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Illinois Study Finds Juvenile Record Confidentiality and Expungement Laws Threaten Public Safety and Burden Youth for Life

In Illinois, the confidentiality of juvenile records is a myth, and the juvenile expungement system is not working.

SPRINGFIELD – Laws and policies governing the treatment of court and arrest records of youth “threaten public safety, produce substantial unnecessary costs, and impede young people’s ability to transition to productive adulthood,” according to a comprehensive study released Thursday by the Illinois Juvenile Justice Commission.

Although state law long has emphasized the principle that a youth’s mistakes should not brand that child for life, Illinois youth have been harmed by the erosion of confidentiality protections and the extreme difficulty and expense of erasing a record through the expungement process, according to the report, “Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois.”

“While many believe juvenile records are kept confidential, they are not,” the report states. “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,” the report continues. “Unfortunately, Illinois’ juvenile expungement system is not working.”

In Illinois, tens of thousands of juveniles are arrested each year, and the largest majority of those arrests by far are for non-violent offenses. Over the last decade, only three of every 1,000 arrests – less than one-third of one percent of juvenile arrests – were expunged in Illinois, the study determined.

The report recommends enhancement of the confidentiality of juvenile records and increased access to juvenile expungement consistent with recommendations of the American Bar Association.

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The Commission's report is based on a first-of-its-kind study to determine how many juvenile record expungements were granted in each county from 2004 to 2014, interviews and surveys of individuals representing a diverse cross-section of professionals in the justice field, interviews of youth with records, a survey of county clerks, review of police practices in Illinois' 10 largest cities, and a review of statutes, employment practices and other research.

"Through many recent reforms, Illinois has regained some of its stature as a leader in juvenile justice with laws recognizing kids do make mistakes and should have a chance to correct their actions and become productive citizens," said George W. Timberlake, who is Chair of the Commission and retired chief judge of the Second Judicial Circuit. "But Illinois' treatment of juvenile records is out of step with those principles, and we need to revise our weak confidentiality and restrictive expungement laws that have become barriers to rehabilitation of young lives and a threat to the safety of our communities."

OVERVIEW OF FINDINGS REGARDING CONFIDENTIALITY OF JUVENILE RECORDS

The study found that weak confidentiality protections for juvenile records in Illinois create obstacles to rehabilitation. When knowledge of the records make it impossible for young people to continue their education and find jobs and housing, their rehabilitation is interrupted, and public safety is threatened. Illinois law now permits broad sharing of juvenile law enforcement records with as many as 20 unique parties and sharing of juvenile court records with 30 unique parties, including some entities with a legitimate need for information to assist the youth but also with potential employers and groups as broad as the general public.

Illinois fell far short of best practices with only 12 states ranking lower than Illinois with weaker limits on sharing of juvenile law enforcement records and only 10 states scoring worse than Illinois in granting access to juvenile court records, according to a national study by the Juvenile Law Center, the nation's oldest non-profit public interest law firm for children.

In addition to the broad sharing of juvenile records allowed by law, the study found unlawful sharing of juvenile records is prevalent. Common examples of unlawful sharing include police and others with access to criminal record databases improperly sharing juveniles' information with employers, landlords, schools and others.

The widespread sharing of records often prevents individuals from obtaining jobs, housing and education – the very things they need to be productive members of society. For example, a review of online employment applications found that nearly 70 percent asked applicants to disclose arrest or conviction history or required criminal background checks but none drew an explicit distinction between juvenile and adult activity or made clear that applicants need not disclose events that occurred when they were minors.

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In addition, there are no statutory penalties for unlawful sharing of juvenile records in Illinois and no legal remedies for individuals harmed by the sharing. In contrast to Illinois, many other states have statutory provisions either criminalizing the improper sharing of juvenile records, imposing fines or sanctions on offenders, and/or granting harmed youth a cause of action against offending parties.

OVERVIEW OF FINDINGS REGARDING EXPUNGEMENT OF JUVENILE RECORDS

The Illinois juvenile expungement process – the primary means of ensuring that youthful mistakes do not cause problems in adulthood – is dysfunctional.

Restrictive eligibility criteria make expungement available to only a small fraction of youth. For those eligible, a burdensome, expensive, and confusing process prevents many from pursuing expungement. The law enforcement and court personnel entrusted to provide notice and information about expungement too often misunderstand their role or neglect their legal duties.

With no oversight or transparency, this broken process has remained in place, with effectively no juvenile record expungement in the majority of the state over the past decade.

RECOMMENDATIONS

Illinois should enhance confidentiality protections of juvenile records.

- The Juvenile Court Act (JCA) should be amended to eliminate instances when juvenile records may be shared with the general public and limit records access to parties with an essential need for the information.
- For further protection and clarity, the JCA should have a robust definition of sealing to make clear all juvenile records remain sealed when a juvenile turns 18 and may not be shared beyond what the law allows.
- To close loopholes, the confidentiality protections of the JCA should be extended to the records of municipal and ordinance violations. Illinois, which stopped the practice of sending juvenile records to the FBI in 2010, should create a mechanism to remove all pre-2010 juvenile records from the FBI database.
- Illinois should make the improper sharing of records a misdemeanor and impose fines, and harmed individuals should be able to recover damages from individuals or entities illegally disclosing confidential information.
- Police departments and clerk's offices throughout Illinois should increase education and training about compliance with juvenile record confidentiality laws.

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Illinois should increase access to juvenile record expungement.

- Consistent with the American Bar Association's recommendations, Illinois should significantly expand automatic expungement and join 12 other states that already have automated the process. Automatic expungement should be immediate for juvenile arrests where no charges are filed, as well as juvenile cases that are dismissed or result in findings of not guilty. In cases resulting in a finding of delinquency, expungement should be made automatic upon the successful closing of the youth's case.
- Short of automatic expungement, Illinois should reduce waiting periods and minimum age limits for juvenile cases that do not result in a delinquency finding. In addition, Illinois should remove absolute bars to expungement and, in previously barred cases, grant judges the discretion to determine whether expungement serves the best interests of the individual and society at large.
- Juvenile expungement fees, which can range upwards of several hundred dollars, should be eliminated.
- Because court clerks and law enforcement officials often fail to inform youth of their expungement rights, those offices and agencies should increase training and education with an emphasis on both the process and value of expungement.

In a resolution passed in December 2014, the General Assembly charged the Illinois Juvenile Justice Commission with researching juvenile confidentiality and expungement law and practice in Illinois and with providing any needed recommendations for reform. The Commission's research was conducted in partnership with the Children and Family Justice Center at Northwestern Pritzker School of Law.

Commission's full report can be found here: <http://ijjc.illinois.gov/publications/reports>

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