

## **Access to Government Data Maintained on Juvenile Offenders**

This information brief answers questions regarding access to information maintained on juvenile offenders by government agencies. As used throughout this document, “juvenile offender” means an individual under the age of 18 who violates or is accused of violating a state or local law. The term does not include juvenile offenders whose cases are handled by the adult criminal justice system.

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### **Who has access to law enforcement records on juveniles?**

Although Minnesota law classifies law enforcement data (e.g., name, gender, age, address) about the arrest of an adult offender as public information, access to similar data on juvenile offenders is more restricted. Specifically, the law only allows law enforcement agencies to publicly release information on the age and gender of an arrested juvenile. *Minn. Stat. §§ 13.82, subd. 2; 260B.171, subd. 5.*

Even though the general public cannot access most law enforcement data on juvenile offenders, these records are available to certain specified individuals and entities. For example, law enforcement records on juveniles are open to other law enforcement agencies if needed for law enforcement purposes. *Minn. Stat. §§ 13.82, subd. 24; 260B.171, subd. 5(b).* Moreover, the victim of the juvenile’s offense may request to see the records and most such requests will be granted. *Minn. Stat. § 260B.171, subd. 5(h).* Additionally, under certain circumstances, the law permits law enforcement agencies to share information on juvenile offenders with school authorities if there is probable cause to believe the juvenile has committed an offense, the victim is a student or staff member of the school, and notice to the school is reasonably necessary to protect the victim. *Minn. Stat. § 260B.171, subd. 5(e).*

Despite the general rule protecting the privacy of law enforcement data on juveniles, information about the reason why a juvenile's driver's license was suspended or revoked is available to the general public. *Minn. Stat. § 171.12, subd. 1(b)*.

## **Who has access to juvenile court records on juveniles?**

Historically, records on juvenile offenders maintained by the juvenile court are not available to the general public and are available to other government agencies only on a "need to know" basis, unless the juvenile court orders otherwise. This privacy policy is based on the primarily rehabilitative mission of the juvenile justice system and the expectation that the system will best achieve its objectives if the juvenile and his or her mistakes are protected from public scrutiny. However, this general rule has significantly changed in the past 20 years in Minnesota and other states. As a result, juvenile records, particularly those involving serious crimes committed by older juveniles, currently are available to a variety of specified entities and individuals. *Minn. Stat. § 260B.171, subds. 1 and 4*.

Often, the openness of the record depends on the juvenile court category into which the juvenile has been placed.

- For example, if a juvenile offender is at least 14 years old and commits a felony-level crime, he or she may be certified to stand trial as an adult in criminal court. If this occurs, all of the records relating to that crime are handled in the same manner as criminal records of adult offenders and are, generally speaking, public.
- Additionally, if a juvenile is 16 years old or older and is accused of a felony-level offense, all proceedings conducted by the juvenile court relating to that offense are open to the public, and all records relating to it are, likewise, available to the public.
- The victim of a juvenile's offense has the right to be informed of the final disposition in the case, the right to attend the juvenile court hearing at which the juvenile receives the disposition, and the right to object to or otherwise comment on the disposition.
- Finally, if the juvenile justice system decides to place a felony-level juvenile offender in the hybrid "extended jurisdiction juvenile" (EJJ) category<sup>1</sup> and the offender is under 16 years old, the proceedings and records are not open to the public, but the records will become publicly available if the offender's juvenile disposition is later revoked and his or her adult sentence is imposed.

*Minn. Stat. §§ 260.171, subd. 4; 611A.037, subd. 2; 611A.038.*

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<sup>1</sup> A juvenile in this category is adjudicated in juvenile court and, upon conviction, receives both a juvenile court disposition and an adult sentence. If the juvenile fails to abide by the terms of the juvenile disposition, it may be revoked and the adult sentence may be imposed immediately, often resulting in incarceration in adult prison.

## **Who has access to records on juvenile offenders that are kept by juvenile detention, probation, and correctional authorities?**

As is the case with law enforcement records, records maintained on juvenile offenders who are confined in a juvenile detention or correctional facility, or who are on probation or parole, may not be released to the public, but may be released to other government agencies that have a need for the information. *Minn. Stat. §§ 13.84, subds. 6 and 7; 13.85, subd. 5; 260B.171, subd. 4(d)*. Additionally, victims of the juvenile's offense may access some of these records, as necessary, in order to either assert their rights to restitution or learn whether and when the offender has been released from custody. *Minn. Stat. § 13.84, subd. 6*.

Minnesota law also places a special responsibility on juvenile probation officers to make juvenile court disposition (i.e., sentencing) information on certain juvenile offenders available to school<sup>2</sup> authorities. The law *requires* the probation officer to transmit a copy of the juvenile court's disposition order to either the superintendent of the school district or the head of the school where the juvenile is enrolled when a juvenile offender is adjudicated delinquent for:

- a serious or violent crime (enumerated in statute);
- a crime involving possession or use of a dangerous weapon; or
- any crime committed on school property.

The law also *permits* probation officers to transmit a juvenile offender's juvenile court disposition order to school authorities when the offender is adjudicated delinquent and placed on probation for committing any other unlawful act. The probation officer must notify school authorities when the juvenile offender is discharged from probation.

Probation officers who share disposition orders with school authorities must notify the juvenile's parent or guardian of this fact. They also must let school authorities know that they may obtain additional information from the probation officer with the consent of the juvenile or his/her parents. *Minn. Stat. § 260B.171, subd. 3*.

## **How long must the juvenile court maintain its records on juvenile offenders?**

The law requires juvenile courts to maintain their records on juvenile offenders until an offender's 28<sup>th</sup> birthday. The law also states that if a juvenile offender was adjudicated delinquent for a gross misdemeanor or felony offense and subsequently commits a felony offense as an adult, the court must maintain its juvenile records on the offender for as long as the records would have been maintained if the offender had been an adult. The same records retention rule applies to a juvenile offender who is convicted as an extended jurisdiction juvenile. *Minn. Stat. § 260B.171, subd. 1(b)*.

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<sup>2</sup> The law defines "school" to include all public, private, and charter schools, but it excludes home schools. *Minn. Stat. § 260B.171, subd. 3(f)*.

## **How long must the Bureau of Criminal Apprehension maintain its records on juvenile offenders?**

Once a juvenile has been adjudicated guilty of a gross misdemeanor or felony-level offense, Minnesota law requires the Bureau of Criminal Apprehension (BCA) to maintain a computerized record of the offense until the juvenile turns 28 years old. If the offender commits another felony violation between the ages of 18 and 28, or if the offender was convicted as an EJJ offender and his or her adult sentence subsequently is imposed, the Bureau must retain the record for as long as the data would have been retained if the offender had been an adult at the time of the juvenile offense. Records in the BCA database are available to people who have access to the juvenile court records relating to the offender and also may be used for certain employment and licensing background check purposes. Additionally, BCA records may be used to compute an individual's criminal history score for sentencing purposes under the Minnesota Sentencing Guidelines. [Minn. Stat. § 299C.095](#).

Minnesota law requires the BCA to destroy juvenile records earlier than the offender's 28<sup>th</sup> birthday under the following circumstances:

- when no court petition is filed or diversion referral is made within six months of an arrest
- when a court petition is dismissed
- when a juvenile successfully completes a diversion program

[Minn. Stat. § 299C.095, subd. 2](#).

## **Can an offender's prior juvenile offense record be considered for sentencing purposes if the offender continues to violate the law as an adult?**

It is a common belief among the public that an adult offender's juvenile record is "sealed" and is not considered when the offender appears in adult court for sentencing. However, courts may, in fact, include such prior offenses in their sentencing decisions, particularly if the offender goes on to commit serious crimes.

The Sentencing Guidelines, applicable to adult offenders who commit felony-level crimes, devote considerable space to whether and to what extent prior juvenile offenses are "counted" in a felony offender's criminal history score for purposes of calculating the offender's presumptive sentence. The policy reflected in the Sentencing Guidelines is that a person's prior delinquency record should "count," but not as heavily as a prior record of adult convictions. In part, this policy is due to a concern that juveniles handled in juvenile court do not receive as much due process as adults in criminal court.<sup>3</sup> This policy also reflects the rehabilitative philosophy of the juvenile court system, compared with the punishment-oriented philosophy of the adult criminal justice system. *Minnesota Sentencing Guideline II.B.401 (commentary)*.

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<sup>3</sup> Specifically, an offender in juvenile court is not entitled to a jury trial, unless he or she is being tried as an EJJ offender.

The Sentencing Guidelines contain two basic rules about prior juvenile offenses:

- A juvenile's prior felony convictions are treated identically to adult convictions when a juvenile is either certified to stand trial as an adult or is convicted as an EJJ offender. *Minnesota Sentencing Guidelines II.B.04 and III.D.*
- A juvenile's prior felony-level delinquency offenses may be included in the juvenile's criminal history score if:
  - the offender has at least two of them and the offenses occurred after the juvenile's 14<sup>th</sup> birthday; and
  - the offense for which the offender currently is being sentenced occurred before the offender's 25<sup>th</sup> birthday.

Thus, prior juvenile offenses count only if the offender continues his or her criminal career into early adulthood, thereby indicating a failure of rehabilitation. Moreover, a juvenile cannot receive more than one criminal history score point for these felony-level delinquencies unless the juvenile also committed at least two additional serious, violent offenses (i.e., offenses for which the guidelines presume a prison sentence). *Minnesota Sentencing Guideline II.B.4.*

### **Can a juvenile's prior record be released to or used by employers or other entities for background check purposes?**

Some Minnesota laws either require or permit access to a juvenile's prior offense history as a prerequisite to the juvenile's employment in certain occupations or for other noncriminal justice system purposes. For example, such background checks are required under the following circumstances:

- When child-placing agencies conduct a home study of a proposed adoptive home, they must check the juvenile and adult offense histories of any household members between the ages of 13 and 24 who reside in the home (*Minn. Stat. § 259.04.*)
- When the Department of Human Services investigates an applicant for a foster care or home day care license, it must examine the offense records of household members over age 13 from the five-year period preceding the license application or the individual's 18<sup>th</sup> birthday, whichever is longer (*Minn. Stat. § 245A.04.*)
- When a law enforcement agency conducts a background check to determine an individual's eligibility to possess or carry a firearm, it must examine the applicant's prior juvenile or adult record of violent crime (*Minn. Stat. § 624.713, subd. 1(b).*)

Additionally, an employer may ask the BCA to conduct a background check when a person seeks to work or volunteer in a facility that serves children. The scope of the background check is limited to whether the person committed a violent crime or a crime against a child. Under these

circumstances, the BCA is authorized to release juvenile offense records relating to these qualifying crimes. *Minn. Stat. § 299C.095, subd. 1 (b)*.

Except as provided by statute, the BCA will not release a juvenile adjudication history record and will not release information that reveals the existence of the record. Consent for release of BCA information by an individual who is the subject of juvenile adjudication history is not effective. *Minn. Stats. § 299C.095, subd. 1(b)*.

The statutes do not expressly address whether an individual may or may not consent to release of law enforcement or court records on juvenile history for a background check.

*For more information about juvenile offenders, visit the criminal justice area of our web site, [www.house.leg.state.mn.us/hrd/issinfo/crime.htm](http://www.house.leg.state.mn.us/hrd/issinfo/crime.htm).*