



Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records

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Center well-being of children in jeopardy

Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records

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Juvenile Law Center is the oldest public interest law firm for children in the United States. Juvenile Law Center uses an array of legal strategies and policy advocacy to promote fairness, prevent harm, ensure access to appropriate services, and create opportunities for success for youth who come into contact with the child welfare and justice systems.

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Introduction

Nearly 1.5 million youth are arrested each year.¹ For each of those youth, records are created the moment the child comes into contact with the justice system. Many of these records are easily accessible to individuals both inside and outside the system. Records serve an important informational function to aid the court in disposition and case planning, but over time their utility diminishes. Children’s juvenile court records tell the story of what they once did—not the story of who they are. These records interfere with children’s opportunities to move ahead in life and demonstrate their ability to make better choices.

At its inception, the juvenile court sought to “spare juveniles from [the] harsh proceedings of adult court” and “the stigma of being branded ‘criminal.’”² The court embraced a less punitive and more therapeutic approach: keeping confidential the records of a less-than-culpable child was essential to a regime of rehabilitation.³ This meant that juvenile proceedings generally were closed to the public, disclosure or dissemination of records was limited to instances where it was necessary to provide supervision and rehabilitation to the child, and the child could be released from court without the stigma of criminality. Even when it was not central to the purpose of the juvenile court system,⁴ courts practiced confidentiality because stigmatizing the child could hinder his or her reintegration into society.⁵ Without confidentiality, the public might brand delinquent children as criminals and stymie their readjustment in the community.⁶

Today, records are increasingly used as an excuse to deny opportunities, and to protect employers and landlords from liability.⁷ Research confirms—and the law recognizes—that youth have the capacity for change and rehabilitation, and yet records continue to erect barriers to youths’ success as they grow into adulthood. Modern technology exacerbates the problem as it facilitates access: information that previously required a physical search through boxes and file drawers at the courthouse now requires a simple tap on a keyboard.

This policy paper urges that we allow children to grow up unfettered by their childhood mistakes—to have their court involvement remain in the past so they can move forward with their lives. We provide an overview of how records are shared publicly and how background checks can disclose inaccurate or confidential information. We also demonstrate, through youths’ own stories, how records carry numerous collateral consequences when we fail to protect confidentiality. We also make recommendations for legislative solutions to increase juvenile record confidentiality and opportunities for expungement, in an effort to shift how juvenile records are viewed by employers, educational institutions and housing authorities to minimize harm from disclosure.

Recent efforts in both the public and private sectors such as Fair-Chance Hiring and Ban-the-Box policies are important steps toward increasing opportunities for adults with a criminal background. However, for youth the stakes are even higher. They have yet to build their skills and resumes to demonstrate their qualifications for employment. Their records have the potential to disqualify them from opportunities before they have even crossed the starting line.

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The Case for Juvenile Record Protection

Children are different from adults.⁸ This commonsense view has been confirmed by scientific research⁹ and used to calibrate how the law affects youth in a variety of contexts.¹⁰ Social science research demonstrates that children have “greater prospects for reform” than adults.¹¹ However, even though adolescents are generally less culpable and more capable of change than adults, their records have become barely less stigmatizing than adult criminal records. A finding of delinquency today differs little from a conviction of guilt, considering the barriers it erects.¹²

Today’s easy access to juvenile records is contrary to the confidential underpinnings of the juvenile court’s history. In 1967, the U.S. Supreme Court understood that “the policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past,”¹³ but this claim was illusory:

This claim of secrecy, however, is more rhetoric than reality. Disclosure of court records is discretionary with the judge in most jurisdictions. Statutory restrictions almost invariably apply only to the court records, and even as to those the evidence is that many courts routinely furnish information to the FBI and the military, and on request to government agencies and even to private employers. Of more importance are police records. In most States the police keep a complete file of juvenile ‘police contacts’ and have complete discretion as to disclosure of juvenile records. Police departments receive requests for information from the FBI and other law-enforcement agencies, the Armed Forces, and social service agencies, and most of them generally comply. Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies.¹⁴

The Court revisited the issue of confidentiality the following decade, characterizing it as a state “policy interest,” and not a constitutional right.¹⁵ “By drawing attention to the fact that a juvenile’s right to confidentiality springs from state law rather than the Constitution, the Supreme Court paved the way for states to rescind their earlier promises to protect juveniles from social stigmas.”¹⁶ In the 1980s and 1990s, as juvenile crime increased,¹⁷ “[s]upport for forgiving and forgetting juvenile misconduct had significantly diminished, while support for governmental and judicial transparency had significantly increased.”¹⁸ As public safety began to overshadow rehabilitation as the guiding principle of juvenile court, the commitment to confidentiality eroded.¹⁹ States opened many juvenile proceedings to the public, fraying the confidentiality protections once afforded youth in juvenile court.²⁰

Terrorism as well has struck at confidentiality as state legislatures nationwide have enacted provisions to create transparency, open records, and share information more broadly.²¹ The juvenile justice system has not been immune to these concerns; many states have lessened protections afforded to youth who commit crimes.²² Not surprisingly, the number of FBI background checks has increased significantly.²³ Law enforcement has been collecting and disseminating more information under this theory of “right to know.”²⁴ Twenty-first century technology abets this. “The information technology revolution makes possible the collection, classification and retrieval of vastly more information than the juvenile court founders could have imagined.”²⁵

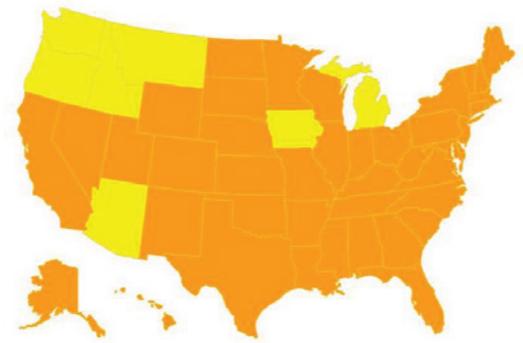
While States are now beginning to roll back some policies in favor of a more nuanced approach to juvenile records, public accessibility remains widespread, with access typically turning on the age of the juvenile, the nature of the offense, or the number of

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offenses.²⁶ Thirty-three states and the District of Columbia make certain types of juvenile record information publicly available.²⁷ Seven states categorically make all juvenile records public,²⁸ though there are some exceptions in each state. All states allow juvenile record information to be shared and exchanged between certain authorized individuals and agencies, such as law enforcement and court personnel, although the most protective states do not extend availability beyond this group. In ten states, record information is kept confidential — i.e. there is no public access to juvenile records, regardless of the seriousness of the offense, the number of offenses, or the age of the child.²⁹

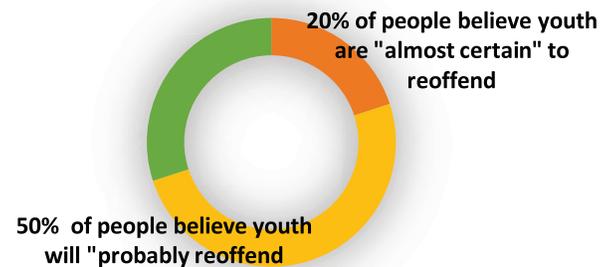


Seven states make records available to the public

Debunking the Myth About Reoffending

The most common rationale for retention of records is the protection of public safety. The general view is that youth who break the law will commit other crimes in the future, even if they have no history of reoffending. Almost 20% believe a youth is “almost certain” to reoffend; another 50% believe a youth will “probably” reoffend.³⁰ However, research shows that making juvenile records available to the public does not make communities safer.³¹ Furthermore, despite the prevalence of criminal background investigations in institutions of higher education, research shows no link between having a criminal record and posing a risk to campus safety.³² A recent survey found that crimes committed on campuses are more likely to involve students who do not have records than those who do.³³

However, school attendance can influence delinquency. In both the short- and long-term, youth who attend school are less likely to commit crime.³⁴ But court involvement has the effect of pushing children out of schools. In 1994, when the Gun Free School Zone Act was passed by Congress, schools across the country instituted zero-tolerance policies to ensure school safety.³⁵ Behavior that ordinarily would have been dealt with through school-based discipline was now referred to law enforcement. The rates of suspensions and expulsions dramatically increased.³⁶ Students’ alleged offenses outside of the school and in the community³⁷ could also affect school enrollment.



Another typical argument for retention and public availability of record information is to reduce employer liability. Under the negligent hiring doctrine, an employer may be liable if their employees offend in the workplace; records therefore become determinative of trustworthiness.³⁸ A recent report noted that “[c]ompanies seeking new employees are forced to navigate a patchwork of state and federal laws that either encourage or deter hiring people with criminal pasts and doing the checks that reveal them. Employers are having to make judgments about who is rehabilitated and who isn’t. And whichever decision they make, they face increasing possibilities for ending up in court.”³⁹

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But records have a greater likelihood of decreasing public safety when they incorrectly or unnecessarily disqualify individuals from employment. Longitudinal survey data has revealed a strong and consistent negative effect of incarceration on the employment probabilities and income of individuals with criminal records.⁴⁰ One scholar noted the “perfect storm” of collateral consequences negatively affecting the economy and public safety; it includes record numbers of former prisoners reentering society, more personal information inexpensively and readily available on-line, and an upsurge in employers and landlords conducting background checks on applicants.⁴¹ Among adult offenders, a lack of employment is the single greatest predictor of recidivism.⁴² Over half of individuals between the ages of 18-25 with former juvenile justice system involvement who were unemployed reported at least one new conviction in the adult system, compared to roughly 28% of individuals in that age bracket with part- or full-time employment.⁴³

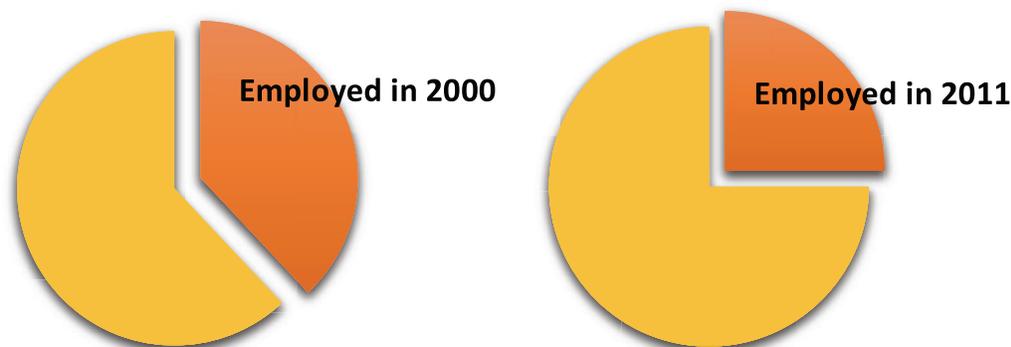
The National Employment Law Project has written that “[t]he irony is that employers’ attempts to safeguard the workplace are not only barring many people who pose little to no risk, but they also are compromising public safety. As studies have shown, providing individuals the opportunity for stable employment actually lowers crime recidivism rates and thus increases public safety.”⁴⁴ A healthy economy requires a large pool of employable workers. This is recognized across the political spectrum. The conservative think tank Right on Crime recommends that states should “[c]reate policies so that youths are more likely to find employment as adults, reducing the likelihood of recidivating. This may entail, among others, providing additional opportunities for non-violent youth offenders to expunge or decline to disclose records, removing barriers for otherwise qualified applicants with a juvenile record from obtaining occupational licenses, and emphasizing vocational training opportunities for youth offenders.”⁴⁵

The Economic Argument

When records impede an individual’s employability, the impact on the economy is staggering.⁴⁶ The reduced output of goods and services of people with records results in losses in the range of billions of dollars as compared to the cost of corrections.⁴⁷

Youth employment is already at an all-time low. In April 2013, the unemployment rate for those between the ages of 16 and 24 was 16.1%, according to the Bureau of Labor Statistics.⁴⁸ Only one in four teens was employed in 2011, compared to 46 percent in 2000.⁴⁹ Overall, 6.5 million people ages 16 to 24 are both out of school and out of work. These “disconnected youth” already face barriers to their financial stability and employment prospects. Juvenile records are additional barriers that can disqualify youth from employment. “Studies show that youth who miss out on an early work experience are more likely to endure later unemployment and less likely to achieve higher levels of career attainment.”⁵⁰

Youth age 16-24



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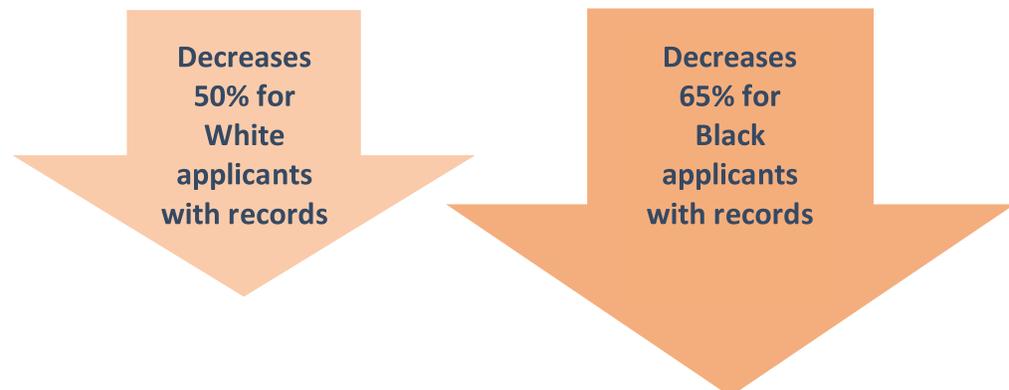
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A recent report on the cost of youth incarceration estimated that the range of lost earnings for confined youth is between 4 and 7.6 billion dollars.⁵¹ This number is unlikely to decrease when youth who are no longer incarcerated exit the system and encounter barriers to obtaining employment. Even when youth are able to overcome initial barriers to obtaining employment, they are more likely to have inconsistent employment and negative outcomes. A study by the National Bureau of Economic Research found that confining youth between the ages of 16-25 reduced work time over the next decade by 25-30 percent.⁵² Another study examining youth ages 14 to 24 found that youth who spent some time incarcerated in a youth facility experienced three weeks less work a year as compared to youth who had no history of incarceration.⁵³ For African American youth, this number increased to five weeks less work a year compared to youth with no history of incarceration.⁵⁴

A recent study by the W. Haywood Burns Institute found that in 2013, youth of color were 4.6 times more likely to be incarcerated for non-violent offenses than white youth.⁵⁵ As greater numbers of youth of color are pushed into the juvenile justice system, their records are more disabling than those of their white peers. A 2003 study found that for people with records, the likelihood of a callback interview is reduced by 50% for white applicants and 65% for black applicants.⁵⁶ This study found that the effect of a criminal record is 40% larger for black Americans than white Americans. The researcher noted, “[d]espite the fact that these testers were bright articulate college students with effective styles of self-presentation, the cursory review of entry-level applicants leaves little room for these qualities to be noticed. Instead, the employment barriers of minority status and criminal record are compounded, intensifying the stigma toward this group.”⁵⁷

Likelihood of being called back for an interview



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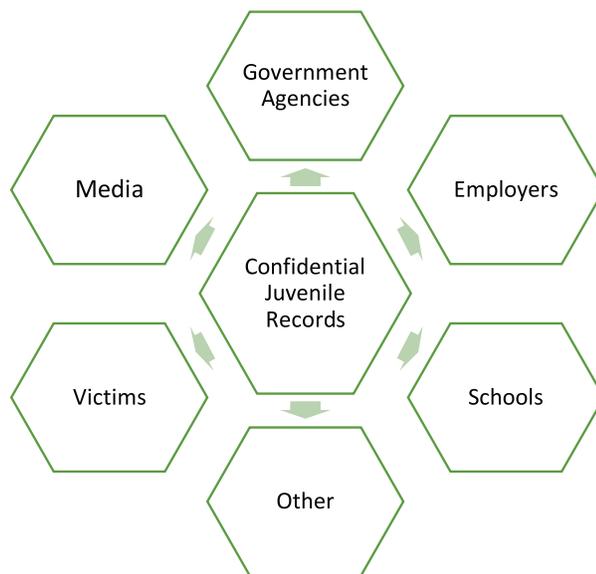
Because using criminal records to screen candidates for employment has a disproportionate impact on people of color, the National Employment Law Project advises that a refusal to hire based on a past conviction is legal only where the conviction is job-related and the refusal to hire is by business necessity.⁵⁸

Proliferation of Records

As soon as a child is arrested, paper or electronic records are created. These can include police reports, arrest, detention and charging documents, witness and victim statements, court-ordered evaluations, fingerprints, and sometimes even DNA samples.⁵⁹ All of these records will be entered into and maintained in the law enforcement agency's records system. Because almost all states permit law enforcement officers to have access to juvenile court records, information from courts may also be obtained by law enforcement

officers and stored in a law enforcement database. Court records include all documents or notations created by or stored by the juvenile court or the juvenile probation office. These may contain documents or information about a child's family, his social history, behavioral health history, education, and prior involvement with the law, as well as the evidence presented and the disposition of the juvenile case.⁶⁰

While many state laws require that juvenile records are kept confidential, these laws also have many exceptions, limiting confidentiality based on the nature of the offense, the number of offenses for which the youth has been adjudicated, or the youth's age when the offense was committed. Depending on state law, "confidential" records can also be shared with employers, schools, government agencies, victims, the media, and others. Almost all states permit law enforcement officers to have access to juvenile records—even records that were not created by law enforcement.⁶¹ Each time a juvenile record is accessed by a new source or placed in an online database, the risk of the youth's exposure to collateral consequences increases.



Juvenile records are maintained by various government entities, both in hard copy and online, with varying levels of security. Sometimes these online records are shared with the public, victims of the crime, or with private companies that make a profit by selling these records to individuals and companies seeking background information. Too often, the records in both government and private databases contain inaccuracies, are out of date, or do not reflect sealing or expungement.

When records are publicly available, information may be disseminated or shared beyond its intended distribution. State agencies and court systems enter into information-sharing agreements and provide juvenile records to private companies, researchers, and others. There are also an increasing number of companies that profit from providing access to delinquency and criminal records in exchange for a fee. Some of these companies actually contract with the state or local governments to directly purchase records. Other companies mine records that the states make public and collect them in one location. These companies are popular because they offer search mechanisms so that records from multiple jurisdictions can be searched all at once. However, there are serious concerns with their accuracy. The records may contain incorrect information, may be out of date, or may not reflect the sealing or expungement of a record. As a result, juvenile records can continue to appear on the internet well after the physical copies kept by the government have been destroyed. Private companies that maintain online databases for employer background checks can cause particularly severe consequences for individuals with records.

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In extreme examples, some states sell juvenile record information to private companies. Until prohibited by the legislature, the state of Washington entered into a contractual agreement with companies to provide felony records in a mass download. The records then populated background check databases accessible by landlords, employers, and educational institutions. For every youth's record, the state made 69 cents.⁶² Although selling juvenile records to private companies for a profit is a rarity, the majority of states make juvenile record information available in some way to individuals outside the courtroom. Once available, it is nearly impossible to safeguard record information from further disclosure.

Overwhelmingly, states do not keep track of how or when juvenile records are accessed.⁶³ Similarly, when states make records available online or to the public, they also do not keep track of who gains access to juvenile record information. Idaho, as an example, has virtually no protection of juvenile records. These records, including the child's name, offense and disposition, are available to the public in an online database.⁶⁴ In extraordinary circumstances, a court may order the records closed, but that is a rarity. The Idaho Administrative Office does not maintain records of who has asked to inspect or keep copies of records because these requests "are made orally and there may be no record made of such requests." Given the public nature of juvenile records in Idaho, monitoring requests for records is unnecessary. If a private researcher or background check company sought to obtain juvenile records, they would be readily available on the Idaho Supreme Court Data Repository.⁶⁵

In Pennsylvania, the public may access juvenile records for youth 14 and older charged with felonies.⁶⁶ Non-confidential juvenile record information can be accessed for \$8 through the Pennsylvania State Police online portal.⁶⁷ But the State Police does not keep track of who obtains records through this portal or who makes requests through the administrative office of courts. In contrast, although North Dakota juvenile records are not available to the public, they can be accessed for "scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes." As such, the Court Administrator releases record information for these purposes only with a non-disclosure agreement. However, any verbal requests to view a juvenile record made to a local clerk are not tracked.

Even when state laws protect the confidentiality of juvenile records, they often do not track the limited exceptions to confidentiality that permit individuals to access records. In Rhode Island, all juvenile records are kept confidential and are never made available to the public.⁶⁸ Although in cases where it has an agreement with a research body to provide data for research and statistical analysis of the juvenile justice system, the court removes all personal identifiers from juvenile record information, it nevertheless does not maintain comprehensive records identifying all entities that have requested to see Family Court Act delinquency records.

Information about who gains access to juvenile records is a vital inquiry. There are two possible explanations for why most states fail to provide information about juvenile records requests. The first is that states do in fact keep track of this information, but do not deem it to be accessible to the public under its open records laws. Such a determination would seem to protect juvenile records from public scrutiny. In reality, it has the detrimental effect of preventing outside inquiry and accountability as to whom and for what purpose juvenile records are being released. State agencies can therefore disseminate or share juvenile record information without safeguards to protect it in accordance with state law.

The second possibility is even more problematic—that states are completely unaware of how juvenile records in their court system are being used. Even when juvenile records can be requested via an automated online system, like in Idaho, it appears that no state

entity is tracking how those records are accessed. Individuals or private companies can gather the information by requesting records without stating a purpose for the use of the information. Although many large corporations utilize national background check companies to conduct searches, the vast majority of small business owners and local employers conduct background searches through the state court system or police department. In order to properly protect juvenile records, states must have policies in place to track who is attempting to access them and why. When records are accessible, they have long-lasting effects on youths' futures.

Collateral Consequences of Juvenile Adjudications

Much has been written about the collateral consequences of a juvenile adjudication.⁶⁹ One legal scholar has noted that criminal history records act as “brands of inferiority,” barring people from public and private housing, professional licensures, and social welfare, which, in turn, can lock them out of mainstream society and into a life of recidivism.⁷⁰

For instance, youth wishing to enter military service after a juvenile adjudication may be barred from doing so by their record. Military recruiters use juvenile or criminal history information in deciding whether to admit someone in the Army, Navy, Air Force, or Marine Corps. Because the U.S. armed services have a ‘moral’ qualification for admission, even records that have been expunged must be reported when youth enlist. Youth can request a ‘moral waiver’ allowing them to enlist despite an adjudication, but certain offenses are not eligible:

Vik⁷¹ was charged with assault and battery after a physical fight between him and his stepbrother resulted in his mother and sister getting hurt. Vik was never adjudicated delinquent. He was required to complete twenty-four hours of community service. He believed that charges were dropped, and that his record was clean because he completed his service. When he became of age, Vik applied to the National Guard. He was denied admission because of his arrest record.

Children adjudicated delinquent may also temporarily lose their driving privileges, which can prevent them from working or attending school.⁷² Youth may lose driving privileges for vehicle-related offenses as well as for a wide variety of non-vehicle related offenses, including offenses on school property or drug offenses.⁷³

A juvenile adjudication, especially for a drug or sex offense, may foreclose the entire family from seeking public housing. Following the passage of the National Affordable Housing Act, the United States Supreme Court upheld Public Housing Authorities' abilities to evict residents based on the offenses of their relatives.⁷⁴ Public Housing Authorities are permitted to consider juvenile adjudications in determining whether families are eligible,⁷⁵ so in some cases, the family can only receive housing if the adjudicated juvenile is not allowed to live with them.

“Finding housing was worse than getting a job,” recalls Sue Steinman, whose son was haunted by his juvenile record. Her son, she says, managed to land “a couple part-time jobs he got through friends who knew he’d turned his life around, but getting housing was impossible.”⁷⁶

A juvenile adjudication can even result in deportation for noncitizen youth—any noncitizen “who is, or at any time after admission has been, a drug abuser or addict is deportable”—even without a conviction.⁷⁷ Youth who have a connection to “illicit

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trafficking” of a controlled substance can be denied entry to the U.S.⁷⁸ Finally, youth applying for naturalization as a U.S. citizen may be denied because of a juvenile adjudication: an applicant must show “good moral character” for a period of three to five years prior to application, and the Attorney General can consider juvenile adjudications for this purpose.⁷⁹

Barriers to Education

Information regarding the arrest or adjudication of a juvenile is commonly released to school personnel. At least thirty-three states and the District of Columbia have statutory provisions allowing for the release of otherwise confidential juvenile record information to school personnel.⁸⁰ Today, most state laws require that schools are notified when a child is in the juvenile court system.⁸¹ If no law *requires* disclosure of record information, courts or the school may nevertheless deem it necessary to protect public safety or to enable appropriate treatment, supervision, or rehabilitation of the juvenile, and obtain access on those grounds. Of course, the school may become aware of a child’s delinquency history when the probation officer attempts to re-enroll the student in school after his or her release from placement. Finally, even when not required by state law, school personnel made aware of a youth’s juvenile record information may feel compelled to share it more broadly than necessary to protect the safety of the school.

When Ming was 16, she was adjudicated delinquent for operating a motor vehicle without owner’s consent—the case involved her allegedly taking a friend’s car from the high school parking lot. She was placed on supervision and her school was notified under state law. She found a job working at a local fast food restaurant and was in their management-training program. After awhile, a former teacher from her high school came to the restaurant and saw Ming. The teacher came back later and told the entire staff about Ming’s delinquency. While this information was supposed to be confidential, Ming was terrified that she would lose her job and the goodwill she had built with her coworkers. Additionally, the teacher told Ming’s manager that if they didn’t do anything about Ming’s employment there, she would contact the corporate office. Ming filed letters of complaint with the department of education as well as with the school district. Fortunately, the restaurant did not fire Ming.

Juvenile records can also limit access to higher education. More than half of universities collect criminal justice information during the admissions process.⁸² As of 2006, the Common Application, which is used by more than 600 schools across the country, began asking applicants to disclose their past adjudications and convictions. Some colleges deny applicants admission based on their past records,⁸³ largely based on the mistaken assumption that barring applicants with juvenile or criminal records will make campuses safer.⁸⁴

Jefferson was adjudicated for a juvenile felony. He took a plea to be on probation until he was twenty-one. At the age of eighteen he left for college. He was required to participate in counseling by his probation conditions. He met with a counselor through the university. Halfway through his sophomore year, having done very well up until that point and having no disciplinary problems, his counselor informed the dean of his juvenile record. The dean determined that Jefferson had “lied” on his application two years prior when he said he did not have a felony. Jefferson was expelled.

Even more commonly, youth with juvenile records will drop out of the application process once they realize information about their records must be disclosed or investigated by the school.⁸⁵ In addition, for some drug-related offenses, youth can temporarily be barred

from receiving federal financial aid.⁸⁶ This makes it virtually impossible for youth to attend college during this period.

These burdens fall disproportionately on youth of color, who are subject to higher rates of law enforcement involvement. The Lawyer's Committee on Civil Rights has opened an investigation into the practices of colleges who inquire into arrests and criminal and juvenile records; the organization has suggested that these types of admissions practices could contribute to the underrepresentation of minority youth in college.⁸⁷

Barriers to Employment

Juvenile records also pose immense barriers to employment. In a 2015 study, 53% of employers reported that their companies continue to ask candidates about criminal records on employment applications despite both the EEOC guidelines recommending against it and the state and municipal laws that “ban the box,” eliminating the question about past convictions on job applications so candidates may demonstrate their qualifications for the position prior to a background check.⁸⁸ In recent studies, over 40% of employers reported that they would “definitely” or “probably” not hire an applicant with a criminal record for a job not requiring a college degree;⁸⁹ 11% of employers reported that even a minor criminal infraction would prevent them from hiring a prospective candidate;⁹⁰ and researchers found that employers are more than 50% less likely to make a callback or job offer to applicants with a criminal record. These practices harm applicants of color more than white applicants.⁹¹

Jake was charged with burglary when he was a teenager. The district attorney elected not to prosecute him. Years later, after Jake successfully completed high school, college, and graduate school, he enrolled in law school and was a successful first year student. He applied to and received a position at the United States Attorney's office for his first summer internship, a highly competitive position. However, he was told that the record of his court involvement and charge from twelve years earlier barred his employment as an intern with the U.S. Attorney's office.

Juvenile records can also create a statutory bar to employment and licensing, especially in the public sector. For instance, in Colorado, childcare facilities and child placements cannot receive funding if they have an employee who has been adjudicated delinquent of certain acts,⁹² and prospective teachers can be denied licensure.⁹³

During program orientation Dina learned that her juvenile record posed an insurmountable obstacle to achieving her professional goal of becoming a nurse. State guidelines prohibit any individual with a criminal background, including juvenile delinquency, from being licensed in numerous healthcare professions. Dina sent more than two hundred emails to colleges and admissions officials to seek admission and ask for guidance on how to pursue a career in her chosen field, all to no avail. Dina's juvenile record appears in a public background check. Under Florida law, Dina will automatically have her juvenile record expunged in two years, when she turns twenty-four. However, because her records are now publicly available, long-term damage has already been done, and the records will continue to limit her opportunities. Because of the state licensing restrictions, Dina changed her focus from nursing and is now applying to law school.⁹⁴

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Background Checks

Generally, vendors purchase arrest and conviction data in bulk from “aggregators,” which may include private databases and state record-keeping systems.⁹⁵ The accuracy of these databases is variable, and it is unlikely that all information will be verified for accuracy or be up to date when information is purchased from aggregators and other sources.⁹⁶ Educational institutions and employers use these vendors to conduct comprehensive background checks on potential employees.

Education Background Checks

Although applications to post-secondary educational institutions ask about adjudications and convictions, many universities conduct supplemental reviews of students who indicate that they have a record.⁹⁷ A recent survey of 273 colleges found that 66% collect criminal records information during the admissions process.⁹⁸ Twenty percent of colleges have policies denying admission based on the severity of a juvenile record.⁹⁹ Approximately one third of schools reported considering pending misdemeanors or misdemeanor arrests in a negative light, and 11% stated that they viewed youthful offender adjudications negatively.¹⁰⁰ Schools often require that, in addition to providing specific documents and information — like a letter from a probation officer or a personal essay about the offense¹⁰¹ — students sign a “disturbingly broad” release for information.¹⁰² The institution can then go on to perform its own investigation, including a criminal background check or looking into other areas of the applicant’s past. One college dean justified these investigations by arguing that they “help set a tone for a safer campus,”¹⁰³ which research has repeatedly proven false.¹⁰⁴ Although in most cases collecting the information does not automatically bar an applicant, colleges do not have proper staff training procedures in place regarding how to collect or interpret the information.¹⁰⁵

66% of colleges collect record information

33% consider misdemeanors negatively

20% deny admission based on the offense

It is also difficult to get complete information about schools’ supplemental review procedures. In one study, the authors explained low response rates: “How colleges and universities handle the admission of students with criminal or disciplinary backgrounds is a politically charged topic. Therefore, it is not surprising that colleges may have been concerned about completing a questionnaire on the subject, despite the guarantee of anonymity.”¹⁰⁶

Employment Background Checks

The vast majority of employers across the U.S. conduct some form of criminal background check on prospective employees.¹⁰⁷ In 2011, 90% of employers surveyed reported running background checks on applicants.¹⁰⁸ Another survey of employers found that 40% reported that they would “definitely” or “probably” not hire an applicant with a criminal record.¹⁰⁹

Many employers, especially large corporations and employers with offices in multiple locations, turn to private background check companies when they want to investigate prospective employees. These companies are commonly referred to as Consumer Reporting Agencies (CRAs). Less commonly, employers may seek information directly from the state database, which will limit access to delinquency and criminal records depending on state law, or from the FBI if the employer is eligible—for instance, if the job involves working with children. The use of background checks for potential employees seems to have increased over time, along with the dangers of inaccuracy and bias. This is likely due to the increased computerization of criminal records,¹¹⁰ and the rise of a class of companies dedicated to performing background checks for companies who don't have the time or expertise to do it themselves.¹¹¹

While in the past, criminal background checks involved a material process of obtaining a paper record from the state or county, many employers are now turning to the computerized and unregulated private industry to obtain criminal histories: current surveys show nearly 80% of employers outsource such checks to a security establishment. Yet, even those who choose to use official state repositories of criminal records run into barriers; overall, accuracy and completeness of criminal records continues to be the most serious problem affecting criminal history databases.¹¹²

In addition, insurers have placed increased pressure on employers to reduce any potential liability, including liability related to employee criminal backgrounds.¹¹³

The hiring company and the background check company both claimed they would not search more than seven years but they violated that agreement. They located an “elevated risk” from my youth and asked me to submit to a deeper screening from when I was a teenager and I refused.

Consumer Reporting Agencies

In order to perform a search with CRA, the employer must provide some information about the prospective employee — typically the name, birthdate, and social security number. CRAs use this information to mine data from many sources. One primary source is the public records that are available online; many CRAs employ powerful search engines that are able to quickly examine hundreds of public databases looking for a match. CRAs that are most concerned with accuracy also employ “runners” who physically go to a courthouse or record storage center to confirm that the information available online is correct. Many CRAs also employ subcontractors who own their own sets of data or provide additional data-sorting tools.

CRA's information collection practices can create many accuracy concerns. Mistakes accumulate as data is shuffled from one database to another. Worse, records that have been corrected, sealed, or expunged remain online long after the paper records have been fixed or destroyed. The Salt Lake City Tribune traced 30 sealed records and found that LexisNexis, a leading CRA, was still disseminating five of them.¹¹⁴

I got hired by a call center and passed the initial background check. Then, after I'd started working, they did a check with a different service [LexisNexis] and my record showed up. I'd said 'No' where the questionnaire asked whether I had any convictions, the way I was supposed to be able to do. They didn't like that and they let me go.¹¹⁵

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Furthermore, there are no standards governing how information is stored, updated, maintained for accuracy, or destroyed. As a form of self-regulation, three voluntary groups provide accreditation or membership: the National Association of Professional Background Screeners (NAPBS), National Consumer Reporting Association (NCRA), and Concerned CRAs. These groups are voluntary professional associations; membership in one of these groups is not required to operate as a CRA. There is no evidence that membership in one of these groups actually improves the quality or accuracy of background checks.

The primary benefit of these groups seems to be the appearance of reliability that accreditation or membership provides to consumers who are choosing between CRAs. Although the NCRA's Code of Ethics includes a purpose "[t]o fully understand and strictly follow all applicable federal and state laws relating to the consumer credit and credit reporting industries," "[t]o maintain procedures, including the refusal to delete or change information obtained from reliable sources, which will result in the provision of credit reports to our customers, which meet the highest standards of accuracy for the mutual benefit of the customer and the consumer," and "[t]o treat all information with the utmost confidentiality and adopt appropriate procedures to that end," there are no processes for filing complaints or issuing sanctions outlined anywhere in the NCRA's materials.¹¹⁶ The final group, Concerned CRAs, represents a group of CRAs who pledge to not use off-shore data processing for data or processing, increasing accuracy. The organization states that:

1. Criminal records databases compiled by non-government entities will only be used as indicators of possible records. Prior to making any report to an employer about a criminal record from a database, the CRA will verify the information directly with the reporting jurisdiction. This ensures that employers make decisions based on accurate and up-to-date information.
2. Current or prospective employer clients will be provided information about the limited nature of criminal records databases and the importance of researching each applicant's criminal history in the jurisdictions in which the applicant currently or previously has lived or worked.¹¹⁷

NAPBS has a process for sanctioning member accredited CRAs who do not meet the professional standards set forth by the organization.¹¹⁸ Importantly, CRAs must abide by the rules set forth in the Fair Credit Reporting Act (FCRA), which require that CRAs must not report arrests older than seven years old¹¹⁹ and must use reasonable procedures to maintain accuracy of the records they report.¹²⁰ However, these standards apply without force. There are no sanctions and no means to enforce the guidelines under the self-certification practices.

Juvenile Law Center conducted background check searches¹²¹ of a group of volunteers with juvenile records. We used a certified CRA, VICTIG, to run a full background check of each volunteer. VICTIG's full range of services includes national criminal and sex offender database searches, social security traces, county criminal searches, employment verifications, education verifications, professional references verifications, workers comp searches, state criminal searches, full credit reports, and state eviction searches. VICTIG's services are generally used by large corporations and not by private individuals. The typical search fee for a large company to run a full search of one individual would be about \$35, however companies routinely contract with vendors like VICTIG for comprehensive screening of multiple candidates.

VICTIG ran the names and dates of birth of our audit volunteers through two databases. The first is backgroundchecks.com, referred to as BGC, which claims to have "the industry's #1 criminal conviction database" containing "more than 500 million criminal records from over 1,000 sources, including county court records, state repositories,

departments of corrections (DOC), administrative office of courts (AOC), state sex and violent offender registries, government exclusion and terrorist watch lists, and more.” The second is National Background Data by Corelogic, which “provides wholesale background data to the background screening industry.” Both databases also conduct specific county court searches to find records that are not available online.

VICTIG’s searches are verified by comparing the information against that which can be obtained directly from the court or law enforcement agency. Despite the existence of statutorily available records for each of our volunteers, no juvenile records were revealed in the CRA background check for our volunteers. It may be that private CRAs shield juvenile record information and carefully scrutinize courthouse databases in order to ensure they do not disclose juvenile record information. The more likely scenario is that state court and police databases may not share juvenile records with private CRAs. In either scenario, there is no prohibition on CRAs disclosing juvenile record information in the future. CRAs may conclude that they will not go through the added step of determining whether a record represents a juvenile delinquency adjudication or criminal conviction. And state courts administrative agencies are well within their statutory rights to share publicly accessible juvenile record information broadly.

Private Database Companies

A recent literature review found that 90% of agencies that provide access to criminal and juvenile records consider themselves exempt from the regulations governing the Fair Credit Reporting Act.¹²² These private companies, calling themselves “People Search companies,” are not considered CRAs under the FCRA but provide similar record checks. These companies are notorious for being “plagued with errors, such as including expunged convictions or failing to show that charges were dropped.”¹²³

Some of the most often used and highly publicized private record databases are: SpyFly (spyfly.com), Intelius (inteli.us.com), Instant Checkmate (instantcheckmate.com) PeopleSmart (peoplesmart.com), and DirtSearch (dirtsearch.org). These sites advertise themselves as quick and easy ways to search public records. The information on the site is obtained through public records searches.

Because these are not CRAs governed by the FCRA, users are informed upon entering the site that they cannot use the information obtained on the site to make decisions about employment, insurance, consumer credit, or tenant screening under the FCRA. However, this warning is juxtaposed with their misleading tactics to gain users. One site, DirtSearch, includes in its mission statement, “We know there are many reasons for gathering public records such as background checks for employment; landlords checking into tenants[sic] backgrounds to rent; whether or not to venture into partnership relationships and much more. At DirtSearch, we do our best to bring as many public records together in one place to help you feel confident in your decision, whatever the case may be.”¹²⁴ Spyfly promises to “keep you and your family safe from sexual predators and other criminals.” Intelius offers the opportunity to “live in the know.” Instant Checkmate encourages users to “Expose The Truth Today.” Search sites like these generally aggregate data found in other public databases online, and comb through this information for a membership fee of between \$10 and \$100 a month for unlimited searches;¹²⁵ others, like DirtSearch, are free.¹²⁶

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The accuracy of the records available on these sites is questionable. Intelius warns that “[c]ustomers should use extreme caution when interpreting the results of a criminal or civil background search for any type of personal verification. Positive or false matches in criminal or civil searches may not provide confirmation of an individual’s criminal or civil background. Proper use of these reports is the responsibility of you, the customer.... Neither Intelius nor any of our data suppliers represents or warrants that the [i]nformation is current, complete or accurate.”¹²⁷ Yet, none of the instant online search engines used in the online “audit” provide a mechanism for an individual to correct inaccurate record information provided by the site. Three of the sites, SpyFly, Instant Checkmate, and PeopleSmart, provide consumers with a mechanism to “opt out” or remove their personal information so that it does not appear when searches are conducted; however, this process may need to be repeated when new records are provided by data partners. Intelius did not provide any information about how to remove information, and DirtSearch specifically stated that an individual’s information cannot be removed because it “is a search engine like Google. It simply gathers information, patterns or names, from public records and returns results.”¹²⁸

Although people search companies like those described above have “combed through public records” to find “accurate” information about criminal justice system involvement and other information, juvenile records enjoy more protection than those of adult criminal records. Inputting Juvenile Law Center’s volunteers’ names, state, birthdate and social security number yielded no results among the most commonly used people search company websites. Instant Checkmate provides the following rationale, “Juvenile criminal records are handled differently than adult criminal records, in that most of them are sealed and unavailable to the public once the juvenile turns 18 years of age. However, there are exceptions to this non-disclosure policy depending on the crime committed.”¹²⁹ Although this statement is inaccurate—most juvenile records are not sealed and do not become unavailable at the youth’s age of majority—the public records databases used in these searches often correspond to public records available by Freedom of Information requests.¹³⁰ They are records generated by a state or local agency and available for public access.¹³¹ As demonstrated by our attempts to obtain information from state courts and law enforcement agencies via Freedom of Information and Right to Know requests, juvenile records are not typically classified as “public records.” That said, state laws permit many juvenile records to be publicly accessible and the technology exists for people search companies and CRAs to obtain juvenile records en masse and disclose them without prohibition or liability.

FBI Background Checks

FBI clearances are required for a number of volunteer, employment and licensing positions, including “those who will have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities; port workers; people who volunteer with certain youth-focused organizations; people who work in public or private schools; those who will work in the financial industry, including mortgage processing; people in nursing or caregiving positions; and workers licensed to handle hazardous materials, among others.”¹³²

Because of his juvenile record, Daniel Brenner was not allowed to serve as guardian for his disabled mother. “When I was 17 my mother had a stroke in Korea, where she was in the military,” he explains. “I was staying with her. I’m the only family member she has, but they wouldn’t place me with her as her guardian because of my record. So right now she’s in a nursing home.”¹³³

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Dina had been out of the juvenile court system for nearly seven years when she signed up to chaperone her child's class on a school field trip. The school, as a matter of course, required fingerprinting and background checks for all volunteers. Dina's felony adjudication from when she was 15 years old appeared on the level II background check and she was told she wasn't allowed to volunteer at her child's school or chaperone the field trip.

Most people consider FBI background checks thorough and accurate and therefore the "gold standard;" in actuality, roughly 50% of the records are inaccurate or incomplete according to the Attorney General.¹³⁴ This can be for a number of reasons: first, the records are national and therefore vulnerable to errors; and second, FBI's data includes arrest history. That means that individuals arrested without being formally charged or adjudicated delinquent or convicted will have an FBI record.

State Police Background Checks

At least some juvenile record information can be very easily obtained through a record request to a state law enforcement agency or court. For example, Pennsylvania's state police repository allows public access to records of felonies committed by youth over age 14 and serious felony offenses committed by youth under age 14.¹³⁵

Klaus was adjudicated delinquent at age 17 on a felony drug charge. Because he was over 14 when he was arrested, his record was public. Ten years later, he returned to school to get a medical assistant certification and apply for jobs in the field. He was hired as a home health care worker. When the agency conducted a state police background check, they terminated his employment. With zero income and nowhere to turn, Klaus sought legal help to get his juvenile record expunged. His attorney advocated with the employer to explain the difference between juvenile adjudications and criminal convictions and was able to get him re-hired.

Even state police background checks can be misleading. Employers, unsure of what the terminology is, or unwilling to wait to get more information, are quick to turn candidates away who have any semblance of a record.

Laney recently applied for a job at a home health care agency. When the employer requested her State Police record, it came back marked as "Request under Review (RUR)." Laney had a misdemeanor adjudication from five years earlier. Because it was a misdemeanor, the State Police was not authorized by law to report the case to her prospective employer. However, the process for the State Police to review the record and make that determination can take up to three weeks. If there was nothing to investigate, the employer would get back a "No Record" result right away. Laney's employer did not wait the three weeks to receive back the "No Record" result, and in fact, just the very presence of the "RUR" status alerted the employer to that fact that Laney did in fact have some sort of record. The employer refused to hire her.

In addition, state police records may not be up to date. Records that are expunged may take time to process and the database may not reflect the record's current status.

Eliza petitioned and had been granted expungement of her record several months before her attorney requested her records from the state police to verify their expungement. Despite state law providing that expungement occurs within 30 days, the expungement order had not yet worked its way to the state record repository, and all of her juvenile records were released.

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There are no federal guidelines that require accuracy and completeness of criminal records, but nearly every state has some such provision—37 states require audit of their central repository and most states allow individuals to review their records and seek corrections of inaccurate information.¹³⁶ These “access and review” policies do not guarantee accuracy. Rather, they place the burden on the individual to discover the record is inaccurate, likely after they have lost an opportunity, and then proactively seek to amend it.

Jaime’s record was available to the public because of the level of offense. However, the online site contained aggregated information. When receiving a copy of Jaime’s record, there was a notation that the record may not be up-to-date and that additions and deletions to his record of juvenile arrest may have been made.

Although the private background checks did not turn up results, for every youth volunteer, the law enforcement agency or court disclosed record information pursuant to state law. In some cases, the court took no measures to protect the record information and disclosed information well beyond what is permitted under law.

Upon request of Mariana’s record by a private citizen with no connection to her case, the State Bureau of Identification of the Delaware State Police provided information regarding Mariana’s charge, plea, adjudication and disposition without questioning the purpose in obtaining the information. The state office communicated Mariana’s detailed juvenile record information to the private citizen via voicemail and email messages.

In contrast to background searches through CRAs and people search companies, state courts and law enforcement agencies more readily provide access to juvenile record information. In many states, juvenile record information is permitted to be shared with the public. Therefore, any person who contacts the court seeking record information is entitled to receive some information. However, some states safeguard this so that the juvenile’s entire delinquency history or court file is not released. In Pennsylvania, for example, when a record is publicly accessible under the law, a data sheet must be created by the court clerk to provide whenever someone requests access to the public record. This data sheet includes general information regarding the juvenile’s court involvement, including the child’s name, offense, date of disposition and type of disposition.¹³⁷ Juvenile records often contain highly sensitive information related to the child’s behavioral and family history. That information should never be shared, even when a record is ostensibly public.

Furthermore, when viewed in light of the results of the requests for information from state court administrative offices, the casual sharing of juvenile record information, as in Delaware with an individual wholly unconnected to the child’s case, is problematic. When states do not keep track of who is requesting record information and they are not following any written policies or guidelines on how the information should be released when it is available, there is a risk of oversharing. As a result, more records are readily available and youth lose opportunities.

Unfortunately, many youth only realize that their records have an impact on their futures after the damage has been done. If the record is inaccurate, the youth must navigate a complex and possibly costly system in order to correct the record to ensure it doesn’t block future opportunities.

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Limiting the Negative Effects of Juvenile Records

In order to counter the effects of juvenile records, states provide remedial measures to increase juvenile record confidentiality, including sealing and expungement. “Sealing” means that the record is still retained by the court or law enforcement agency, but access to the record is further restricted — for instance, limiting access only to law enforcement, or even preventing law enforcement access after a number of years.¹³⁸ “Expungement” means that the record is physically destroyed, both in its paper and electronic form.¹³⁹ After expungement, some states allow the individual to respond to inquiries as though the record never existed.

There are many barriers to effective sealing and expungement. Many states limit the type of record that can be sealed or expunged—for instance, offenses committed past a certain age, second offenses, or serious offenses are not eligible.¹⁴⁰ In other states, the application for sealing or expungement is onerous, and potential candidates may not even know that limiting access to their records is a legal option.¹⁴¹ In some states, sealing or expungement can only occur at the discretion of the prosecutor or judge, further limiting access to this remedy.¹⁴²

Even when juvenile records are sealed and expunged, it may be too late to prevent the harm caused by wide access to the records. Companies that provide background check services are unlikely to update their databases and delete sealed or expunged records, so the records may still appear when an applicant is seeking jobs or housing. Private individuals may post information about the records online, and past references to the record may appear in search engines long after the website containing the page has been deleted. Once a juvenile record reaches the internet, it is impossible to contain.

Although our own anecdotal experience suggests that people search companies and CRAs are not sharing juvenile record information currently, the technology is certainly available to make juvenile records more broadly accessible through these search tools. Juvenile courts and law enforcement agencies routinely release record information and state laws encourage the disclosure of record information even to individuals wholly unconnected to the child’s case. State policies permitting widespread access are aligned with the technological advancements to make information more readily accessible to the public. As a result, youth with records of juvenile court history will increasingly encounter barriers to education and employment.

State Laws

States should enact more protective laws governing juvenile records. In a 2014 Report, Juvenile Law Center recommended that states should “ensure that access to juvenile record information is limited to individuals connected to the case. This may include: juvenile court personnel, including the judge, juvenile probation officers and other court professional staff ordered by the juvenile court to provide services to the juvenile; public or private agencies or departments providing supervision by court order; the juvenile and his or her attorney; the parent (except when parental rights have been terminated), the legal guardian of the juvenile, and the legal custodian of the juvenile; [and] the prosecutor.”¹⁴³ Simply put, records should not be made available to the public and should not be considered in establishing eligibility for employment and education.

Furthermore, as courts have accepted the developmental differences between youth and adults, there is a growing interest in providing greater protection to young people by limiting access to juvenile criminal history records. Recently, the American Bar Association adopted a policy addressing the collateral consequences facing individuals adjudicated delinquent or convicted of a crime:

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Laws, rules, regulations and policies that require disclosure of juvenile adjudications can lead to numerous individuals being denied opportunities as an adult based upon a mistake(s) made when they were a child. The ABA recognizes the language used by the United States Supreme Court in *Roper v. Simmons*, 543 U.S. 551, that children are different than adults because of: “A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” Therefore, the ABA is recommending that the collateral consequences of committing a crime as a youth be severely reduced by reducing barriers to education and vocational opportunities because of a juvenile incident. Furthermore there should be limited exceptions that only exist when the incident is directly relevant to the position sought or a concern of a school.¹⁴⁴

This is consistent with the ABA’s juvenile justice standards that provided, in part, that

[a]ccess to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention.¹⁴⁵

The ABA recently also adopted a Model Act governing the confidentiality and sealing and expungement of juvenile records. The Act provides that juvenile records shall not be available for public inspection.¹⁴⁶

Ensuring greater confidentiality is in service of the goal of increasing opportunities for court-involved youth. Although expungement and sealing can be useful measures after the court process has ended, these measures are meaningless without confidentiality of records at the front end. Record information available to the public is disseminated and subject to redisclosure. Although private background check companies are not currently aggregating juvenile record information at the same rate as adult criminal record information, as more state agencies use online databases to store juvenile record information, the technology exists to collect and disseminate this information. And no law prohibits them from doing so.¹⁴⁷

Why Ban-the-Box Isn’t Enough

Increasing confidentiality protections is an important first step toward ensuring juvenile records do not affect youth opportunities. But employers and educational institutions must also examine how they consider juvenile record information. The juvenile justice system at its best provides opportunities for rehabilitation. Children are supposed to emerge from the system held accountable for their offenses, having addressed the root causes of their behavior and having developed competencies to become productive citizens. Though there is a common belief that the system is able to ensure accountability, records set up roadblocks for youth as they emerge and demonstrate our reluctance to accept the system’s ability to provide adequate rehabilitation. But, the research is clear — youth in the juvenile justice system are unlikely to reoffend and employment is a key positive indicator in ensuring decreased recidivism.

Over half of employers inquire about criminal records during the application process, without conducting a further background check.¹⁴⁸ The “ban-the-box” campaign advocates for removing questions about criminal history from employment applications. This recommendation was endorsed by the Equal Employment Opportunity Commission in 2012.¹⁴⁹ Nineteen states and over one hundred municipalities have enacted this in law;¹⁵⁰ seven of these states’ laws apply to both public and private employment.¹⁵¹ Several private

companies acted even before laws were put in place for public agencies. “Walmart, Target, Home Depot, Koch Industries, and others have already adopted so-called fair-chance hiring policies for people with records, which are designed to give these candidates a better shot at getting an interview by removing the requirement to disclose a record upfront.”¹⁵²

The My Brother’s Keeper Task Force Report to the President urges public and private employers to “ban the box” and calls on legal services organizations to help young people expunge their records.¹⁵³ Specifically, the report recommends that employers:

Launch an initiative to eliminate unnecessary barriers to giving justice-involved youth a second chance. Large employers, including the Federal government, should study the impacts of requiring disclosure of juvenile or criminal records on job applications and consider “banning the box.” Federal, state, local, and private actors should support public campaigns focused on eliminating forms of discrimination and bias based on past arrest or conviction records. Legal and other services focused on addressing successful reentry are acutely needed to address accuracy and expunge criminal records, reinstate licenses and reduce excessive fines. Relevant agencies should work with civil legal services providers, including the Legal Services Corporation, state and local attorneys general, and the private bar to expand awareness of the need and access to these services.¹⁵⁴

In November 2015, President Obama took executive action to delay inquiry into criminal history to further in the application process for federal employment.¹⁵⁵

[T]hat record disqualifies you from being a full participant in our society—even if you’ve already paid your debt to society. It means millions of Americans have difficulty even getting their foot in the door to try to get a job much less actually hang on to that job. That’s bad for not only those individuals, it’s bad for our economy. It’s bad for the communities that desperately need more role models who are gainfully employed. So we’ve got to make sure Americans who’ve paid their debt to society can earn their second chance.

...

[O]n many job applications there’s a box that asks if you have a criminal record. If you answer yes, then a lot of times you’re not getting a call back. We’re going to do our part in changing this. The federal government, I believe, should not use criminal history to screen out applicants before we even look at their qualifications. We can’t dismiss people out of hand simply because of a mistake that they made in the past.

...

So my hope is, is that with the federal government also taking action, us getting legislation passed — this becomes a basic principle across our society. It is relevant to find out whether somebody has a criminal record. We’re not suggesting ignore it. What we are suggesting is, when it comes to the application, give folks a chance to get through the door. Give them a chance to get in there so that they can make their case.¹⁵⁶

Although ban-the-box policies are an important way for youth with justice system involvement to demonstrate their qualifications for a job prior to being subjected to a background check, they are meaningless if a positive background check result automatically disqualifies any candidate from employment. Little research has been done to determine whether the ban-the-box campaign has resulted in increased opportunities for individuals with records. Some companies, including Men’s Wearhouse,¹⁵⁷ make a concerted effort to hire individuals with records, believing in the principles of rehabilitation and second chances.

Conclusion

The fact that most children grow out of their youthful behavior should inform the way we set policy for access to records of juvenile justice system involvement. Children should not be stymied in their efforts to obtain education and employment or to become valuable contributing adults by their records. Children should have the right to grow up absent the stain of their juvenile court involvement.

Legislative reform is one path to this goal. But we must also change the cultural climate. Children must be held accountable for their delinquent conduct, but they must not be defined by that conduct. Second chances mean nothing if the chance is illusory.

Endnotes

- 1 1,319,700 juveniles were arrested in 2012. Office of Juvenile Justice and Delinquency Prevention, STATISTICAL BRIEFING BOOK: 2012, available at <http://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qaDate=2012>.
- 2 Center on Juvenile and Criminal Justice, *Juvenile Justice History*, <http://www.cjcj.org/education1/juvenile-justice-history.html> (“First established in 1899 in Cook County, Illinois and then rapidly spread across the country, the juvenile court became the unifying entity that led to a juvenile justice system.”); Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Reform Initiatives in the States: 1994-1996*, at 36 (1997), available at <https://www.ncjrs.gov/pdffiles/reform.pdf>.
- 3 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Reform Initiatives in the States: 1994-1996*, at 36 (1997), available at <https://www.ncjrs.gov/pdffiles/reform.pdf>; see also *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring) (“It is a hallmark of our juvenile justice system in the United States that virtually from its inception at the end of the last century its proceedings have been conducted outside of the public’s full gaze and the youths brought before our juvenile courts have been shielded from publicity.”).
- 4 See Linda E. Frost & Robert E. Shepherd, Jr., *Mental Health Issues in Juvenile Delinquency Proceedings*, 11 CRIM. JUST. 52, 58 (1996).
- 5 Kristin N. Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 526-27 (2004); see also *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 107-08 (1979) (Rehnquist, J., concurring).
- 6 Henning, *supra* note 5, at 526-27; see also *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 107-08 (1979) (Rehnquist, J., concurring).
- 7 Ryan D. Watstein, Notes, *Out of Jail and Out of Luck: The Effect of Negligent Hiring Liability and the Criminal Record Revolution on Ex-Offenders’ Employment Prospects*, 61 FLA. L. REV. 581, 592-94 (2009) (stating that individual employers can be held liable if their employees offend in the workplace under the negligent hiring doctrine and therefore need access to records to avoid hiring people who might increase their liability).
- 8 *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina*, 564 U.S. 261, 131 S. Ct. 2394 (2011); *Miller v. Alabama*, 132 S. Ct. 2455 (2012).
- 9 *Miller*, 132 S. Ct. at 2467 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)); see also *J.D.B.*, 564 U.S. 261, 131 S. Ct. at 2403 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)); *Gall v. United States*, 552 U.S. 38, 58 (2007); *Roper*, 543 U.S. at 569; *Johnson v. Texas*, 509 U.S. 350, 367 (1993).
- 10 See *J.D.B.*, 564 U.S. 261, 131 S. Ct. at 2403 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)); see also *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569.
- 11 *Miller*, 132 S. Ct. at 2464.
- 12 See, e.g., Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 PSYCHOL. PUB. POL’Y & L. 3, 5 (1997) (discussing trend among states to develop laws which extend juvenile punishment into adulthood); see also Linda E. Frost & Robert E. Shepherd, Jr., *Mental Health Issues in Juvenile Delinquency Proceedings*, 11 CRIM. JUST. 52, 59 (1996) (“Juvenile delinquency proceedings have far more serious consequences now than at any other point in the history of the juvenile or family court.”).
- 13 *In re Gault*, 387 U.S. 1, 32 (1967).
- 14 *Gault*, 387 U.S. at 24-25. See also *McKeiver v. Pennsylvania*, 403 U.S. 528, 567-68 (1971) (Douglas, J., dissenting).
- 15 *Davis v. Alaska*, 415 U.S. 308, 320 (1974) (“The 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.”).
- 16 Arthur R. Blum, *Disclosing the Identities of Juvenile Felons: Introducing Accountability to Juvenile Justice*, 27 LOY. U. CHI. L.J. 349, 376 (1996).
- 17 Marygold S. Melli, *Juvenile Justice Reform in Context*, 1996 WIS. L. REV. 375, 390-91 (1996); Ralph A. Rossum, *Holding Juveniles Accountable: Reforming America’s “Juvenile Injustice System,”* 22 PEPP. L. REV. 907, 909 (1995) (“The American public perceives juvenile courts as unable to prevent—in fact, as contributing to—serious juvenile crime.”); Stephan E. Oestreicher, Jr., *Toward Fundamental Fairness in the Kangaroo Courtroom: The Due Process Case Against Statutes Presumptively Closing Juvenile Proceedings*, 54 VAND. L. REV. 1751, 1761 n.44 (“[I]ncreased press

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access to juvenile proceedings has fueled public perception of a juvenile crime wave”).

18 James B. Jacobs, *Juvenile Criminal Record Confidentiality*, New York University Public Law and Legal Theory Working Papers (2013). Paper 403 at 9-10, available at http://lsr.nellco.org/cgi/viewcontent.cgi?article=1405&context=nyu_plltwp.

19 Henning, *supra* note 5, at 533, 536 (“Preserving confidentiality has become less popular, as it appears to frustrate society’s increasing desire to hold delinquents accountable for their actions.”).

20 Between 1992 and 1995, ten states modified or enacted legislation to open juvenile proceedings to the public. Office of Juvenile Justice and Delinquency Prevention, *State Responses to Serious and Violent Juvenile Crime: Research Report*, at 36 (1996), available at <https://www.ncjrs.gov/pdffiles/statresp.pdf>. By 2004, only four states had absolute mandatory closure statutes; fourteen gave the judge discretion to close upon petition; sixteen closed cases for young children or minor offenses but opened them otherwise; and seventeen presumptively closed cases but considered opening upon petition. See Henning, *supra* note 5, at 547.

21 See, e.g., Jeffrey F. Addicott et. al., *STATE OPEN GOVERNMENT LAW AND PRACTICE IN A POST-9/11 WORLD* (2007).

22 Juvenile Law Center, *JUVENILE RECORDS: A NATIONAL REVIEW OF STATE LAWS ON CONFIDENTIALITY, SEALING AND EXPUNGEMENT* (2014), at 8, available at <http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf> [hereinafter NATIONAL REVIEW].

23 See The National Consortium for Justice and Information Statistics, *Report of the National Taskforce on the Commercial Sale of Criminal Record Information 1* (2005), available at <http://www.search.org/files/pdf/RNTFCSCJRI.pdf>.

24 See, e.g., 65 Pa. Stat. Ann. § 67 (2008) (overhauling Pennsylvania’s Right to Know law and creating presumption that state and local agency records are open to the public).

25 Jacobs, *supra* note 18, at 18-19. Jacobs points to gang databases as an example. State and federal governments authorize the collection and dissemination of information related to gang affiliation and suspected gang affiliation to aid law enforcement and other government agencies to identify and monitor suspected gang members whom, it is assumed, pose a high risk of current and future criminality.

26 NATIONAL REVIEW, *supra* note 22.

27 Alabama (Ala. Code § 12-15-136, Ala. Code § 12-15-137); Alaska (Alaska Stat. § 47.12.300(d)-(f)); Arkansas (Ark. Code § 9-27-309); Colorado (Colo. Rev. Stat. § 19-1-304); Connecticut (Conn. Gen. Stat. § 46b-124); Delaware (Del. Code tit. 10, § 1063(b)); District of Columbia (D.C. Code § 16-2331(c)); Florida (Fla. Stat. § 985.045); Georgia (Ga. Code Ann. § 15-11-83); Hawaii (Haw. Rev. Stat. § 571-84); Idaho (Idaho Code § 20-525-1, Jensen v. State, 72 P3d 897, 903 (Idaho 2003)); Indiana (Ind. Code § 31-39-2-10, Ind. Code § 31-39-2-11); Kansas (Kan. Stat. § 38-2310); Kentucky (Ky. Rev. Stat. § 610.340); Louisiana (La. Child Code art. 412); Maine (Me. Rev. Stat. tit. 15, § 3308); Maryland (Md. Code, Courts and Judicial Proceedings § 3-8A-27); Massachusetts (Mass. Gen. Laws ch. 119, § 60A); Minnesota (Minn. Stat. § 260B.171); Mississippi (Miss. Code § 43-21-255); Missouri (Mo. Rev. Stat. § 211.321, Mo. S. Ct. Op. R. 4.26, Mo. S. Ct. Op. R. 4.25(3)); Nevada (Nev. Rev. Stat. § 62H.020, Nev. Rev. Stat. § 62H.025); New Hampshire (N.H. Rev. Stat. § 169-B:35); New Jersey (N.J. Stat. § 2A:4A-60, State v. D.L.C., 2013 WL 322491 (N.J. Super. Ct. App. Div. 2013)); Oklahoma (Okla. Stat. tit. 10A, §§ 2-6-108(D), (E) (2), (F)-(H), Okla. Stat. tit. 10A, § 2-6-102); Pennsylvania (42 Pa. Const. Stat. § 6307); South Carolina (S.C. Code § 63-19-2010); South Dakota (S.D. Codified Laws §§ 26-7A-29, 27, 39)); Tennessee (Tenn. Code § 37-1-153); Texas (Tex. Fam. Code § 58.005; Utah (Utah Code § 78A-6-209); Virginia (Va. Code § 16.1-301); West Virginia (W. Va. Code § 49-7-1); Wisconsin (Wisc. Stat. § 938.396).

28 Arizona (Ariz. Rev. Stat. § 8-208(G), Ariz. Const. Article IV, §22); Idaho (Idaho Code § 20-525A); Iowa (Iowa Code § 232.147); Michigan (Mich. Comp. Laws §§ 712A.28); Montana (Mont. Code §§ 41-5-216); Oregon (Or. Rev. Stat. § 419A.255); Washington (Wash. Rev. Code § 13.50.050(14)-(16)).

29 The only states that fully protect juvenile record information from public accessibility are California (Cal. Rules of Court, Rule 5.552); Illinois (705 Ill. Comp. Stat. § 405(C)); Nebraska (Neb. Rev. Stat. § 43-2,108); New Mexico (N.M. Stat. § 32A-2-32); New York (N.Y. Fam. Ct. § 381.3); North Carolina (N.C. Gen. Stat. § 7B-3000); North Dakota (N.D. Cent. Code § 27-20-52); Ohio (Ohio Rev. Code Ann. § 2151.18); Rhode Island (R.I. Gen. Laws § 14-1-64; R.I. Gen. Laws § 14-1-30); and Vermont (Vt. Stat. tit., 33 § 5117).

- 30 Mark Soler, *Public Opinion on Youth, Crime, and Race: A Guide for Advocates* in BUILDING BLOCKS FOR YOUTH, (2001), at 15, available at <http://cclp.org/documents/BBY/advocacyguide.pdf>.
- 31 Benjamin Chambers and Annie Balck, *Because Kids Are Different: Five Opportunities for Reforming the Juvenile Justice System* (2014), available at <http://www.modelsforchange.net/publications/718>.
- 32 Center for Community Alternatives, *Boxed Out: Criminal History Screening and College Application Attrition* (2015), at 12 [Boxed Out], available at http://communityalternatives.org/pdf/publications/BoxedOut_FullReport.pdf.
- 33 *Id.* at 5.
- 34 Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, NACDL: THE CHAMPION (July/August 2011), at 22.
- 35 20 U.S. Code § 7151.
- 36 States receiving funds under the Elementary and Secondary Education Act are required to expel a student for one year if certain weapons are allegedly involved. United States Department of Education, *GUIDANCE CONCERNING STATE AND LOCAL RESPONSIBILITIES UNDER THE GUN-FREE SCHOOLS ACT OF 1994*, available at <https://www2.ed.gov/offices/OSDFS/gfsaguidance.html>.
- 37 Missouri law allows schools to suspend or expel students who were charged, but not convicted, of a felony. Mo. Rev. Stat. § 167.115,164 (2000). North Carolina is similar to Missouri in that a student who is charged, convicted, or adjudicated of a criminal offense can be suspended or expelled from school even if the offense is alleged to have occurred off school grounds. N.C.G.S § 7B-3101 (a)(2), (a)(3), (a)(5).
- 38 Watstein, *supra* note 7, at 592-94.
- 39 John R. Emshwiller and Gary Fields, *Decadeslong Arrest Wave Vexes Employers*, WALL STREET JOURNAL (Dec. 12, 2014).
- 40 Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 939 (2003) (citing Bruce Western & Katherine Beckett, *How Unregulated is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 AM. J. SOC. 1030 (1999); Richard B. Freeman, *The Relation of Criminal Activity to Black Youth Employment*, 16 REV. BLACK POL. ECON. 99 (1987); Daniel Nagin & Joel Waldfogel, *The Effect of Conviction on Income through the Life Cycle* (NBER Working Paper No. 4551, 1993).
- 41 Steven D. Bell, *The Long Shadow: Decreasing Barriers to Employment, Housing, and Civic Participation for People with Criminal Records Will Improve Public Safety and Strengthen the Economy*, 42 W. ST. L. REV. 1, 13 (2014).
- 42 Susan Lockwood et al., *The Effect of Correctional Education on Postrelease Employment and Recidivism: A 5-Year Follow-Up Study in the State of Indiana*, 58 CRIME & DELINQ. 380, 389-90 (2012). See also Christopher Uggen, *Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism*, 67 AM. SOC. REV. 529 (2000).
- 43 Laura S. Abrams, Diane Terry & Todd M. Franke, *Community-Based Juvenile Reentry Services: The Effects of Service Dosage on Juvenile and Adult Recidivism*, 50 J. OFFENDER REHABILITATION 492, 504 (2011).
- 44 Michelle Natividad Rodriguez and Maurice Emsellem, National Employment Law Project, *65 Million Need Not Apply: The Case for Reforming Criminal Background Checks for Employment* (March 2011) (citing American Correctional Assoc., 135th Congress of Correction, *Presentation by Dr. Art Lurigio (Loyola University)*); *Safer Foundation Recidivism Study* (August 8, 2005) (Illinois study following 1,600 individuals recently released from state prison, found only 8 percent of those who were employed for a year committed another crime compared to the state's 54-percent average recidivism rate).
- 45 Available at <http://rightoncrime.com/category/priority-issues/juvenile-justice/>
- 46 Rodriguez & Emsellem, *supra* note 44, at 3. See also Autumn Spanne, *Can hiring ex-offenders make a business more profitable?*, The Guardian (Feb. 4, 2016) available at <http://www.theguardian.com/sustainable-business/2016/feb/04/us-prison-system-ex-offenders-employment-walmart-target-civil-rights>.
- 47 *Id.*
- 48 *Youth Employment Rate, Figures by State*, Governing.com, available at <http://www.governing.com/gov-data/economy-finance/youth-employment-unemployment-rate-by-state.html>.

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- 51 Justice Policy Institute, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* (2014), at 3, available at http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.
- 52 Richard B. Freeman, *Crime and the Employment Disadvantage of Youth* (Cambridge, MA: National Bureau of Economic Research, 1991) at 11.
- 53 Western & Beckett, *supra* note 40, at 1048.
- 54 *Id.*
- 55 W. Haywood Burns Institute, *Unbalanced Juvenile Justice*, at <http://data.burnsinstitute.org>.
- 56 Pager, *supra* note 40, at 959.
- 57 *Id.*
- 58 National Employment Law Project, *Criminal Background Checks: A Best Practice Guide for Employers*, available at <http://www.nelp.org/content/uploads/2015/03/CriminalBackgroundChecksBestPracticesGuide.pdf>.
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- 60 *Id.*
- 61 Only Massachusetts, Louisiana, West Virginia, Utah, Ohio, and Rhode Island do not explicitly authorize law enforcement officers to access information about juvenile adjudications. See Massachusetts (Mass Gen. Laws 119 § 60A); Louisiana (La. Child. Code art. 412); West Virginia (W. Va. Code § 49-7-1(a)); Utah (Utah Code Ann. § 78A-6-209); Ohio (Ohio Rev. Code Ann. § 2151.14); Rhode Island (R.I. Gen. Laws § 14-1-30).
- 62 Linda Thomas, *The real cost of selling juvenile records for pennies per name*, MyNorthwest.com (April 14, 2013), available at <http://mynorthwest.com/646/2251996/The-real-cost-of-selling-juvenile-records-for-pennies-per-name>.
- 63 Under right to know or freedom of information requests, we contacted a number of states to obtain information governing access to public records from January 1, 2010 through December 31, 2014 that identified all entities and individuals that requested to inspect, copy or examine any juvenile records in the possession of the state entity and the outcome of each such request, i.e., whether the request was granted or denied. If the request for access was granted, we also requested a copy of the records to which access was granted. In addition, Juvenile Law Center requested any agreements or contracts between the state entity and any other entity or individual regarding access to juvenile records, including any payments or other remuneration made to the state entity for such access.
- 64 Idaho Ct. Admin. r. 32(g)(9)(E); Idaho State Judiciary, Idaho Supreme Court Data Repository, <https://www.idcourts.us/repository/start.do>.
- 65 Idaho State Judiciary, Idaho Supreme Court Data Repository, <https://www.idcourts.us/repository/start.do>.
- 66 42 Pa. Cons. Stat. § 6308(b).
- 67 Pennsylvania State Police, Access to Criminal History, <https://epatch.state.pa.us/>.
- 68 R.I. Gen. Laws § 14-1-30.
- 69 American Bar Association, Juvenile Collateral Consequences Project, available at <http://www.beforeyouplea.com>; Vera Institute of Justice, *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014* 23 (2014), available at <http://www.vera.org/sites/default/files/resources/downloads/states-rethink-collateral-consequences-report-v3.pdf>; Pacific Juvenile Defender Center, *Collateral Consequences of Juvenile Delinquency Proceedings in California: A Handbook for Juvenile Law Professionals* (2011), available at <http://njdc.info/wp-content/uploads/2014/04/PJDC-CA-Collateral-Consequences-Handbook-2011.pdf>; Pennsylvania Juvenile Indigent Defense Action Network, *The Pennsylvania Juvenile Collateral Consequences Checklist* (2010), available at http://www.pccd.pa.gov/Juvenile-Justice/Documents/Pennsylvania_Juvenile_Collateral_Consequences_Checklist.pdf.

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- 71 Unless the story was publicly reported, in which case the information is cited, all names have been changed to protect the confidentiality of the individuals.
- 72 Margaret Colgate Love et al., *COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY AND PRACTICE* (2013), § 2:70.
- 73 See, e.g., 75 Pa. Stat. Ann. § 1532 (2005). See also The American Association of Motor Vehicle Administrators, *Best Practices Guide to Reducing Suspended Drivers*, available at <http://www.aamva.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=3723&libID=3709>.
- 74 *Collateral Consequences of Juvenile Delinquency Adjudications: The Need to Think Outside the Box*, *Criminal Justice Research Review* (Nov./Dec. 2014) (citing National Affordable Housing Act, Pub. L. No. 104-120, 110 Stat. 836q (1996) and *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002)).
- 75 Love et al., *supra* note 72, § 2:73.
- 76 Eric Scigliano, *To Seal or not to seal: WA's battle over juvenile records* (January 27, 2014), available at <http://crosscut.com/2014/01/washingtons-never-ending-punishment-of-juveniles/>.
- 77 8. U.S.C.A. § 1227(a)(2)(B)(ii).
- 78 8 U.S.C.A. § 1182(a)(2)(C)(i).
- 79 8. U.S.C.A. § 1427(e).
- 80 Alabama (Ala. Code § 12-15-134, Ala. Code § 12-15-133); Alaska (Alaska Stat. § 47.12.310(c)); Arkansas (Ark. Code. § 9-27-309); Colorado (Colo. Rev. Stat. § 19-1-304); Connecticut (Conn. Gen. Stat. § 10-233h); District of Columbia (D.C. Code § 16-2331(c)); Florida (Fla. Stat. § 985.04 (1)); Georgia (Ga. Code § 15-11-82(e)); Illinois (705 Ill. Comp. Stat. 405/1-7); Indiana (Ind. Code § 31-39-2-13.8.); Iowa (Iowa Code § 232.147); Kansas (Kan. Stat. § 38-2310); Kentucky (Ky. Rev. Stat. § 610.340); Louisiana (La. Child. Code. art. 412); Maine (Me. Rev. Stat. tit. 15, § 3308); Maryland (Md. Educ. Code § 7-303); Minnesota (Minn. Stat. § 260B.171); Mississippi (Miss. Code § 43-21-255); Missouri (Mo. Rev. Stat. § 211.321); Montana (Mont. Code § 41-5-215); New Jersey (N.J. Stat. § 2A:4A-60); New Mexico (N.M. Stat. § 32A-2-32); New York (N.Y. Crim. Proc. § 720.35); North Carolina (N.C. Gen. Stat. § 7B-3101); North Dakota (N.D. Cent. Code. § 27-20-51, N.D. Cent. Code § 27-20-52); Oklahoma (Okla. Stat. tit. 10A, § 2-6-102); Oregon (Or. Rev. Stat. § 419A.255); South Carolina (S.C. Code § 63-19-2020, S.C. Code § 63-19-2030); Tennessee (Tenn. Code. § 49-6-3051); Texas (Tex. Fam. Code § 58.0051); Virginia (Va. Code § 16.1-300, Va. Code § 16.1-301); Washington (Wash. Rev. Code § 13.50.050); Wisconsin (Wis. Stat. § 938.396, Wis. Stat. § 938.396); Wyoming (Wyo. Stat. § 14-6-203).
- 81 NATIONAL REVIEW, *supra* note 22, at 16.
- 82 BOXED OUT, *supra* note 32, at ii.
- 83 *Id.* at 12.
- 84 *Id.* at 37.
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- 95 Center for Community Change & National Employment Law Project, *The “Wild West” of Employment Background Checks: A Reform Agenda to Limit Conviction and Arrest History Abuses in the Digital Age* (August 2014), at 2 [hereinafter *Wild West*].
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- 104 *Id.* at 37.
- 105 Fewer than half surveyed have written policies in place on how they collect this information and only 40% say they train staff. CTR. FOR CMTY. ALTS., *supra* note 98, at i.
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- 119 15 U.S.C. § 1681c(a)(5) and (b)(3). Prior to 1998, this seven year limit also applied to reporting records of convictions.
- 120 15 U.S.C. § 1681e(b).
- 121 Juvenile Law Center engaged a consultant with expertise in information technology and cybersecurity and a company that performs employment, volunteer and tenant screening. We recruited volunteers from various states willing to have their juvenile records audited. The volunteers, many who are now adults, provided us with background on their delinquency records, including whether these records have been sealed or expunged and when. Using general information about each individual, similar to the information one would require to include in an employment background check, we then traced how each young person's records were disseminated and where these records are currently available online, including in online databases maintained by for-profit companies that provide background checking services.
- 122 Calero, *supra* note 99, at 14.
- 123 *Wild West*, *supra* note 95, at 1.
- 124 *Dirt Search Mission*, available at <http://www.dirtsearch.org/dirt-search/mission/>.
- 125 *Help Center*, SpyFly, available at <http://spyfly.com/help-center.php>; *About*, Intelius, available at <http://corp.intelius.com>; *Public Records Search Service: Background Checks, Police Records, Court Documents, Contact Information and Much More!*, Instant Checkmate, available at <https://www.instantcheckmate.com/>.
- 126 *Dirt Search FAQs*, available at <http://www.dirtsearch.org/dirt-search/faq/>.
- 127 *Intelius Terms & Conditions*, available at <http://www.intelius.com/useragreement.php>.
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- 129 *Criminal Records*, Instant Checkmate, available at <http://www.instantcheckmate.com/glossary/criminal-record/>.
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- 131 *What Is a Public Record*, PeopleSmart, available at <https://www.peoplesmart.com/blog/what-is-a-public-record>
- 132 Vera Institute of Justice, *supra* note 69, at 23.
- 133 Scigliano, *supra* note 76.
- 134 U.S. Department of Justice, THE ATTORNEY GENERAL'S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS 3 (2006), available at http://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf ("Although it is quite comprehensive in its coverage of nationwide arrest records for serious offenses, the FBI is still missing final disposition information for approximately 50 percent of its records.").
- 135 42 Pa. Cons. Stat. Ann. § 6308.
- 136 Sharon M. Dietrich, *Application of Fair Credit Report Background Checks to Criminal Background Reports* in Margaret Colgate Love et al., COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY AND PRACTICE (2013) (citing Paul L. Woolard and Eric C. Johnson, *Compendium of State Privacy and Security Legislation: 2002 Overview*, NJC 200030 (U.S. Department of Justice, Bureau of Justice Statistics, Nov. 2003)).
- 137 Pa. R. Juv. Ct. Proc. 160.
- 138 NATIONAL REVIEW, *supra* note 22, at 23.
- 139 *Id.* at 24.

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140 In 26 states, offenses against persons and felony offenses cannot be expunged. Alabama (Ala. Code § 12-15-137(a)(2)); Alaska (Alaska Stat. § 47.12.300); Arizona (Ariz. Rev. Stat. § 8-349; Ariz. Rev. Stat. § 8-348); Colorado (Colo. Rev. Stat. § 19-1-306(7)(a)); Delaware (Del. Code tit., 10 § 1018(a)); Idaho (Idaho Code § 20-525A (4)); Illinois (705 Ill. Comp. Stat. § 405/5-915(2)); Kansas (Kan. Stat. § 38-2312 (b,c)); Kentucky (Ky. Rev. Stat. § 610.330(1)); Louisiana (La. Stat. C: 918); Michigan (Mich. Code Rev. 712A.18e(1)); Minnesota (Minn. Stat. § 260B.198(6), *In re Welfare of J.J.P.*, 831 N.W.2d 260, 266-70 (Minn. 2013)); Nevada (Nev. Rev. Stat. § 62H.130, Nev. Rev. Stat. § 62H.150(6), Nev. Rev. Stat. § 62H.140); New Jersey (N.J. Stat. § 2C:52-4.1); New York (N.Y. Fam. Ct. Act §§ 375.2, 301.2 (McKinney 29A)); North Carolina (N.C. Gen. Stat. § 7B-3200(b) (1); N.C. Gen. Stat. § 7B-2102(d)); Ohio (Ohio Rev. Code §§ 2151.356(A), 2151.358(C), *State v. Muller*, 2000 WL 1681025 (2000), *In re Rovtar*, 2006 WL 3703273); Oregon (Or. Rev. Stat. § 137.225(5), §§ 419A.262(9), 419A.260(1)(d)(j)); Rhode Island (R.I. Gen. Laws § 12-1.3-2, R.I. Gen. Laws § 12-1.3-1); South Carolina (S.C. Code § 63-19-2050(A, B)); Texas (Tex. Fam. Code § 58.003(n); Tex. Fam. Code § 58.003 at (b) (citing §§ 53.045, 51.031), (g-1); Tex. Fam. Code § 58.202); Utah (Utah Code § 78A-6-1105(5)); Vermont (13 Vt. Stat. § 5301, § 5119(a)(1)(A)); Virginia (Va. Code §§ 16.1-306, 16.1-306(B), 46.2-383); Washington (Wash. Rev. Code § 13.50.050(12)(v)); and Wyoming (Wyo. Stat. § 14-6-241).

141 NATIONAL REVIEW, *supra* note 22, at 28.

142 *See, e.g.*, 18 Pa. Const. Stat. § 9123.

143 NATIONAL REVIEW, *supra* note 22, at 20.

144 *Report to the House of Delegates*. Am. Bar Ass’n, Criminal Justice Section, Commission on Homelessness and Poverty, Standing Committee on Legal Aid and Indigent Defendants, at 14 (2010) available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102a.authcheckdam.pdf.

145 IJA-ABA STANDARDS RELATING TO JUVENILE RECORDS AND INFORMATION SERVICES, Part XV: Access to Juvenile Records 25 (1980), available at <https://www.ncjrs.gov/pdffiles1/ojdp/83571.pdf>.

146 MODEL ACT GOVERNING THE CONFIDENTIALITY AND EXPUNGEMENT OF JUVENILE DELINQUENCY RECORDS IV(c) (2015), available at <http://www.americanbar.org/content/dam/aba/images/abanews/2015annualresolutions/103a.pdf>.

147 The FCRA prohibits the reporting of non-conviction data more than 7 years old. 15 U.S.C. § 1681c(a)(4). There is nothing in the law to suggest that this applies to non-conviction adjudications of delinquency. Importantly, in most states, juvenile adjudications are not considered convictions. However, other federal laws have equated adjudications with convictions for the purpose of applying sanctions. *See* 42 U.S.C. § 16911(8) (section of Adam Walsh Act defining the term “convicted” as including those “adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code [18 USCS § 2241]), or was an attempt or conspiracy to commit such an offense.)

148 Employee Screen IQ, *supra* note 88, at 4.

149 EEOC Enforcement Guidance, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (2012), available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

150 California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Mexico, New Jersey, New York, Ohio, Oregon, Rhode Island, Vermont, and Virginia. Michelle Natividad Rodriguez and Nayantara Mehta, *Ban the Box: U.S. Cities, Counties and States Adopt Fair Hiring Policies* (Dec. 1, 2015), available at <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>; National Employment Law Project, *Ban the Box: U.S. Cities, Counties and States Adopt Fair Hiring Policies to Reduce Unfair Barriers to Employment of People with Criminal Records* (2015), available at <http://op.bna.com/dlrcases.nsf/id/cscz-9srn68/%24File/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf>.

151 Rodriguez & Mehta, *supra* note 150.

152 Lindsay Blakely, *How Obama Could Make a Little Box on Job Applications a Very Big Deal*, INC, (July 29, 2015), available at <http://www.inc.com/lindsay-blakely/ban-the-box-movement-obama-fair-chance-hiring.html>.

153 *My Brother's Keeper Task Force Report to the President*, May 2014 at 53, available at https://www.whitehouse.gov/sites/default/files/docs/053014_mbk_report.pdf.

154 *Id.*

155 White House Office of the Press Secretary, *FACT SHEET: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly- Incarcerated* (Nov. 2, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation>.

156 Remarks by the President on Criminal Justice Reform, Rutgers University Center for Law and Justice Building, Newark, New Jersey (November 2, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/11/02/remarks-president-criminal-justice-reform>.

157 Susanna Hamner and Tom McNichol, *Ripping Up the Rules of Management*, Business 2.0 (May 7, 2007) available at <http://money.cnn.com/galleries/2007/biz2/0705/gallery.contrarians.biz2/10.html>.

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