

## THE ABA'S APPROACH TO JUVENILE JUSTICE REFORM:

### EDUCATION, EVICTION, AND EMPLOYMENT: THE COLLATERAL CONSEQUENCES OF JUVENILE ADJUDICATION

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## INTRODUCTION

The issue of collateral consequences is one of the most hotly debated topics in criminal justice. Collateral consequences, essentially civil or non-criminal penalties, affect individuals who have successfully completed a sentence imposed by a criminal court. These consequences are never part of a court's sentence and lie outside the criminal justice system; however, the opportunities denied through a collateral consequence can be far more significant and pervasive than an initial criminal sentence.

In every state there are two justice systems for addressing criminal offenses: a system for juveniles, typically of civil jurisdiction, and a system of criminal jurisdiction for adults. The use of civil jurisdiction for juvenile courts is meant to reflect the philosophy that juvenile offenses must be treated differently, and it is necessary to avoid the stigma that is conferred by a criminal conviction in order to promote rehabilitation.<sup>1</sup> While every juvenile justice system has exclusive jurisdiction over youth, adult systems handle not only adults, but also youth who are accused of serious crimes.<sup>2</sup> Each state has vastly different direct criminal consequences issued by its courts as a result of a criminal conviction. A youth convicted in the adult system may face up to life in prison, whereas youth found guilty in a juvenile system may, at most, be detained in a juvenile placement facility until the age of majority.<sup>3</sup>

As with direct consequences, collateral consequences of criminal convictions differ dramatically from the collateral consequences of juvenile adjudications. According to a recent study conducted by the American Bar Association (ABA), individuals found guilty or convicted of a crime in adult court are exposed to over 38,000 collateral consequences nationwide.<sup>4</sup> Potential consequences include deportation, denial of the right to vote, denial of food stamps, imposition of licensure restrictions, and in particular, loss of employment opportunities.<sup>5</sup> Notably, over sixty percent of the statutes collected by the ABA were found to deny an employment opportunity.<sup>6</sup>

In recent history, states have exhibited a growing trend to transfer youth to adult court for felony-level crimes. Once transferred, minors are exposed to lifetime penalties that arguably make a punishment more severe than the

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1. Robert Shepherd, *The Juvenile Court at 100 Years: A Look Back*, 6 JUV. JUST. 13, 15 (1999), available at <http://www.ncjrs.gov/html/ojdp/jjjournal1299/2.html>.

2. The definition of serious crimes, for which a judge may transfer a case from juvenile to adult court, varies from state to state. See MODELS FOR CHANGE, NAT'L CTR. FOR JUV. JUST, DIFFERENT FROM ADULTS: AN UPDATED ANALYSIS OF JUVENILE TRANSFER AND BLENDED SENTENCING LAWS, WITH RECOMMENDATIONS FOR REFORM (2008) (offering a comprehensive review of transfer laws).

3. As with transfer provisions, the age of majority varies from state to state. *E.g.*, N.C. GEN. STAT. § 7B-1604 (2009) (indicating that a juvenile over sixteen is an adult for criminal justice purposes); N.J. STAT. ANN. § 2A:4A-22 (indicating that a juvenile is under eighteen years old).

4. See *Adult Criminal Consequences Statute Demonstration Site*, CRIMINAL JUSTICE SECTION, A.B.A., <http://isrweb.isr.temple.edu/projects/accproject/> (last updated Apr. 23, 2011) [hereinafter *Statute Demonstration Site*] (allowing users to search for criminal consequences by state or statute).

5. *Collateral Consequences Breakdown by Categories*, CRIMINAL JUSTICE SECTION, A.B.A., <http://isrweb.isr.temple.edu/projects/accproject/blog.cfm?RecordID=2> (last updated May 6, 2011).

6. *Id.*

punishment of an adult convicted of the same crime. A simple hypothetical illustrates this point: A fifty-five-year-old man and sixteen-year-old boy are both arrested, tried, and convicted (as adults) for the manufacture and distribution of methamphetamine; both are sentenced to ten years in prison. The fifty-five-year-old man is incarcerated, "pays his debt to society," and walks out of prison ten years later at the age of sixty-five. With an average life expectancy of seventy-eight years,<sup>7</sup> this man will face only twelve years of being denied opportunities related to employment, public benefits, housing, voting rights, and various other lost benefits. In contrast, the sixteen-year-old boy (who exits prison at twenty-six years of age) battles those same consequences for over fifty years, simply because he was tried and convicted as an adult.

In the above hypothetical, the finding of guilt serves as a scarlet letter, severely limiting offenders' ability to earn an honest living; without such opportunities, a return to crime becomes an easier, if not a more attractive, solution. Because youth will struggle with these considerable consequences for a longer period of time,<sup>8</sup> recidivism is significantly more likely,<sup>9</sup> especially since a criminal record erects considerable barriers to successful reentry into society as a productive citizen.

The transfer of youth to adult court is a topic that has garnered much attention and sparked much debate. Since the early 1990s, neuroscience has provided reliable proof that youth are different from adults, and a juvenile justice system must be predicated on recognizing those differences. However, this view has limited support among legislatures, and an alarming number of youth are subjected to justice in adult courts.<sup>10</sup> In recent years, American juvenile justice policies have promoted the "adulthoodification" of youth on the theory that adult crimes deserve adult time.<sup>11</sup> As a result of this adulthoodification, an increased number of youth are being tried and convicted in adult courts, leading to severe consequences that hinder the rehabilitative efforts inherent in the juvenile court process. Today, opposition to the placement of youth in adult facilities has prompted a reconsideration of the validity of this approach.<sup>12</sup>

If confined to the juvenile justice system, the number and severity of

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7. U.N. STAT. DIV., SOCIAL INDICATORS <http://unstats.un.org/unsd/demographic/products/socind/health.htm> (last updated Dec. 2010).

8. See PATRICIA ALLARD & MALCOLM YOUNG, THE SENTENCING PROJECT, PROSECUTING JUVENILES IN ADULT COURT: PERSPECTIVES FOR POLICYMAKERS AND PRACTITIONERS 7 (2002) (discussing potential permanent barriers to employment).

9. See, e.g., VINCENT SCHIRALDI & JASON ZIEDENBERG, JUST. POL'Y INST., THE FLORIDA EXPERIMENT: AN ANALYSIS OF THE IMPACT OF GRANTING PROSECUTORS DISCRETION TO TRY JUVENILES AS ADULTS 6-7(1999), [http://www.justicepolicy.org/images/upload/99-07\\_REP\\_FLEExperiment\\_JJ.pdf](http://www.justicepolicy.org/images/upload/99-07_REP_FLEExperiment_JJ.pdf) (finding that juveniles transferred to adult court in Florida were a third more likely to reoffend than those in the juvenile justice system and did so twice as fast).

10. Jessica Reaves, *Should the Law Treat Kids and Adults Differently?*, TIME, May 17, 2001, <http://www.time.com/time/nation/article/0,8599,110232,00.html>.

11. *Id.*

12. See, e.g., AM. JAIL ASS'N, RESOLUTION, JUVENILES IN JAILS (May 3, 2008) [http://www.aja.org/resolutions.aspx#JUVENILES\\_IN\\_JAILS](http://www.aja.org/resolutions.aspx#JUVENILES_IN_JAILS); AM. CORRECTIONAL ASS'N, POLICY, PUBLIC CORRECTIONAL POLICY ON JUVENILE JUSTICE (Jan. 24, 2007) <http://www.aca.org/government/policyresolution/view.asp?ID=25>.

collateral consequences faced by youth drop significantly. However, tracking these consequences and developing accurate scientific data is far more difficult than doing so in the adult system. In the adult system, legislatures across the country have passed over 38,000 statutes that contain collateral consequences.<sup>13</sup> Although harsh, these statutes have specific language about how each collateral consequence operates and can be challenged. The collateral consequences arising from being found guilty or accepting a plea in the juvenile system are harder to locate, and are often buried in a state's extensive administrative code. Quite often, adverse, unintended collateral consequences also result from mandatory disclosure of juvenile records during an application process. In the absence of proactive efforts by juvenile justice system stakeholders to protect court-involved youth by eliminating the requirements for such disclosure, youth face consequences that increase in scope for the rest of their lives.

Providing youth offenders with accurate information about collateral consequences presents several challenges: (1) there is not a single state that requires judges, prosecutors, or defense attorneys to inform youth about all the collateral consequences of a plea or finding of guilt;<sup>14</sup> (2) judges, prosecutors, and defense attorneys willing to inform youth about these potential consequences find that the information is not readily available, difficult to locate, and not always implemented consistently; and (3) a teenager may not comprehend that the collateral consequences of a decision made at age sixteen may still exist at age forty, let alone the rest of his life.<sup>15</sup>

Providing a mechanism for juvenile system stakeholders to review juvenile collateral consequences on a state-by-state basis is a crucial step toward reforming the system. The ABA recently funded a study to provide this information in an easily accessible and understandable format.

#### A. *The American Bar Association Study*

The ABA produced a comprehensive and convenient resource from which defense attorneys, prosecutors, judges, legislators, offenders, and the general public can inform themselves of the collateral consequences of juvenile arrests, adjudications, and court involvement on a state-by-state basis.<sup>16</sup> The importance of this study is threefold: it will (1) help debunk the pervasive view that juvenile records are always personal and confidential; (2) enable youth and attorneys to be informed of the potential collateral consequences *before* a youth makes a decision that will forever affect his or her future; and (3) raise awareness in legislatures of these consequences and assist advocates lobbying for change in the current system.

The goals of the study include determining the full extent of consequences

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13. *Statute Demonstration Site*, *supra* note 4.

14. Statutory codes throughout the United States are devoid of provisions that require attorneys or judges to inform juveniles about the collateral consequences of a conviction.

15. Reaves, *supra* note 10.

16. *Juvenile Collateral Consequences Project*, CRIMINAL JUSTICE SECTION, A.B.A. (forthcoming June 2011).

youth may face, such as suspension and expulsion from school,<sup>17</sup> denial of employment,<sup>18</sup> or eviction from public housing.<sup>19</sup> The study documents how juvenile records are created, kept, and distributed, as well as who has access to those records. Unlike other publications that focus on access to only court records,<sup>20</sup> the ABA study includes information on access to arrest records, which have proven to be an increasingly influential source of available information about court-involved youth.<sup>21</sup> Utilizing information about access to both court *and* arrest records provides a more accurate snapshot of the pervasive consequences faced by youth involved in the juvenile justice system.

For this endeavor, the ABA assembled a team of over one hundred researchers, attorney-authors, and experts to draft an individual "chapter" for each state that outlines and explains the collateral consequences a youth faces pursuant to involvement with the juvenile justice system. The research protocol used in the study required collection of statutes, case law, and regulations, along with news articles, government websites, and phone interviews, from all fifty states, the District of Columbia, and the federal system. The protocol directed researchers to approach both arrest and court records with similar questions: when are the records created, to whom may records be distributed, and when (if ever) are records confidential. Researchers also collected information on available mechanisms to prevent disclosure of juvenile records, such as expunging or sealing records.

The finished product is a fifty-two chapter compilation on the collateral consequences existing as a result of the dissemination of juvenile court and arrest records. The information will be presented online in "wiki" format, on a webpage that will be updated as states' juvenile justice systems evolve.<sup>22</sup> Whenever there is a change in law or policy, any individual (including members of the general public) may submit entries, which will then be confirmed by the ABA before being published on the website.

In addition to the website, the ABA will also publish essential information for each state on a "Think-About-It" card. These cards will provide youth and their advocates with succinct, pertinent information, in age-appropriate language, about the collateral consequences that may result from entering the juvenile justice system. The cards will advise youth about the consequences related to education, housing, and driving privileges, and provide youth with the opportunity to make well-informed decisions about going to trial or accepting a

17. *See infra* Part II.

18. *See infra* Part IV.

19. *See infra* Part III.

20. *See, e.g.,* NEAL MILLER & TOM MCEWEN, INST. FOR L. & JUST., PROSECUTOR AND CRIMINAL COURT USE OF JUVENILE COURT RECORDS: A NATIONAL STUDY (1996), available at [http://www.ilj.org/publications/docs/Juvenile\\_Court\\_Records.pdf](http://www.ilj.org/publications/docs/Juvenile_Court_Records.pdf).

21. For example, in Washington State, records of arrest that are less than a year old, regardless of the arrestee's age, are available publicly and without restriction for a nominal fee. WASH. REV. CODE § 10.97.050 (2010); *see also* WATCH: WASHINGTON ACCESS TO CRIMINAL HISTORY, <https://fortress.wa.gov/wsp/watch/> (last visited Jan. 15, 2011) (providing online access to those records).

22. *Think Before You Plea: Juvenile Collateral Consequences in the United States*, A.B.A., <http://www.beforeyouplea.com/> (last visited April 23, 2011).

plea.

The Justice Policy Institute (JPI) will complete the final stage of this project. JPI is a Washington, D.C.-based organization committed to promoting effective solutions to social problems related to incarceration and criminal justice.<sup>23</sup> As each chapter is completed, JPI will "score" each state on a scale from 1-100. The scoring system is an objective measurement developed by juvenile experts and will provide a "grade" that establishes how effective a state's laws and policies are at protecting youth offenders. JPI's analysis and ranking of states should help advocates and legislatures consider state policies in a national context. This system will also enable stakeholders interested in promoting reform to refer to other states' approaches to juvenile justice.

#### B. *Increasing Access to Stakeholders*

An additional goal of the ABA study is to increase juvenile justice stakeholders' access to information on the collateral consequences of juvenile arrests and adjudications. With the availability of uniformly-collected, state-specific statutes, juvenile advocates and legislators will be equipped to review the breadth of state statutes and be in a better position to determine how agency practices diverge from state law.<sup>24</sup> In addition, information on all states will be readily available, supplying ideas and varying approaches to collateral consequences in each state, and providing advocates with the opportunity to review various statutory schemes that provide better protection of juvenile information. With a common understanding of the varying juvenile justice systems throughout the United States, legislators can advance a meaningful discussion about whether their state's policy promotes or thwarts a youth's rehabilitation and reentry into society.

#### C. *The Impacts of Collateral Consequences on Youth*

A nationwide review of state statutes demonstrates that the range of approaches to recording and distributing juvenile records is diverse and nuanced. Washington, at one end of the spectrum, allows disclosure of a wide range of juvenile records to the public, and explicitly includes juvenile adjudications as part of an individual's criminal history.<sup>25</sup> On the other end is New Jersey, a state that is highly protective of juvenile information, and, with the exception of a few serious offenses, requires that all juvenile records remain confidential.<sup>26</sup>

The results of the ABA Study indicate that across the nation, state policies permitting disclosure of juvenile records have inconsistent short- and long-term

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23. *About JPI*, JUST. POL'Y INST., <http://www.justicepolicy.org/content-hmID=1810.htm> (last visited Jan. 18, 2011).

24. See *Hypocrisy at HANO*, GAMBIT, Mar. 23, 2004, <http://bestofneworleans.com/gambit/hypocrisy-at-hano/content?oid=1242635> (reporting that the Housing Authority of New Orleans used juvenile arrest reports to evict public housing families, an abuse of state juvenile confidentiality laws).

25. WASH. REV. CODE § 9.94A.030 (2010).

26. N.J. STAT. ANN. § 2A:4A-60 (West 2010).

impacts on education, housing, and employment. In addition, youth have limited access and understanding of how to gain relief from these consequences through the expungement or sealing of records. Overall, the collateral consequences faced by youth are at odds with the rehabilitative goals of the juvenile justice system. The ABA's findings draw attention to the immediate need for reform.

## I. CONSEQUENCES TO EDUCATION

One of the most significant consequences faced by youth involved in the juvenile justice system is the denial of educational opportunities. If, upon reaching the age of majority, a child has a high school diploma and the opportunity to go to college, the system worked effectively. Unfortunately, because of collateral consequences related to education, youth involved in the justice system regularly fail to attain this minimum accomplishment. In fact, barriers to education can even impact youth who were only arrested, without an official charge or determination of guilt.

### A. *Middle School and High School*

The majority of states allow youth to drop out of school at the age of sixteen.<sup>27</sup> An average high school student reaches his or her junior year by the age of sixteen. Therefore, that individual receives at least eleven years of education and is only one year away from graduation. If arrested or involved in the juvenile justice system, a youth may face suspension or expulsion and be forced to miss numerous days of school.<sup>28</sup> This can occur regardless of whether a case is dismissed or adjudicated in court.<sup>29</sup> These missed days of school add up quickly, especially if a youth is subject to pretrial detention, is suspended from school, or experiences delays due to witnesses' availabilities, investigations, or general court administration. Repeated absence from school may have a severe detrimental effect, and can lead to a child falling significantly behind, or even being held back a year. When this occurs, children will turn sixteen at an earlier grade level and may be more prone to dropping out because they have reached the legal age at which they can do so, making graduation even less likely.

Even a mere arrest of a completely innocent youth may result in severe consequences, placing a child at the dramatic disadvantage of an incomplete education. Massachusetts' education law provides a good example.<sup>30</sup> Massachusetts permits disclosure of a youth's arrest or issuance of a complaint for a felony charge, or both, to school principals.<sup>31</sup> The principal may then use the

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27. NAT'L CTR. FOR STUDENT ENGAGEMENT, COMPULSORY ATTENDANCE LAWS (2003), <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/15.pdf>; NAT'L CTR. FOR EDUC. STATISTICS, DEP'T OF EDUC., STATE ENACTMENT AGE LIMITS (Feb. 1993), available at <http://www.lectlaw.com/files/edu02.htm>.

28. See Kelly Lecker, *Expelled Students Left with Few Options*, PITTSBURGH POST-GAZETTE, Apr. 8, 2001, <http://www.post-gazette.com/headlines/20010408zerooptions4.asp> (discussing the consequences of students being expelled from school).

29. E.g., MASS. GEN. LAWS ch. 71, § 37H1/2 (2010).

30. *Id.*

31. *Id.*

charge as proof that the student is a danger to himself or others and as grounds for indefinitely suspending the student before any hearing, much less a resolution, in court.

Once a youth is found guilty or adjudicated delinquent, the stakes rise dramatically. Several states allow the superintendent or principal to suspend or expel a student, or both, for the commission of a crime off school grounds.<sup>32</sup> In Delaware, suspended and expelled students may have the option of going to an alternative school for students with disciplinary problems.<sup>33</sup> However, although alternative schools may be appropriate for youth who commit serious disciplinary infractions on school property to the detriment of other students, the programs may be inappropriate for those who commit offenses off school property, and who are willing and able to learn in the normal school environment. In the worst extreme, states such as Massachusetts allow superintendents and school boards to unilaterally remove a student from classes, regardless of whether a court determines the child is fit to return to mainstream society.<sup>34</sup> Such policies present serious issues of due process and constitutional rights violations.

#### B. *Undergraduate College Education*

Collateral consequences affecting access to college occur during the admissions process. The questions asked and information solicited by schools vary not only from state to state, but from school to school. Applications generally include a question regarding previous criminal acts, but it is often unclear whether it applies only to criminal convictions, or to items in juvenile records as well. For example, the Common Application, which is used by over 400 schools nationwide, requires an applicant to disclose prior juvenile adjudications; it asks, "Have you ever been adjudicated guilty or convicted of a misdemeanor, felony, or other crime?"<sup>35</sup> This question requires an applicant to reveal all findings of guilt, regardless of whether the findings occurred in

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32. The following states allow suspension of students for activity off school grounds: ALA. CODE § 16-1-24.1 (2010); IND. CODE § 20-33-8-15 (2010). The following states allow suspension for activity off school grounds, but only if the student is going to or from school or an educational activity: LA. REV. STAT. ANN. § 17:416(A)(1)(a) (2010); MICH. COMP. LAWS ANN. § 380.1311(1) (West 2010). See MINN. STAT. § 121A.45 (2009) (allowing suspension for willful conduct that affects students or school personnel); N.C. GEN. STAT. § 115C-391(f) (2010) (indicating that criminal acts committed on school property or at school-sponsored functions may be grounds for suspension); OHIO REV. CODE ANN. § 3313.661 (West 2011) (allowing suspension for conduct off school grounds if connected to activities or incidents that occurred on school grounds); VT. STAT. ANN. tit. 16, §§ 1161a, 1162 (2010) (allowing suspension for activities on or off school grounds depending on the degree of harm to the school); WASH. REV. CODE § 28A.600.020(5) (2011) (mandating that a principal consider suspension or expulsion when a student commits an enumerated offense, whether on or off campus); Howard v. Colonial Sch. Dist., 605 A.2d 590, 593 (Del. Super. Ct. 1992), *aff'd*, 615 A.2d 531 (Del. 1992) (approving suspension for off-campus drug offenses).

33. See DEL. ATT'Y GEN., *School Violence & Bully Prevention Assemblies & Programs*, THE OFFICIAL WEBSITE OF THE STATE OF DELAWARE (Sept. 19, 2007, 11:56 AM), <http://attorneygeneral.delaware.gov/schools/asspro.shtml>.

34. MASS. GEN. LAWS ch. 71, § 37H (2010).

35. THE COMMON APPLICATION, 2010-11 FIRST-YEAR APPLICATION 5 (2010), <https://www.commonapp.org/commonapp/docs/downloadforms/commonapp2011.pdf>.



juvenile or adult court.

Some schools go even further. Duke University asks applicants, "Other than what you reported on the Common Application . . . have you ever been arrested or placed on probation, regardless of the outcome?"<sup>36</sup> The University of North Carolina (UNC) asks if the applicant has ever "entered a plea of guilty, a plea of no contest, a plea of nolo contendere . . . or . . . received a deferred prosecution or prayer for judgment continued, to a criminal charge[.]"<sup>37</sup> The UNC application also asks whether the applicant has ever "otherwise accepted responsibility for the commission of a crime" or has "any criminal charges pending[.]"<sup>38</sup> These questions require an applicant to disclose all adjudications of guilt, as well as current pending charges, regardless of the subsequent outcome. Additionally, an applicant may be forced to disclose a juvenile adjudication in response to inquiries about prior school disciplinary actions. For example, UNC asks if an applicant has ever served detention, or if an applicant has been dismissed, suspended, expelled, placed on probation, or otherwise subjected to any disciplinary action.<sup>39</sup>

There are exceptions. Most notably, the State University of New York (SUNY) only asks applicants about prior convictions.<sup>40</sup> Because a "conviction" occurs only in the adult criminal justice system, a youth whose case remained in juvenile court does not need to answer this question in the affirmative. However, a youth whose case was transferred to adult court is required to disclose a previous criminal conviction.

An obvious problem occurs if an applicant does not know or understand the distinction between a juvenile adjudication and a criminal conviction. For this reason, the ABA instituted a policy urging colleges, universities, and financial aid offices to include clear definitions of relevant legal terms, such as arrest, adjudication, and conviction, and identify where those words are relevant to the application.<sup>41</sup> It is also important for applicants to know whether they must disclose expunged or sealed records.

Admissions committees at colleges and universities are not precluded from accepting applicants with serious criminal records; no law protects applicants with prior criminal records from being excluded. The power to deny an applicant is discretionary, and criteria for admission are both subjective and objective, making it very difficult to challenge a denial of admission on the basis of a prior adjudication. Without a bright-line rule preventing institutions from inquiring

36. DUKE UNIVERSITY STUDENT SUPPLEMENT-2011 2 (2011), [http://admissions.duke.edu/jump/UGA\\_supp\\_2011rev.pdf](http://admissions.duke.edu/jump/UGA_supp_2011rev.pdf).

37. THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL FIRST-YEAR APPLICATION FOR FALL 2011 ADMISSION 7 (2011), [http://www.admissions.unc.edu/pdf/UNC-CH\\_First-Year\\_Application.pdf](http://www.admissions.unc.edu/pdf/UNC-CH_First-Year_Application.pdf).

38. *Id.*

39. *Id.*

40. THE STATE UNIVERSITY OF NEW YORK, SUNY APPLICATION 2011 A2 (2010), [http://www.suny.edu/student/downloads/pdf/2011\\_suny\\_application.pdf](http://www.suny.edu/student/downloads/pdf/2011_suny_application.pdf).

41. See Charles Joseph Hynes, *Commission on Homelessness and Poverty Standing Committee on Legal Aid & Indigent Defendants Report to the House of Delegates*, 2010 A.B.A. SEC. CRIM. JUST., available at <http://aba.pr-optout.com/Url.aspx?515903x3800706x-1520178>.

about juvenile records, otherwise-qualified applicants risk being denied the opportunity to attend college.

### C. Graduate School

The collateral consequences related to graduate school admission operate much the same as the undergraduate system with one major exception: admission to graduate institutions strongly reflects the requirements of the licensing body that controls employment in the school's field of expertise. For example, law schools preparing students for legal careers are significantly affected by the state bar associations. There is not a single state bar licensing board that does not inquire about the applicant's entire criminal history, including any incident handled in the juvenile system.<sup>42</sup> The Florida Bar even requires applicants to disclose adult and juvenile matters that have been sealed or expunged.<sup>43</sup>

As in the legal field, graduate programs focusing on other professions that require a license may require applicants to disclose prior criminal records depending on the license requirements. In Texas, for instance, nurses applying to be licensed must answer several questions regarding their criminal history that cover both juvenile and adult records.<sup>44</sup> Applicants to graduate programs need to be aware of the licensing requirements for their fields, which may be reflected in the criminal history sections of their graduate school applications.

## II. EVICTION AND ADMISSION TO PUBLIC HOUSING

Youth dependent on public housing are profoundly affected by the immediate collateral consequence of eviction. Throughout the United States, youth involved in the juvenile justice system risk eviction from public housing, which may lead to displacement of not only the youth, but the youths' entire families. Families with children who have contact with the juvenile justice system face an impossible decision: to uproot an entire family and remove the household from social, educational, and professional connections, or to remove the "offending" child from the home.<sup>45</sup>

Public housing authorities in the United States function on multiple levels:

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42. *Comprehensive Guide to Bar Admission Requirements*, 2010 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR (2010), available at [www.ncbex.org/fileadmin/mediafiles/downloads/Comp\\_Guide/CompGuide\\_2010.pdf](http://www.ncbex.org/fileadmin/mediafiles/downloads/Comp_Guide/CompGuide_2010.pdf).

43. FLORIDA BAR EXAM APPLICATION (2011), available at <https://www.floridabarexam.org/public/bar09a.nsf/q19a> (requiring user name and PIN to access).

44. TEXAS BOARD OF NURSING, ENDORSEMENT APPLICATION FOR REGISTERED NURSES 2 (2009), available at <http://www.bne.state.tx.us/olv/pdfs/rnend.pdf>; see, e.g., PRAIRIE VIEW A&M UNIVERSITY COLLEGE OF NURSING, APPLICATION PACKET 2008-2010 3 (2008) (requiring a background check for any criminal history when applying to nursing school), available at <http://www.pvamu.edu/PDFFiles/Nursing/GraduateNursingApplicationPacket2008109.pdf>.

45. Andrew Mach, *Evicting the Family When a Child Skips School?*, ABC NEWS, MAY 13, 2010, <http://abcnews.go.com/US/Parenting/evicting-family-child-skips-school/story?id=10616121>; Tenisha Waldo, *2 Mothers Facing Eviction from Public Housing Complex to Defend Their Efforts as Parents*, THE POST & COURIER, Dec. 22, 2007, at A1, available at [http://www.postandcourier.com/news/2007/dec/22/nwwhere\\_go25680/](http://www.postandcourier.com/news/2007/dec/22/nwwhere_go25680/).

federal, state, and local. On the federal level, owners of federally assisted housing must comply with mandatory standards for admission and eviction.<sup>46</sup> They are also provided with discretionary authority to implement standards for grounds to evict or admit tenants based on various acts committed by household members, including youth.<sup>47</sup> It is this discretionary authority that leads to inconsistent application of standards in admission to and eviction from public housing.

At the outset, under federal law, admission to public housing is prohibited to any individual subject to lifetime sex-offender registration—this applies to youth in the same manner as it does to adults.<sup>48</sup> A number of states subject youth to sex-offender registration for juvenile adjudications,<sup>49</sup> which can prevent an entire family from admission to housing. Further, admission is also prohibited if any household member has been evicted from public housing for drug-related activity within the past three years (including youth in the juvenile system).<sup>50</sup>

Although mandatory prohibition and eviction of youth has significant effects on both youth and their families, the most extreme issue lies with federal regulations that give local housing authorities complete discretion to prohibit admission and evict families from public housing.<sup>51</sup> Under federal law, a local housing authority may evict a family for any criminal activity that "threaten[s] the health, safety, or right to peaceful enjoyment of the premises by other residents."<sup>52</sup> The only limitation to this discretionary power is that a lease must include provisions outlining the discretionary standards;<sup>53</sup> the decision to evict is left solely within the discretion of the property owner.<sup>54</sup>

The discretion granted to local housing authorities leads to immense disparity in standards throughout the United States.<sup>55</sup> The Supreme Court held in *HUD v. Rucker* that a tenant is responsible for the drug-related conduct of children listed as tenants in a lease and can be evicted even if the tenant has no knowledge of the children's illegal conduct.<sup>56</sup> As interpreted by courts, Congress intended "no-fault" eviction upon enacting federal housing laws—knowledge of criminal activity is irrelevant, and the decision to evict an entire household based on the actions of a youth is left in the hands of local public housing authorities.<sup>57</sup> Regardless of a tenant's ignorance of a child's criminal activities, when an activity

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46. 24 C.F.R. § 5.854 (2011).

47. *Id.* § 5.854(b).

48. *Id.* § 5.856.

49. *E.g.*, LA. REV. STAT. ANN. § 15:544(B)(2)(b) (2010); MINN. STAT. ANN. § 243.166 (West 2010); N.J. STAT. ANN. § 2C:7-2 (West 2010); NEW JERSEY STATE POLICE, NJ SEX OFFENDER INTERNET REGISTRY FREQUENTLY ASKED QUESTIONS, <http://www.state.nj.us/njsp/spoff/faq.html> (last visited Feb. 1, 2011).

50. 24 C.F.R. § 5.854(a).

51. *Id.* § 5.855(a).

52. *Id.*

53. *See id.* §§ 5.850–861.

54. 42 U.S.C. § 1437f(o)(6)(C) (2010).

55. *See Hypocrisy at HANO*, *supra* note 24; Mach, *supra* note 45.

56. *HUD v. Rucker*, 535 U.S. 125, 136 (2002).

57. *Id.* at 134.

is deemed by housing authorities to represent "a threat to other residents," a judicial determination of guilt is irrelevant and unnecessary for the eviction process to proceed.<sup>58</sup>

Because indigent and minority children are more likely to be involved in the juvenile justice system,<sup>59</sup> their public housing is more likely to be jeopardized. Disruption in a youth's housing also undermines his or her connection to both education and the community, thereby weakening some of the key social and educational supports in the youth's life. Indigent youth are thus subjected to severe consequences that simply do not exist for those with the means to afford housing and legal counsel. When a youth's family is evicted on the basis of a minor juvenile offense, the disparity between the offense and the punishment lacks proportionality. Too often the *real* sentence comes from the impact of the collateral consequences rather than court-ordered punishment. Therein lies the disparate impact of collateral consequences, and ultimately, the disparate outcomes of the juvenile justice system for poor youth who are dependent on public housing, something youth who live in private homes do not face and their families do not have to endure.

### III. LOSS OR DENIAL OF EMPLOYMENT

As with education and housing, employment opportunities are limited for youth who are arrested or involved in the juvenile justice system. Employment is affected on two levels: (1) by dissemination of records to the general public, which may result in access by potential employers, and (2) statutorily-permitted access to specified employers.

#### A. *Effect of Public Access to Records on Employment*

Many states make juvenile records available to the public, giving potential employers unfettered access to information about prior adjudications and arrests.<sup>60</sup> In Pennsylvania, employers (and anyone else) may call police departments and inquire about whether a youth fourteen years of age or older has been arrested or charged with an offense that would be a felony if committed by an adult, or an offense that places national security at risk.<sup>61</sup> As with other states that allow general publication,<sup>62</sup> juvenile records will circulate to the general public and therefore be available to any employer as well. In contrast, New Jersey "strictly safeguards" juvenile records from the general public<sup>63</sup> but

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58. *Id.* (citations omitted).

59. See NAT'L CTR. FOR JUV. JUST. FOR THE OFFICE OF JUV. JUST. & DELINQ. PREVENTION, NATIONAL DISPROPORTIONATE MINORITY CONTACT DATABOOK (2010), available at <http://www.ojjdp.gov/ojstatbb/dmcd/b/asp/whatis.asp> (last updated May 17, 2010); NAT'L COUNCIL ON CRIME & DELINQ., AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUVENILE JUSTICE SYSTEM (2007), available at [http://www.nccd-crc.org/nccd/pubs/2007jan\\_justice\\_for\\_some.pdf](http://www.nccd-crc.org/nccd/pubs/2007jan_justice_for_some.pdf).

60. *E.g.*, MONT. CODE ANN. § 41-5-215(1) (2010); MONT. ADMIN. R. 23.12.204 (2011) (granting public access to juvenile records until a juvenile reaches the age of eighteen); WASH. REV. CODE § 13.50.050 (2010) (asserting that arrest records are open and available).

61. 42 PA. CONS. STAT. ANN. § 6308(a)-(b) (West 2010).

62. See *infra* Part V (explaining the current state of the law in Washington and Montana).

63. N.J. STAT. ANN. § 2A:4A-60(a) (West 2010).

does not expressly prohibit an employer from inquiring about a juvenile arrest or adjudication.<sup>64</sup> In addition, once public, it is hard to subsequently expunge or seal juvenile records that have already circulated among employers, individuals, or state agencies.<sup>65</sup>

Additionally, an issue in states that distribute juvenile arrest records is that these records may contain no indication of whether a case was dismissed or the charges were dropped. Some states have attempted to combat this outcome. In Michigan, although police records are open to the public upon filing a public information request with the court, employers are prohibited from requesting information regarding a misdemeanor arrest, detention, or disposition that did not result in a finding of delinquency.<sup>66</sup>

#### B. *Employers with Mandated Access to Juvenile Records*

Although there are states where publication of juvenile records is prohibited, and proceedings and documents are confidential, there are statutorily specified employers and licensing boards who will nonetheless be granted access to juvenile adjudication information. Generally, these professions include home-health agencies, childcare facilities, and adult-care homes.<sup>67</sup> In addition, various licensing boards have access to juvenile records, regardless of whether this information is generally confidential or reasonably related to the core requirements of employment.<sup>68</sup> These licensing boards can include those for dentistry, law, psychology, or medical services.<sup>69</sup> When juvenile adjudications are available to employers and licensing boards in this manner, an adjudication that takes place at a young age will continue to haunt a youth for years, creating obstacles to successful reentry into society.

### IV. LIMITED AVAILABILITY OF RELIEF MECHANISMS

The juvenile justice system is rooted in social welfare and focuses on the rehabilitation of the child, instead of prosecution and punishment of the guilty.<sup>70</sup> In fact, when the Supreme Court first extended the Fourteenth Amendment to youth accused of crimes of delinquency, the Court found that juvenile policy should "hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past."<sup>71</sup> However, the Court was also quick to acknowledge reality, and expressed that the policy of complete confidentiality is

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64. Assemb. 4198, 213th Leg. (N.J. 2009) (introducing a bill that would prohibit employers from requesting or inquiring about juvenile adjudications to both the Senate and Assembly. This bill is still pending).

65. VA. COMM'N ON YOUTH, JUVENILE OFFENDER REENTRY FINDINGS AND RECOMMENDATIONS DRAFT (2010), available at [http://leg5.state.va.us/User\\_db/frmView.aspx?ViewId=878](http://leg5.state.va.us/User_db/frmView.aspx?ViewId=878).

66. MICH. COMP. LAWS § 37.2205a(1) (2011).

67. E.g., KAN. STAT. ANN. § 65-516(a)(2) (2009).

68. E.g., LA. REV. STAT. ANN. § 44:9(F) (2010).

69. *Id.*

70. *Kent v. United States*, 383 U.S. 541, 554 (1966).

71. *In re Gault*, 387 U.S. 1, 24 (1967).

an ideal that is not often reached in today's juvenile court systems.<sup>72</sup>

Consistent with the Supreme Court's observation on the reality of the system, many states' juvenile records are public and available to any individual or agency.<sup>73</sup> In Montana, juvenile records are always public until a youth turns eighteen.<sup>74</sup> And in Washington, records of juvenile court proceedings are open to the public without restriction, unless expressly sealed by court order.<sup>75</sup> These state laws promoting availability of information are a direct contradiction to the oft-repeated, and often assumed, myth that juvenile records are personal and confidential – that juvenile justice isn't meant to focus on criminal culpability, but is founded on principles rooted in social welfare and the needs of the child.<sup>76</sup> Confidentiality provisions in Wisconsin "permit dissemination and disclosure at every turn," making it difficult to know when records are truly confidential.<sup>77</sup> Thus, as records become increasingly available in the public forum, the chances of rehabilitation and reentry significantly decline.

A majority of states do provide limited statutory mechanisms by which an individual may seal or expunge juvenile records.<sup>78</sup> However, because some states have no legal requirement to inform youth of these provisions,<sup>79</sup> an individual may be wholly unaware that sealing or expunging a record is an available option. Further, in states such as Washington and Montana, where juvenile records are initially open to the public,<sup>80</sup> subsequent sealing may do little to prevent the further dissemination of "sealed" information, leading to significant confusion and inconsistency in the confidentiality of juvenile records. This issue was recently addressed in Virginia, where orders to purge an adjudication are not always properly reflected in juvenile records.<sup>81</sup> If a youth's record is located

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72. *Id.*

73. *E.g.*, WASH. DEFENDER ASS'N, BEYOND JUVENILE COURT: LONG-TERM IMPACT OF A JUVENILE RECORD 5(2010)[http://www.defensenet.org/resources/publications-1/beyond-juvenile-court/Beyond%20Juvenile%20Court.pdf/at\\_download/file](http://www.defensenet.org/resources/publications-1/beyond-juvenile-court/Beyond%20Juvenile%20Court.pdf/at_download/file); KAN. STAT. ANN. § 38-2310(c) (2009); MONT. ADMIN. R. 23.12.204 (2011).

74. MONT. CODE ANN. § 41-5-215(1) (2010); MONT. ADMIN. R. 23.12.204 (2011).

75. WASH. REV. CODE § 13.50.050 (2010).

76. *Kent v. United States*, 383 U.S. 541, 554 (1966) (confirming that the juvenile justice system is focused on "determining the needs of the child and of society rather than adjudicating criminal conduct"); *see also* Joshua M. Dalton, *At the Crossroads of Richmond and Gault: Addressing Media Access to Juvenile Delinquency Proceedings Through a Functional Analysis*, 28 SETON HALL L. REV. 1155, 1178 (1998).

77. Kara E. Nelson, *The Release of Juvenile Records Under Wisconsin's Juvenile Justice Code: A New System of False Promises*, 81 MARQ. L. REV. 1101, 1106 (1998).

78. *E.g.*, LA. CHILD. CODE ANN. art. 917 (2010) (allowing juvenile to move for expungement of records upon turning seventeen); WASH. REV. CODE § 13.50.050(12)(a)-(b) (2010) (allowing records to be sealed if various requirements are met). Class A offenders must wait until at least five years have passed since the date of disposition or release from confinement, whereas Class B, C, and other offenders must wait at least two years. *Id.*

79. The majority of states do not require judges or attorneys to inform juveniles of collateral consequences or the right to expunge or seal records.

80. WASH. DEFENDER ASS'N, *supra* note 73, at 5; MONT. ADMIN. R. 23.12.204 (2009); *see also* KAN. STAT. ANN. § 38-2310(c) (2009).

81. Va. Comm'n on Youth, *Juvenile Offender Reentry Findings and Recommendations* 8 (Working Paper 10/20/10, 2010), available at [http://leg5.state.va.us/User\\_db/frmView.aspx?ViewId=878](http://leg5.state.va.us/User_db/frmView.aspx?ViewId=878).

by a non-governmental agency, such as an internet background check organization, during initial publication, that agency may remain unaware that the record was subsequently sealed and potentially continue distribution. In response to these problems, one nonprofit agency in California, Privacy Rights Clearinghouse, urges individuals, including youth, to conduct personal background checks to ensure that outside companies, or even state agencies, do not have erroneous or misleading information about a prior record.<sup>82</sup>

It is also important that individuals are aware of the difference between "sealing" and "expunging" a record. Although exact definitions have minor variations depending on the state,<sup>83</sup> expunging a record provides far more protection than sealing a record. To expunge a record means to "remove a conviction from a person's criminal record," and can involve complete destruction of a record, whereas sealing a record merely acts to officially prevent access to particular criminal information.<sup>84</sup> In other words, expungement of a record completely "wipes the slate clean," and the record no longer exists; in contrast, sealing a record merely protects it from disclosure, and it is still available to statutorily authorized agencies and individuals, which may include employers or educational institutions. Finally, very few records can be sealed or expunged. Indeed, many states have enumerated lists of offenses that are ineligible for either type of relief and are permanently part of a youth's record.<sup>85</sup>

Some state courts and agencies do attempt to provide this information to youth outside the courtroom. Although juvenile adjudications will appear on a criminal record in California, the state's court website provides information on the steps to seal the record once the youth turns eighteen.<sup>86</sup> Other courts, such as those in Washington, have created "packets" that contain essential instructions, forms, and deadlines that inform youth of the steps necessary to seal or expunge a juvenile record.<sup>87</sup> Unfortunately, although the information may be available, it is often irrelevant, since youth and their families are generally unaware of such provisions in the first place. Without knowledge of its existence, access to the information does little, if anything, to provide youth with the facts critical to expunging and sealing records.

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82. *Fact Sheet 16a: Employment Background Checks in California: New Focus on Accuracy*, PRIVACY RIGHTS CLEARINGHOUSE, <http://www.privacyrights.org/fs/fs16a-califbck.htm> (last updated Oct. 2010).

83. *E.g.*, Lori M. Nehls, Note, *Juvenile Records Expunction: The Rehabilitating Remedy*, 7 SUFFOLK J. TRIAL & APP. ADVOC. 91, 94 (2002) (describing the difference between sealing and expunging a record in Massachusetts).

84. BLACK'S LAW DICTIONARY 662, 1467 (9th ed. 2009).

85. *E.g.*, N.C. GEN. STAT. § 7B-3200(b) (2010).

86. *Self Help Center*, CALIFORNIA COURTS, <http://www.courtinfo.ca.gov/selfhelp/other/crimlawclean.htm#juvrecs> (last updated Mar. 3, 2011).

87. PIERCE COUNTY JUVENILE COURT JUVENILE OFFENDER RECORDS SEALING PROCEDURE, <http://www.co.pierce.wa.us/xml/services/lawjust/Motion-Notice%20to%20Seal%20Records.pdf> (last visited May 3, 2011).

## CONCLUSION

The Illinois Juvenile Justice Act of 1899 created the first juvenile court.<sup>88</sup> The purpose of the Act was to address shortcomings in an adult system that did not adequately address the needs of children—one of which was confidentiality.<sup>89</sup> More than 100 years later, these needs have faced erosion, and youth are at a greater risk of recidivism. Court-involved youth are being exposed to the very stigma Illinois sought in 1899 to avoid: publication of prior criminal acts. The twin impacts of stigma and exclusion from educational and employment opportunities not only thwart rehabilitation, but can entirely derail a youth's reentry into society.<sup>90</sup> Unfortunately, as juvenile justice has become a controversial issue in recent years, confidentiality provisions have significantly diminished, leaving youth ill-equipped to handle the consequences.<sup>91</sup>

There is a pressing need for an organized effort to advocate for consistency and fairness in the distribution and administration of juvenile records. A major source of variation is caused by structure: county-wide systems show greater diversity than do states using state-wide juvenile justice systems. Using neighboring state statutes as examples, states that readily disseminate juvenile records should move toward a more uniform and protective juvenile justice model.

This lack of uniformity among states is characterized by a lack of awareness and priority, as well as the absence of internal systems to routinely facilitate the disclosure of collateral consequences. Steps must be taken to increase awareness of these consequences among juvenile judges, defense counsel, and youth. Youth need to be informed of the potential consequences of an arrest, plea, or adjudication,<sup>92</sup> and legislators must take notice of these issues and submit legislation that prohibits disclosure of juvenile information. In order for legislators to identify this issue, action must be taken on the ground first. If the juvenile defense bar focuses on properly notifying clients before taking a plea, more cases will result in trials. As more cases go to trial, a strain will be placed on the juvenile justice system, and state legislators will be confronted with a budgetary demand for more judges, prosecutors, public defenders, and court personnel, as well as larger courtrooms and buildings. If history is our guide, legislators may be more inclined to pass effective reform measures that reduce collateral consequences if it can be shown that such reform will reduce a state's budget.

It is not only important that change take place within the juvenile justice system, but that change must be based on scientific data that acknowledges the inherent individuality of juveniles. For example, many states limit the

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88. Robert E. Shepherd, *The Juvenile Court at 100 Years: A Look Back*, JUV. JUST. J., 1999, at 12, 15.

89. Jeffrey A. Butts & Ojmarrh Mitchell, *Brick by Brick: Dismantling the Border Between Juvenile and Adult Justice*, CRIM. JUST., 2000, at 167, 190.

90. *Id.*

91. *Id.*

92. Courts are only just beginning to realize the importance of fully informing a juvenile of the consequences of plea agreements. The Washington Supreme Court recently held that a juvenile could rescind a plea because his attorney failed to fully inform him of the ramifications of sex-offender registration requirements. *Washington v. A.N.J.*, 225 P.3d 956, 959 (Wash. 2010).



availability of expungement proceedings until a prescribed number of years have elapsed since the youth's involvement with the court.<sup>93</sup> However, there is no scientific data indicating how much time should elapse before remedies are offered. In fact, such decision-making does not appear to be guided by empirical data at all, nor do states appear to collect data on the effectiveness of their record collection and disclosure. Such data would provide insight into how well these approaches promote or inhibit rehabilitation and reentry of court-involved youth.<sup>94</sup> The ABA's study will prompt such reconsideration of policies and approaches, and ultimately lead to reform.

In the past six years, the Supreme Court has twice accepted the premise that youth are developmentally different than adults and are therefore less culpable.<sup>95</sup> In both *Roper v. Simmons* and *Graham v. Florida*, significant scientific data was reviewed by the Court and acknowledged as accurate and relevant.<sup>96</sup> In the wake of these Supreme Court decisions, states should consider implementing automatic provisions to seal records, as well as discretionary expungement of records for all youth upon reaching the age of majority.

Since the first juvenile court was created in 1899, politicized approaches to these collateral consequences have diminished the efficacy of the juvenile justice system as a whole. Empirically-based research must be utilized in drafting and implementing new and innovative policies that will protect youth and improve their chances of successful rehabilitation and reentry. It is in the interest of the juvenile justice community and all of society to take stock of each state's consequences and determine whether the goals of rehabilitation are either actively promoted, or sabotaged, by these consequences.

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93. *E.g.*, N.J. STAT. ANN. § 2C:52-2 (West 2010).

94. Butts, *supra* note 89, at 190.

95. *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010).

96. *Roper*, 543 U.S. at 569; *Graham*, 130 S. Ct. at 2026.