the historical rehabilitative purposes of juvenile court intervention. Whether these

theories are correct is unclear; and, in any case, it is doubtful that the taking of a juvenile's fingerprints is any more traumatic than arresting him or her or that the retention of a juvenile's fingerprints involves any greater risks than the retention of his or her arrest record. In fact, it would seem that an arrest record involves more risks than do fingerprints because, while the existence of a fingerprint card may suggest illegal activity, the existence of an arrest record (with or without disposition) points to particular illegal conduct without any indication of the seriousness of that conduct or mitigating circumstances that might have existed. Moreover, even if it could be argued that taking a juvenile's fingerprints is slightly traumatic or creates an additional risk of stigma, the law enforcement need for fingerprints is the same whether the offender is an adult or a juvenile.

For the most part, the twenty-three states that have recently passed legislation regulating the fingerprinting and photographing of juveniles have included standards that are somewhat more restrictive than adult practices. Illinois (Ill. Laws ch. 373 § 702-8) prohibits police from forwarding juvenile prints and photos to the F.B.I. and to the central state depository; South Carolina (S.C. Laws ch. 15-1281.20) prohibits the fingerprinting and photographing of juveniles without judicial consent; and Florida (Fla. Laws ch. 39.03) limits fingerprinting and photographing to felony cases, limits access to police, the juvenile court, and the juvenile, and requires destruction of such records at age twenty-one. A recent federal statute, 18 U.S.C.A. § 5038 (1974), prohibits police from fingerprinting or photographing a juvenile without judicial consent.

The model of the federal statute, 18 U.S.C.A. § 5038, has been rejected because it does not provide any standards by which a court should decide when to authorize fingerprints or photographs. Instead, standards are adopted which place the responsibility upon police for determining when fingerprints and photographs are necessary and which limit the right to fingerprint to felony cases and the right to photograph to cases in which photographs are necessary for a pending investigation. The photographing standards are more restrictive than the fingerprint standards because there are greater risks that a photograph can be misused or misinterpreted (if, for example, it is shown to neighbors for the purpose of identifying a local burglar it may suggest to the neighbors that the photographed juvenile is a bad child or has a record).

Although the model acts and some state statutes prohibit the fingerprinting of juveniles who are under fourteen years of age, this restriction has not been included in this standard. It is not included because the need for fingerprints for comparison and identification

purposes is the same, irrespective of the age of the juvenile and because there does not seem to be any risk to the juvenile which increases inversely with his or her age.

#### 19.7 Statistical reports.

A. Each law enforcement agency should prepare a monthly and annual statistical report of crimes committed by juveniles and of the activities of the agency with respect to juveniles.

B. The statistical report should include a maximum amount of aggregate data so that there can be meaningful analysis of juvenile crime and the activities of the agency with respect to juveniles.

C. The principal state law enforcement agency of each state should develop standardized forms for collecting and reporting data to insure uniformity.

#### *Commentary*

To ensure meaningful and effective evaluation from both external and internal sources, law enforcement agencies should prepare regular statistical reports. The development of standardized forms would permit the comparison of the activities of various law enforcement agencies. See commentary to Standard 13.4. The standards pertaining to statistical reports will serve the purpose of producing sufficient information to permit the meaningful evaluation of agency programs and activities.

#### 19.8 Juveniles' privacy committee.

A juveniles' privacy committee should have authority with respect to law enforcement records pertaining to the arrest, detention, and disposition of cases involving juveniles that is commensurate with the authority of the committee set forth in Standard 2.1.

#### *Commentary*

This standard is designed to include law enforcement records pertaining to juveniles within the scope of concern of the juveniles' privacy committees established by Standard 2.1. The purpose and role of the committees are set forth in the commentary to Standard 2.1. Since, as explained in the commentary to Standard 2.1, the historical antecedent for the committee concept is the security and privacy councils that were originally recommended and established for police records, it is logical to extend the committee's authority to include juvenile police records. It should be noted, however, that

it is not the intent of this standard to authorize committees to examine all information issues that arise in the context of police work with juveniles; rather, the authority of the committees is to be limited to the scope of Section IV of this volume, police criminal histories pertaining to juveniles.

## PART XX: ACCESS TO POLICE RECORDS

### 20.1 Police records not to be public records.

Records and files maintained by a law enforcement agency pertaining to the arrest, detention, adjudication, or disposition of a juvenile's case should not be a public record.

#### *Commentary*

Twenty-four states have enacted statutes which specifically regulate the dissemination of juvenile records by police. Basically, these statutes accept the proposition that juvenile records should not be public records and, with varying degrees of specificity, set forth the process of gaining access and the persons who are entitled to access. Thus, in Wyoming (Wyo. Laws § 14-15.41), it is provided that juvenile records maintained by police must be kept confidential but that access may be provided by court orders. No standards for providing access are set forth in the Wyoming statute. In Vermont (Vt. Laws § 663), on the other hand, court approval is not required and access is only accorded to designated agencies: the juvenile court, an agency to which the juvenile has been committed, the state correctional agency, a criminal court for sentencing, the parole board, and other police agencies. Iowa (Iowa Code § 232.56), an anomaly, requires police to provide the public with access to their juvenile records. See generally Note, "Juvenile Police Record-keeping," 4 *Colum. Hum. Rts. L. Rev.* 461 (1972).

The Uniform Juvenile Court Act § 55 (1968), the Model Acts for Family Courts and State-Local Children's Programs § 46 (Sheridan and Beaser eds.) and the recently enacted state statutes that are based upon the model acts, N. D. Cent. Code § 27-20-52, provide that juvenile records in the custody of police will not be public records by limiting access to designated individuals and agencies. See also, 28 C.F.R. § 20.21(d) (limiting access to juvenile record systems maintained by police agencies receiving LEAA funds). A section of the Juvenile Justice and Delinquency Prevention Act of 1974, 18 U.S.C.A. § 5038, is similar to the model acts except that

the nondisclosure provisions do not apply until "the completion of any juvenile delinquency proceeding." Recent statutes and proposed rules pertaining to adult arrest records in the custody of police are also similar. See Mass. Gen. Laws ch. 6 § 172 (designated agencies); Crime Control Act of 1973, 42 U.S.C.A. § 3771 (access limited for: "law enforcement and criminal justice and other lawful purposes"); Rule 401, "Model Rules: Release of Arrest and Conviction Records" (Project on Law Enforcement Policy and Rule Making 1974); Project SEARCH, "Technical Memorandum No. 3: A Model State Act for Criminal Offender Record Information" § 8 (1971).

## 20.2 Access by the juvenile and his or her representatives.

A juvenile, his or her parents, and the juvenile's attorney should, upon request, be given access to all records and files collected or retained by a law enforcement agency which pertain to the arrest, detention, adjudication, or disposition of a case involving the juvenile.

### *Commentary*

Providing a juvenile, his or her parents, and the juvenile's attorney with access to the juvenile's criminal history record maintained by police serves the same purpose as providing access to other records maintained by other agencies. See Standard 5.2 and the commentary thereto. It should be noted, however, that, unlike the obligation of other agencies, the police are only required by this standard to provide access to traditional criminal history data, data "which pertain to the arrest, detention, adjudication, or disposition of a case involving the child." Thus, information which is of an investigative or intelligence nature is not included. However, this exception to the disclosure requirement is intended to be narrow, and information should not be maintained in an intelligence or investigative file if the information pertains to a case in which the juvenile has been arrested or if the information does not relate to a pending investigation.

The policy of providing a person with access to his or her arrest records is becoming well established. Access is required by section 524(b) of the Crime Control Act of 1973 and by 28 C.F.R. § 20.21(g). See also, "Model Rules of Law Enforcement," Rule 402; Cal. Penal Code § § 11120-27 (1971); National Adv. Comm. on Crim. J. Standards and Goals, "Criminal Justice System" Standard 8.4 (1973), hereafter "Criminal Justice System."

In addition to ensuring against secret record systems, the primary purpose of this standard, providing for access by the subject of a

record or his or her representative, is to permit challenges to be made in cases in which it is believed that record information is inaccurate or incomplete. The right to file a challenge to a record is provided by Standard 21.1.

### **20.3 Disclosure to third persons.**

**A. Information contained in law enforcement records and files pertaining to juveniles may be disclosed to:**

- 1. law enforcement officers of any jurisdiction for law enforcement purposes;**
- 2. a probation officer, judge, or prosecutor for purposes of executing the responsibilities of his or her position in a matter relating to the juvenile who is the subject of the record;**
- 3. the state juvenile correctional agency if the juvenile is currently committed to the agency;**
- 4. a person to whom it is necessary to disclose information for the limited purposes of investigating a crime, apprehending a juvenile, or determining whether to detain a juvenile;**
- 5. a person who meets the criteria of Standards 5.6 and 5.7.**

**B. Information contained in law enforcement records and files pertaining to a juvenile should not be released to law enforcement officers of another jurisdiction unless the juvenile was adjudicated delinquent or convicted of a crime or unless there is an outstanding arrest warrant for the juvenile.**

**C. Information that is released pertaining to a juvenile should include the disposition or current status of the case.**

### *Commentary*

This standard restricts the dissemination of juvenile police records essentially to criminal justice agencies for criminal justice purposes. The standard is based upon the same general purposes that support limiting dissemination of juvenile court records; see, Standard 5.4 and the commentary thereto, and the dissemination of adult police records. See, "Criminal Justice System" § 8.3.

The need for a standard restricting the dissemination of juvenile police records is based on three considerations. First, it appears that the widespread dissemination of juvenile police records, articulated by Justice Fortas almost ten years ago in the case of *In re Gault*, 387 U.S. 1 (1967) continues:

In most states the police keep a complete file of juvenile "police contacts" and have complete discretion as to the disclosure of juvenile

records. Police departments receive requests for information from the FBI and other law enforcement agencies, the armed forces, and social agencies, and most of them generally comply. Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies. *Id.* at 24-25.

Second, harm (measured by lost opportunities) and stigma can result from the dissemination of arrest records. See Karabian, "Record of Arrest: The Indelible Stain," 3 *Pac. L.J.* 21 (1972); Schwartz and Skolnick, "Two Studies of Legal Stigma," 10 *Social Prob.* 133-42 (1962); E. Sparer, *Employability and the Juvenile Arrest Record* (1966); H. Miller, *The Closed Door* (1972); Hess and Le Poole, "Abuse of the Record of Arrest Not Leading to Conviction," 13 *Crime & Delinq.* 494 (1967). Third, the increasing use of computers to disseminate arrest records magnifies the risks created by the existence of arrest records. See commentary to Standard 4.6; "Criminal Justice System" at 114; Project SEARCH, "Technical Memorandum No. 2: Security and Privacy Considerations in Criminal History Information Systems" (1970).

A recognition that the retention of records creates risks, *Davidson v. Dill*, 503 P.2d 157 (Colo. 1972), does not mean that the retention and dissemination of records is never a proper police function. See, *Dugan v. Police Dept. City of Camden*, 112 N.J. Super. 482, 217 A.2d 727 (1970). Therefore, this standard proposes safeguards so that the risks of misuse are minimized and so that law enforcement purposes may be served. Similar standards are contained in the regulations of the Crime Control Act of 1973, 28 C.F.R. § § 20.1(b)-(d), 20.33, Rule 401, "Model Rules for Law Enforcement, the Uniform Juvenile Court Act" § 55 (1968), the "Model Acts for Family Courts and State-Local Programs" § 46 (Sheridan and Beaser eds.) and a number of recent statutes. See commentary to 20.1. Compare Project SEARCH, "Technical Memorandum No. 3: A Model Act for Criminal Offender Record Information" § 8 (1970). See generally Coffee, "Privacy Versus Parens Patriae: The Role of Police Records in the Sentencing and Surveillance of Juveniles," 57 *Cornell L. Rev.* 576 (1970); Note, "Juvenile Police Record-keeping," 4 *Colum. Hum. Rts. L. Rev.* 461 (1972); Altman, "Juvenile Information Systems: A Comparative Analysis," 24 *Juvenile Justice* No. 4, 2 (1974).

#### 20.4 Warnings and nondisclosure agreements.

Prior to disclosure of information concerning a juvenile to a law enforcement agency outside of the jurisdiction, that agency should



be informed that the information should only be disclosed to law enforcement personnel, probation officers, judges, and prosecutors who are currently concerned with the juvenile. The outside agency should also be informed that the information will not be disclosed unless the agency is willing to execute a nondisclosure agreement.

### *Commentary*

This standard serves the function of both informing the outside state agency of the limited disclosure allowed under these standards and creating a written, official record, thereby protecting the integrity of the parties involved. The nondisclosure agreement is also important if a cause of action for invasion of privacy by improper release of a record is to be maintainable. The Model Rules for Release of Arrest and Conviction Records, Rule 502, is similar in purpose to this standard. It requires a certification-of-purpose form, similar to the certification required by Cal. Penal Code § 11105. The nondisclosure agreement should require the outside state agency to certify familiarity with the disclosure provisions and agree not to disclose any information to an unauthorized person.

## **20.5 Response to police record inquiries.**

The response and procedure for answering inquiries regarding the police record of a juvenile should be in accordance with Standard 18.3.

### *Commentary*

This standard is identical to Standard 18.3, "Response to Juvenile Record Inquiries," and serves the same purposes that are set forth in the commentary to Standard 18.3.

## **PART XXI: CORRECTION OF POLICE RECORDS**

### **21.1 Rules providing for the correction of police records.**

Each law enforcement agency should promulgate rules and regulations permitting a juvenile or his or her representative to challenge the correctness of a police record pertaining to the juvenile.

### *Commentary*

Rules providing for the correction of records ensure accuracy and completeness. See commentary to Standard 2.6. To provide access

and not a means whereby errors can be eliminated or corrected is to render the right to access meaningless in many situations. This standard is flexible in allowing each law enforcement agency to adopt its own rules. The Crime Control Act of 1973, and regulations pursuant thereto, provide a comprehensive scheme which includes administrative appeals upon refusal to change the challenged record and notification of recipients of the information. See 28 C.F.R. § § 20.21(g)(1)-(6), 20.34. See also Project SEARCH, "Model Regulations" § 14; "Model Rules of Law Enforcement," Rule 402. The recent trend of legislation pertaining to personal records maintained by administrative agencies is to include sections providing for the correction of records. See commentary to Standard 2.6.

## PART XXII: DESTRUCTION OF POLICE RECORDS

### 22.1 Procedure and timing of destruction of police records.

Upon receipt of notice from a juvenile court that a juvenile record has been destroyed or if a juvenile is arrested or detained and has not been referred to a court, a law enforcement agency should destroy all information pertaining to the matter in all records and files, except that if the chief law enforcement officer of the agency, or his or her designee, certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner.

#### *Commentary*

This standard providing for the destruction of police records, is based upon the same analysis that supports destruction of juvenile court records after a period of time. See Part XVII and the commentary thereto. This standard becomes operative either upon receipt of notice from a juvenile court that the juvenile's records have been destroyed or upon a decision not to refer a juvenile to court for prosecution. This standard is an important complement to Part XVII, because unless the juvenile's police record is also destroyed, the destruction of the court record alone would become a relatively meaningless reform. See generally Coffee, "Privacy Versus Parens Patriae," 57 *Cornell L. Rev.* 571 (1972); Note, "Juvenile Police Record-keeping," 4 *Colum. Human Rts. L. Rev.* 461 (1972).

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