1-1-1982

The Use of Juvenile Adjudications for Impeachment and Sentencing

Susan A. Sinclair

Follow this and additional works at: http://digitalcommons.law.scu.edu/lawreview

Part of the Law Commons

Recommended Citation
Available at: http://digitalcommons.law.scu.edu/lawreview/vol22/iss2/4

This Article is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.
THE USE OF JUVENILE ADJUDICATIONS FOR IMPEACHMENT AND SENTENCING

Susan A. Sinclair*

I. INTRODUCTION

The juvenile court system is designed to meet the social rehabilitation and readjustment needs of the juvenile offender,¹ as opposed to punishing him for criminal behavior.² Because a juvenile adjudication can stigmatize to the same degree as an adult conviction, juvenile court proceedings are generally categorized as civil rather than criminal actions.³ Yet, despite this substantive difference in treatment, society often views juvenile offenders in the same manner as adult offenders.* A commitment to a reform or training school is

---

¹ See, e.g., State v. Wright, 515 S.W.2d 421, 437 (Mo. 1974) (en banc); State v. Arbeiter, 408 S.W.2d 26, 30 (Mo. 1966); Note, Rights and Rehabilitation in the Juvenile Courts, 67 COLUM. L. REV. 281 (1967).

² The juvenile justice system is based on the parens patriae doctrine whereby the state acts on behalf of the child as its guardian, assuming the role of the parents and acting in their place to secure what is in the best interest of the child. The parens patriae doctrine had its beginning in England during the feudal period. E.g., Eyre v. Shaftsbury, 2 P. Wms. 103, 24 Eng. Rep. 659 (1722); Cinque v. Boyd, 99 Conn. 70, 83, 121 A. 678, 682-83 (1923); Commonwealth v. Fisher, 213 Pa. 48, 62 A. 195 (1905).

³ See generally Fagerstrom v. United States, 311 F.2d 717, 720 (8th Cir. 1963); Pee v. United States, 274 F.2d 556, 561-63 (D.C. Cir. 1959) (Appendix A); Shioutakon v. District of Columbia, 236 F.2d 666, 668 (D.C. Cir. 1956); Herget v. Circuit Court, 84 Wis. 2d 435, 267 N.W.2d 309 (1978); F. Sussman, LAW OF JUVENILE DELINQUENCY (2d ed. 1959); Paulsen, The Changing World of Juvenile Law—New Horizons for Juvenile Court Legislation, 40 PA. B.A. Q. 26, 27 (1968); Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice, 79 HARV. L. REV. 775, 784 (1966). But see In re Contereras, 109 Cal. App. 2d 787, 789, 241 F.2d 631, 633 (1952) (a statute which provided that a finding of delinquency was not to be deemed a conviction of a crime held "a legal fiction, presenting a challenge to credulity and doing violence to reason.")

⁴ In the public eye, an offender is an offender, be he juvenile or adult. The cliches of noncriminality and lack of stigma attendant upon the
looked upon as a term of imprisonment. The juvenile offender, when he reaches adulthood, often suffers the same legal and social consequences that an adult offender faces with a prior criminal conviction.

Many state legislators have recognized that it is impossible to change societal views toward youthful offenders. In recognition of the debilitating legal and social consequences resulting from a juvenile adjudication of delinquency, they have enacted statutes seeking to restore the civil rights of the former juvenile offender by requiring juvenile adjudications to

juvenile court process have so often been repeated that we have become piously obtuse to the fact that the enlightened instrumentality of the juvenile court is frequently not as felicitous in practice as it is in theory.

Gough, The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status, 1966 Wash. U.L.Q. 147, 170, [hereinafter cited as Gough]. In Jones v. Commonwealth, 185 Va. 335, 385 S.E. 444 (1946), the court recognized that:

[1]he stigma of conviction will reflect upon him for life. It hurts his self respect. It may, at some inopportune, unfortunate moment, rear its ugly head to destroy his opportunity for advancement and blast his ambition to build up a character and reputation entitling him to the esteem and respect of his fellowman.


The philosophy behind juvenile justice is rehabilitation and treatment, yet the juvenile system, to some degree, imposes crime and punishment on its former offenders. Though the statutory goal is the best interest of the child, once the child is an adult the adjudication may surface in spite of the statutes and haunt the child the rest of his adult life. See Bazelon, Racism, Classism, and the Juvenile Process, 53 Judicature 373 (1970); Mahoney, The Effect of Labeling Upon Youths in the Juvenile Justice System: A Review of the Evidence, 8 Law & Soc'y Rev. 583 (1974); see also Herget v. Circuit Court, 84 Wis. 2d 435, 267 N.W.2d 309 (1978).

5. In State v. Miller, 214 Kan. 538, 520 P.2d 1248 (1974), the problem confronting a juvenile subsequent to an adjudication was described as follows:

It is not explicitly articulated disabilities which are most troublesome to the reformed offender. It is rather the less-direct economic and social reprisals engendered by his brand as an adjudicated criminal. The vagaries of public sentiment often discriminate against persons with a criminal past, with very little regard for the severity of the offense, and they do not frequently distinguish between persons arrested and acquitted or otherwise released and persons convicted. This is particularly true in the vital matter of employment, which perhaps as much as anything influences a man's concept of himself and his worth, and accordingly influences the values which guide his conduct.

Id. at 542-43, 520 P.2d at 1252 (quoting Gough, supra note 4 at 153).

be kept confidential. The confidentiality is expected to eliminate the stigma of a finding of delinquency and to prevent the "presumably beneficient procedures [of the juvenile court from becoming] the basis for criminal records which could be used to harass a person throughout his life."^{6}

The statutes currently in existence can be grouped into three categories. The first category mandates the destruction of adjudication records of juveniles, the second requires the sealing of adjudication records, and the more limited third group contains provisions that prohibit mention of juvenile adjudications in subsequent court proceedings. All three types of statutes are intended to have the legal effect of restoring the former juvenile offender to his status prior to the wrongdoing which resulted in the adjudication.^{7}


7. State v. Miller, 214 Kan 538, 543, 520 P.2d 1248, 1253 (1974). There has been tremendous confusion about the terms "sealing" and "expungement." Often the terms are used synonymously, but they are not the same.

By an expungement statute is meant a legislative provision for the eradication of a record of conviction or adjudication upon fulfillment of prescribed conditions, usually the successful discharge of the offender from probation and the passage of a period of time without further offense. It is not simply a lifting of disabilities attendant upon conviction and a restoration of civil rights, though this is a significant part of its effect. It is rather a redefinition of status, a process of erasing the legal event of conviction or adjudication, and thereby restoring to the regenerate offender his status quo ante.

Black's Law Dictionary 522 (rev. 5th ed. 1979) defines expungement of record as a "[p]rocess by which record of criminal conviction is destroyed or sealed after expiration of time." See also 35 C.J.S. 343 (1960). The word expunged has mistakenly been used by the legislature in the labeling of statutes that merely seal the adjudication records. For example, Col. Rev. Stat. § 19-1-11 (1978), which is labeled as an expungement statute, does not in fact provide for the destruction of the juvenile adjudication record, but merely calls for sealing the records. Kan. Stat. Ann. § 38-805d (Supp. 1980); See also Utah Code Ann. § 78-31-56 (1977).

A typical statute which implicitly provides for expungement is often labeled "destruction of records." For example, in Arizona, Indiana, Florida, Missouri, North Dakota, Oklahoma, Montana and Virginia, the statutes provide for the destruction of the adjudication records. See generally infra notes 16-17. A statute typical of the destruction statute can be found in Arizona. Ariz. Rev. Stat. Ann. § 8-247(A) (Supp. 1981) which provides in pertinent part that "[o]n application of a person who has been adjudicated delinquent or incorrigible or on the court's own motion, and after a hearing, the juvenile court shall order the destruction of the files and records, includ-
There is a substantial lack of uniformity among the courts in applying these statutes. Where the statutes provide for the sealing of records, some courts have permitted them to be unsealed on the basis of exceptions written judicially into the law. Where provisions prohibit the use in evidence of a juvenile adjudication, courts have found reason to allow their circumvention. Varied and even inconsistent interpretations are the hallmark of juvenile statutes, which on their face appear unambiguous.

This article examines the existing statutes and the methods courts have used to circumvent them by allowing the introduction of adjudication records into evidence for impeachment and sentencing purposes. Section II of this article will discuss the three types of statutes which address juvenile adjudication records and will differentiate among their intended meanings. Section III will focus upon the practical effect of these statutes, identifying those situations where the courts have permitted the use of juvenile adjudications for impeachment and sentencing despite the terms of the statutes. The article will also discuss the constitutional implications of the use of such records, especially in light of the defendant’s right to confront witnesses.

8. A juvenile who has been adjudicated delinquent is supposedly shielded by virtue of statutory provisions, prohibiting the use of expunged or sealed records, from adverse effects of his juvenile court record. As Justice Musmanno pointed out, in his dissent in In re Holmes, 379 Pa. 599, 612, 109 A.2d 523, 529 (1954) such is not the case:

A most disturbing fallacy abides in the notion that a Juvenile Court Record does its owner no harm . . . . In point of fact it will be a witness against him in the court of business and commerce, it will be a bar sinister to him in the court of society where the penalties inflicted for deviation from conventional codes can be as ruinous as those imposed in any criminal court, it will be a sword of Damocles hanging over his head in public life, it will be a weapon to hold him at bay as he seeks respectable and honorable employment.


10. See generally infra notes 44-46.
II. Statutes Providing for the Confidentiality of Juvenile Records

A. Destruction of Adjudication Records

The relief afforded to the former offender often depends on the degree to which the legislature is willing to erase all traces of a juvenile adjudication. Only a few states have procedures whereby a juvenile's adjudication record is physically destroyed when he becomes an adult. One prototype of such a procedure is found in North Dakota. The statute initially requires the sealing of the delinquent child's adjudication records two years after the final disposition order and final discharge of the child from the juvenile court's jurisdiction. Sometime subsequent to sealing, the child, his parent, or his guardian may petition the court for an order destroying all orders, records, papers and exhibits relating to the child. The court must enter the order so long as the former offender has not been adjudicated a misdemeanor of a crime involving moral turpitude, a delinquent, or an unruly child since his discharge from the juvenile court's jurisdiction. The child must, in addition, have no pending criminal or juvenile proceeding when he moves to have his records destroyed.

11. In California, for example, the judge or clerk of the juvenile court or the probation officer may destroy all records, papers, minute book entries, and dockets of the proceedings of the juvenile five years after the jurisdiction of the juvenile court is terminated. All of these records and documents are microfilmed, however, prior to their destruction, which in effect makes the California statute the equivalent of a sealing statute until the person reaches the age of 38 at which time destruction of documents is mandated. See Cal. Welf. & Inst. Code §§ 826, 826.5 (West Supp. 1981).


14. Id. In North Dakota, once the records are destroyed the proceeding is treated as if it never occurred and the court, law enforcement agencies, and representative agencies must reply that no record exists regarding the person who is the subject of inquiry. The former offender may also reply in the negative to such inquiries. The juvenile court may, however, keep the records for research and statistical purposes provided all names are expunged from the records.

The records of those former offenders who do not meet the requirements enunciated in the statute, must be destroyed after ten years have elapsed from the final discharge of the juvenile from the juvenile court's jurisdiction. Id.
Although other destruction statutes take a variety of forms, the basic purpose of each is to overcome the stigma of delinquency. Thus, the statutes usually provide for the destruction not only of the adjudication of delinquency, but all other records, social histories, and court files as well. Under each statute obliteration of the juvenile record is the goal toward which the former juvenile offender is intended to strive through proof of rehabilitation. A “waiting period” of clean conduct is usually prescribed before the destruction will take place. Furthermore, in view of the extraordinary nature of the relief provided in the statutes, many exclude juvenile offenders deemed not to deserve the benefits of the statute. These exclusions often are rooted in the seriousness of the offense committed. Other statutes avoid blanket exclusions by requiring that a court determine the ex-offender to be rehabilitated before relieving him of the burden of his record.

The statutes, which by their terms provide for the physical obliteration of the juvenile’s adjudication record, are by definition intended to confer a significant practical benefit on the juvenile. There is to be no trace of the juvenile adjudication; upon reaching adulthood, the juvenile is to start with a clean slate. Nevertheless, in practice many of these statutes


16. See N.D. Cent. Code § 27-20-54 (Supp. 1979); see also Va. Code § 16.1-306 (1981) where the juvenile adjudication record may be destroyed provided the juvenile has not been found guilty of a felony. Those juveniles who are not eligible to have their records destroyed may have their records sealed and later destroyed. Those records that are sealed may, however, be opened for purposes of sentencing.


18. Although this article is concerned only with such legal consequences as impeachment and sentencing, there may be other consequences. The former offender, for example, may find that he will be discriminated against when he seeks employment and may be ineligible to join certain Armed Forces because the statute does not permit a negative response to an inquiry as to whether he has ever been adjudicated a delinquent. Lemert, The Juvenile Court—Quest and Realities, President’s Commission on Enforcement and Ad. of Just., Task Force Report: Juv. Delinquency and Youth Crime 91 (1967).

Although the FBI is not required to destroy or seal those juvenile adjudication records that are subject to the state statutes, it appears the FBI always returns such
have proven less than satisfactory in fulfilling this goal. In many states, for example, the legislature has neglected to provide a statute to complement the destruction statute which forbids the subsequent use of a "destroyed" adjudication if, perchance, its existence is known to or discovered by a third party. In this situation, a former offender may find himself punished or stigmatized by the adjudication just as if it had never been sealed or destroyed. But by and large, the destruction statutes afford juveniles the most far-reaching relief among the existing forms of adjudication-limiting legislation.

B. Sealing of Adjudication Records

Most jurisdictions have enacted statutes that merely authorize the sealing of the adjudication record\(^{19}\) after the juvenile has reached the age of majority or after the passage of a specified period of time.\(^{20}\) These statutes have proven to be inadequate in providing a shield of confidentiality for the former juvenile offender because most are riddled with exceptions. In their application the statutes create only an illusion

records to the state authorities if requested to do so. See Crow v. Keeley, 512 F.2d 752, 755 (8th Cir. 1975); Tarlton v. Saxbe, 507 F.2d 1116 (D.C. Cir. 1974); Menard v. Saxbe, 498 F.2d 1017, 1025 n.24 (D.C. Cir. 1974).

See also Note, Expungement in Ohio: Assimilation Into Society for the Former Criminal, 8 Akron L. Rev. 480, 490 (1974-75); Note, The Effect of Expungement on a Criminal Conviction, 40 S. Cal. L. Rev. 127, 140 (1967).


Under most of the sealing statutes, the records to be sealed include the court’s official records, information, and social records pertaining to the juvenile, including all criminal records against him and their punishment, with the exception of traffic offenses.


It should also be noted that like those statutes providing for the destruction of the juvenile record, not all persons are entitled to have their juvenile adjudication records sealed. For example, in New Jersey the records will not be sealed if the former juvenile offender has been convicted of a crime, disorderly conduct or adjudged delinquent since the juvenile court’s termination of jurisdiction over him. N.J. Stat. Ann 2A: 46-67a(2) (West Supp. 1981). See also N.D. Cent. Code § 27-20-54 (1979).
of confidentiality. Some, for example, permit the district attorney or any agency “caring” for the medical or psychiatric needs of the former offender to unseal and inspect the records simply by petitioning the court. Others are sufficiently ambiguous to permit the use of the sealed record for impeachment and sentencing purposes. A third group provides a catch-all mechanism for the unsealing of the record where an undefined “good cause” is shown. These afford broad judicial discretion in determining when the records should be disclosed. Case law reveals a total lack of consistency in the decisions interpreting these statutes among states and even within individual states.

One advantage inherent in many of the sealing statutes is that the former offender is permitted to respond negatively to inquiries on whether he had a prior adjudication. Court per-

21. In the case of In re Gault, 387 U.S. 1, (1967) Justice Fortas put it quite simply, “[the] claim of secrecy . . . is more rhetoric than reality.” Id. at 24.

As pointed out by authors Eager and Logermann in Juvenile Justice, 1974-75 ANNUAL SURVEY OF AMERICAN LAW 547, 549-50 n.16 (1976) the Juvenile Justice and Delinquency Prevention Act of 1974, 18 U.S.C. §§ 5031-42 (1976) (prior to 1977 amendment), permits the unsealing and release of the record upon:

(1) an inquiry from another court of law; (2) an inquiry from an agency preparing a presentence report for another court; (3) an inquiry from a law enforcement agency if the request is related to investigation of a crime or a position within that agency; (4) an inquiry from a treatment agency or an institution to which the juvenile has been committed by the court; or (5) an inquiry from an agency considering the person for a position directly affecting the national security.

Id. In 1977 the Act was amended to additionally allow release to victims of a juvenile, or to the victim’s immediate family members if the victim is deceased, of the juvenile’s record relating to the disposition of the case. 18 U.S.C. § 5038 (Supp. III 1979).

Courts are also inconsistent in their interpretation of the confidentiality and prohibiting provisions of the statutes.


23. See infra notes 47-69 and accompanying text.


25. ALASKA STAT. § 47.10.090(a) (1979); MD. CTS. & JUD. PROC. CODE ANN. § 3.828(c) (Supp. 1980); D.C. CODE ANN. § 16-2335(c) (Supp. 1981). Cf. COLO. REV. STAT. § 19-1-11(f)(1973) and UTAH CODE ANN. § 78-3a-56 (1965), which only permit the person whose records were sealed to petition for inspection of the sealed records.


sonnel and agencies are also directed to corroborate, in response to any inquiry regarding the former juvenile offender, that no record exists. Nevertheless, sealing statutes in general afford juveniles far less protection than the destruction statutes. Because the records are maintained, there are inevitably situations in which they are unsealed, inspected and used. And the “good cause” for which courts permit such unsealing has been interpreted broadly.

C. Restricted Use of Adjudication Records

The third method of handling juvenile adjudication records is to leave them unimpaired, but to restrict their use in subsequent court proceedings. Many states, in addition to providing that an adjudication shall not be deemed a conviction, prohibit the use of juvenile court records as evidence against the former offender in any court proceeding.


These statutes do not preclude an inquiry of the former offender as to whether he had had an adjudication sealed or destroyed.

29. In the case of *In re R.C.C.*, 151 N.J. Super. 174, 376 A.2d 614 (1977) the court pointed out that there is a vast difference between having a record destroyed as opposed to sealed. In explaining these differences Judge Staller stated:

The [destruction] of records is far more effective than is the sealing of records in destroying all traces of contact with the criminal justice system . . . . The [destruction] of records prevents their use by anyone, while sealed records are available on court order . . . . Additionally, later convictions do not reactivate [destroyed] records. [The Juvenile Statute] provides that a later adjudication of delinquency automatically nullifies the sealing order . . . . [S]ealed arrest records may be maintained by the law enforcement agencies originally possessing such records, while [destroyed] records may not be maintained by anyone.


31. See ALASKA STAT. § 47.10.080(g) (1979) (“The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court . . . .”); FLA. STAT. ANN. § 39.12 (West Supp. 1981) (juvenile court record is inadmissible in evidence in any other civil or criminal proceeding); MASS. GEN. LAWS ANN. Ch. 119 § 60 (West Supp. 1980) (an adjudication of delinquency is not admissible in any proceeding involving the juvenile, except subsequent delinquency proceedings or for purposes of disposition); See Deja v. State, 43 Wis. 2d 488, 168 N.W.2d 856 (1969); Berfield v. State, 458 P.2d 1008 (Alaska 1969) (Alaska has a similar statute); State v. Jones, 91
states have prohibited the use of the adjudication, "for any purpose whatsoever." In discussing these types of statutes, Professor Wigmore states:

This measure is a deduction from the modern enlightened principle of reforming the juvenile offender and then protecting him from afterwards being dragged back into the criminal class by the automatic operation of the law for habitual offenders.

But the enthusiasts for social welfare, in the framing of these enlightened Acts, have gone too far in some respects. (1) The penal treatment of such a juvenile in later years, if he appears as an adult in the Criminal Court should depend in part on his entire life-record, and for this purpose the Juvenile Court records should be usable.

(2) In charges of rape, incest, etc., where the complainant is a young girl, her credibility may be affected by her unchaste tendencies. False charges of the sort by girls of such tendencies are not uncommon. Unless that tendency is inquired into, the story becomes plausible, and many a man has probably gone to the penitentiary as the innocent victim of such tales. The juvenile court record of the complainant should unquestionably be admitted; to exclude it is a suppression of means of truth, and it is indefensible on any ground; in this aspect these statutes are unscientific and anti-social.

Notwithstanding the statutory provisions restricting the use


32. Once the juvenile adjudication records are sealed, the proceedings are deemed "never to have occurred" and the person whose record was sealed and the court may reply that no record exists with respect to the prior juvenile adjudication. COLO. REV. STAT. § 19-1-111 (1978); See also CAL. WELF. & INST. CODE § 781 (West Supp. 1980); D.C. CODE ANN. § 16-2335 (1981); KAN. STAT. ANN. § 38-805(d) (Supp. 1979); NEV. REV. STAT. § 62.275 (1979); N.M. STAT. ANN. § 32-1-45 (1981); N.D. CENT. CODE § 27-20-54 (1981); UTAH CODE ANN. § 78-3a-56 (1977); VT. STAT. ANN. tit. 33, § 665 (1981).

33. MICH. COMP. LAWS § 712A23 (1970) provides:

A disposition of any child under this chapter, or any evidence given in such case, shall not in any civil, criminal or any other cause or proceeding whatever in any court, be lawful or proper evidence against such child for any purpose whatever, except in subsequent cases against the same child under this chapter.


34. 1 J. WIGMORE, WIGMORE ON EVIDENCE 673-76 (3d ed. 1940).
of juvenile adjudication, many courts have ignored the legislative direction and followed Professor Wigmore's philosophy by permitting the subsequent use of the adjudication for impeachment and sentencing purposes.

III. SUBSEQUENT USES OF JUVENILE ADJUDICATION RECORDS

Issues involving the use of juvenile records most often arise in situations where the government or a party to a criminal proceeding seeks to introduce a juvenile record into evidence for purposes of impeachment or where the government or the trial court attempts to use the juvenile’s record in sentencing proceedings. Whether to sanction the use of juvenile records for impeachment and sentencing purposes often presents courts with difficult problems of statutory construction and conflicting policy considerations.

The concept of impeachment is grounded on the fundamental principle that the finder of fact should have the benefit of evidence bearing on the credibility of a witness. Fairness dictates that once a witness takes the stand, counsel may inquire into his general credibility. A decision totally prohibiting the use of juvenile records limits the truth-finding procedure. On the other hand, a decision permitting their use for impeachment nullifies the protections accorded juveniles and subverts the entire policy underlying the statutorily prescribed confidentiality.

Conflicting policy considerations are no less apparent in situations where there is an attempt to use juvenile records in sentencing proceedings. Traditionally, courts have considered a wide variety of factors in determining a sentence, including data and information which is generally inadmissible at trial. A sentencing judge who must balance punishment and deterrence against the rehabilitation needs of the defendant faces a difficult task generally requiring the “fullest information possible” concerning the defendant’s life and characteristics. Nevertheless, for a court to consider an adjudication which has been destroyed or sealed runs counter to the policy behind those statutes designed to give a qualifying juvenile a clean slate once he becomes an adult.

A careful examination of cases addressing the use of a ju-

---

venile record for impeachment and sentencing purposes reveals that too often judges have permitted the use of juvenile records without adequately considering the policies underlying the confidentiality statutes. Even less justifiably, some courts have allowed the use of juvenile records despite a clear statutory prohibition. If the effectiveness of the various statutes protecting the confidentiality of juvenile records is measured by the frequency with which such records are permitted to be used for impeachment and sentencing purposes, it is immediately apparent that the statutes are woefully deficient.

A. Impeachment of Defendant

Courts have been far from consistent in their decisions regarding the admissibility of juvenile adjudications for the purpose of impeaching a defendant. The courts that have excluded the adjudications have done so reluctantly, under the constraint of the clear words or express policy of a confidentiality statute. Nevertheless, while forbidding the impeachment of a defendant's credibility by the use of an adjudication record, many courts have nullified the effect of this exclusion

36. One enlightened court in explaining the reason for excluding juvenile adjudications stated:

[t]he fundamental philosophy of the juvenile court laws is that a delinquent child is to be considered and treated not as a criminal, but as a person requiring care, education, and protection. He is not thought of as 'a bad man who should be punished, but as an erring or sick child who needs help.' Thus, the primary function of juvenile courts, properly considered is not conviction or punishment for crime, but crime prevention and delinquency rehabilitation. It would be a serious breach of public faith, therefore, to permit these informal and presumably beneficient procedures to become the basis for criminal records, which could be used to harass a person throughout his life. There is no more reason for permitting their use for such a purpose than there would be to pry into school records or to compile family and community recollections concerning youthful indiscretions of persons who were fortunate enough to avoid the juvenile court.

Thomas v. United States 121 F.2d 905, 908-09 (D.C. Cir. 1941).

37. The following cases hold or recognize that a juvenile adjudication may not be used to impeach the general credibility of a witness whether or not the witness is the defendant. Cotton v. United States, 355 F.2d 480 (10th Cir. 1966); Brown v. United States, 338 F.2d 543 (D.C. Cir. 1964); Price v. United States, 282 F.2d 769 (4th Cir. 1960), cert. denied, 365 U.S. 848 (1961); Thomas v. United States, 121 F.2d 905 (D.C. Cir 1941); Hammac v. State, 44 Ala. App. 459, 212 So.2d 849 (1968); State v. Guerrero, 58 Ariz. 421, 120 P.2d 798 (1942); In Re Nash, 61 Cal. 2d 491, 393 P.2d 405, 39 Cal. Rptr. 205 (1964); People v. Hoffman, 199 Cal. 155, 248 P. 504 (1926);
by permitting impeachment through questions meant to uncover the underlying act of misconduct upon which the former adjudications were based.88 They reason that prior bad acts which are evidenced by an adjudication of delinquency or the defendant's own admission are relevant because they "throw light upon the merits, and aid in a correct solution of the issues . . . ."89 The former juvenile offender may thus find that he is questioned about the facts underlying his juvenile adjudication despite statutes designed to protect him from precisely such questioning.40

The "underlying act" method of cross-examination was allowed in People v. Vidal,41 where the defendant was questioned about two offenses that he committed when he was a juvenile.42 The court stated: "While the [Code] may bar use of the adjudication per se to impeach, [it does not] preclude cross-examination based on the underlying immoral act."43 In


40. See State v. Marin, 139 Ohio St. 559, 41 N.E.2d 387 (1942) where the court felt that the purpose of a trial was to determine the truth and a rule prohibiting the prosecutor from questioning the defendant regarding the prior adjudication would allow the defendant to deceive the court and accomplish a miscarriage of justice.


42. The two offenses involved possession of two forged auto licenses and an assault on a police officer. Section 913-n of the New York Code of Criminal Procedure provided that "no youth shall be denominated a criminal by reason of such determination nor shall such determination be deemed a conviction." Id. at 257 N.E.2d at 880, 309 N.Y.S. 2d at 340.

43. Id. at 253, 257 N.E.2d at 889, 309 N.Y.S.2d at 340. See also United States v. Canniff, 521 F.2d 565 (2d Cir. 1975), cert. denied, 423 U.S. 1059 (1976). For cases which declare that being adjudged a juvenile delinquent in a federal court is not
sustaining use of the facts underlying an adjudication for impeachment, other courts have similarly maintained that the defendant is not being impeached with the adjudication in violation of the statute, but rather he is only cross-examined regarding an "immoral, vicious or criminal [act] of his life," which bears on his credibility as a witness.44

As a result of these narrow judicial interpretations of destruction and sealing statutes, a juvenile may find that a statute that leaves his adjudication unimpaired but provides that the adjudication should not be used as evidence affords him more protection than a destruction statute.45 This result flies
in the face of the underlying purposes of the various state statutes intended to protect juvenile records from disclosure. The statutes enunciate a policy of distinguishing between juvenile adjudications and adult criminal convictions and mandate that the juvenile adjudications be more sparingly used. Thus, where the statutes either expressly prohibit the use of juvenile adjudications in subsequent proceedings or seal or destroy the adjudication, it is wholly inappropriate to circumvent the express intent by permitting the adjudication's use for impeachment purposes under the pretext that the underlying facts and not the adjudication itself are being introduced. The better rule would be to exclude all evidence of the adjudication and the underlying facts whenever the former offender is a defendant in a criminal proceeding. Since the purpose of the confidentiality statutes is to permit rehabilitation without stigma of a prior record, the former offender should be insulated from all disabilities attaching to his prior, and presumably forgiven, criminal acts.

B. Impeachment of Witnesses

Somewhat different considerations obtain where the witness sought to be impeached is not a defendant and therefore has less to lose by the resurrection of his juvenile adjudication. Where a person is a witness, as opposed to a defendant in a criminal court proceeding, he is not likely to be injured by the impeachment beyond some limited embarrassment. The defendant on the other hand stands to lose his liberty if the jury fails to believe his testimony after hearing of his juvenile adjudication. The courts have, therefore, drawn the logical distinction and have permitted the non-defendant to be impeached more freely.

515 P.2d 1205 (1973); See also State v. Matthews, 6 Wash. App. 201, 492 P.2d 1076 (1971) where the court disallowed use of a juvenile adjudication record to impeach the defendant, distinguishing the case from one allowing use of such records to impeach a character witness.

47. See People v. Meadows, 46 Mich. App. 741, 208 N.W.2d 593 (1973) (statutory provision prohibiting the use of a juvenile adjudication from being used as evidence, was construed as only applying to defendants and not adverse witnesses). See also People v. Yacks, 38 Mich. App. 437, 196 N.W.2d 827 (1972); People v. Basemore, 36 Mich. App. 256, 193 N.W.2d 335 (1971); People v. Davies, 34 Mich. App. 19, 190 N.W.2d 694 (1971).

48. See 3A J. WIGMORE, EVIDENCE 834 (rev. ed. 1970) "It would be a blunder of policy to construe these statutes [forbidding use of juvenile records 'against the child']
Although Michigan statute prohibited the use of a “disposition” of any child for any evidentiary purpose in any court except juvenile court, the court, nevertheless, in People v. Smallwood, held that this statute did not foreclose the defendant in a statutory rape case from questioning the complainant as to whether she had previously been in trouble as a juvenile. The court justified its decision by stating that the question did not refer to the “disposition of the child” or any “evidence given in the case,” thus concluding that the defense was attempting to ascertain, rather than impeach, her credibility.

The United States Supreme Court’s decision in Davis v. Alaska, appears to support the validity of this distinction at least where it is made in the context of a criminal trial. The Court held that the failure to allow a criminal defendant to impeach an adverse witness for bias by revealing the witness’ juvenile record violated the defendant’s sixth amendment right of confrontation.

In Davis, the defendant was accused of grand larceny and burglary of a safe. The key witness for the prosecution, Green, identified the defendant as one of two men present in the area where the safe was found. Green had previously been adjudicated delinquent for burglary and was on probation at the time of trial. The defense in an attempt to show bias on the part of Green, requested an opportunity, to cross-examine him in any other court] as forbidding the use of such proceedings to affect the credibility of a juvenile when appearing as a witness in another court.” But see Hammac v. State, 444 Ala. App. 459, 212 So.2d 849 (1968); State v. Wilson, 1 Wash. App. 1001, 465 P.2d 413 (1970); Banas v. State, 34 Wis. 2d 468, 149 N.W.2d 571, cert. denied, 389 U.S. 962 (1967).


50. Id. Other courts have held that there is no reason for excluding the adjudication. See People v. Basemore, 36 Mich. App. 256, 193 N.W.2d 335 (1971); People v. Davies, 34 Mich. App. 19, 190 N.W.2d 694 (1971); State v. Searle, 125 Mont. 467, 239 P.2d 995 (1952).


52. Id. at 320. U.S. CONST. amend. VI provides in part: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” In reversing the lower court’s exclusion of the witness’ adjudication record the Supreme Court thus laid down a rule of constitutional law requiring trial courts to override state statutes forbidding the use of juvenile adjudications.

53. 415 U.S. at 309-10.

54. Id. at 310-11.
regarding his juvenile record. The prosecutor sought a protective order to prevent any reference to Green’s record and the trial court granted the motion. The Supreme Court reversed the conviction due to the restrictions placed on the defendant’s cross-examination of Green regarding his probationary status. While admitting the legitimacy of the state interest involved, the Court held that: “[t]he State’s policy interest in protecting the confidentiality of a juvenile offender’s record cannot require yielding of so vital a Constitutional right as the effective cross-examination for bias of an adverse witness.”

The Court repeatedly distinguished between the use of a prior adjudication merely to show lack of truthful character and its use to show bias or motive:

We granted certiorari in this case to consider whether the Confrontation Clause requires that a defendant in a criminal case be allowed to impeach the credibility of a prosecution witness by cross-examination directed at possible bias deriving from the witness’ probationary status as a juvenile delinquent when such an impeachment would conflict with a State’s asserted interest in preserving the confidentiality of juvenile adjudications of a delinquency.

In a concurring opinion, Justice Stewart emphasized, “that the Court neither holds nor suggests that the Constitution confers a right in every case to impeach the general credibility of a witness through cross-examination about his past delinquency adjudications or criminal convictions.” Some courts have overlooked this caveat and have applied the Davis ratio-

55. *Id.* at 311. The court stated “[a] more particular attack on . . . credibility” occurs when impeachment is used to reveal bias as opposed to the disclosure of a prior conviction. *Id.* at 316.
56. *Id.* at 311 n.1. The trial court relied on the ALASKA RULE OF CHILDREN’S PROCEDURE and the Alaska statute concerning the admissibility of juvenile adjudication. The rule provided in pertinent part: “no adjudication, order, or disposition of a juvenile case shall be admissible in a court not acting in the exercise of juvenile jurisdiction except for use in a presentencing proceeding in a criminal case where the superior court in its discretion, determines that such is appropriate.” ALASKA RULE OF CHILDREN’S PROC. 23.

The Alaska statute provided in part: “the commitment and placement of child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court.” ALASKA STAT. § 47.10.080 (1979).
57. 415 U.S. at 320.
58. *Id.* at 309.
59. *Id.* at 321 (Stewart, J., concurring).
nale blindly in all situations involving impeachment by a juvenile adjudication.

The significance of the *Davis* opinion lies in what it fails to contain. While admitting the legitimacy of the state interest involved, the Court's holding that the state "cannot, consistent with the right of confrontation, require the petitioner to bear the full burden of vindicating the State's interest in the secrecy of juvenile criminal records," did not articulate meaningful guidelines for accommodating these conflicting interests. Additionally, while *Davis* seems to approve of broader impeachment of a witness, its constitutional ruling is a narrow one.

In *People v. Eatherly*, for example, the Illinois Appeals Court, in upholding the trial court's decision prohibiting the defense from impeaching a witness with a prior juvenile adjudication, held that *Davis* did not remove all restrictions from the use of juvenile records in cross-examining a prosecution witness. In barring the cross-examination, the court cited Illinois' policy of confidentiality of juvenile records and noted that "in determining the permissible scope of cross-examination in such cases the trial court should balance the importance of the juvenile's testimony to defendant's case against the state's policy of preserving the anonymity of a juvenile's record." Since the prosecution witness was not the only witness to the crime, not the crucial identification witness as in *Davis*, the court affirmed the trial court's decision.

Similarly in *Commonwealth v. Santos*, a case involving rape, unnatural sexual intercourse and kidnapping, the complainant had a juvenile record which had been sealed pursuant to a state statute. At the time of trial, she was not on probation nor did the defense contend that she had any motive to please the prosecution. The defense sought to impeach her with her past juvenile record. The Supreme Judicial Court

60. *Id.* at 320.
62. See Ill. REV. STAT. ch. 37, §§ 702-09 (1969); which provided: "[n]o adjudication, disposition or evidence given in proceedings under the Act is admissible as evidence against the minor for any purpose whatsoever in any civil, criminal or other cause or proceeding except in subsequent proceedings under this Act concerning the same minor."
63. 78 Ill. App. 3d at 784, 397 N.E.2d at 538.
64. 376 Mass. 920, 384 N.E.2d 1202 (1978).
of Massachusetts, relying on *Davis*, affirmed the defendant's conviction holding that the considerations of *Davis* were not present. The court noted that some of the critical factors that aid a court in determining whether the juvenile record should be used are: "(1) the probationary status of the witness (2) some suspicion focusing on the witness, and (3) the witness' motives to please the prosecution."  

In *Lewis v. United States*, the District of Columbia Court of Appeals, although using a different approach, held that under some circumstances impeachment of a witness' general credibility may be permitted. The appellant contended that the trial court erred in failing to require the government to produce at trial all impeachable convictions of the government's witnesses including juvenile adjudications. The District of Columbia Court of Appeals, despite a strong statutory policy favoring confidentiality, held that when the impeachment of the witness' general credibility is likely to be material to the outcome of the trial, the defendant, as a matter of due process, was entitled to the juvenile adjudications for that purpose.

---

66. The court distinguished one of its previous cases, Commonwealth v. Ferrara, 368 Mass. 182, 330 N.E.2d 837 (1975), where the same statutory mandate in *Santos* operated to permit the defense to examine the records of the juvenile offenses of a prosecution witness. Unlike the witness in *Santos*, the witness in *Ferrara* was 14 years old at the time of the trial and had multiple charges and an adjudication from the time he was 12 years old. Additionally, the considerations in *Davis*, such as bias were present in *Ferrara*.


69. The *Lewis* Court relying on *Brady v. Maryland*, 373 U.S. 83 (1963), held that:

[1] If on the basis of the government's representation—or later on the basis of the witness' testimony at trial—the court concludes that the juvenile adjudication goes to bias, the court shall order its disclosure to the defense.

[2] If the court concludes, prior to completion of the witness' testimony, that the adjudication does not go to bias, the court shall withhold it from the defense unless the court becomes convinced that impeachment of the witness on the basis of the adjudication is likely to be material to the outcome. In that case the court shall order its disclosure to the defense.

In sum, Eatherly, Santos and Lewis suggest quite properly that Davis did not eliminate all restrictions on the use of prior juvenile adjudications for impeachment purposes in criminal proceedings. More importantly, these cases suggest that only a demonstrable showing of prejudice of constitutional dimension can overcome the presumption of confidentiality of juvenile adjudications.

Some courts, however, extended the limited holding of Davis far beyond that justified by the Court's narrow ruling. For example, in State v. Cox,70 the Supreme Court of Ohio held that the state's policy of maintaining the confidentiality of juvenile records must yield to a criminal defendant's right to present all relevant and probative evidence that pertains to a specific material issue in the case.71 The court's decision constituted a compromise of Davis' significance. Although prohibiting a fishing expedition into the witness' juvenile background, it nevertheless allowed the defendant to impeach the witness without any showing by the defense that the witness was biased or had a motive to give false testimony. In New Jersey v. Ramos,72 the court granted a defendant's pre-trial motion in a murder case for the disclosure of juvenile charges against a state witness despite a statute which precluded reference to a former offender's juvenile record. The appellate court upheld the decision and concluded that effective cross-examination under Davis "cannot be sensibly met without permitting the examination not only of the 'probation status' of the juvenile but also of the charge upon which it is based."73

Although Davis established the principle that a criminal defendant's constitutional right to confrontation may be violated by refusal to allow impeachment of a key prosecution witness by using his juvenile record, Davis did not hold that a juvenile's record is always admissible to impeach a witness' credibility. The concurring opinion of Justice Stewart specifi-
cally states that there is no right in every case to impeach a witness with past adjudications of delinquency.\textsuperscript{74}

The most serious misreading of \textit{Davis} is found in the Supreme Court of Kansas' opinion in \textit{State v. Wilkins}.\textsuperscript{75} There, the court interpreted \textit{Davis} as altering the procedures for cross-examining a juvenile witness who testified for the defense, despite a statute which provided for the confidentiality of juvenile records.\textsuperscript{76} The prosecutor sought to impeach the defense witness with his prior juvenile record of burglary and theft. The local court refused to issue a protective order against the use of the juvenile record. After examining \textit{Davis}, the court concluded that the rule permitting the use of a juvenile's record is a double-edged sword.\textsuperscript{77} The court reasoned that if the rule applies to a prosecution witness, then it applies to a defense witness.

\textit{Wilkins} and similar decisions have emasculated the importance of the juvenile statutes in their handling of juvenile adjudication records. There is no question that where a statute providing for the confidentiality of juvenile records conflicts with the Constitution, the statute must yield. The court's use of \textit{Davis}, however, was improper in that it overlooked the limited nature of Chief Justice Burger's holding that the State's interest in protecting the anonymity of the juvenile offender is outweighed by the defendant's sixth amendment right of confrontation. The state has no corresponding constitutional right to confront witnesses, nor does \textit{Davis} create such a right.

In addition to the constitutional aspects of impeaching a witness with juvenile adjudication records, there are personal factors which must be taken into consideration. Allowing the impeachment of a witness may produce significant untoward effects upon the witness including embarrassment, making the witness relive the past, and making public what had been secret for a long time.\textsuperscript{78} Some courts have ignored these negative effects of impeachment and erroneously construed \textit{Davis} so as to permit free impeachment of witnesses with prior juvenile adjudications. Unfortunately, \textit{Davis} and its progeny have

\begin{itemize}
\item \textsuperscript{74} 415 U.S. at 321 (Stewart, J., concurring).
\item \textsuperscript{75} 215 Kan. 145, 523 P.2d 728 (1974).
\item \textsuperscript{76} \textsc{Kan. Stat. Ann.} §§ 38-801, 38-815(g) (1973).
\item \textsuperscript{77} 215 Kan. at 149-50, 523 P.2d at 732.
\item \textsuperscript{78} \textit{State v. Guerrero}, 58 Ariz. 421, 120 P.2d 798 (1942).
\end{itemize}
opened the door for these courts to find a seemingly legitimate way of circumventing the state's policy decision to rehabilitate juvenile offenders rather than to punish them. Accordingly, the effectiveness of the statutes, has been drastically diminished.

*Davis* represents a significant qualification on statutes protecting the anonymity of juvenile offenders. Yet, as the state courts have applied the decision, it has had far more significant ramifications than intended by the Supreme Court. *Davis* by its terms has no effect where the former juvenile offender is the defendant since constitutional dimensions are lacking. Contrary to the court's opinion in *Wilkins*, *Davis* does not apply when a former offender testifies for the defendant. It is apparent in viewing the factual circumstances surrounding *Davis* that its holding cannot extend beyond the circumstances at issue in *Davis* to establish a rule embracing other situations.

For purposes of impeachment, a defendant should be permitted to use the adjudications only in two narrowly circumscribed situations: first, to establish bias or motive to testify falsely, and second, if the adjudication is likely to be material to the outcome of the trial. In the absence of these considerations, statutes which protect a juvenile's record from disclosure should not be construed to permit access to the records in order to impeach the general credibility of the former offender.

C. **Sentencing**

Even in those states that prohibit the use of a juvenile adjudication as evidence against the former offender, little protection is afforded if the former offender is subsequently convicted of a crime. Most courts permit the sentencing judge to consider the juvenile court records when imposing sentence. For example, in *Commonwealth v. Myers*, the defen-

---

R.I. 527 304 A.2d 891 (1973); Walker v. State, 493 S.W.2d 239 (Tex. 1973); State v. Dainard, 85 Wash. 2d 624, 537 P.2d 760 (1975). But see People v. Crable, 80 Ill. App. 2d 243, 225 N.E.2d 76 (1967) (sentencing judge cannot consider the defendant's stay at a state training school when he was a juvenile in determining the sentence to impose); Carlin v. State, 254 Ind. 332, 259 N.E.2d 870 (1970) (if defendant's juvenile record had been destroyed pursuant to statutory provisions it would not have appeared in the presentence investigation report); Garcia v. State, 571 P.2d 606 (Wyo. 1977) (prior juvenile record that had been expunged is presumed to have been disregarded by the sentencing judge since it was improper to consider and the judge said he would not consider it).

Many of the sealing statutes are silent on the use of the juvenile adjudication at sentencing, while others explicitly permit their use. Alaska permits the use of sealed records for a presentencing report. ALASKA STAT. § 47.10.090(a) (1975); Colorado provides that any future inspection of the sealed records can only be made upon petition by the person whose records were sealed and only to those persons named in the petition. COLO. REV. STAT. § 19-1-111 (1978); Maryland permits the unsealing for good cause shown. MD. CTS. & JUD. PROC. CODE ANN. § 3.828(c) (1980); Nevada permits the inspection of the records by the district attorney or an attorney representing a defendant in a criminal action to obtain information relating to a person involved in the incident recorded. NEV. REV. STAT. § 62.275 (1979); New Jersey nullifies the sealing order if the former offender is convicted of a crime subsequent to their sealing. N.J. STAT. ANN. 2A: 4-67(e) (Supp. 1981); South Dakota permits inspection of the sealed records for sentencing purposes on a felony charge. S.D. CODIFIED LAWS ANNOUNCED 1978 § 26-8-57 (Supp. 1981); Utah permits inspection of the sealed records upon petition by the person who is the subject of the records and only to persons named in the petition. UTAH CODE ANN. 78-3a.56 (1977). See generally VT. STAT. ANN. tit. 33 § 665 (1981).


81. At the time of sentencing the defendant's juvenile record was brought to the attention of the sentencing judge. The judge also had personal knowledge of the defendant's record since four years previously he had placed the defendant on probation for burglary. At the sentencing, the judge addressed the defendant as follows:

This Court tried to help you many years ago by placing you on probation when you were charged with burglary as a boy. You committed a serious crime there . . . . This Court was so anxious to help you and to make a man of you that instead of sending you away, as we might have done, we placed you on probation in [the] charge of Miss Bright, the Probation Officer. We did not hear any more about you after that until this occurrence here. That should have taught you several things. It should have taught you in the first place, that it is foolish, it is stupid, it is just plain dumb, to commit crimes. There is nothing gained by it. You are no richer than you were because of these crimes. Everybody that knows you will now despise you. They will look down upon you. Everybody of any intelligence, everybody of any standing or decency now looks down upon you as just a stupid, common criminal. Now can you think of anything that could be said in your favor? I can't think of anything.

position of a child or any evidence given in a juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court.'"82

Ignoring this statute, the Supreme Court of Pennsylvania held that the statute did not apply in the sentencing context because the judge was entitled to all of the material facts to assist him in determining the character of the defendant and what penalty to impose.83 The court based its decision on the definition of the word "evidence" which is "[a]ny species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties . . . for the purpose of inducing belief in the minds of the court or jury as to their contention,"84 thus concluding that since the juvenile records were only testimony and not evidence they were not prohibited by the statute.85

Even in those few states which prohibit the use of the adjudication "for any purpose whatsoever," the courts have circumvented the statutes by construing them so as to permit the sentencing judge to consider the juvenile history of the adult offender.86 In People v. McFarlin,87 for example, the Supreme Court of Michigan reversed a decision of the Michigan Court of Appeals which prohibited the use of the juvenile record for the purpose of sentencing88 based on its belief that evidence of the record was necessary to enable the sentencing

82. Id. at 174 n.1, 126 A.2d 487 n.1.
84. BLACK'S LAW DICTIONARY 656 (4th ed. 1951).
88. "A judge needs complete information to set a proper individualized sentence." 389 Mich. at 574, 208 N.W.2d at 513.
court to balance society's needs for protection and to maximize the possibility of rehabilitation for the offender.\textsuperscript{89} Inherent in this decision was the court's belief that an adult offender's prior juvenile history may reveal a pattern of behavior that was not susceptible to previous rehabilitative efforts\textsuperscript{90} and that the sentencing court should be aware of this pattern.

A different approach is apparent in \textit{State v. Radi},\textsuperscript{91} where the sentencing judge took into consideration the defendant's juvenile court record. The appellate court noted that the purpose of the statute regarding juvenile records was merely to prevent public dissemination once the juvenile was no longer a minor. The court thus approved use of the adjudication records for sentencing, noting "[t]here would seem to be no other purpose in maintaining the sealed records of the youth court over a period of at least ten years if they were not to be used in considering the sentencing of an individual later as an adult."\textsuperscript{92}

Even where records of a juvenile adjudication have been destroyed pursuant to statute, the courts have on occasion sanctioned use of the adjudication in sentencing where it is brought to the sentencing judge's attention by means independent of the record. In \textit{State v. Corral}\textsuperscript{93} the sentencing judge had, by independent means, learned of the defendant's juvenile record and had considered that record in sentencing the defendant as an adult. On appeal, the court upheld the sentencing judge, ruling that the judge's actions were no different from the case where the sentencing judge had initially sentenced the defendant as a juvenile. The court noted that

\textsuperscript{89}. \textit{Id.}

\textsuperscript{90}. See Annot., 64 A.L.R.3d 1291 (1975) for a list of jurisdictions which support this view.

\textsuperscript{91}. 168 Mont. 451, 604 P.2d 318 (1979).

\textsuperscript{92}. \textit{Id.} at 454, 604 P.2d at 322. At the time of sentencing the defendant was thirty-four years old and had an extensive criminal record.

\textsuperscript{93}. See generally D.C. CODE ANN. § 16-2335(e) (1981) (will nullify any sealing order if the individual is convicted of a felony subsequent to sealing); \textit{Kan. Stat. Ann.} § 38-805(d) (Supp. 1980) (allows a sentencing judge to consider the sealed record); \textit{N.M. Stat. Ann.} § 32-1-45 (1978) (permits the setting aside of the sealing order if the former offender is subsequently convicted of a crime).
the destruction statute could not erase the judge's memory.94 At least one court has adopted a different view. In Garcia v. State,95 the defendant appeared before the court for sentencing, having been convicted of assault and battery with intent to commit rape. The presentence investigation report referred to his prior juvenile adjudication which had been expunged. As in Corral, the court thus became aware of the destroyed record by independent means. The sentencing judge, without considering the admissibility of the prior juvenile record, held that it would be inappropriate for him to consider anything the presentence investigation report referred to with respect to the expunged juvenile record,96 even though, as in Corral, he could not erase his knowledge of it.

Garcia presents the better rule. If statutes which provide for the confidentiality of juvenile records are to be effective, courts should be prevented from considering the defendant’s past juvenile record for purposes of determining what sentence to impose.97 Use of the records circumvents the statutory prohibition and penalizes the defendant for a juvenile confrontation with the law.

IV. Conclusion

If the statutes protecting the confidentiality of juvenile records are to have their intended effect of restoring the former juvenile offender to his status prior to the adjudication, then the use of juvenile records for purposes of impeachment

94. An independent ground for the Corral decision is evident. At the time the defendant’s juvenile record was destroyed, he had pending a new criminal charge. Since one of the predicates for application of the destruction statute was the juvenile’s freedom from further involvement in the criminal justice system, his records were mistakenly destroyed. It was, therefore, particularly appropriate for the sentencing judge to rely on the defendant’s juvenile adjudication.

95. 571 P.2d 606 (Wyo. 1977).

96. The Court in Garcia did not specifically address the admissibility of the expunged record but merely stated that: “the rule generally is that in such proceedings the trial court is presumed to have disregarded improper information presented in connection with the sentencing proceeding.” Id. at 608. See also People v. Reno, 17 Ill. App. 3d 348, 308 N.E.2d 3 (1974); People v. Bauer, 111 Ill. App. 2d 211, 249 N.E.2d 859, cert. denied, 397 U.S. 1022 (1969).

97. See Carlin v. Burns, 254 Ind. 332, 259 N.E.2d 870 (1970) where the sentencing judge considered the juvenile record of the defendant contained in a presentence investigation. The court held that only because the defendant's records had not been destroyed as mandated by statute, was the sentencing judge's ruling not reversible on this point.
should be limited.

Where a state statute prohibits the use of juvenile records in other judicial proceedings, either by way of specific provisions or indirectly by sealing or destroying these records, courts should prohibit their use for impeachment purposes against both a defendant and a defense witness. Where the records are used to impeach a prosecution witness' general credibility, the resolution of the issue of whether this adjudication should be admitted depends on the purpose of the impeachment and its potential significance in the litigation. If the impeachment is for the purpose of revealing a witness' bias because of a juvenile adjudication or his delinquency status, courts should permit their use. Even if this purpose is evident, however, impeachment should not be permitted unless it is likely to be material to the outcome of the trial. Under all other circumstances, impeachment through use of juvenile adjudications is inappropriate.

Since these statutes "are based on the philosophy that fallen men can rise again and should be helped to do so" their use must also be prohibited at sentencing. If the purpose of these statutes is to prevent the "noncriminal rehabilitative proceeding" from stigmatizing the offender or finding its way into an adult proceeding, use of a juvenile record at sentencing directly contradicts the statutes' goals.

Judicial circumvention of explicit statutory language prohibiting the use of juvenile adjudication records undermines the public policy which favors rehabilitation and ultimate eradication of past mistakes. Legislators should be aware of the circumvention methods used by the courts and the ultimate effects of such action when drafting proposals regarding juvenile records. If, however, it is the intent of a particular state legislature to allow use of adjudication records in subsequent proceedings, the statutory language should precisely indicate when such records may be used and under what circumstances.


99. In those cases where the courts have declared that the use of the juvenile adjudication is error, rarely are those cases reversed, since the error only affects the defendant's sentence which can be modified in some cases at the appellate level. See People v. Crable, 80 Ill. App. 2d 243, 225 N.E.2d 76 (1967).