



Juvenile Justice 21

Information Sharing and Juvenile Justice in Minnesota Practitioner's Guide



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Dear Juvenile Justice System Practitioner,

We are pleased to share this guide and its accompanying report with you. Information sharing laws have been a long-standing area of confusion for professionals working with youth in the delinquency system here in Minnesota.

We hope that, as you work to support youth and their families, the guide and report will help you to understand these laws, and gain a better understanding of the risks and other barriers to juvenile information sharing. The formal barriers (federal and state laws; local policies) can at times create challenges for collaborating with our colleagues, but they exist to protect the privacy of vulnerable young people.

Information sharing can be helpful for supporting youth, and we cannot let misunderstanding of the law be a barrier to collaborating with other entities and professionals that serve them. But we must work to mitigate the risks of information sharing even when it happens within the bounds of the law, and make sure they are understood by all involved—including the youth impacted, their families, and communities. Distrust of the system, especially by families and communities of color who have experienced real harms, is understandable, and we must always work alongside them in serving our youth.

Finally, the risks of juvenile information sharing in the delinquency system should remind us to continually seek to prevent juvenile delinquency involvement in the first place.

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Introduction

Information sharing is central to coordination and collaboration on behalf of youth involved in Minnesota's juvenile justice system. Information sharing refers to the collection and disclosure of personally identifiable information about individual children and their families, both within the juvenile justice system and across agencies and systems. A number of factors have elevated the topic of information sharing in importance, including a large number of Minnesota youth involved in juvenile justice and welfare systems, advances in knowledge about the developmental needs of youth, and a desire to address the complex and varied needs of many system-involved youth.

Information sharing can take multiple forms: multi-disciplinary teams that bring together stakeholders from across systems, youth, and families at key decision points; a unified information management system; or the use of liaisons to identify youths' potential cross-systems involvement. It can be formalized in memoranda of understanding, interagency policies and protocols, or blended funding streams that leverage funds from multiple agencies to support shared services. Information sharing can also transpire outside of collaborative, cross-agency programs. In these instances, information is requested on a one-off basis, without the support of a system-wide protocol that could streamline the work.

While information sharing has been a focus of state initiatives in Minnesota as far back as 2007, many questions for juvenile justice professionals remain. To address the need for greater clarity on the topic of information sharing, the 2018 Juvenile Justice 21 (JJ21) project analyzed the barriers, risks, and best practices involving information sharing in Minnesota's juvenile justice system. The project incorporated findings from research, thirty interviews with juvenile justice stakeholders across Minnesota, and an in-depth analysis of federal and state data practices laws. A group of juvenile justice and data practices experts helped to guide the work and identify next steps.

The report "Information Sharing and Juvenile Justice in Minnesota" details the findings from this analysis. The report describes the formal and informal factors affecting information sharing, outlines the risks of information sharing and strategies for mitigating those risks, and highlights innovative practices and steps forward for Minnesota's juvenile justice field. Below, we highlight the report's key findings.

Formal and Informal Factors Affecting Information Sharing

The laws regarding information sharing are in federal laws and regulations, state statutes and administrative rules, and local policies and practices. These formal factors affecting information sharing appropriately limit the disclosure of information to protect the privacy of youth. Although exceptions

About this guide

This guide is a practical aid for juvenile justice professionals to understand juvenile information sharing in Minnesota. It is based on the 2019 report "Information Sharing and Juvenile Justice in Minnesota," by Arielle Edelman McHenry and Robin Phinney. We recommend using this guide together with the full report, which contains additional detail and information that is necessary for appropriately sharing information on behalf of youth and their families.

exist, information about youth who are involved in the justice system is generally considered private data that cannot be disclosed without consent.

However, information sharing is permitted in certain circumstances by statute and through mechanisms such as informed consent release and court order. **Pages 5-9 of this guide outline the laws and regulations that shape case-level information sharing and data sharing more broadly**, in five areas: within juvenile justice, between juvenile justice and education systems, between juvenile justice and health entities, between juvenile justice and substance use disorder treatment entities, and between juvenile justice and welfare systems.

Although federal and state laws permit information sharing in certain circumstances, interviews with stakeholders indicate that there is a lack of knowledge about the type of information that can be shared, with whom, and when. The interviews also suggest informal factors that affect information sharing on behalf of system-involved youth: risk aversion from frontline staff as well as leadership, organizational structures that create departmental and program silos within units of local government, organizational dynamics involving funding and turnover, inability to obtain parental consent to information sharing. Finally, there is skepticism among some stakeholders about the benefits of information sharing, particularly for youth of color.

Mitigating the Risks of Information Sharing

Both research and stakeholder interviews make clear that information sharing poses risks for youth and their families, even when information is shared appropriately and within the confines of the law. These risks are particularly acute for youth of color, who are disproportionately represented in Minnesota's juvenile justice system. **Pages 10-12 outline the risks of information sharing as well as practitioner- and policy-level strategies for mitigating those risks.**

While information sharing poses risks, it is sometimes also important for working with youth who are involved in multiple systems. Across Minnesota, there are examples of local entities utilizing formal mechanisms to share information in order to better coordinate services or collaborate on behalf of youth involved in multiple systems. These partnerships involve both formal programs such as the Crossover Youth Program, as well as informal collaborative efforts. Analysis of these programs reveals that "successful collaborations" tend to feature buy-in from key stakeholders; tailoring to local context; personal relationships between departments and programs; partner engagement; specialization; leadership with varied perspectives; and legal mechanisms that define the partnership.

Moving Forward in Juvenile Justice

The full report reveals the complexity of the topic of information sharing. On the one hand, information sharing between agencies can connect youth in multiple systems to appropriate services, thereby supporting a youth's rehabilitation. In this way, information sharing can be protective of youth who are justice system-involved. On the other hand, information sharing between agencies comes with risks, particularly for youth of color.

As Minnesota continues to expand information sharing programs and collaboration within juvenile justice, it is important to consider variable and potentially differing perspectives in order to improve outcomes for youth while mitigating the risks of information sharing for youth of color in particular.

Practitioner's Guide to Information Sharing Laws

Information Sharing within Juvenile Justice

Records that are created and maintained by law enforcement (“peace officer records of children”) are classified as private data that can be released in certain circumstances including with a court order. In jurisdictions with a juvenile diversion program,¹ law enforcement is permitted to provide the diversion program with information concerning a youth who is being considered for participation in that program.²

Minnesota law requires juvenile courts to keep and maintain records pertaining to delinquent adjudications until a person reaches the age of 28. On request, the court is permitted to provide copies of these records to law enforcement agencies, probation officers, and corrections agents if the court finds that it is in the best interest of the child or serves public safety to do so.³

Data that are created and maintained as part of the state’s conditional release data system are classified as private data on individuals.⁴ These data can be accessed by criminal justice agencies, public defenders, and trial and appellate courts in the state.⁵ Data involving case planning are accessible to detention staff and corrections staff. In addition, a finalized case plan can be provided to community service providers for the purposes of monitoring and enforcing the conditions of conditional release programs.⁶

Finally, with the exception of the child and/or parents, any person who receives access to private juvenile court or peace officer records is not permitted to release or redisclose the records unless authorized to do so by law.⁷

Note for Practitioners

Much of the information that is collected from youth in the juvenile justice system is classified as private. As a result, the disclosure of information about a particular youth typically requires authorization and/or individual consent.

If state law authorizes the disclosure of information that is otherwise categorized as private, then it is legally permissible to share this information. However, local units of government (including schools) may have stricter practices regarding when and how that information can be disclosed. For this reason, we recommend obtaining guidance from a local expert, such as a county attorney.

Practitioner's Guide to Information Sharing Laws

Information Sharing between Juvenile Justice and Education

In general, parents (or students if aged 18 or older) are granted authority to release educational data.⁸ Consent is typically required for schools to disclose information to the juvenile justice system.⁹

Exceptions include (*note: not a complete list of exceptions*):

- In response to a court order¹⁰
- In a health or safety emergency¹¹
- If information about the behavior of a student who poses a risk of harm is necessary to protect the health/safety of student or others¹²
- Prior to adjudication, in the following circumstances: the disclosure is made to state/local juvenile justice officials and pertains to the ability of the officials to effectively serve a student prior to adjudication, and the officials certify in writing that those receiving the information will not disclose it to a third party outside of the juvenile justice agency.¹³

In addition, schools must release the following to the juvenile justice system upon request: a student's full name, home address, phone number, date of birth, school schedule, daily attendance record, any photographs, and parents' names, addresses, and phone numbers.¹⁴ Schools are permitted to share the existence of certain data, such as use of a controlled substance and assaultive or threatening conduct.¹⁵ Note that this law permits schools officials to disclose the existence of data, not the data itself.

Finally, schools are required to share:

- Suspected maltreatment of a child¹⁶
- If school medical staff treat a student for an injury resulting from a firearm or other dangerous weapon¹⁷
- If a student possesses an unlawful firearm¹⁸
- If the records of a student reported as missing are requested.

Law enforcement and juvenile probation officers are also required to share certain information with schools.¹⁹

Practitioner's Guide to Information Sharing Laws

Information Sharing between Juvenile Justice and the Welfare System

Welfare data includes data that are collected, maintained, or disseminated as part of an individual's participation in programs that are part of the "welfare system." Such programs include, but are not limited to, programs within social service agencies, county welfare agencies, and county public health agencies.²⁰ Minnesota law defines welfare data as private data that is not to be disclosed except in certain circumstances.

These circumstances include (*note: not a complete list of exceptions*):

- Subject to a court order²¹
- To the appropriate parties in connection with an emergency, if the information is necessary to protect the health and safety of the individual or other individuals²²
- To county correctional agencies to coordinate services and diversion programs. This information is limited to name, client demographics, program, case status, and county worker information.²³

In addition, some information (such as address) can be disclosed to law enforcement in certain circumstances, such as when law enforcement officers are investigating an individual for a felony-level offense.²⁴

Health information, including substance use disorder information, that is collected, maintained, or disseminated by the welfare system is subject to stricter disclosure rules (described in the sections below).

Mental health data within the welfare system is also subject to its own set of rules regarding disclosure. Such information may be released pursuant to a court order or with the consent of the client.²⁵ The written consent must specify the purpose and use for which the case manager may disclose the information.²⁶ Such data also must be disclosed to law enforcement if the client or patient is currently involved in an emergency interaction and the information is necessary to protect the health and safety of the individual or others.²⁷

Finally, if a local social services agency requests information about a child who may be delinquent or may be engaged in criminal acts, law enforcement may share information in order to promote the best interests of the child.²⁸

Practitioner's Guide to Information Sharing Laws

Information Sharing between Juvenile Justice and Health

Certain types of health organizations including health plans, health care providers, and hospitals (called "covered health care entities"²⁹) are subject to federal restrictions on the disclosure of individual protected health information (PHI). In Minnesota, written consent is required for a covered health care entity to share PHI. The ability to grant consent to a minor's PHI rests with a parent or guardian, except in situations where a minor is able to consent to specific health services and the disclosure of information pertains to information about those services.³⁰

Together, the federal and state laws identify certain circumstances when PHI may be disclosed without consent, including (*note: not a complete list of exceptions*):

- In response to a threat to health or safety³¹
- In a situation of abuse, neglect, or domestic violence³²
- To law enforcement officials, in specific situations³³
- In response to a court order or subpoena³⁴
- To an individual's other treatment providers³⁵
- To a correctional institution or law enforcement official with custody of a youth if the information is necessary to provide healthcare; ensure the health and safety of the youth or others; or to law enforcement at the correctional facility.

In most cases, health information that is contained within an education record, including treatment records, is subject to the provisions regarding disclosure of educational records, rather than those pertaining to the disclosure of health records.³⁶

In addition, under Minnesota law, a person or provider that receives health records may not redisclose those records without consent, specific statutory or regulatory authority, or court order.³⁷

Practitioner's Guide to Information Sharing Laws

Information Sharing between Juvenile Justice and Chemical Health

Federal laws and regulations dictate that written consent is required³⁸ for a substance use treatment program to disclose personally identifiable information.³⁹ Because a minor can consent to treatment without parental consent in Minnesota, it is the consent of the minor that is necessary for the disclosure of treatment records.⁴⁰

Information may be disclosed to relevant juvenile justice system officials under certain conditions.⁴¹ In addition, Federal laws regarding disclosure do not apply in the following circumstances (*note: not a complete list of exceptions*):⁴²

- Communication between staff in the same treatment program, or between a treatment program and entity with direct administrative control over that program⁴³
- Disclosure to law enforcement in situations where a patient has threatened or committed a crime at a substance use treatment program or against personnel⁴⁴
- In the context of reporting suspected child abuse⁴⁵

In addition, disclosure without consent is permitted: to medical personnel in the case of medical emergency and in response to a court order, in limited circumstances.⁴⁶

In addition to your county attorney, the Minnesota Department of Administration Office of Data Practices is available to help answer questions about how information may be shared appropriately in the context of specific cases.

More information is available at <https://mn.gov/admin/data-practices/data/>

The Risks of Information Sharing

It is critical to recognize that information sharing poses risks for youth and their families, even when information is shared appropriately and within the confines of the law. Our research suggests that these risks are particularly acute for youth of color, who are disproportionately represented in Minnesota's juvenile justice system. Risks to information sharing include:

Self- incrimination: Many programs that aim to address the needs of youth and families in the juvenile justice system require comprehensive screenings and assessments. To access benefits, youth often must answer questions that can elicit information about offending behavior, putting them at risk of incriminating themselves and/or facing prosecution for new offenses. Although Minnesota has enacted some protections against self-incrimination, it ranks below other states in the number of protective laws in place.

Implicit Bias and Lack of Knowledge among Program Staff: In a system with growing racial disparities, there are many opportunities for implicit biases - those attitudes and stereotypes that subconsciously affect our understandings and actions - to affect how youth of color are perceived and treated by system professionals. Information can be misinterpreted or taken out of context when it is communicated without a broader understanding of a family's circumstances. In addition, a lack of knowledge among program staff about issues outside of their area can alter how a youth is assessed. For instance, a juvenile justice professional not trained in mental health may interpret signs of depression and anxiety as aggression or defiance. When that assessment is documented in the record, it may result in system entanglement that may have otherwise been avoided.

The "Net-Widening Effect" of Information Sharing Programs: Many initiatives call for the screening and assessment of youth before they have been adjudicated delinquent, with the goal of diverting or matching youth with appropriate services. Early screening and assessment can cause a "net-widening effect," in which youth exhibiting symptoms or with a specific diagnosis enter and/or become entrenched in the justice system because that system can more easily provide health resources than community providers. System involvement may be problematic if the services provided by the system do not promote success. For instance, youth of color may be ill-served by services that are not culturally tailored. Once information is shared, it also has the potential to further entrench youth within the system if such information is used in future delinquency decisions.

Collateral consequences: Although many aspects of a juvenile's record are private, there are instances in which records involving arrest and adjudication can be used against an individual in Minnesota, sometimes long after that individual becomes an adult. Because risks associated with information sharing also increase the risk of such records being formed, they likely increase the likelihood of such collateral consequences occurring.

Out-of-home Placements: Research shows that Native and African-American youth are disproportionately likely to be placed in out-of-home care, relative to white youth. Information shared between the juvenile justice system and child welfare may pose a risk to youth of color if it increases the likelihood that such youth will be placed out of the home when brought in for a consultation.

Mitigating the Risks of Information Sharing

Engaging Families and Communities: Some juvenile justice professionals underscore the importance of “putting families in the driver’s seat” when a youth is involved in multiple systems, using approaches like family group conferencing and functional family therapy. Such approaches may help ensure that any information shared is done so with the full consent of the family. The Minnesota Juvenile Justice Advisory Committee also recognizes that community awareness and buy-in are “critical components” of information sharing expansion efforts. Gaining the trust of historically marginalized communities is particularly important, as it is likely to increase the effectiveness and sustainability of such efforts.

Limiting the Information that is Shared: Data practices laws limit the information that can be legally shared. Educating juvenile justice professionals (as well as those outside the system) on data practices law is an important component of mitigating risks to youth and their families. Best practice also dictates that the type and amount of information shared should be limited to that which is needed to support the youth and their family. Even when information can be legally shared, disclosing the information across systems may not be necessary to support a youth, particularly for minor offenses.

Ensuring that Consent is Informed: Federal and state laws permit a considerable amount of information sharing with informed consent. For consent to be valid, the individual must have sufficient mental capacity to understand the consequences of granting consent. In addition, Minnesota law requires that a valid informed consent must: be voluntary and not coerced; be in writing; explain why the new use or release is necessary; and include any known consequences for giving consent (see full report for a sample consent form). If the individual giving consent is a minor or has a legally appointed guardian, it may be necessary to obtain a parent or guardian’s signature. Parents have differing abilities to understand the implications of granting consent, and those with limited literacy or English proficiency may need support to understand the consequences of sharing their child’s information.

Figure 1 (next page) shows a step-by-step decision guide for sharing information and gaining consent.

Protections Against Self-Incrimination: The Juvenile Law Center recommends 16 model rules and laws to protect youth against self-incrimination. Minnesota had only four of these rules and laws in place as of 2007, suggesting considerable room to enhance protections through legal or policy change. The practices of juvenile justice professionals can also help minimize opportunities for self-incrimination - for instance, one public defender we interviewed chose to participate in multi-disciplinary team meetings solely to protect against the sharing of incriminating information.

Monitoring and Evaluating the Outcomes of Systems-Involved Youth by Race: Because information sharing may pose particular risks for youth of color, collecting outcomes data by race on youth who are involved in multiple systems (either within or apart from a collaborative program) is important for evaluating the consequences of broader access to information for different populations.

Reducing Implicit Bias and Lack of Knowledge through Training and Practice: While trainings in implicit bias, trauma, and mental health have become standard within the juvenile justice field, there may be opportunities to augment trainings to focus on implicit bias in the context of information sharing and/or cross-system programming. Training in trauma and mental health may be important to ensure that they are not misinterpreted as aggression. Practices that minimize bias when receiving information may also be employed, such as reading a case file only after meeting with a youth.

Federal and State Laws and Regulations Cited on Pages 5-9

¹ By statute, all Minnesota counties have diversion programs.

² MINN. STAT. § 260B.171, SUBD. 5(f).

³ MINN. STAT. § 260B.171, SUBD. 1(a).

⁴ MINN. STAT. § 241.065, SUBD. 2 (b).

⁵ "Criminal justice agencies" is defined as "all state and local prosecution authorities, all state and local law enforcement agencies, the Sentencing Guidelines Commission, the Bureau of Criminal Apprehension, the Department of Corrections, and all probation officers who are not part of the judiciary." MINN. STAT. 13.02, SUBD. 3a.

⁶ MINN. STAT. § 241.065, SUB 2.

⁷ MINN. STAT. § 260B.171, SUBD. 8.

⁸ This definition does not include records of instructional personnel that are only available to that personnel (notes, for example), nor does it include records of a law enforcement unit within an educational institution that are maintained exclusively for law enforcement purposes (see MINN. STAT. §13.32, SUBD. 1(a)). The statute does not apply to private schools unless the school is under contract with a government entity (see MINN. STAT. 13.32, SUBD. 3).

⁹ The "juvenile justice system" is defined as criminal justice agencies and the judiciary when involved in juvenile justice activities (MINN. STAT. §13.32, SUBD. 1(b)).

¹⁰ MINN. STAT. §13.32, SUBD. 3(b).

¹¹ MINN. STAT. §13.32, SUBD. 3(d).

¹² MINN. STAT. §13.32, SUBD. 3(l).

¹³ MINN. STAT. §13.32, SUBD. 3(i).

¹⁴ MINN. STAT. §13.32, SUBD. 8(a).

¹⁵ MINN. STAT. §13.32, SUBD. 8(b-d).

¹⁶ MINN. STAT. §626.556, SUBD. 3. Schools may also report maltreatment to social service agencies.

¹⁷ MINN. STAT. §626.52, SUBD. 2 and 3.

¹⁸ MINN. STAT. §121A.05.

¹⁹ Relevant statutes include: MINN. STAT. § 121A.28; MINN. STAT. § 260B.171, SUBD. 5(e); and MINN. STAT. § 260B.171, SUBD. 3.

²⁰ The "welfare system" includes the "Department of Human Services, local social services agencies, county welfare agencies, county public health agencies, county veteran services agencies, county housing agencies, private licensing agencies, the public authority responsible for child support enforcement, human services boards, community mental health center boards, state hospitals, state nursing homes, the ombudsman for mental health and developmental disabilities, Native American tribes to the extent a tribe provides a service component of the welfare system, and persons, agencies, institutions, organizations, and other entities under contract to any of the above agencies to the extent specified in the contract" (see Minn. Stat. § 13.46, subd. 1(c)). Notably, the welfare system does not include juvenile justice entities including law enforcement or corrections.

²¹ MINN. STAT. § 13.46, SUBD. 2(a)(2).

²² MINN. STAT. § 13.46, SUBD. 2(a)(10).

²³ MINN. STAT. § 13.46, SUBD. 2(a) (33).

²⁴ MINN. STAT. § 13.46, SUBD. 2(a)(15-19).

²⁵ MINN. STAT. § 13.46, SUBD. 7(a)(2, 6). In addition, there are disclosure rules in place for situations in which consent is obtained and the information disclosure is necessary to determine whether an individual is eligible for participation in the Criminal Mental Health Court of Hennepin County. See MINN. STAT. § 13.46, SUBD. 7(d).

²⁶ MINN. STAT. § 245.4876, SUBD. 5(a).

²⁷ MINN. STAT. § 13.46, SUBD. 7(c). In this instance, the scope of the disclosure is limited to the minimum amount of information necessary for law enforcement to respond to the emergency.

²⁸ MINN. STAT. § 260B.171, SUBD. 5(g).

²⁹ See 45 CFR 160.103 for explanation of the types of health care providers included within the definition of "covered entities."

³⁰ Minn. Stat. §§ 144.341 to 144.347. For more information, see Elisabeth Klarqvist, "House Research: Short Subjects - Minors' Consent for Health Care," Research Department of the Minnesota House of Representatives, June 2018.

³¹ 45 C.F.R. § 164.512 (j).

³² 45 C.F.R. § 164.512 (c).

³³ 45 C.F.R. § 164.512 (f).

³⁴ 45 C.F.R. § 164.512(e).

³⁵ 45 C.F.R. § 164.506(c).

³⁶ Federal Register (December 28, 2000), p. 82483.

³⁷ MINN STAT. § 144.293, SUBD. 2.

³⁸ For the full list of items to be included in consent, see 42 C.F.R. § 2.31(a). For sample forms, please see the following forms from Legal Action Center (<https://lac.org/resources/substance-use-resources/confidentiality-resources/sample-forms-confidentiality/>).

³⁹ Release of substance use treatment information is governed by federal drug and alcohol confidentiality (FDAC) laws (see 42 U.S.C. § 290dd-2) and regulations (42 CFR § Part 2, or Part 2).

⁴⁰ 42 U.S.C. § 290dd-2(b)(1). Note: parental consent would generally still be required for the disclosure of information not pertaining to substance use treatment.

⁴¹ 42 C.F.R. §2.35.

⁴² See 42 C.F.R. § 2.12(c) for a complete list.

⁴³ 42 C.F.R. § 2.12(c)(3).

⁴⁴ 42 C.F.R. § 2.12(c)(5).

⁴⁵ 42 C.F.R. § 2.12(c)(6).

⁴⁶ 42 C.F.R. §2.51 and 42 U.S.C. §290dd-(b)(c) and 42 C.F.R. § 2.64.

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