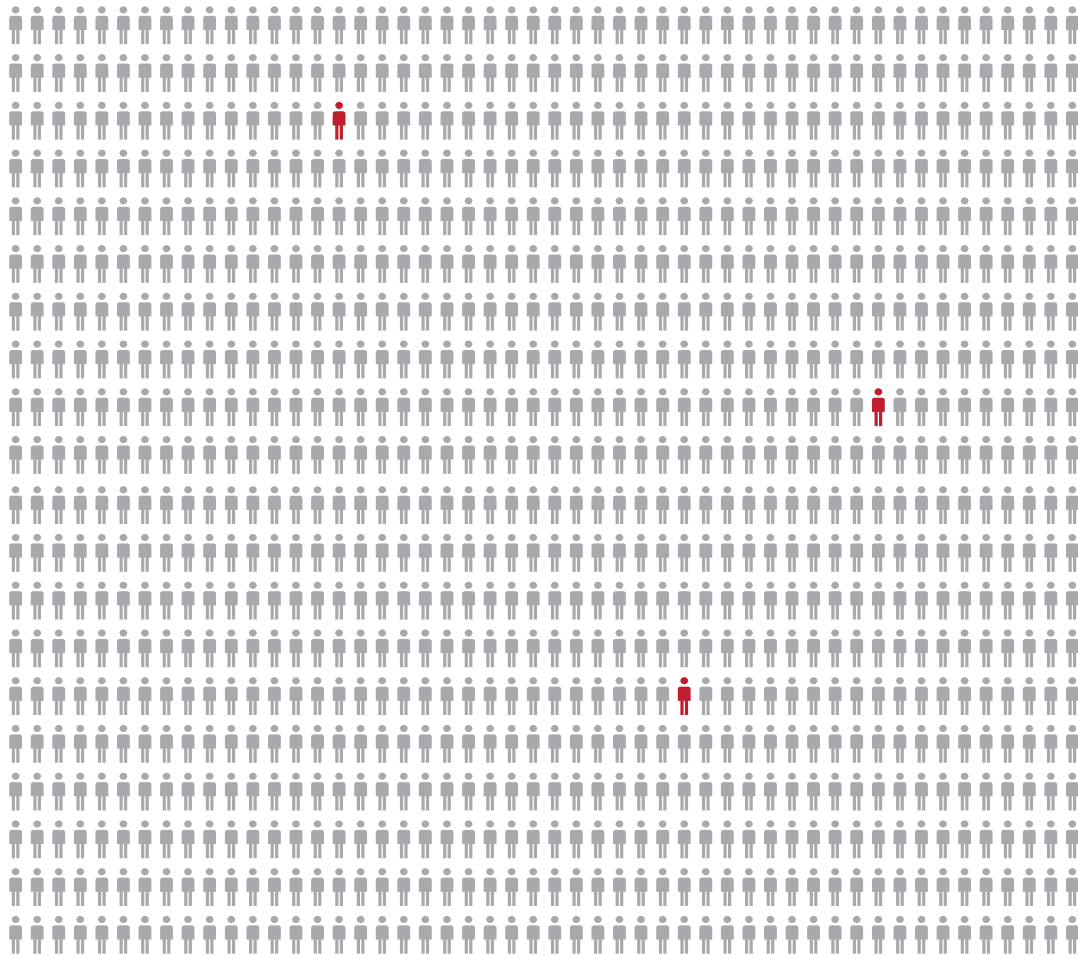


Burdened for Life:

The Myth of Juvenile Record Confidentiality and Expungement in Illinois

How to Fix a Broken System that Fails Youth and Harms the State



For every **1,000** juvenile arrests in Illinois only **3** are expunged.



EXECUTIVE SUMMARY

Illinois' treatment of juvenile records is failing the citizens of Illinois. Its confidentiality and expungement laws and policies threaten public safety, produce substantial unnecessary costs, and impede young people's ability to transition to productive adulthood. While many believe juvenile records are kept confidential, they are not. The erosion of record confidentiality protections over the past 40 years calls into question whether the word "confidential" can be used in good faith anymore. Through broad lawful record sharing and the widespread incidence of unlawful sharing, the potential for accessing and sharing juvenile information has never been greater.

In light of this expanded access, juvenile record expungement is a crucial mechanism to ensure that a person's youthful mistakes do not limit future access to employment, housing, and education. Unfortunately, Illinois' juvenile expungement system is not working. Over the last decade, less than one-third of one percent of juvenile arrests were expunged in Illinois. This dismal statistic is due to overly restrictive expungement laws as well as a complicated, burdensome, and expensive process.

With dwindling confidentiality protections and a limited, ineffective juvenile expungement process, Illinois law contradicts foundational principles of the juvenile court, scientifically-confirmed understandings of youth development, and best practices increasingly employed in a number of states throughout the country. Once a leader in championing the cause of juvenile justice, Illinois now lags behind the majority of states in its approach to handling juvenile records.

It is time for a change.

What Is a Juvenile Record?

A juvenile record is any documentation of a youth's interactions with the police or the juvenile court. In Illinois, these records are created and kept by the police or the court unless a person succeeds in expunging them. Every youth who is arrested has a juvenile record, regardless of whether the arrest leads to a finding of guilt or even results in charges being filed in court.

Since establishing the world's first juvenile court in 1899, Illinois law has consistently emphasized the principle that a youth's mistakes should not brand him¹ for life. Currently, according to its guiding policy of balanced and restorative justice, the system endeavors to "equip juvenile offenders with competencies to live responsibly and productively...and enable a minor to mature into a productive member of society."² After holding a youth accountable for his conduct, society benefits from ensuring that individuals can move on from early mistakes, stay out of the costly justice system, work, pay taxes, and otherwise productively contribute. Keeping juvenile court and law enforcement records confidential is one important way that the juvenile system has aimed to help young people avoid the stigma of a criminal background as they enter adulthood.

Today, tens of thousands of youth are arrested in Illinois each year.³ Despite misconceptions, over 95.5% of juvenile arrests nationwide are for nonviolent offenses, and for the majority of juveniles, this arrest marks their only formal interaction with law enforcement.⁴ Rather than becoming dangerous or habitual offenders, most arrested juveniles make a single youthful mistake. And yet, every one of these individuals has a juvenile record – regardless of whether they ever end up being found guilty or even formally charged with committing a juvenile offense. The initial arrest record, which is created by local law enforcement, can be forwarded to the Illinois State Police, where an additional record is created. If the arrest results in prosecution, yet another record is created by the juvenile court.

While conventional wisdom holds that juvenile records are kept mostly confidential, they are not. The confidentiality protections for juveniles in Illinois have eroded over the past 40 years, as the number of parties with legal access to juvenile records has steadily expanded. In addition to this legal sharing, unlawful sharing beyond the bounds permitted by law is disturbingly common. Unfortunately, this trend of expanded sharing has coincided with the advent of the internet, the birth of digital recordkeeping, and a sharp increase in the practice – by employ-

1 For simplicity and ease of reading, we will use male pronouns throughout this report.

2 705 ILCS 405/5-101(1).

3 Data provided by the Illinois Criminal Justice Information Authority shows that during the 11 years between 2004 and 2014, Illinois law enforcement reported an average of over 43,000 juvenile arrests per year to ISP. The Illinois Juvenile Justice Commission's study suggests this number of reported arrests may represent less than a third of the total number of juvenile arrests. *See* Appendix A – Methodology.

4 Statistics compiled from the annual *Juvenile Arrests* reports of the Office of Juvenile Justice and Delinquency Prevention, available at <http://www.ojjdp.gov/publications/PubResults.asp>; EDWARD HUMES, *NO MATTER HOW LOUD I SHOUT* (1997) (57% of children arrested are never arrested again).

ers, housing authorities, licensing bodies, college admissions departments, and many others – of conducting computerized background checks.⁵ As a result, the potential for accessing and sharing criminal record information, including juvenile information, is greater than it has ever been.

As record confidentiality protections eroded, the need for a robust system of juvenile record expungement became apparent. In 1977, the Illinois Supreme Court – concerned about the sharing of juvenile records and the possibility that the confidentiality provisions of the Juvenile Court Act could be circumvented or abused – extended to minors the right to seek expungement.⁶ Since then, confidentiality and expungement laws have remained the primary means of ensuring that a juvenile record does not prevent individuals from becoming productive members of society.

Ex•punge•ment —

/ik-spənj-ment/ *n.* 1. the permanent destruction of all or part of an individual's law enforcement or court records.

However, Illinois' current juvenile confidentiality and expungement laws are failing in their goal of positioning individuals to contribute to society as adults. Wide sharing of juvenile records produces devastating consequences for individuals by creating obstacles to housing, employment, and educational opportunities. The tens of thousands of juvenile records created in Illinois each year remain in existence until the person with the record files paperwork, pays fees, attends additional court hearings, and successfully navigates a series of other burdensome hurdles to have his records expunged. By limiting access to productive life choices and failing to provide youth with a straightforward path to expungement, the system fails the public by increasing the risk that youth will reoffend.

⁵ *Report of The National Task Force on the Criminal Backgrounding of America*, SEARCH, THE NATIONAL CONSORTIUM FOR JUSTICE INFORMATION AND STATISTICS, available at <http://www.search.org/files/pdf/ReportofNTFCBA.pdf>.

⁶ *St. Louis v. Drolet*, 67 Ill. 2d 43, 364 N.E.2d 61 (1977).

Recently, several state legislatures, as well as national organizations including the American Bar Association, have reevaluated the ways in which juvenile records are protected, accessed, and shared, and realigned their juvenile record policies with the goals of the juvenile justice system.⁷

It is against this backdrop that the Illinois General Assembly, in December 2014, charged the Illinois Juvenile Justice Commission (the Commission) with studying the current state of juvenile confidentiality and expungement law and practice in Illinois and making any needed recommendations for reform.⁸ This study, the first of its kind in the state, represents a significant effort in which the Commission obtained and analyzed data that has never before been collected in Illinois.

To fulfill its legislative mandate, the Commission, partnering with the Children and Family Justice Center at Northwestern Pritzker School of Law:

- collected data on the number of juvenile expungements sought and granted in Illinois over the past 10 years through a survey of the court clerks in all of the state's 102 counties;
- interviewed or surveyed nearly 150 stakeholders who work with system-involved or formerly system-involved youth (e.g. judges, lawyers, probation officers, law enforcement officers, social service agency personnel);
- reviewed and analyzed Illinois' and other states' statutes regarding juvenile expungement and confidentiality, as well as the Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records, which was adopted by the American Bar Association in August 2015;
- interviewed various public and private entities in order to better understand how juvenile record information is created, stored, accessed, and shared;
- interviewed youth regarding their experiences; and
- conducted a literature review on juvenile confidentiality and expungement law and practice.

7 Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records (American Bar Association 2015) [hereinafter ABA Model Act]. *See also* Appendix B – ABA Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records.

8 Senate Joint Resolution 0079, Ill. 98th Gen. Assembly, available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=85&GA=98&DocTypeId=SJR&DocNum=79&GAID=12&LegID=82378&SpecSess=&Session=>.

FINDINGS

1. Weak Confidentiality Protections for Juvenile Records in Illinois Create Obstacles to Rehabilitation and Threaten Public Safety.

A. Illinois' Confidentiality Law Permits Overly Broad Access to Juvenile Records.

The prevailing belief that juvenile records are kept confidential in Illinois is wrong. To the contrary, all juvenile records in Illinois can be legally shared with several additional parties besides the arresting agency and the court. Current law allows juvenile records to be shared with as many as 30 distinct parties under varying circumstances. Illinois lags behind other states by allowing many records to be legally shared with potential employers and even the general public.

B. The Unlawful Sharing of Juvenile Records Is a Common Practice in Illinois.

The Commission found that the informal and illegal sharing of juvenile records is a troublingly common practice in Illinois. Over 60% of stakeholders interviewed for the study reported being aware of instances when juvenile records were shared improperly, either intentionally or inadvertently.

C. The Widespread Sharing of Juvenile Records Harms Individuals with Records and Jeopardizes Public Safety by Creating Obstacles to Stable Employment, Housing, and Education.

One of the main stated policy goals of Illinois' Juvenile Court Act is to "promote a juvenile justice system...[which] equip[s] juvenile offenders with competencies to live responsibly and productively...and enables a minor to mature into a productive member of society."⁹ The Commission found that the extensive sharing of juvenile records is causing precisely the opposite result.

The sharing harms individuals by hindering their ability to obtain the essential building blocks needed to contribute to society: namely, a stable home, a job, and opportunities for educational advancement. Research confirms that by limiting life options and demoralizing an individual trying to build a productive life, the harms of juvenile record sharing jeopardize public safety and increase the risk of recidivism.

One of the main stated policy goals of Illinois' Juvenile Court Act is to "promote a juvenile justice system...[which] equip[s] juvenile offenders with competencies to live responsibly and productively...and enables a minor to mature into a productive member of society." The Commission found, however, that the extensive sharing of juvenile records is causing precisely the opposite result.

⁹ 705 ILCS 405/5-101(1).

D. There Are No Statutory Penalties for Unlawful Sharing of Juvenile Records and No Legal Remedies for Individuals Harmed by Such Sharing.

Despite the potentially devastating harms of improper juvenile record sharing, Illinois imposes no punishments on those who illegally disclose records. While several states have criminalized unauthorized record sharing, passed laws imposing fines on offenders, and/or granted a cause of action to individuals harmed by oversharing, Illinois has no such statutory penalties. This allows the practice to go unchecked and harms to proliferate.

2. The Juvenile Expungement Process in Illinois Is Dysfunctional.

“The expungement process is unknown to most kids and with no knowledge of the process they don’t know where to go or look for help. Most think they have to hire an attorney. The process seems lengthy and cumbersome to most.”

*- Administrator,
State’s Attorney’s Office,
Central Illinois*

A. A Miniscule Proportion of Juvenile Records Are Expunged.

Juvenile record expungement is rare in Illinois. In most of the state, the practice is virtually nonexistent. Statewide, less than one-third of one percent – 0.29% – of Illinois juvenile arrests were expunged in the past decade. Over 87% of counties responding to the Commission’s request for data reported an average of less than one juvenile expungement per year, and 50% of responding counties reported that they had not granted any juvenile expungements during the entire preceding decade.

B. Restrictive Eligibility Criteria Bar Many Individuals from Expunging Their Juvenile Records.

Illinois’ juvenile expungement eligibility criteria are among the most limited and restrictive in the nation. Current law imposes long waiting periods and minimum age limits before any person can seek expungement. Some individuals, because of the nature of their juvenile offenses, are never eligible for expungement. Others become ineligible because the law imposes an absolute bar to eligibility if the individual is convicted of an offense – no matter how minor – after he turns 18. Because of these restrictive eligibility criteria, many law-abiding adults who made mistakes in adolescence are stuck with a record for life. Such restrictive criteria run counter to best practices in the field, particularly given current scientific knowledge about adolescents’ incomplete brain development and their inherent capacity for change.

C. A Burdensome, Complicated, and Expensive Process Discourages Eligible Individuals from Pursuing Expungement.

The expungement process is so difficult and confusing that it discourages people from even beginning it, let alone completing it. The current process suffers from several problems, including: forms that are

overly technical and difficult to decode without a lawyer's help; the need to obtain documents and information that individuals have great difficulty obtaining and which can require multiple trips to the courthouse and/or police station; and fees that are prohibitively expensive. Automatic expungement provisions, which serve to streamline and simplify the process in many states, are virtually meaningless in Illinois. Its lack of automatic expungement laws places Illinois out of step with best practices as expressed in the ABA's Model Statute.

D. Law Enforcement Agencies and County Clerk's Offices Often Neglect Their Statutorily-Mandated Duty to Inform Individuals of Their Right to Seek Expungement.

By statute, the responsibility to inform a young person of his right to seek expungement of his juvenile record falls upon the local arresting agency (if no charges are filed), or the judge and the clerk's office (if charges are filed). The Commission found that the majority of law enforcement agencies and county clerk's offices neglect this duty, leaving youth who stand to benefit from expunging their records unaware that expungement even exists.

RECOMMENDATIONS

1. Enhance Confidentiality Protections of Juvenile Records.

- A. Amend the Juvenile Court Act to Eliminate Instances When Records May Be Shared with the General Public, Create a Robust Definition of Sealing, and Clarify That a Juvenile Adjudication Is Not a Conviction Under Illinois Law.
- B. Close the Loopholes That Exclude Many Juvenile Records from the Confidentiality Protections Provided by Illinois Law.
- C. Create Meaningful Sanctions and a Cause of Action for Improper Disclosure of Juvenile Records.
- D. Provide Systemwide Education to Improve Compliance with Illinois' Confidentiality Laws.

2. Increase Access to Juvenile Expungement.

- A. Enact Real Automatic Expungement.
- B. Expand the Scope of Eligibility for Expungement by Decreasing Waiting Periods and Minimum Age Limits and Adding Judicial Discretion to the Consideration of Subsequent Adult Convictions.
- C. Eliminate Fees Charged for Expungement.
- D. Provide Education to Law Enforcement Agencies and Clerk's Offices to Improve Compliance with Illinois' Juvenile Expungement Law.