The Juvenile Record Myth

JOY RADICE*

The proliferation of adult criminal records and their harmful impact on people with convictions has received growing attention from scholars, the media, and legislators from both sides of the political aisle. Much less attention has been given to the far-reaching impact of juvenile delinquency records, partly because many people believe that juvenile records are not public, especially after a juvenile turns eighteen. That common notion is a myth.

This Article addresses that myth and adds to both the juvenile justice and collateral consequences literature in four ways. First, The Juvenile Record Myth *illuminates the variety of ways states treat juvenile records—revealing that state confidentiality, sealing, and expungement provisions often provide far less protection than those terms suggest. Although juvenile delinquency records are not as publicly accessible as adult records, their impact is felt well beyond a juvenile's eighteenth birthday. No state completely seals juvenile delinquency records from public view or expunges them. Some states even publish juvenile records online, and almost all permit some degree of public access.*

Second, this Article provides the first comprehensive analysis of the crucial role of nondisclosure provisions in eliminating the stigma of a juvenile record. Now that colleges, employers, state licensing agencies, and even landlords are increasingly asking about juvenile delinquency charges and adjudications, the confidentiality, sealing, and expungement protections that do exist will be significantly undermined unless states allow juveniles with records not to disclose them. Third, using recent literature on juvenile brain development and the recidivism research of criminologists, The Juvenile Record Myth *presents new arguments for why juvenile delinquency records should not follow a juvenile into adulthood—and why the state's obligation to help rehabilitate juveniles (an obligation typically recognized in a state's juvenile code) should extend to restricting access to juvenile records. Finally, it argues for a comprehensive and uniform approach to removing the stigma of a juvenile record through a combination of robust confidentiality, expungement, sealing, and nondisclosure statutes to facilitate a juvenile's reintegration.*

---

* Associate Professor, University of Tennessee College of Law. For helpful conversations, astute insights, and constructive feedback on earlier drafts of this Article, I would like to thank Benjamin Barton, Dean Rivkin, Jenny Roberts, Melanie Wilson, and David Wolitz. Margaret Colgate Love and Joshua Gaines provided critical input and additions on recent statutory changes. I am also grateful for the generous feedback from the NYU Writers' Workshop, especially that of Jennifer Koh, Kate Kruse, Eumi Lee, Kathryn Ramsey, and Kate Weisburd, and to the panel discussions at the Southeastern Association of Law Schools Annual Conference, especially the comments of Valena Beety, William Berry, J.D. King, and Janet Moore, and the AALS Clinical Law Conference, where I presented earlier versions of this paper. I am indebted to James Stovall for his keen editor's eye and unyielding support. And finally, I am grateful for the excellent research assistance and Bluebook edits of Michael Deel, Andrew Fels, Machen Picard, and Yasmin Stiggons, the diligent administrative support of Jill Owen, and for the generous financial support of the administration of the University of Tennessee.

TABLE OF CONTENTS

INTRODUCTION

> "Have you ever been adjudicated guilty or convicted of a misdemeanor or felony?" —*The Common Application for College*[1]

Teenagers applying to college face the above question, which calls for information about a juvenile delinquency proceeding. Whether and how they answer the question—which can impact their admission to college and ultimately their future—can depend on where they live if they have had an encounter with the juvenile justice system.

Consider three teenagers living in three different states: Rhode Island, Idaho, and Virginia. At fifteen years old, all three were arrested and pleaded guilty to possessing marijuana on school grounds, a minor misdemeanor-level adjudication, for which they completed a forty-five-day outpatient drug treatment program and served nine months on court-supervised probation. Three years later, they are eighteen-year-old seniors in high school answering the Common Application question above about whether they have ever been adjudicated guilty of a misdemeanor—which they all have. The teenager from Rhode Island answers "no" because her juvenile record was sealed automatically when she turned eighteen.[2] The teenager from Idaho must answer "yes" because she lives in a state that considers her adjudication a conviction, which, unless expunged, is made accessible on a public, searchable state website.[3] The eighteen-year-old

1. SAMPLE COMMON APPLICATION, http://recsupport.commonapp.org/FileManagement/Download/e20832c8868d4c5db48f6a6ada549a61 [https://perma.cc/T2HA-5BAZ] [hereinafter COMMON APP].

2. R.I. GEN. LAWS §§ 14-1-6.1, 14-1-64(b) (2017).

3. IDAHO CODE ANN. § 20-525–525A(1) (2017).

from Virginia, however, is unsure how to answer the question because she remembers that her record is confidential but will not be expunged until she turns twenty-one.[4] All three are guilty of the same low-level misdemeanor; all three received the same punishment in juvenile court. But pleading guilty will have a dramatically different impact on their admission to college. Of the 66% of colleges that ask about juvenile records, "33% consider misdemeanors negatively, and 20% deny admission based on the offense."[5] Given that the teenagers' answers can dramatically affect which colleges accept them, the different statutes in each state dictating whether juvenile records should be permanently concealed or destroyed can have a major impact on their future. This disparate state-by-state result, which is all too common in a federal system, raises the normative questions of whether the delinquent conduct of juveniles should so indelibly impact their future and whether where they live should be such a determining factor.

A college admission decision is only one example of how juvenile records can follow youth into adulthood and have long-lasting effects. A juvenile delinquency record, like an adult criminal record, can trigger a web of collateral consequences[6]—the term used to describe civil penalties or regulatory restrictions that are not included in the juvenile's sentence for an offense but impacts a juvenile's life after the court-ordered punishment is complete and the case is closed.[7] Juvenile records can make it harder, if not impossible, for a person to get a job, secure housing, serve in the military, receive college financial aid, or be granted a state occupational license.[8] The records might result in a denial of U.S. citizenship,[9] the loss of a driver's license, and severe sentencing enhance-

4. VA. CODE ANN. § 16.1-306 (2017).

5. Riya Saha Shah & Jean Strout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, JUVENILE LAW CENTER 1, 12 (2016).

6. Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An* Introduction, 30 N.Y.U. REV. L. & SOC. CHANGE 585, 589–91 (2006); Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, *in* INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 15, 16–17 (Marc Mauer & Meda Chesney-Lind eds., 2002); AM. BAR ASS'N CRIMINAL JUSTICE SECTION, NATIONAL SUMMIT ON COLLATERAL CONSEQUENCES 9–10 (2015), https://www.americanbar.org/content/dam/aba/events/criminal_justice/summit_brochure.authcheckdam.pdf [https://perma.cc/32JZ-QZAQ]. Collateral consequences often refer to "both those consequences that occur by operation of law at the time of conviction . . . and those that occur as a result of some subsequent intervening event or discretionary decision." AM. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS 7 n.2 (3d ed. 2004) http://www.abanet.org/crimjust/standards/collateralsanctionwithcommentary.pdf [https://perma.cc/9VED-TQM5].

7. MARGARET COLGATE LOVE ET AL., COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY, & PRACTICE 2–3, 170–71 (2016).

8. *See* Shah & Strout, *supra* note 5, at 9, 11.

9. Theo Liebmann, *Adverse Consequences and Constructive Opportunities for Immigrant Youth in Delinquency Proceedings*, 88 TEMP. L. REV. 869, 874 (2016). Liebmann notes that even the Deferred Action for Childhood Arrivals (DACA) application asks applicants whether they have "ever been arrested for, charged with, or convicted of a felony or misdemeanor, *including incidents handled in juvenile court*, in the United States?" *Id.* (citing U.S. Citizenship & Immigration Servs., Form I-821D,

ments if a person with a juvenile record is later convicted as an adult.[10]

The most pervasive obstacles for juveniles with records are created by applications, like the Common Application, that ask if a person has been arrested, charged, or adjudicated guilty of an "offense."[11] Most states do not prohibit such questions on private job applications.[12] So applications can legally elicit information about juvenile records even if the question is not intending to or juveniles are permitted by law not to disclose information about their records.[13] People with juvenile arrest records desiring to be truthful on an application may answer "yes" to a question about an arrest or adjudication, revealing their own juvenile record, even when they are not required to by their states' confidentiality, sealing, or expungement statutes.[14]

The common misconception about records from "juvi" is that they remain confidential and are ultimately sealed or expunged because the juvenile justice system aims to rehabilitate rather than merely punish youth. The law has long recognized that the state's role in encouraging rehabilitation includes restricting access to juvenile records.[15] In fact, juvenile courts were the first courts to expunge or destroy records, relying on the premise that juveniles should be able to outgrow their youthful indiscretion and be given a clean slate in adulthood.[16]

In reality, state statutes governing juvenile records vary dramatically in how permanent and public they make juvenile records. Differences arise partly because the juvenile system became ever more punitive in the 1980s and 1990s,[17] and thus the treatment of juvenile records now mirrors the treatment of

---

Consideration of Deferred Action for Childhood Arrivals 4 (2014) https://www.uscis.gov/sites/default/files/files/form/i-821d.pdf [https://perma.cc/79VA-E8MK].

10. *See* 18 U.S.C. § 924(6)(A)(i)–(ii) (2012) (juveniles who violated the Armed Career Criminal Act shall be fined and imprisoned not more than a year, unless they have not been previously convicted or adjudicated delinquent, in which case they should not be incarcerated).

11. COMMON APP, *supra* note 1.

12. Even though twenty-nine states have removed criminal history questions from public employment applications, pushing the question to a later stage of the application process, only nine have made banned the criminal history question from private employment applications. Beth Avery & Phil Hernandez, *Ban the Box: US Cities, Counties, and States Adopt Fair Hiring Policies*, NAT'L EMP. L. PROJECT, http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/ [https://perma.cc/F4U5-FASE].

13. Riya Saha Shah et al., *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement*, JUV. L. CTR. 1, 13, 25 (2014) (describing that "nine states offer no public accessibility to juvenile records", and "[f]ifteen states provide that parties can treat the expunged record as if it never existed").

14. *See infra* Section IV.C.

15. *See infra* Section II.A.

16. JAMES JACOBS, THE ETERNAL CRIMINAL RECORD 116 (2015).

17. Donna M. Bishop & Barry Feld, *Trends in Juvenile Justice Policy and Practice*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 898, 901 (Barry C. Feld & Donna M. Bishop eds., 2012) (stating that economic, social, and political factors "provided the backdrop for the adoption of a rash of hardline juvenile justice policies beginning in the 1980s"); Barry Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 701 (1991) [hereinafter Transformation of Juvenile Court] (explaining "[a] shift in sentencing philosophy from rehabilitation to retribution is evident both in the response to serious juvenile offenders and in the routine sentencing of delinquent offenders").

adult criminal histories.[18] As the U.S. Supreme Court recognized over half a century ago: "'[T]he 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,'"[19] but this "claim of secrecy . . . is more rhetoric than reality."[20]

The time is right to reconsider how states treat juvenile delinquency records. Several states have recently renewed their commitment to a more rehabilitative approach to juvenile justice.[21] As for juvenile record reform, more specifically, the American Bar Association (ABA) unanimously passed a "Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records" (Model Act) in 2015.[22] The ABA intended for the Model Act to undo the current stigma that results from disclosing juvenile records.[23] And states, like Illinois and Tennessee, are currently considering how the Model Act can strengthen their juvenile record protections.[24] This Article connects juvenile records to this new wave of juvenile reform.

Such juvenile justice reform also comes at a time when states are simultaneously rethinking public accessibility to adult criminal records.[25] One study showed that more than forty states passed 155 statutes to remove or mitigate the impact of collateral consequences triggered by adult criminal records.[26] Several of these reforms have included expunging or sealing adult convictions, includ-

18. *See infra* Section II.A.3.

19. *In re* Gault, 387 U.S. 1, 32 (1967) (quoting *In re* Gault, 407 P.2d 760, 767 (Ariz. 1965)).

20. *Id.*

21. *See* Sarah Childress, *More States Consider Raising the Age for Juvenile Crime*, FRONTLINE (June 2, 2016), http://www.pbs.org/wgbh/frontline/article/more-states-consider-raising-the-age-for-juvenile-crime/ [https://perma.cc/Q2T6-A93W] (discussing bipartisan efforts in some states to raise the age at which juveniles can be tried as adults); Mark Pazniokas, *Malloy dubs bail, sentencing reforms as 'Second Chance 2.0'*, CONNECTICUT MIRROR (Jan. 28, 2016), http://ctmirror.org/2016/01/28/malloy-dubs-his-bail-sentencing-reforms-as-second-chance-2.0 [https://perma.cc/LE8W-QVVZ] (explaining that the Connecticut governor backed polices to raise the age of juvenile jurisdiction to twenty-one and improve juvenile expungement laws); Press Release, *Gov. Shumlin Signs Law Creating More Rationale Juvenile Justice Policies in Vermont*, VERMONT DIGGER (June 2, 2016), https://vtdigger.org/2016/06/02/gov-shumlin-signs-law-creating-more-rational-juvenile-justice-policies-in-vermont/#.Wa26O9Pfqb8 [https://perma.cc/DU4Z-2MQN] (discussing that Vermont raised the age of juvenile court jurisdiction to twenty-one).

22. MODEL ACT GOVERNING THE CONFIDENTIALITY AND EXPUNGEMENT OF JUVENILE DELINQUENCY RECORDS (AM. BAR. ASS'N 2015), http://www.americanbar.org/content/dam/aba/images/abanews/2015annualresolutions/103a.pdf [https://perma.cc/P8GB-CLU4] [hereinafter MODEL ACT].

23. *Id.* at 1.

24. *See Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois*, ILLINOIS JUVENILE JUSTICE COMMISSION 74–77 (2016), http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/Burdened%20for%20Life.pdf [https://perma.cc/6NLN-54YG] (recommending expanding automatic expungement, creating penalties for wrongful disclosure of juvenile records, and other changes consistent with the Model Act); TENN. CODE ANN. § 37-1-153 (Lexis 2017).

25. *See* Ram Subramanian, Rebecka Moreno & Sophia Gebreselassie, *Relief in Sight? States Rethink the Collateral Consequences of Conviction, 2009–2014*, VERA INSTITUTE OF JUSTICE (2014), https://storage.googleapis.com/vera-web-assets/downloads/Publications/relief-in-sight-states-rethink-the-collateral-consequences-of-criminal-conviction-2009-2014/legacy_downloads/states-rethink-collateral-consequences-report-v4.pdf [https://perma.cc/V2CH-AKZH].

26. *Id.* at 4, 11, 30.

ing felonies, from public records.[27] In addition, Ban-the-Box legislation has been passed in 150 cities and counties to limit the use of adult criminal records, primarily in public employment applications.[28] This legislation requires the removal of the "box" on job applications that asks about criminal history information so that employers consider applicants first and offer them a position before pulling their criminal histories.[29]

Although a growing body of scholarship has studied and critiqued the seemingly unfettered proliferation of adult criminal records, scholars have paid far less attention to the parallel proliferation of juvenile delinquency records.[30] With more than one million juveniles arrested each year,[31] treating these records like a scarlet letter is no small problem. Although juvenile records are not as publicly accessible as adult records—for now, at least, there aren't private websites with juvenile mug shots, and juvenile records are not included in most online criminal record databases—their impact is felt well beyond a juvenile's eighteenth birthday. And even though most states provide some confidentiality, sealing, or expungement protections for juvenile records, no state completely shields juvenile delinquency records from public inquiry. In fact, all states but nine offer some degree of public access,[32] and some states, like Florida and Idaho, even publish juvenile records online.[33] Juvenile records are noticeably absent, however, from the growing body of literature focused on the proliferation of collateral consequences and criminal records.

---

27. For example, Kansas allows a wide range of misdemeanor and felonies to be expunged after a specified waiting period. KAN. STAT. ANN. § 21-6614(a)–(d) (2016). Massachusetts permits adults to seal misdemeanors after five years and felonies after ten years. MASS. GEN. LAWS ch. 276, § 100A (2017). Nevada allows convicted people to petition the court to seal records two to fifteen years after release, with the period of time being dependent on the nature of the crime of the conviction. NEV. REV. STAT. § 179.245 (2017).

28. Avery & Hernandez, *supra* note 12 (stating that of the 150 statutes, nine also cover private employers).

29. *Id.*

30. *See* JACOBS, *supra* note 16, at 116; Pinard & Thompson, *supra* note 6 (discussing collateral consequences of felony and misdemeanor convictions that present issues when offenders reenter community); Travis, *supra* note 6, at 15–17 (describing collateral consequences of convictions and the adult criminal record problem); Anna Kessler, *Excavating Expungement Law: A Comprehensive Approach*, 87 TEMP. L. REV. 403, 404 (2015) (advocating for expungement law reform as a way to combat issues of mass incarceration); Jenny Roberts, *Expunging America's Rap Sheet in the Information Age*, 2015 WIS. L. REV. 321, 330 (2015) (discussing expungement and sealing of criminal records as one way to address problems in U.S. criminal justice system); MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 148–61 (2010) (describing employment discrimination and other difficulties with reentry faced by black ex-convicts); Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623 (2006) (discussing collateral consequences and issues of reentry).

31. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STATISTICAL BRIEFING BOOK (2015) http://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qaDate=2014 [https://perma.cc/8DQU-4X86].

32. Shah et al., *supra* note 13, at 13.

33. Kevin Lapp, *Databasing Delinquency*, 67 HASTINGS L.J. 195, 221 (2015).

Juvenile records have not garnered much attention from juvenile justice scholars either.[34] Over the past decade, these scholars have extended the "kids are different" reasoning of recent Supreme Court cases[35] to various dimensions of the juvenile system—from redefining *mens rea* to reexamining how to sentence juveniles under the federal sentencing guidelines—without acknowledging the collateral consequences of the permanency of these records.[36] In the *Roper v. Simmons* line of Supreme Court cases, the Court recognized developments in neuroscience and child psychology that supported the majority's argument that juveniles are not merely miniature adults, and thus they should be treated differently given their limited capacity for decision making, difficulty making long-term decisions, and propensity for risk-taking.[37] Legal juvenile justice scholars have applied the Supreme Court's diminished culpability and rehabilitative arguments to other contexts facing juveniles from the time they are arrested, interrogated, charged, and sentenced. No article, however, has extended the Supreme Court's "kids are different" approach to the retention and dissemination of juvenile delinquency records by examining the fifty states' confidentiality, sealing, and expungement statutes. This "kids are different" approach, focused on the psychological and neurological differences between children and adults, suggests that juvenile records are not a reliable indicator of adult criminal behavior, contrary to the typical rationale for permitting access to them.

---

34. Two juvenile justice scholars have addressed juvenile record data collection and sharing by courts and law enforcement agencies in different contexts. *See id.* at 210–11, 224, 228 (arguing that databasing delinquency through the creation of gang databases, DNA records, and sex offender registries is destructive and must be reformed); Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 525–30 (2004) (critiquing the reduced confidentiality protections by disseminating juvenile records to housing authorities). For a comparison of juvenile records to adult records, see JACOBS, *supra* note 16, at 116.

35. *See* Miller v. Alabama, 132 S. Ct. 2455, 2475 (2012) (mandatory life sentence for murder by juvenile offender violated Eight Amendment); J.D.B. v. North Carolina, 564 U.S. 261, 277 (2011) (a juvenile's maturity must be considered in a *Miranda* analysis); Graham v. Florida, 560 U.S. 48, 82 (2010) (diminished juvenile culpability requires states to provide a meaningful opportunity for rehabilitation to juvenile offenders sentenced to life in prison without parole); Roper v. Simmons, 543 U.S. 551, 578 (2005) (reduced capacity of juvenile offenders renders death penalty unconstitutional).

36. *See* Jenny Carroll, *Brain Science and the Theory of Juvenile Mens Rea*, 94 N.C. L. REV. 539, 541–44 (2015) (applying Supreme Court *Roper* jurisprudence to *mens rea* calculations for juveniles); Cara Drinan, *The Miller Revolution*, 101 IOWA L. REV. 1787, 1787 (2016) (explaining how scholars have been defining the outer limits of the what she refers to as the *Miller* trilogy); Barry C. Feld, *Adolescent Criminal Responsibility, Proportionality, and Sentencing Policy: Roper, Graham, and Miller/Jackson, and the Youth Discount*, 31 LAW & INEQ. 263, 264 (2013) (using the Supreme Court jurisprudence to argue for a formal method that he terms "the Youth Discount" to mitigate the sentences of juveniles because of their lessened culpability); Elizabeth S. Scott, *"Children are Different": Constitutional Values and Justice Policy*, 11 OHIO ST. J. CRIM. L. 71, 72 (2013) (explaining that the recent Supreme Court cases support a developmental approach to juvenile justice policy).

37. The Supreme Court in *Graham v. Florida* explained that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, the parts of the brain involved in behavior control continue to mature through late adolescence." 560 U.S. at 68.

This Article thus fills a gap in both collateral-consequences and juvenile-justice scholarship by making four unique contributions to the literature. It is the first to illustrate the variety of ways that states treat juvenile delinquency records through their confidentiality, sealing, and expungement statutes—revealing that they provide far less protection than those terms suggest. Second, it provides the first comprehensive analysis of the crucial role of nondisclosure provisions in eliminating the stigma of a juvenile record. Third, using recent literature on juvenile brain development and juvenile recidivism, it presents new arguments for why states have an obligation to help juveniles rehabilitate. Fourth, it argues for a comprehensive and uniform state approach to confidentiality, sealing, expungement, and nondisclosure statutes.

To achieve these goals, Part I offers some brief context to explain the juvenile record problem. It illuminates the invisible but long-lasting consequences of juvenile records and the state's role in creating them. Part II argues for the need to align juvenile record dissemination with the revival of rehabilitation in current juvenile justice reforms. This Part provides a brief historical account of the juvenile court system in the United States and the national shift in the 1980s to a more punitive approach to juvenile justice that included disseminating, sharing, and retaining previously protected juvenile records. Part II also discusses the recent shift to the "kids are different" approach to juvenile justice that has sparked recent reforms that return to a more rehabilitative juvenile justice system.

Part III makes the case for removing the stigma of juvenile delinquency records because juveniles *are* different. I examine three ways that the differences between juveniles and adults matter when considering the accessibility and permanency of juvenile records: (1) the purpose and consequences of juvenile court are uniquely focused on rehabilitation, (2) juveniles are still maturing psychologically and neurologically, which seriously impacts decision making and behavior, and (3) relatedly, juvenile recidivism is less predictable than adult recidivism. This Part draws upon state statutes that define the purpose of the juvenile justice system and two connected robust literatures on juvenile brain development and juvenile recidivism. Ultimately, these "kids are different" arguments support greater protection of juvenile records.

Part IV then identifies three mechanisms—confidentiality statutes, extinguishing statutes (using sealing or expungement), and nondisclosure statutes—for how states can and should protect juvenile records. I categorize states based on how they have created different variations on confidentiality, sealing, and expungement. Finally, Part V presents four significant obstacles to fully protecting juvenile records even in states with strong laws on the books, and then concludes by introducing and critiquing the ABA's model statute for protecting juvenile records. Ultimately, I argue for a streamlined approach to juvenile records with strong confidentiality protections, a combination of sealing and expungement statutes, and robust nondisclosure provisions.

I. THE JUVENILE RECORD PROBLEM

Each state has its own unique way of addressing the permanency and accessibility of juvenile records. The result is a patchwork of confidentiality, sealing, and expungement statutes. Take the example of Jennifer W. At sixteen years old, Jennifer was arrested and pleaded to a delinquency charge for shoplifting a pair of jeans from a local department store. She was placed on probation for six months where she was randomly screened for drug usage, prohibited from the department store for six months, and mandated to complete twenty hours of community service. Jennifer met her probation requirements, and her case was closed. The judge wished her luck at her last court appearance and told Jennifer that she was fortunate this happened when she was a juvenile because, unlike an adult conviction, a juvenile delinquency record was different. It was not permanent.

In some ways, the judge is right. Juvenile delinquency records are different from adult criminal records. Juvenile court, in fact, is not a criminal court, but a civil court. Even the words used in juvenile court are different from adult criminal court. For example, a juvenile is charged by petition, not by an information or indictment. In many states, a juvenile pleads "true," not "guilty," and the result or disposition of the plea is a delinquency adjudication, not a conviction with a sentence. Juvenile adjudications do not, in most states, create public criminal records.

State statutes also provide for varying levels of confidentiality, sealing, and expungement of juvenile records. Some confidentiality statutes limit the disclosure of juvenile records or juvenile court proceedings even before the case is closed; sealing statutes prohibit disclosure of these records without a court order after disposition; and expungement statutes require juvenile records be destroyed. Therefore, most states have some mechanism that protects juvenile records in a way that adult criminal records are left unprotected. These protections paint the picture that "youthful indiscretions"—getting in trouble with the law when you are underage—should be viewed as a learning experience for kids like Jennifer, not an event that results in punitive, lifelong consequences.

But even with these mechanisms in place, the judge is not right that the records will not follow Jennifer into adulthood. In most states, delinquency records are not completely confidential.[38] Rather, they allow the public and press to access some portion of the record or proceedings, especially for more serious felony charges. Other states, like Idaho, even publish juvenile records on an online database with adult criminal records while the juvenile case is still open. If a juvenile's charging documents are not confidential, the juvenile's name and alleged offense could be published in a newspaper or covered on the evening news. Once juvenile record information is publicly available, especially

38. Shah et al., *supra* note 13, at 12–13 (in most states, "the confidentiality of records is not fully protected," and only nine offer that robust level of protection).

online, guaranteeing its removal is difficult, if not impossible.[39]

At the time of arrest, a photograph may be taken and fingerprints and DNA may be collected, which are not likely to be destroyed.[40] After the arrest, the information in the juvenile delinquency records may be shared with law enforcement task forces, the juvenile's school, and social services agencies.[41] For a shoplifting charge like Jennifer's, her family could be evicted from public housing and, if the theft occurred at school, she could be suspended, creating a disciplinary school record that can be shared with colleges. Even when states enact expunging or sealing statutes, therefore, they often cover only juvenile court files, not law enforcement, school, or other records that were created because of the juvenile court sharing that record information.

After a delinquency case is closed and the juvenile turns eighteen, few states seal or expunge *all* juvenile records, and depending on the definition of juvenile records, what is sealed may be very limited.[42] Often violent offenses and sex offenses are never sealed or expunged, even if the juvenile commits no additional offenses as a child or adult.[43] Many states wait to seal records until either the juvenile is twenty-one or it has been five years since the commission of the offense, which means the record information may be disclosed before it is eventually sealed or expunged. Very few states automatically seal or expunge juvenile records, but rather place the burden on the juvenile to file a petition to request the sealing or expungement. This petitioning process generally gives the juvenile judge discretion to determine whether to order expungement or seal the records, which can create inconsistencies for similarly situated children as a result. Based on the judge's individualized assessment, it is possible for two juveniles, with the same delinquency history in the same jurisdiction, to receive *different* expungement or sealing results in which one juvenile may be permitted to deny her criminal history even exists while the other cannot.

The treatment of juvenile records is particularly important because "the United States, which invented a separate juvenile court committed to record confidentiality, now is exceptional for disclosing more juvenile offender information than most other countries or international standards allow."[44] In 2013 alone there were over a million cases[45] in which children as young as eleven years old

39. This is a common problem for adult criminal records which are easily accessible of after they are expunged. For a more detailed discussion, see Roberts, *supra* note 30, at 328.

40. Lapp, *supra* note 33, at 217.

41. *See* Henning, *supra* note 34, at 528–29; *see also* Lapp, *supra* note 33, at 204.

42. *See* Lapp, *supra* note 33, at 222; Margaret Love et al., *Forgiving & Forgetting in American Justice: A 50-State Guide to Expungement and Restoration of Rights*, COLLATERAL CONSEQUENCES RESOURCE CENTER, at 11 (Oct. 2017), http://ccresourcecenter.org/wp-content/uploads/2017/10/Forgiving-Forgetting-Report-CCRC-Oct-17.pdf [https://perma.cc/CYT5-D2SE].

43. Love, *supra* note 42, at 11–12.

44. JACOBS, *supra* note 16, at 116.

45. *Easy Access to Juvenile Court Statistics*, NATIONAL CENTER FOR JUVENILE JUSTICE (Mar. 27, 2017), https://www.ojjdp.gov/ojstatbb/ezajcs/asp/demo.asp [https://perma.cc/8USU-NVFY].

were handcuffed, arrested, booked, charged, and detained for crimes as minor as fighting in the schoolyard, theft, or even violation of their probation.

The public's perception of juvenile criminal activity is shaped by highly publicized violent cases that present "juvenile delinquents" as near-adults who should not be let off the hook by a less punitive juvenile system.[46] But as juvenile cases more than doubled between 1960 and 2013, about three-quarters of the cases were for offenses related to property, drugs, or public order violations, not violent offenses.[47] And the vast majority of offenses were committed by children between the ages of ten and fifteen.[48]

Although we refer to juvenile court as if one size fits all, the reality is that every state has its own individualized juvenile justice structure with dramatic differences. Even within states, juvenile courts can look different. For example, the maximum age for juvenile jurisdiction can be as low as fifteen or as high as seventeen.[49] Some state statutes require the appointment of counsel in every case because juveniles are inherently indigent[50] while others base appointment on the income of the juvenile's parents and allow the juveniles to waive this fundamental right with little explanation.[51] The treatment options and probation caseloads vary dramatically too.[52] The formality of these courts range widely—some juvenile cases are on the docket in the same courtroom as adult cases; in other jurisdictions, adjudication of the juvenile docket occurs in smaller, more intimate courtrooms that seem more like conference rooms.

---

46. *See Juvenile Offenders and Victims: 2014 National Report*, NATIONAL CENTER FOR JUVENILE JUSTICE (Melissa Sickmund & Charles Puzzanchera, eds., Dec. 2014), https://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf [https://perma.cc/9FQD-4R7Q]; *see also* Michael Welch et al., *Moral Panic Over Youth Violence: Wilding and the Manufacture of Menace in the Media*, 34 YOUTH & SOC'Y 3, 19–25 (2002).

47. Sarah Hockenberry & Charles Puzzanchera, *Juvenile Court Statistics 2013*, NATIONAL CENTER FOR JUVENILE JUSTICE (2015), at 6, http://www.ncjj.org/pdf/jcsreports/jcs2013.pdf [https//perma.cc/4PD2-KPT9].

48. *Id*. at 8.

49. Angel Zang, *U.S. Age Boundaries of Delinquency 2015*, JUVENILE JUSTICE GEOGRAPHY, POLICY, PRACTICE & STATISTICS, U.S. AGE BOUNDARIES OF DELINQUENCY (2015), at 2, http://www.ncjj.org/pdf/JJGPS%20StateScan/JJGPS_U.S._age_boundaries_of_delinquency_2015_8.pdf [https://perma.cc/M9DD-XF3P].

50. *See* CAL. WELF. & INST. CODE § 634 (West 2016) (stating that "the court shall appoint counsel for the minor . . . whether he is unable to afford counsel or not").

51. *See* TENN. CODE ANN. § 37-1-126 (2016) (stating that "[i]n determining indigency, the court shall consider the financial resources of the child and the child's parents, legal custodians or guardians").

52. *See, e.g.*, Jeffrey Butts et al., *Varieties of Juvenile Court: Nonspecialized Courts, Teen Courts Drug Courts, and Mental Health Courts*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE, *supra* note 17, at 607–29 (describing the different kinds of juvenile courts and their outcomes); Peter Greenwood & Susan Turner, *Probation and Other Noninstitutional Treatment*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE, *supra* note 17, at 730–37 (table showing cost benefit analysis of disparate juvenile treatment strategies); Sarah Vidal & Jennifer L. Skeem, *Effect of Psychopathy, Abuse, and Ethnicity on Juvenile Probation Officers' Decision-Making and Supervision Strategies*, 31 LAW & HUM. BEHAV. 479, 480 (2007) (discussing diversity of individual juvenile probation officers' approaches).

Like adult defendants, juveniles brought into court nationwide are disproportionately black, male, and poor.[53] Although black youth make up only 17% of the overall juvenile population, they are 35% of the kids arrested for an offense, a rate that has not changed over the past two decades.[54] And studies show that a disproportionate number of children in the system suffer from mental health problems, and many have serious trauma and abuse histories.[55] An estimated 53% have learning disabilities, compared to 2% to 10% of the overall child population.[56]

As these children are processed through this system, records of their offenses and adjudications are created, shared, and stored. The recordkeeping of juvenile courts in many states looks like the recordkeeping of adult criminal records. Fingerprints, photographs, and DNA samples taken by the police officer arresting them are maintained in central state databases or repositories.[57] Arrest reports are stored in police files, some of which are public even when the court file's contents are not. Juvenile court files chronicle the history of a juvenile's charges, adjudications, and dispositions. Such files often include psychological evaluations and reports from the Department of Children Services with sensitive mental health diagnoses.

The increasing dissemination of juvenile delinquency records is a current reality. It is only one piece of the complicated evolution of juvenile courts and their increasing punitive function. Part II of this Article briefly outlines this evolution, beginning with its economically, socially, and racially charged rehabilitation principles in the early 1900s, and highlights key points from the 1960s to the present that have played a role in changing confidentiality, sealing, and expungement laws.

II. THE EVOLVING PERMANENCY OF JUVENILE RECORDS

The role of juvenile courts in adjudicating children "delinquent" or "unruly" has changed dramatically over the past one hundred years—from a court of rehabilitation, in theory, to one of punishment, in reality.[58] The increase in juvenile record accessibility is only one way that the juvenile courts have morphed into more informal replicas of adult criminal courts. To place today's

53. Joshua Rovner, *Disproportionate Minority Contact in the Juvenile Justice System*, THE SENTENCING PROJECT, at 5 (May 2014), http://www.sentencingproject.org/wp-content/uploads/2015/11/Disproportionate-Minority-Contact-in-the-Juvenile-Justice-System.pdf [https://perma.cc/2ZXY-YEBJ].

54. Hockenberry & Puzzanchera, *supra* note 47, at 19; *see also* Rovner, *supra* note 53, at 1.

55. Marty Beyer, *What's Behind Behavior Matters: The Effects of Disabilities, Trauma and Immaturity on the Juvenile Intent and Ability to Assist Counsel*, GUILD PRACTITIONER, 58:2 112, at 12–13 (2001).

56. *Id.*

57. Lapp, *supra* note 33, at 217.

58. *See generally* BARRY FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT (1999); DAVID TANEHAUS, THE CONSTITUTIONAL RIGHTS OF CHILDREN: IN RE GAULT AND JUVENILE JUSTICE (2011); GEOFFREY WARD, THE BLACK CHILD SAVERS: DEMOCRACY AND JUVENILE JUSTICE (2012); Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. L. REV. 1335, 1335 (2013); Robin Walker Sterling, *Fundamental Unfairness: In re Gault and the Road Not Taken*, 72 MD. L. REV. 607 (2013).

juvenile justice system in context, section II.A briefly traces the history of juvenile courts to explain the pendulum shift from a rehabilitative approach in the early 1900s to our current more punitive approach to juvenile justice. Section II.B explains how the punitive shift set the stage for an increase in the creation and dissemination of juvenile records. Finally, section II.C describes the recent "kids are different" approach and demonstrates how scholars, several of whom once called for the abolition of the juvenile justice system, now see a potential for it to return to its rehabilitative roots. Consistent with this rehabilitation revival, I argue that states have an obligation to protect juvenile records and ultimately destroy them altogether.

A. THE ORIGINS OF PERMANENT RECORDS: A BRIEF HISTORY OF JUVENILE JUSTICE—FROM REHABILITATION TO PUNISHMENT

1. Rehabilitative Beginnings in the Early 1900s

Since their inception in 1899, juvenile courts have purported to rehabilitate and reform youth charged with criminal offenses, "treating the young offender rather than punishing him for his offense."[59] Prior to the creation of juvenile courts, children charged with crimes were deemed to have the same criminal capacity as adults and subjected to the same forms of punishments, which could be as minor as paying fines or as punitive as public flogging or, in the extreme, execution.[60]

Juvenile court, however, changed that punitive landscape because of new conceptions of childhood and medical conclusions that children were amenable to treatment.[61] During the Progressive Era, children were no longer viewed as miniature adults;[62] rather, children needed protection and guidance as they experienced newly understood developmental periods of growth and maturation.[63] This understanding of childhood was inconsistent with the punitive treatment of children who were charged with offenses.[64] Poverty was seen as the problem; delinquent behavior, poor parenting, and a deficient education

59. FELD, *supra* note 58, at 67.

60. At common law, the seriousness of the conduct could establish the requisite capacity, under the maxim *"malitia supplet aetatem"* (malice makes up for age). 1 WILLIAM C. SPRAGUE BLACKSTONE'S COMMENTARIES 432 (9th ed. 1915); *see also* FELD, *supra* note 58, at 48 (explaining that the common law doctrine of the "infancy mens rea defense" was the only legal protection for children charged with a criminal act prior to the 1890s. The doctrine "presumed children under the age of seven lacked criminal capacity, treated those over the age of fourteen as fully responsible adults, and created a rebuttable presumption that those between seven and fourteen years of age lacked criminal capacity").

61. FELD, *supra* note 58, at 48.

62. Beyond the scope of this paper is a discussion of the parallel anti-child labor movement, which also reflected this new conception of childhood. For a more detailed discussion, see generally WALTER TRATTNER, CRUSADE FOR THE CHILDREN (1970).

63. Bishop & Feld, *supra* note 17, at 898–901. At this time, universities began developing curriculum about the new fields of psychology, sociology, and social work, which fed into the changing conception of youth.

64. ROBERT M. MENNEL, THORNS & THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES 1825–1940, at 10 (1973).

were merely symptoms.[65] Although it is beyond the scope of this Article, the seemingly virtuous motives of these "child-savers" have been widely criticized by scholars for imbedding white middle class norms into rehabilitating predominantly poor, white immigrants, and for relegating youth of color to a caste that was still flogged, punished, and deemed essentially incapable of rehabilitation.[66]

The rehabilitative origins of juvenile court were also heavily influenced by the theories of positive criminologists who argued that offending behaviors were the result not of calculated, deliberate acts, but environmental factors like peer pressure and poor parenting.[67] Changing those external influences through positive treatment would result in long-term rehabilitation of the child.

Viewed through a social welfare lens, juvenile courts were developed to correct and treat children.[68] Legal protections were not a great concern. Juvenile courts were set up as civil, not criminal, courts, and courtrooms were closed to the public.[69] The lexicon of the system was deliberately different from that of the adult criminal system. *Delinquent* replaced the word *criminal*; *adjudication* replaced *conviction*; and *disposition* replaced criminal *sentence*.[70] The focus was not on punishing guilt but "reforming" and "treating" the child.[71] The courtroom was to be informal and nonstigmatizing. Sentences of probation or therapeutic treatment were of indeterminate length so that they could be individualized for each child's needs.[72]

Scholars have long pointed out that the reformers strived for a rehabilitative ideal that could not be realized.[73] A tension existed between the goal of treatment and the inherently controlling and stigmatizing role of any court system. Children with repeat and serious charges also undermined the juvenile court's aim to rehabilitate.[74] In response, these children were "waived into" adult court.[75] Some courts opened their doors to the public so communities could see the positive work done by judges, removing the confidential nature of the proceedings.[76] In addition, the treatment facilities—a remnant of earlier reformatories and asylums—looked a lot like punishment, and much of the "treatment" children received was more punitive than rehabilitative.[77] The

65. *Id.* at 10.

66. Robyn Walker Sterling, *"Children Are Different": Implicit Bias, Rehabilitation, and the "New" Juvenile Jurisprudence*, 46 LOY. L.A. L. REV. 1019, 1024 (2013).

67. Feld & Bishop, *supra* note 17, at 900.

68. *Id.* (explaining that the court was "conceived as a benign, nonpunitive, and therapeutic institution").

69. *Id.*

70. FELD, *supra* note 58, at 68 (explaining how "reformers introduced a euphemistic vocabulary further to avoid stigma and to eliminate any implications of a criminal prosecution").

71. Feld & Bishop, *supra* note 17, at 900.

72. *Id.*

73. *Id.* at 902–07.

74. *Id.*

75. *Id.* at 901.

76. *Id.*

77. *Id.*

erosion of the rehabilitation ideal intensified, however, in the 1960s, as our conception of youth changed again.

2. The Rights Era of the 1960s and 1970s

The juvenile court system came under attack for severe failures in treating children under its care in the 1960s.[78] Judges had great discretion over cases but were not trained to understand child development or to identify necessary medical intervention.[79] Probation officers, who also were rarely trained in social work or child psychology, suffered from unmanageable caseloads.[80] Children were placed in large treatment facilities with dismal conditions, high rates of violence, and abusive care.[81] A series of reports issued at this time from the President's Commission on Law Enforcement and the Administration of Justice revealed the breakdown of juvenile courts and mistreatment of juveniles under its care.[82] A study of juvenile court judges, cited in the 1967 report, revealed that 50% of the judges had no undergraduate degree.[83] And "more than four-fifths . . . had no psychologist or psychiatrist available to them on a regular basis" to advise the judge on juvenile mental health issues.[84] The documented shortcomings of the juvenile system resulted in a call for a "revised philosophy of juvenile court" because "the same purposes that characterize the use of criminal law for adult offenders—retribution, condemnation, deterrence, incapacitation—are involved in the disposition of juvenile offenders."[85]

One response to the recognition that the system was punitive was to grant juveniles the due process protections held by adult criminal defendants. Several key Supreme Court cases in the '60s and '70s launched an attack on the juvenile justice system by demanding procedural safeguards to protect the juvenile's right to fair treatment and due process.[86] The seminal case *In re Gault* extended several rights to juveniles that were deemed fundamental to their adult counter-

78. *Id.* at 902.

79. *Id.*

80. *Id.*

81. *The Challenge of Crime in a Fre Society*, PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, at 43 (1967), https://www.ncjrs.gov/pdffiles1/nij/42.pdf [https://perma.cc/3WS3-45ZR]. The poor treatment of children mirrored the poor treatment of other historically disadvantaged groups, like women and the mentally ill, who also were subjected to abusive conditions under the guise of help.

82. *See id.*

83. *Id.* at 80.

84. *Id.*

85. *Id.* at 80–81.

86. *See, e.g.*, *In re* Winship, 397 U.S. 358, 368 (1970) (applying the proof beyond a reasonable doubt standard to juvenile proceedings); *In re* Gault, 387 U.S. 1, 30 (1967) (guaranteeing juveniles basic procedural safeguards including notice, counsel, and a hearing); Kent v. United States, 383 U.S. 541, 553 (1966) (specifying the need to apply "the basic requirements of process and fairness" to a juvenile court proceedings in a waiver of jurisdiction to adult court); Haley v. Ohio, 331 U.S. 596, 599 (1948) (barring the use of a juvenile confession because the methods used violated the Fourteenth Amendment).

parts in criminal court, including the right to counsel.[87] The Court emphasized that granting procedural due process to juveniles was not inconsistent with a "therapeutic purpose": "even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel."[88] Procedural due process was viewed as a means to helping a juvenile rehabilitate and instill confidence in the system.

But most importantly, the Court took the juvenile system to task for being so punitive under the guise of being treatment-oriented. Responding to the argument that an important benefit of juvenile court was to label a child as a delinquent and not a "criminal," Justice Fortas explained that "this term [delinquent] has come to involve only slightly less stigma than the term 'criminal.'"[89]

The due process shift in juvenile courts created further tension with the system's avowed rehabilitative purpose because formalized procedures meant replacing the informal, more individualized approach focused on rehabilitation with a proceeding that looked more like adult criminal court. The Court essentially recognized this problem in *McKeiver v. Pennsylvania* when the majority refused to extend the right to a jury trial to juveniles, saying that "the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding."[90]

3. The Punitive Shift of the 1980s and 1990s

The due process era was followed by a dramatic shift in how children were treated in the juvenile system, as homicides and violent crimes committed by juveniles increased. Social, cultural, and economic changes[91] in the inner cities during the '80s contributed to this rise as gang violence and drug crimes increased in poor urban neighborhoods. Between 1988 and 1997, the number of juvenile delinquency cases rose to 1.75 million, increasing by 48% in just a decade.[92] This shift had a disproportionate impact on African American juve-

87. *Gault*, 387 U.S. at 28, 30, 33, 42, 61 (explaining that "[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court"). The Court also extended the right to notice of their charges, the right to representation by counsel, the right to a hearing, the right to confront witnesses, and the right against self-incrimination. *See id.*

88. *Id*. at 26 (quoting STANTON WHEELER & LEONARD S. COTTRELL, JR., JUVENILE DELINQUENCY; ITS PREVENTION AND CONTROL 33 (1966)).

89. *Id.* at 23–24. (In the actual case of fifteen-year-old Gerald Gault, the judge committed Gault to state custody for six years. Justice Fortas concluded that this adjudication was dramatically more punitive than the maximum sentence of an adult for the same offense.).

90. 403 U.S. 528, 545 (1971).

91. A more in-depth discussion of these changes, which are beyond the scope of this Article can be found in FELD, *supra* note 58, at 192.

92. Anne L. Stahl, *Fact Sheet: Delinquency Cases in Juvenile Courts, 1997*, U.S. DEP'T OF JUSTICE (Mar. 2000), https://www.ncjrs.gov/pdffiles1/ojjdp/fs200004.pdf [https://perma.cc/F2B8-H6TC]. The number of juvenile cases has decline significantly since the 1990s; in 2013, juvenile courts nationwide handled only 1.1 million cases. Julie Furdella & Charles Puzzanchera, *Delinquency Cases in Juvenile*

niles who were overrepresented in the system.[93] Although they made up only 15% of the juvenile population, they "accounted for 31% . . . of the delinquency cases handled by juvenile courts" in 1997.[94] During this time, academics warned of "severely morally impoverished super-predators" and predicted a "blood-bath" of juvenile crime sprees.[95]

This new depiction of juvenile delinquents as "responsible, autonomous, and adult-like" mirrored a "tough on crime" approach to adult criminal punishment.[96] The criminal justice policies of the 1980s and 1990s emphasized incapacitation and retribution over rehabilitation, which resulted in longer, determinate sentences and little likelihood for parole.[97] Fueled by the super-predator image, the punitive criminal approach extended to the juvenile system.[98] Democrats and Republicans passed juvenile court reforms reflecting the sentiment "adult-crime, adult-time."[99]

For juveniles charged with serious offenses, such as murder or rape, many states eased the process for transferring even younger children to adult court or allowed those cases to be filed directly in adult court.[100] For juveniles charged with less serious offenses, deterrence rather than rehabilitation drove sentencing decisions: "legislators touted the utility of punishment as a deterrent and as a means to protect public safety."[101] Consistent with this new approach, states amended their juvenile codes to recognize that juvenile courts had purposes besides rehabilitation, including holding "juveniles accountable for their unlawful behavior,"[102] providing for "the protection of the public,"[103] and "deterring delinquency."[104]

Because of this dramatically punitive shift, legal scholars began to advocate for the abolition of the juvenile justice system, moving *all* juveniles to adult

---

Court, 2013, U.S. DEP'T OF JUSTICE (Oct. 2015), https://www.ojjdp.gov/pubs/248899.pdf [https://perma.cc/RD9Y-Q6XN].

93. Dorothy E Roberts, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 202 (2002).

94. *Id.*

95. John J. DiIulio Jr., *The Coming of the Super-Predators*, WKLY. STANDARD, Nov. 27, 1995, at 23; Perry L. Moriearty, *Framing Justice: Media, Bias and Legal Decisionmaking*, 69 MD. L. REV. 849, 870 (2011) (explaining that youth of color were "overrepresented as perpetrators and underrepresented as victims in media crime stories").

96. Feld & Bishop, *supra* note 17, at 904.

97. Marty Gardner, *Punitive Juvenile Justice and Public Trials by Jury: Sixth Amendment Applications in a Post-McKeiver World*, 91 NEB. L. REV. 1, 22 (2012).

98. Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 323, 331, 335–47 (1991) (describing the move away from rehabilitation to a more punitive juvenile sentencing approach).

99. DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 13–14 (2001).

100. Feld & Bishop, *supra* note 17, at 905–06.

101. *Id.* at 905.

102. CONN. GEN. STAT. ANN. § 46b-121h(1) (2017).

103. TEX. FAM. CODE ANN. § 51.01(1) (2017).

104. N.C. GEN. STAT. ANN. § 7B-1500 (2017).

court.[105] As Barry Feld has explained, "the substantive and procedural convergence between juvenile and criminal courts eliminates virtually all the conceptual and operational differences in strategies of criminal social control for youths and adults."[106] Juvenile courts were merely reduced to "scaled down criminal courts."[107] In fact, some juveniles charged with minor crimes, like property offenses, were dealt with more leniently in adult court than in juvenile court, presumably because criminal court judges who primarily sentenced adults saw the rehabilitative potential of children more than their juvenile court counterparts.[108]

B. THE LASTING STIGMA: AN EXPLOSION OF JUVENILE RECORDS AND COLLATERAL CONSEQUENCES

The punitive shift in juvenile justice was also reflected in the increased dissemination of juvenile records.[109] This section first describes how state action eviscerated confidentiality protections in the juvenile system by permitting greater dissemination of juvenile records. Then it discusses the ways in which a juvenile record triggers civil collateral consequences. Maintaining a separate system for juveniles with remnants of the rehabilitative ideal allows the state to perpetuate the juvenile record myth.

1. The Permanency of Juvenile Records

Juvenile records are often not as confidential as the public believes, and even when states offer protection through confidentiality, sealing, and expungement laws, some documents created during the juvenile's case revealing a juvenile delinquency history are not covered by these protections. As the Court in *In re Gault* understood, when it comes to juvenile records, "the claim of secrecy . . . is more rhetoric than reality":

---

105. *See, e.g.*, Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1123–26 (1991); Katherine Hunt Federle, *The Abolition of the Juvenile Court: A Proposal for the Preservation of Children's Legal Rights*, 16 J. CONTEMP. L. 23 (1990); Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. CRIM. L. & CRIMINOLOGY 68, 71–86 (1997); Francis Barry McCarthy, *Delinquency Dispositions Under the Juvenile Justice Standards: The Consequences of a Change of Rationale*, 52 N.Y.U. L. REV. 1093 (1977); Stephen Wizner & Mary F. Keller, *The Penal Model of Juvenile Justice: Is Juvenile Court Delinquency Jurisdiction Obsolete?*, 52 N.Y.U. L. REV. 1120 (1977).

106. Feld, *supra* note 105, at 68–69.

107. Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. L. FAM. STUD. 11, 24 (2007).

108. Barry C. Feld, *Symposium on the Future of the Juvenile Court: Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. CRIM. L. & CRIMINOLOGY 68, 78 n.20 (1997).

109. Lapp, *supra* note 33, at 198 (arguing that traditional juvenile justice scholars "have yet to recognize, much less fully grapple with, the databasing of delinquency").

> Disclosure of court records is discretionary with the judge in most jurisdictions. . . . [M]any 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.[110]

Juvenile records that result from arresting, processing, and sentencing a juvenile do not live in a file in the courthouse alone.[111] Parts of the record exist in the files of police departments, social services agencies, schools, housing authorities, and mental health facilities that even under the most stringent sealing and expungement laws do not go away.[112] With every juvenile case, probation files and prosecution files are created, containing almost identical records as in the court files. But these types of files are not necessarily included in the definition of confidential juvenile records and may not be included for purposes of sealing and expungement.

Under the "public safety" rationale of the 1980s and 1990s, legislation was created allowing greater dissemination of juvenile information for criminal justice purposes to parties outside the juvenile court proceedings.[113] States determined that these noncriminal law enforcement bodies had an interest in protecting the public and that information contained in juvenile records would help accomplish that goal.[114] For example, new laws permitted courts to share information about juvenile records with school officials not only to explain absences, but to put schools on notice about delinquent behavior that might predict similar behaviors in school.[115] Laws permitted the sharing of juvenile records with housing authorities that could determine whether to begin eviction proceedings against the juvenile's family.[116]

As the Supreme Court pointed out in *Gault*, record dissemination is not a new phenomenon; eroding juvenile confidentiality protections has just increased, especially with the advent of better technology. More recently, states have allowed law enforcement to create more records of juveniles through fingerprinting, photographing, and even DNA collection.[117] Only a quarter of law enforcement agencies in 1988 fingerprinted juveniles.[118] Courts and law enforcement were required to keep fingerprints protected when they were taken. Today,

---

110. *In re* Gault, 387 U.S. 1, 24–25 (1967).

111. Lapp, *supra* note 33, at 217 (describing how police records now include fingerprints and photographs).

112. Henning, *supra* note 34, at 543 (discussing how interagency collaboratives permit law enforcement, schools, and housing authorities to share confidential juvenile record information).

113. *Id.* at 530.

114. *Id.*

115. *Id.*

116. *Id*.

117. Lapp, *supra* note 33, at 221, 223.

118. BUREAU OF JUSTICE STATS., U.S. DEP'T OF JUSTICE, JUVENILE RECORDS AND RECORDKEEPING SYSTEMS v (1988).

virtually every state photographs and fingerprints juveniles, sharing that information with state information repositories.[119] In addition to fingerprinting, twenty-nine states require DNA collection from arrested juveniles; many others collect it upon consent.[120] Advances in technology and science have enabled law enforcement agencies to collect and store a tremendous amount of information about adults and juveniles alike.[121]

Sharing juvenile records has extended beyond public safety concerns. As Professor James Jacobs explains, "[t]he trend has been to make juvenile court records increasingly available for both criminal justice and noncriminal justice purposes."[122] Several states make all juvenile records accessible on public websites.[123] Florida and Idaho publish juvenile adjudications online allowing free access.[124] In Maine and Nebraska, a person willing to pay a small fee can access juvenile records.[125] For example, in Nebraska, all records, including juvenile records, are kept together in a public online database. For some offenses, the press can request juvenile charging information and print the names of juveniles charged in juvenile courts.[126] And many juvenile courts are open to the public, allowing information about charges and adjudications to be shared with anyone, including a reporter.[127]

The Supreme Court played a direct role in eroding confidentiality and the dissemination of records in the 1970s. In *Davis v. Alaska*, the Court permitted the defense to impeach a witness with a juvenile adjudication despite the confidentiality protections of Alaska's juvenile statute.[128] In two separate opinions, the Court found it unconstitutional for states to prohibit the press from identifying a charged juvenile by name if the news source obtained the name legally.[129]

The origins of juvenile court looked to confidentiality as a key factor in saving the "child from the brand of criminality, the brand that sticks to it for life."[130] Yet the juvenile court's changes over time have eroded this protection. The United States now "disclos[es] more juvenile offender information than

119. Lapp, *supra* note 33, at 217.

120. *Id.* at 223.

121. *Id.* at 195.

122. JACOBS, *supra* note 16, at 115.

123. Lapp, *supra* note 33, at 221.

124. *See id.*

125. *See id.*; Neb. Trial Courts Online Case Search, https://www.nebraska.gov/justicecc/ccname.cgi [https://perma.cc/6ZRY-WFRL].

126. TENN. CODE. ANN. § 37-1-153 (2017).

127. Feld & Bishop, *supra* note 17, at 907–08. Although these examples present ways that states have increased accessibility to juvenile records, each state has its own method for maintaining records for adults and juveniles. Some states, like Tennessee, still maintain protections for juvenile records locally and store them in different databases than their adult criminal records.

128. 415 U.S. 308, 319 (1974).

129. *See* Smith v. Daily Mail Pub. Co., 443 U.S. 97, 104 (1979); Okla. Pub. Co. v. Dist. Court, 430 U.S. 308 (1977) (per curiam).

130. JACOBS, *supra* note 16, at 180.

most other countries or international standards allow."[131]

2. Collateral Consequences of Juvenile Adjudications

> Too often youth who have been court involved, even for minor cases which have been dismissed, learn that their brush with the law has put their family's public housing, their career and educational opportunities (including maintaining their enrollment in their secondary schools), and their future encounters with law enforcement, at risk.[132]

The permanence of juvenile records matters because juvenile adjudications can trigger a range of collateral consequences that impact juveniles even after their case is closed—a fact that they rarely know at the time they enter a plea or are adjudicated delinquent.[133] Collateral consequences are typically described in the scholarly literature as state-created civil penalties imposed outside of the juvenile's court-ordered disposition.[134] Every state differs in the number and breadth of these collateral consequences for juveniles. Some may be automatic and others are discretionary. Mostly, however, these consequences are unrelated to the youth's specific criminal misconduct, and they can impact someone convicted of a minor crime and someone convicted of a violent felony in just the same way and with the same force.

This section does not catalogue all collateral statutes impeding full rehabilitation, but rather offers a glimpse of the most damaging collateral consequences.[135] Most immediately, juvenile adjudications, whether they involve criminal behavior on or off school grounds, can result in a suspension or expulsion from school. New Jersey's statute governing expulsion or suspension includes conduct that occurs off school grounds.[136] Missouri allows notice to the parents and a hearing, but ultimately can expel a student if the juvenile's adjudication is "prejudicial to good order and discipline in the schools."[137] Although students are given some due process protections, and federal protections should extend to children who receive special education services, often schools take a more punitive approach.[138]

---

131. *Id.* at 116.

132. American Bar Association's Criminal Justice Section, *Understanding Juvenile Collateral Consequences*, http://www.beforeyouplea.com [https://perma.cc/5796-LY8C].

133. COLGATE LOVE ET AL., *supra* note 7, at 170–71, 189–90; *see also Collateral Damage: Americas Failure to Forgive or Forget in the War on Crime*, NAT'L ASSOC. OF CRIM. DEF. LAW. (May 2014), https://www.nacdl.org/restoration/roadmapreport/ [https://perma.cc/NP3L-JGJD].

134. *See* Pinard & Thompson, *supra* note 6, at 590; Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced By Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623, 634 (2006); Travis, *supra* note 6, at 16.

135. *See, e.g.*, COLGATE LOVE ET AL., *supra* note 7, at 170–91; Shah & Strout, *supra* note 5, at 9–11. Other sources offer a comprehensive analysis that is beyond the scope of this paper.

136. COLGATE LOVE ET AL., *supra* note 7, at 173.

137. MO. ANN. STAT. § 167.161.1 (West 2017).

138. COLGATE LOVE ET AL., *supra* note 7, at 172–74.

A student also may need to admit or explain a juvenile adjudication on a college application.[139] Of the schools that ask applicants about juvenile records, about 20% deny students admission because of their records, and more than a third consider their application negatively.[140] One study of sixty campuses of the State University of New York showed that almost two-thirds of the students who started to fill out the online Common Application for college failed to complete and submit the application if they answered yes to this question.[141] And some states (but not the federal government) deny students financial aid because of certain juvenile adjudications.[142] Even after pressure from advocacy groups and some universities to drop the criminal history question, the Common Application decided in May 2017 to keep it even though it allows schools to block the answer to the question.[143]

Perhaps the most permanent consequence, however, is on future employment. Like college applications, job applications increasingly ask about juvenile delinquency adjudications, sometimes unintentionally.[144] Even an application that simply asks "have you ever been arrested?" could lead to the disclosure of a juvenile proceeding. Juveniles may not be permitted by state law to answer "no," even if they could answer "no" to a question about adjudication or conviction of a crime. Further, their lawful answer of "yes" can easily make them feel as if they must explain why they were arrested, and in turn reveal their juvenile past. And even in states that would not allow employers to access a juvenile record because it is confidential, sealed, or expunged, if these states have no corresponding law that allows a juvenile to deny the existence of a record, the door is left open for employers to ask and for juveniles to self-disclose.[145] People with a juvenile record (even as an adult) might then answer "yes" to these questions, even if the records no longer exist or they are sealed or protected by confidentiality.[146]

Background checks conducted by employers can also turn up information about juvenile adjudications, especially when conducted through private record

---

139. *Boxed Out: Criminal History Screening and College Application Attrition*, CENTER FOR COMMUNITY ALTERNATIVES, at v (Mar. 2015), http://www.communityalternatives.org/pdf/publications/BoxedOut_FullReport.pdf [https://perma.cc/6QTW-8F3X].

140. Shah & Strout, *supra* note 5, at 8–10; *see also Reconsidered: The Use of Criminal History Records in College Admissions*, CENTER FOR COMMUNITY ALTERNATIVES (Nov. 2010), http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf [https://perma.cc/5FPG-BEM3].

141. Shah & Strout, *supra* note 5, at 8–10.

142. COLGATE LOVE ET AL., *supra* note 7, at 174.

143. *Still Asking Questions About Crime and Discipline*, INSIDE HIGHER ED (Mar. 2010), https://www.insidehighered.com/news/2017/03/10/common-application-announces-it-will-keep-questions-criminal-background-and#.WffGYsWZ928.link [https://perma.cc/TU26-DFUL].

144. Shah & Strout, *supra* note 5, at 14–15.

145. *See infra* Section IV.C.

146. *Id.*

databases that do not fall under the Fair Credit Reporting Act (FCRA).[147] Even companies that fall under FCRA have been shown to present inaccurate information about juvenile records for which there is no sanction under FCRA.[148] Finally, states permit and sometimes require that juvenile adjudications limit employment opportunities, especially jobs related to schools. And some state licensing agencies, by law, inquire about juvenile adjudications, which can automatically bar an adult from a license or public job.[149]

There are several other areas where a juvenile record may be harmful. Juvenile adjudications can trigger immigration consequences, which, depending on the severity of the offense, can include a denial of citizenship and even deportation.[150] A juvenile and his family may be evicted from public housing because of a juvenile charge, and an adjudication of delinquency can trigger a public housing denial when the juvenile is an adult.[151] A juvenile may also lose her driver's license, which could have a ripple effect on school attendance and employment.[152] Juvenile adjudications can also be used to increase the sentence of an adult criminal defendant.[153]

Military service and state sex offender registries are two examples of profound collateral consequences dictated by federal and state law. The process for signing up for all military branches, a common plan for many high school graduates, requires extensive inquiry into juvenile records, a federal requirement that complicates confidentiality and expungement provisions.[154] Juveniles adjudicated of certain sex offenses are placed on sex-offender registries that have the potential to last a lifetime.[155] These registries are public and can include a range of offenses. One example of a juvenile sex offense that has received recent media attention is child pornography charges that result when a juvenile takes pictures wearing little or no clothing and texts them to friends. Some sex offenses intended for adults, like child pornography statutes, are critiqued by juvenile justice advocates as inappropriate for juveniles.

In sum, even if they are not as damaging as adult criminal convictions, juvenile records can be permanently harmful.

C. A REVIVIAL OF THE "KIDS ARE DIFFERENT" APPROACH

The past two decades have ushered in a new "kids are different" approach to thinking about juvenile offenses. Since 1994, juvenile crimes, particularly

147. Shah & Strout, *supra* note 5, at 15 (stating "90% of agencies that provide criminal and juvenile records consider them exempt from the regulations governing the Fair Credit Reporting Act").

148. *Id.*

149. *See* COLGATE LOVE ET AL., *supra* note 7, at 176–77.

150. *See id.* at 178–79.

151. *See id.* at 183.

152. *See id.* at 179.

153. *See id.* at 180–81.

154. *See id.* at 181–82.

155. *See id.* at 186.

violent crimes, have dropped dramatically.[156] Public opinion has supported rehabilitative efforts for juveniles, with one study reporting 90% of those polled supported prevention and rehabilitation of juveniles charged with crimes.[157] Even at the height of juvenile criminal activity in the 1980s, scholars have shown that public opinion did not support retribution as the dominant mode for punishing juveniles.[158]

Recently, juvenile justice reforms have significantly increased. State legislation has increased the age of juvenile jurisdiction back to eighteen (in some states, it's as low as sixteen),[159] directed more funding toward treatment options, enhanced the provision of counsel for juveniles, and improved the conditions of juvenile facilities.[160] These efforts have exposed problems with the system and the need for reforms focused on rehabilitation over punishment.

A quartet of recent Supreme Court decisions has played a major role in the revival of rehabilitation as a central goal for juveniles charged with even the most serious crimes. The premise of these decisions is that juveniles are different from adults.[161] In *Thompson v. Oklahoma*, the Court explained that it has long "endorsed the proposition that less culpability should attach to a crime committed by a juvenile" because "inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct, while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult."[162] The Court has viewed the difference between children and adults as a "common sense conclusion" that should "be evident to any who was a child once himself, including a police

156. Feld & Bishop, *supra* note 17, at 907–08 ("Murder rates declined to "levels not seen since the 1970s.").

157. *Id.* at 908.

158. Nagin et al., *Public Preferences for Rehabilitation Versus Incarceration of Juvenile Offenders: Evidence from a Contingent Valuation Survey*, 5 CRIM. & PUB. POLICY 627, 645 (2006) (presenting evidence that the public values rehabilitation over incarceration for youth and arguing that lawmakers should factor that response into more moderate, cost-effective reforms).

159. Lorelei Laird, *States Raising the Age for Adult Prosecution Back to 18*, ABA JOURNAL (Feb. 2017), http://www.abajournal.com/magazine/article/adult_prosecution_juvenile_justice [https://perma.cc/8T2V-K4T7] ("Last year, advocates aimed to raise the age . . . in at least five states—more if you count proposals to increase the age to 21.").

160. *Trends in Juvenile Justice State Legislation 2011–2015*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Sept. 2015), http://www.ncsl.org/documents/cj/Juvenile_Justice_Trends.pdf [https://perma.cc/ML5L-CDSX] (explaining that specific non-partisan advocacy trends include: reforming detention, being more responsive to juvenile mental health needs, offering alternatives to incarceration, providing for a strong public defender system for juveniles, and reforming detention facilities).

161. Miller v. Alabama, 132 S. Ct. 2455 (2012) (mandatory life sentence for murder by juvenile offender violated Eighth Amendment); J.D.B. v. North Carolina, 564 U.S. 261 (2011) (a juvenile's maturity must be considered in a *Miranda* analysis); Graham v. Florida, 560 U.S. 48, 74 (2010) (diminished juvenile culpability requires states to provide a meaningful opportunity for rehabilitation to juvenile offenders sentenced to life in prison without parole); Roper v. Simmons, 543 U.S. 551, 553 (2005) (reduced capacity of juvenile offenders renders death penalty unconstitutional).

162. 487 U.S. 815, 816 (1988); *see also Roper*, 543 U.S. at 551.

officer or judge."[163] And in *Graham v. Florida*, the Court also relied on "developments in psychology and brain science" that "continue to show fundamental differences between juvenile and adult minds."[164] Because of a juvenile's "capacity for change and limited moral culpability," the Court struck down punishment for juveniles that "forswears altogether the rehabilitative ideal."[165]

Many scholars who originally advocated abolishing the juvenile system have found new potential in these reform efforts and Supreme Court decisions. Recently, they have applied the new scientific understanding of juvenile brain development to how juvenile courts should define *mens rea*, consider confessions, determine competency, and assess culpability.[166] As discussed below, this science should also inform the treatment of juvenile records.

III. KIDS ARE DIFFERENT: THE CASE FOR PROTECTING JUVENILE RECORDS

Because kids are different from adults, the state's obligation to juveniles is different from its obligation to adults. Protecting records does not run counter to the state's concern that juvenile offending requires state action to protect the public; rather, it aids states in achieving their dual juvenile justice goals of acting in the bests interests of the child while protecting the public from future harm.

Section III.A examines the purposes guiding the juvenile justice system, as explicitly set forth in the juvenile codes of each state. Most states begin their juvenile code with a statute identifying the purposes of the juvenile system, and those statutes recognize the state's unique, parent-like relationship with juveniles in delinquency proceedings.[167] This relationship, combined with the states' articulated interests in rehabilitation and protection, suggests that the state has an obligation to fully reintegrate youth without the stigma of a juvenile past. This reintegrative obligation should extend to a strong protection of juvenile records and ultimately sealing and expungement statutes. Section III.B summarizes recent brain science developments and applies it to how we should think about the permanency of juvenile records. Section III.C concludes with a review of the juvenile desistance literature showing that juveniles stop committing

163. *J.D.B.*, 564 U.S. at 271–72 (holding that age matters in determining a free and voluntary *Miranda* waiver).

164. *Graham*, 560 U.S. at 74.

165. *Id.*

166. Feld, *supra* note 36, at 265; Scott, *supra* note 36, at 72; Jenny Carroll, *supra* note 36, at 541 (explaining that the courts have failed to extend Supreme Court's analysis of reduced culpability of juveniles to the culpability standard of *mens rea*); Kathryn Monahan et al., *Juvenile Justice Policy and Practice: A Developmental Perspective* 44 CRIME & JUSTICE 577, 582 (2015) (arguing that the changing psychological and brain development of juveniles should influence culpability and competency determinations); Tamar R. Birckhead, *Toward a Theory of Procedural Justice for Juveniles*, 57 BUFF. L. REV. 1447 (2000) (arguing for a procedural model over adversarial for juvenile justice reform).

167. *See infra* Section III.A (surveying state juvenile justice purpose statutes); *see also infra* Appendices A and B (summarizing the state purpose statutes).

crimes as their brains develop further, which should also encourage states to formally remove the stigma of a juvenile record.

A. THE STATE OBLIGATION TO JUVENILES IS DIFFERENT

As section II.B explained, the state has played an important role in loosening restrictions on juvenile records. And even when state laws provide for confidential recordkeeping and the potential for sealing and expungement, many states fail to limit the degree to which private and public authorities, like state agencies, employers, and landlords, can ask questions that prompt answers about the existence of current or past juvenile delinquency history. For the first time in reentry or juvenile justice scholarship, this section uses a survey of state juvenile justice purpose statutes, presented in Appendices A and B, to argue that the state has an obligation to protect these records and limit their exposure, especially given its role in disseminating them.

First, states have a different relationship to juveniles charged in the juvenile system than they do to adults in the criminal justice system. From its inception, throughout the juvenile proceeding, courts were to consider the best interests of the child, that is, the juvenile respondent.[168] Juveniles, because of their age, lack independence and autonomy, requiring the state to act in the place of the parent when kids are charged with crimes. Judge Julian Mack explained in 1925 that when a juvenile breaks the law, the juvenile is "to be dealt with by the State, as a wise parent would deal with a wayward child."[169] The legal doctrine of *parens patriae* governs the juvenile system, establishing "the right and responsibility of the state to substitute its control over children" in the place of their legal guardians.[170] When juveniles are found delinquent of an offense and are taken into the custody of the state, social services departments are charged with acting in the place of parents to provide for the welfare of the child.[171] The legal relationship of the state to juveniles is thus radically different from its legal relationship to adult defendants.

The special relationship to juveniles is recognized in the statutes that articulate the purposes of each state's juvenile system. More than half of the state juvenile justice purpose statutes explicitly name a parent-like function governing the state interest in the juvenile justice system.[172] Twenty states articulate the need to act in the "best interests" of the child or use equivalent language of

168. Feld & Bishop, *supra* note 17, at 900.

169. Julian Mack, *The Chancery Procedure in the Juvenile Court*, *in* THE CHILD, THE CLINIC AND THE COURT 310, 310 (Jane Adams ed., 1925).

170. Feld, *supra* note 36, at 52; *see* Kay P. Kindred, *God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance*, 57 OHIO ST. L.J. 519, 527 (1996) (explaining that under the *parens patriae* doctrine a parent's constitutional rights is overborn by the state's interest in providing for the welfare of the child).

171. Feld, *supra* note 36, at 52.

172. *See* Appendix A & B. Thirty states include language that refers to rehabilitation or treatment.

serving the emotional, mental, and physical welfare of the child.[173] Recognizing the juvenile's dependent status, more than 50% of states also aim to provide "care and guidance" or "care and protection" to juveniles who commit offenses.[174] Six states make the role even clearer, requiring, as Rhode Island's statute does, that the juvenile court secure "custody, care and discipline" that is "equivalent to that which should have been given by his or her parents."[175]

Second, statutes in thirty states include rehabilitation as a goal of the juvenile system.[176] Maryland, for example, aims "to provide for a program of treatment, training, and rehabilitation."[177] Vermont's statute includes "the development of competencies to enable children to become responsible and productive members of the community."[178] And four states, Vermont being one of them, names "removing the taint of criminality" and "the consequences of a criminal behavior" as a central purpose.[179]

Finally, even in states where the purposes of the juvenile system include punishment, most still direct that punishment have a therapeutic or rehabilitative aspect.[180] More than a quarter of the states include concepts of rehabilitation and treatment alongside discipline and punishment in their juvenile purpose statutes.[181] For example, the Oregon juvenile justice system "is founded on the principles of . . . reformation *within the context* of public safety."[182] Similarly, Florida's system is structured to "increase public safety . . . through effective prevention, intervention, and treatment services that strengthen and reform the lives of children."[183] Pennsylvania aims "to provide . . . programs of supervision, care and rehabilitation which provide *balanced* attention to the protection

---

173. *See* Appendix B; ARK. CODE ANN. § 9-27-302(1) (2016), COLO. REV. STAT. § 19-1-102(1)(a) (2016); CONN. GEN. STAT. § 46b-121h(1)–(3) (2016); 705 ILL. COMP. STAT. § 405/1-2(1) (2016); IOWA CODE ANN. § 232.1 (2016); FLA. STAT. § 985.01(1)(a) (2016); GA. CODE ANN. § 15-11-1 (2016); LA. CHILD. CODE ANN. ART. 102 (2016); ME. STAT. TIT. 15, § 3002(A), (D)–(F) (2016); MASS. GEN. LAWS CH. 119, § 1 (Lexis 2016); MICH. COMP. LAWS § 712A.1 (2016); MISS. CODE ANN. § 43-21-103 (2016); MD. CODE ANN., Courts and Judicial Proceedings § 3-8A-02 (Lexis 2016); MO. ANN.. STAT. § 211.011 (2016); NEB. REV. STAT. § 43-246 (2016); N.M. STAT. ANN. § 32A-1-3(A) (2016); N.Y. FAMILY CT. ACT. § 301.1 (Consol. 2016); 14 R.I. GEN. LAWS § 14-1-2(1)–(3) (2016); KY. REV. STAT. ANN. § 600.010(2)(a), (e)–(f) (2016); S.C. CODE ANN. § 63-1-30 (2015); WYO. STAT. ANN. § 14-6-201(c)(ii)–(iii) (2016).

174. Appendix B shows that 28 of the 50 state statutes reviewed include "care and protection" or similar language as part of the purpose of the juvenile code. For example, Illinois' juvenile purpose statute includes securing for each minor "care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor" 705 ILL. COMP. STAT. 405/1-2(1) (2016).

175. IOWA CODE ANN. § 232.1 (2016); LA. CHILD. CODE ANN. ART. 102 (2016); MICH. COMP. LAWS § 712A.1; MO. ANN. STAT. § 211.011 (2016); 14 R.I. GEN. LAWS § 14-1-2(1)–(3) (2016); S.C. CODE ANN. § 63-1-30 (2015); W. VA. CODE § 49-1-105(b)(1–2), (8–12) (2016).

176. *See* Appendix A & B.

177. MD. CODE ANN., Courts and Judicial Proceedings § 3-8A-02 (Lexis 2016).

178. VT. STAT. ANN. TIT. 33, § 5101 (2016); *see also* WIS. STAT. § 938.01 (2016).

179. TENN. CODE ANN. § 37-1-101(a)(1)–(2) (2016).

180. *See* Appendix A & B.

181. *See* Appendix B.

182. OR. REV. STAT. § 419C.001(1) (2016) (emphasis added).

183. FLA. STAT. § 985.01(1)(a) (2016).

of the community."[184] Even for juveniles confined as a "danger to the community," the confinement must be "therapeutic."[185] Although some states emphasize discipline and confinement without a nod to the rehabilitative origins of the system, more than half identify a balanced combination of discipline and rehabilitation as goals of the juvenile justice system.

The juvenile justice system's unique relationship to juveniles and its explicit goals to protect and reform are frustrated if a juvenile is not fully reintegrated into society. There are few obstacles to reintegration as substantial as a juvenile record. Accordingly, to fulfill the purpose of the juvenile system, states should consider what happens to a juvenile when the juvenile's case is closed. Protecting juvenile records through confidentiality, sealing, and expungement statutes achieves these state interests by removing obstacles created by juvenile records, enabling the juvenile to begin with a clean slate.

B. THE JUVENILE BRAIN IS DIFFERENT

Over the past two decades, advances in psychology and neuroscience have enhanced our understanding of adolescent behavior.[186] These two bodies of research explain much of the biological and behavioral attributes of adolescence, a concept that has developed significantly over time to encompass the distinct transitional period between childhood and adulthood, beginning with puberty in the early teenage years and extending into the early twenties.[187] Just as the concept of childhood informed the creation of the first juvenile courts, so the evolving notions of adolescence can and should inform not only how we treat juveniles in the system but also how we handle juvenile records.

The psychosocial features of adolescence most connected to criminal behavior are an adolescent's propensity for risk-taking, lack of impulse control, and susceptibility to peer pressure.[188] The research on risk-taking consistently and comprehensively shows that adolescents take more risks than do adults or children.[189] They engage in sensation-seeking behaviors that result in "the tendency to pursue novel, exciting, and rewarding experiences" well into their early twenties.[190] The trajectory of risk-taking criminal activity follows a bell curve, with risky behavior increasing from childhood to adolescence, peaking at

184. 42 PA. CONS. STAT. § 6301(2) (2016) (emphasis added).

185. CONN. GEN. STAT. § 46b-121h(1)–(3) (2016).

186. ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 35, 44 (2008).

187. *See* Nicholas Hobbs & Sally Robinson, *Adolescent Development and Public Policy*, 37 AM. PSYCHOL. 212, 217 (1982); Feld, *supra* note 36, at 286.

188. Feld, *supra* note 36, at 277; *see also* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 472 (2009).

189. B.J. Casey et al., *The Adolescent Brain*, 1124 ANNALS N.Y. ACAD. SCI. 111, 112, 122 (2008); *see* Elizabeth Scott et al., *Juvenile Sentencing Reform in a Constitutional Framework*, 88 TEMP. L. REV. 675, 683 (2015 (describing how "dual systems model impacts adolescent's risk-taking").

190. Scott et al., *supra* note 189, at 684.

eighteen years old, and declining from there into adulthood.[191] Psychologists connect the increase in risky behavior with poor impulse control and low performance on executive functions like planning, considering future consequences, and self-regulation.[192] Additionally, studies have shown adolescents are greatly influenced by peer pressure especially during early and mid-adolescence, which is evidenced by co-offending during this time period.[193]

These teenage behavioral changes are consistent with neurological changes during adolescence that also impact decision making, self-control, and peer influences. New brain imaging technology has made it possible to document age-related changes to the structure and functioning of the brain.[194] For example, the first significant brain change involves synaptic pruning that reduces gray matter in the frontal lobe, clearing out unused neural connections.[195] This clearing process during early adolescence improves the efficiency of the brain, cognitive functioning, and logical reasoning.[196] Intellectual development aiding in critical and analytical thinking far outpaces psychosocial and emotional development.[197] Also at the beginning of adolescence, significant increases in the "density and distribution of dopamine receptors" occur which increases connectivity between the limbic system, impacting emotional responses and the prefrontal cortex, the control center of the brain, as a result.[198] Increases in dopamine directly encourage "sensation seeking" in juveniles.[199]

At the same time, myelination occurs, increasing white matter in the prefrontal cortex, to improve the "signal transmission efficiency of brain circuits."[200] Myelination creates "more efficient neural connections" which in turn lead to higher-order thinking—complicated decision making, balancing costs and benefits, and future planning—later in adolescence and into a person's thirties.[201] And finally, the connections between the more efficient prefrontal cortex and other parts of the brain, like the limbic system, become stronger. The limbic system allows for enhanced emotional control. These changes, unlike synaptic pruning, occur later in adolescence and evidence brain growth that maps on to similar discoveries in behavioral science about adolescent development. Brain imaging has shown that one of the last areas of the brain to develop is the region in charge of controlling impulses.[202]

---

191. *Id.* at 683; *see also* Elizabeth Cauffman et al., *Psychological, Neuropsychological and Physiological Correlates of Serious Antisocial Behavior in Adolescence: The Role of Self-Control*, 43 CRIMINOLOGY 133, 135 (2005).

192. Cauffman et al., *supra* note 191, at 140.

193. Monahan et al., *supra* note 166, at 584.

194. *Id.*

195. *Id.* at 582.

196. *Id.*

197. *See id.* at 584.

198. *Id.* at 582.

199. *Id.*

200. *Id.*

201. *Id.* At 583.

202. *Id.*

Increased connectivity in the brain leads to significant changes in how the brain works. Brain scans actually show that, as a result of hormonal changes in the brain, "reward centers" of an adolescent brain are more active or "lit up" than those in an adult brain when an adolescent is introduced to a rewarding stimulus, like money.[203] In contrast, brain scans show that adult brains have a greater number of connected brain regions than do adolescent brains, which researchers theorize allows for greater self-control in adults because the work required to complete a task is divided among multiple brain areas.[204] The brain's evolution throughout adolescence suggests that, as they get older, youth will be better able to change their behavior. In fact, age, and little else, may account for much of the change.[205] Therefore, state interventions developed to rehabilitate must create positive influences that would not have occurred with the mere passage of time. Some intervention can be more harmful to their psychosocial and brain development.

Of course, there are limitations to the use of neuroscience in juvenile court. Scholars have cautioned against an overreliance on brain science in the courtroom,[206] and juvenile courts have been reluctant to apply generalized findings about brain changes to individual juvenile cases.[207] Although juveniles change at different rates and some studies show that adolescents can outperform adults cognitively, the connection between the findings of behavioral and neuroscience evidence "suggests that developmentally normative phenomena that mark the lives of many adolescents are a critical (but not only) piece of the puzzle for understanding antisocial and criminal behavior."[208]

Scientific findings may be significantly more helpful for addressing general policy issues that impact all juveniles rather than for determining culpability for an individual juvenile. A similar approach was taken by the Supreme Court to justify a *categorical* prohibition of the death penalty and life-without-parole for juveniles. The science led to a "kids are different" jurisprudence based on the Court's conclusion that unlike adult offenders, kids can change and rehabilitate.

---

203. *Id.* at 584.

204. *Id.* More detailed discussions summarize the neurological literature and present more specific studies.

205. *See* FRANKLIN E. ZIMRING, AMERICAN JUVENILE JUSTICE 63, 101 (2005); *see also* Edward P. Mulvey & Mark Aber, *Growing out of Delinquency: Development and Desistance*, *in* THE ABANDONMENT OF DELINQUENT BEHAVIOR 99, 100–01 (Richard L. Jenkins & Waln K. Brown eds., 1988).

206. *See* Terry A. Maroney, *Adolescent Brain Science After* Graham v. Florida, 86 NOTRE DAME L. REV. 765, 769 (2011) (expanding on the author's article, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV 89 (2009)); *see also* Emily Buss, *What the Law Should (and Should Not) Learn from Child Development Research*, 38 HOFSTRA L. REV. 13, 13 (2009); Stephen J. Morse, *Brain Overclaim Syndrome and Criminal Responsibility: A Diagnostic Note*, 3 OHIO ST. J. CRIM. L. 397, 400 (2006).

207. Maroney, *supra* note 206, at 768; *see* Jenny Carroll, *Brain Science and the Theory of Juvenile Mens Rea*, 94 N.C.L. REV. 539, 544 (2016) (explaining that the courts have failed to extend Supreme Court's analysis of reduced culpability of juveniles to the culpability standard of *mens rea*).

208. Monahan et al., *supra* note 166, at 587.

That conclusion has implications for how states structure confidentiality, expungement, and sealing juvenile records. That kids have a better shot at rehabilitation suggests that juvenile records are not a reliable indicator of future criminal behavior. And, if this is the case, it is more reason to ensure that juvenile records are fully expunged or sealed, because making them available to the public could truly impede rehabilitation.

C. JUVENILE RECIDIVISM IS DIFFERENT

Tension does exist between the state's interest in protecting juvenile records and the state's interest in protecting the public from future harm. Part of the impetus for disseminating juvenile records or even making them public is because past offenses are thought to express information about a juvenile's risk of reoffense. Yet this desire to protect the public could be undermined if the obstacles created by a juvenile record incentivize a juvenile to reoffend or negatively impact a juvenile who has little likelihood of reoffending. A classic example would be a juvenile with a record who cannot find a job and turns to selling drugs. Permitting dissemination of the juvenile record could actually undermine public safety by increasing the risk of recidivism.

Criminology research, summarized in this section, could help states weigh the costs of protecting juvenile records.[209] This research concludes that most juveniles with records stop committing crimes, and that factors like age and employment matter. Perhaps more importantly, it shows that the reoffense trajectory of juveniles varies greatly and allowing discrimination based on juvenile records likely hurts a significant number of juveniles who age out of crime, which has a disproportionate impact on girls with juvenile records.

First, it is important to note that states have done a poor job reporting and tracking juvenile recidivism. As illustrated by a Pew 50 State Survey, thirteen states record no data, "1 in 4 [states] do[] not regularly collect and report recidivism data," "fewer than half use measures that provide a comprehensive picture of youth reoffending," and of those that do, they employ different methodologies to look at recidivism.[210] Other differences in data collection include how recidivism is measured. For example, some states use rearrests and others use delinquent findings. State agencies use three different lengths of time from twelve months to thirty-six months after an offense to gauge reoffending.[211] These differences make it nearly impossible to form an accurate and complete picture of national rates of juvenile recidivism over a significant

209. *See* PAUL E. TRACY ET AL., DELINQUENCY CAREERS IN TWO BIRTH COHORTS 5 (1990) (describing the many birth cohort delinquency studies undertaken during the mid-twentieth century); Robert J. Sampson & John H. Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 CRIMINOLOGY 301, 330 (2003).

210. *Measuring Juvenile Recidivism*, PEW CHARITABLE TRUSTS (May 21, 2014), http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/measuring-juvenile-recidivism [https://perma.cc/333U-BRH9].

211. *Id.*

period.[212] States need to know more about juvenile recidivism rates before recidivism is used to justify a juvenile's risk to the public based on juvenile history and ultimately the necessity of a permanent juvenile record.

Desistance studies by criminologists offer a different lens to consider juvenile reoffending.[213] Experts who study desistance, the process by which people stop committing crime,[214] calculate that most people age out of criminal behavior, even among adults with records.[215] Juveniles, as the brain science would predict, are no exception. In one line of desistence research, criminologists argue that the "age-crime curve" drives most of desistance, and it has been "unchanged for at least 150 years."[216] Looking at crime trajectories of delinquent boys followed from age seven to seventy, Sampson and Laub showed that "crime declines with age *even for active offenders*," refuting arguments in the literature that repeat offenders never desist from crime.[217] In fact, new evidence shows that a significant number desist quickly after their last conviction.[218]

In addition to age, life changes, like employment, education, and marriage,[219] are significant predictors of desisting from crime.[220] In fact, desistance and the "successful reintegration of these (mostly) men depends in part on their ability to find and maintain gainful employment."[221] One study showed that people with criminal records were less likely to be rearrested and reconvicted if they were "provided with marginal employment opportunities" than similarly situated people with prior convictions who were not employed.[222]

---

212. *See id.*

213. *See* TRACY ET AL., *supra* note 209, at 5 (describing the many birth cohort delinquency studies undertaken during the mid-twentieth century).

214. TONY WARD & SHADD MARUNA, REHABILITATION 13 (2007).

215. *See* Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 CRIMINOLOGY 327, 331 (2009).

216. SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES 20 (2001); *see also* Michael R. Gottfredson & Travis Hirschi, *The True Value of Lambda Would Appear to be Zero: An Essay on Career Criminals, Criminal Careers, Selective Incapacitation, Cohort Studies, and Related Topics*, 24 CRIMINOLOGY 213, 221 (1986) (arguing that data show even people with extensive criminal histories desist as they age).

217. Sampson & Laub, *supra* note 209, at 330.

218. *See* Shawn D. Bushway & Robert Apel, *A Signaling Perspective on Employment-Based Reentry Programming*, 11 CRIMINOLOGY & PUB. POL. 21, 39 (2012) (citing Megan C. Kurlychek et al., *Long-Term Crime Desistance and Recidivism Patterns—Evidence from the Essex County Convicted Felon Study*, 50 CRIMINOLOGY 71 (2012)).

219. *See* MARUNA, *supra* note 216, at 20. For a description of the literature covering the life-course conceptions of criminal behavior, see 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, 530 (2000).

220. *See* MARUNA, *supra* note 216, at 20.

221. Michael A. Stoll & Shawn D. Bushway, *The Effect of Criminal Background Checks on Hiring Ex-Offenders*, 7 CRIMINOLOGY 371, 372 (2008); *see also* JEREMY TRAVIS ET AL., URBAN INST., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 1, 31 (2001), http://research.urban.org/UploadedPDF/from_prison_to_home.pdf [https://perma.cc/WSJ4-ZYZJ]; Shawn Bushway & Peter Reuter, *Labor Markets and Crime Risk Factors*, *in* PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING 6-1, 6-1 (L.W. Sherman et al. eds., 1997).

222. Uggen, *supra* note 219, at 529.

One significant study considering the relationship between juvenile history and the risk of reoffending compared a group of "juvenile offenders" who had at least one police contact prior to age eighteen with a group of similarly situated nonoffenders who had no police contact prior to eighteen.[223] With each year after eighteen, the hazard rates of both groups grow significantly closer[224] and by age twenty-three the study's cohort with a juvenile history presented a nearly identical risk for future police contact as the nonoffending cohort.[225] In looking at the two cohorts, there were even times between the ages of twenty-five and thirty-two where the offending cohort was *less* likely to have a future police interaction.[226] The study also concluded that "the amount of time since the last police contact has occurred is relevant information for making short-term predictions about future criminal activity," inferring that police contact was less useful as a long-term predictor.[227] For the purpose of juvenile record protection, the study called into question the usefulness of using juvenile records to predict future offending, especially over time. In looking at the reoffending rates, even before age twenty-three, the prediction of future criminality for a significant portion of the offending cohort would be wrong, rendering illegitimate any barriers to full reintegration based on those predictions.

Various studies have also looked to the offense trajectories of juveniles with records (without comparing them to non-offenders).[228] The consistent picture from many of these studies is that every cohort produces several different trajectories labeled by differences in reoffending, which includes desisters, low offenders, late starters, and chronic offenders. For example, in one study following a cohort from age thirteen-and-a-half to twenty-two, 27% of the cohort with an offense prior to eighteen years old did not reoffend by age twenty-two.[229] In a study looking at gender differences, researchers found significantly higher male offending rates than female offending rates.[230] For females in the low-offending category for example, offending peaked at fifteen and then dropped, while the high chronic group peaked at seventeen.[231] To the

223. *See* Megan C. Kurlychek et al., *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement*, 53 CRIME & DELINQUENCY 64, 72 (2007).

224. *Id.* at 73 (Figure 1 shows the rates only one year out at age nineteen to differ by only 0.1 and at age twenty by less than 0.05).

225. *Id.* at 72.

226. *Id.* at 73.

227. *Id.* at 78.

228. *See, e.g.*, Alex R. Piquero, *Taking Stock of Developmental Trajectories of Criminal Activity over the Life Course*, *in* THE LONG VIEW OF CRIME: A SYNTHESIS OF LONGITUDINAL RESEARCH 23, 45 (Akiva M. Kuberman, ed., 2008) (synthesizing the "longitudinal patterning of criminal activity using the trajectory methodology").

229. *See* Shawn D. Bushway et al., *Desistence as a Developmental Process: A Comparison of Static and Dynamic Approaches*, 19 J. QUANTITATIVE CRIMINOLOGY 129, 141 (2003).

230. Amy V. D'Unger et al., *Sex Differences in Age Patterns of Delinquent/Criminal Careers: Results from Poisson Latent Class Analyses of the Philadelphia Cohort Study*, 18 J. QUANTITATIVE CRIMINOLOGY 349, 371–72 (2002).

231. *Id.* at 363.

extent that there are a range of offending trajectories for delinquent juveniles, and serious gender differences exist, juveniles should not be placed in a one-size-fits-all category when it comes to determining the risk of reoffending.[232]

The juvenile system was created because of the recognition that kids are different from adults and have a different relationship to the state. Recent scientific findings about juvenile brain development provide support for that recognition.[233] They also provide support for maximizing the chances of rehabilitation by increasing the restrictions on access to and dissemination of juvenile records. The next Part explores the vehicles by which states can and do protect delinquency records. When combined, the three approaches to reintegrating juveniles can offer comprehensive protection over juvenile records. However, as Part IV shows, nearly all states have yet to achieve such a level of protection.

IV. THREE APPROACHES TO REINTEGRATION: CONFIDENTIALITY, EXTINGUISHING, AND NON-DISCLOSURE STATUTES

States have employed three different mechanisms to protect juvenile records: confidentiality statutes, extinguishing statutes, and non-disclosure statutes. Confidentiality statutes provide overall protection to juvenile court records because they limit who has access to the records at any stage of the proceeding.[234] Sealing and expungement statutes apply when the case is closed, to remove future access to the record.[235] Non-disclosure statutes permit juveniles to deny the existence of a juvenile record, and some prohibit asking questions about juvenile arrests and adjudications in the first place.[236] They are less prevalent (and less studied) than the other mechanisms, but without them, even the strictest sealing or expungement protections can be undermined. This section presents ways that states use each of these mechanisms, and their limitations, especially when they are not used together as a cohesive strategy for juvenile record protection.

A. PROTECTING JUVENILE RECORDS: CONFIDENTIALITY STATUTES

Confidentiality was once a hallmark of juvenile courts. But the degree of protection has eroded significantly over the past three decades. Confidentiality statutes protect the paper trail created when a juvenile is arrested and adjudicated by a juvenile court for charges that would be crimes if the juvenile was an adult. Confidentiality statutes restrict "access to, dissemination or use of a juvenile record outside of juvenile court, unless it is intended to further the

232. *See* Piquero, *supra* note 228, at 52 (explaining that "[r]esearchers need to be careful that policymakers do not take high-rate chronic offenders . . . [and] make them candidates for specific and harsh punishment experiences").

233. *See* Maroney, *supra* note 206, at 174.

234. *See infra* Section IV.A.

235. *See infra* Section IV.B.

236. *See infra* Section IV.C.

youth's case planning and services."[237] In doing so, they define who has access to juvenile records and which records are protected. All states have a confidentiality statute on the books, but the protection provided by those statutes varies greatly.[238]

The mere existence of these statutes, however, fosters the juvenile record myth—that delinquency records do not follow children into adulthood. The myth may derive from many sources. First, some juvenile record protection is guaranteed by statute in every state.[239] Second, confidentiality in juvenile court delinquency proceedings has been a key distinguishing factor from adult criminal courts since the system's inception.[240] More generally, family court records, like those in adoption, abuse, and dependency and neglect cases, guarantee confidentiality protections for children.[241] Finally, most states protect at least some public dissemination of a child's identity in the press,[242] as do court opinions by using initials to "name" the child, as in *JDB v. North Carolina*.[243] The understanding that juvenile records are protected is not entirely false. Certainly, they are more protected than adult criminal records. But recent changes to these statutes conflict with the goal of juvenile record protection.

A weakening of confidentiality protections began as early as the juvenile court system's inception, when juvenile courts began transferring jurisdiction over serious charges and repeated offenders to adult courts, where the juvenile's record went entirely unprotected.[244] Those juveniles were deemed incapable of rehabilitation. But that was merely a crack in the armor of confidentiality. The real break, as discussed in section II.A.1, occurred during "two significant waves of attack on juvenile confidentiality:" one during the due process era through the First Amendment cases that allowed the press to publish legally obtained information about juvenile records, and the other during the tough-on-crime 80s and 90s, when public safety concerns pervaded criminal and juvenile justice policy decisions and "[p]reserving confidentiality . . . bec[ame] less popular."[245] The change resulted in a default to open courtrooms, especially in serious cases, permitting judges to grant access to the public upon a motion of interested parties, or both.[246] As for records, the public safety rationale led to a perceived need to disseminate juvenile delinquency adjudications to protect the

237. Shah et al., *supra* note 13, at 7.

238. *See* Henning, *supra* note 34, at 536–37.

239. *Id.*

240. *See* Feld & Bishop, *supra* note 17, at 900.

241. *See* Emily Bazelon, *Public Access to Juvenile and Family Court: Should the Courtroom Doors Be Open or Closed?*, 18 YALE L. & POL'Y REV. 155, 175–76 (1999).

242. *See* Shah et al., *supra* note 13, at 3.

243. 564 U.S. 261, 265 (2011).

244. *See* Feld & Bishop, *supra* note 17, at 901; Henning, *supra* note 34, at 529.

245. Henning, *supra* note 34, at 523, 533.

246. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE JUSTICE REFORM INITIATIVES IN THE STATES: 1994–1996, at 36 (1997), https://www.ncjrs.gov/pdffiles/reform.pdf [https://perma.cc/89C6-3VLM].

public and make juveniles more accountable for their behavior.[247] In the most limited degree, legislative reform permitted courts to share juvenile records with agencies outside the juvenile court's jurisdiction, such as schools and housing authorities.[248] To a much greater degree, states gave access to the public at large.[249]

These attacks on confidentiality have resulted in significant differences in confidentiality protections in each state. State statutes fall along a spectrum of protection, ranging from almost complete protection to virtually unfettered access. Many types of records can fall under a juvenile confidential protection, including court-generated records, law enforcement records, probation records, and other third-party records. Thus, the definition of juvenile records plays a role in how protected a juvenile's information is, and states vary greatly in how they define protected records.

Table 1. Confidentiality Statutes[250]

Robust Confidentiality	Partial Confidentiality		Public Access
Louisiana	Alabama	Mississippi	Arizona
New Hampshire	Alaska	Missouri	Idaho
New York	Arkansas	Nevada	Iowa
Rhode Island	Connecticut	New Jersey	Kansas
South Dakota	Colorado	New Mexico	Michigan
Vermont	Delaware	North Carolina	Montana
Wyoming	D.C.	Ohio	Nebraska
	Florida	Oklahoma	Oregon
	Georgia	Pennsylvania	Washington
	Hawaii	South Carolina	
	Illinois	Tennessee	
	Indiana	Texas	
	Louisiana	Utah	
	Kentucky	Vermont	
	Maine	Virginia	
	Maryland	West Virginia	
	Massachusetts	Wisconsin	
	Minnesota		

247. *See* Henning, *supra* note 34, at 535.
248. *See id.* at 538.
249. *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-208(G) (2016); MICH. COMP. LAWS § 712A.28 (2016).
250. *See* COLGATE LOVE ET AL., *supra* note 7, at 657–76.

1. Robust Confidentiality Statutes

Seven states offer a robust presumption of confidentiality, dramatically limiting who can access juvenile records and serving as a model for how states can best protect juvenile records.[251] These states explicitly prohibit open, public access to law enforcement, probation, and court-related records relating to the juvenile's case.[252] Rhode Island's juvenile confidentiality statute[253] stands out from the others because it limits access to only the child, the child's attorney, and the child's guardian, without any exceptions. And New Hampshire's statute prohibits the media from publishing any identifying information about a juvenile charged with a crime.[254]

More common, though, are states like New York,[255] Louisiana,[256] and Vermont,[257] which present a default rule—records are confidential and are not disclosed publicly. But these states then lay out limited statutory exceptions to the confidentiality requirement. Some explicitly permit schools,[258] the child's parent[259], the child's accuser,[260] or probation personnel[261] to access juvenile records. However, these additional entities may be required to keep the information confidential, to reduce the risk of further dissemination. One interesting example of this is New York's statute. It directs that notice of juvenile adjudications be given to school personnel if they are related to the juvenile's education plan, but it requires the information be kept separate from the juvenile's school

251. *See* LA. CHILD. CODE ANN. art. 412 (2017); N.H. REV. STAT. ANN. §§169-B:35–169-B:36 (2016); N.Y. FAM. CT. ACT § 381.3 (McKinney 2016); 14 R.I. GEN. LAWS §§ 14-1-30, 14-1-64 (2017); S.D. CODIFIED LAWS §§ 26-7A-27, 26-7A-37–26-7A-38, 26-7A-120 (law enforcement and court records); VT. STAT. ANN. tit. 33, § 5117 (West 2016); WYO. STAT. ANN. §§ 14-6-203, 14-6-240 (West 2016).

252. *See* 38 R.I. GEN. LAWS § 38-2-2(4)(C); 14 R.I. GEN. LAWS § 14-1-64 (explaining that "[a]ll police records relating to the arrest, detention, apprehension, and disposition of any juveniles shall be kept in files separate and apart from the arrest records of adults and shall be withheld from public inspection"); *id.* § 14-1-30 (stating "the general public shall be excluded" and "only those other persons shall be admitted who have a direct interest in the case").

253. 14 R.I. GEN. LAWS. §§ 14-1-30, 14-1-64; 38 R.I. GEN. LAWS § 38-2-2(4)(C) (stating "records of juvenile proceedings before the family court" are not public records).

254. N.H. REV. STAT. ANN. § 169-B:37 (2016) (establishing prohibition on publication by media of identifying information). No other exceptions apply. *See* N.H. REV. STAT. ANN. §§ 169-B:35–169-B:36 (court *may* disclose records for violent crime adjudication at its discretion); *see also In re* Ryan D., 146 N.H. 644, 777 A.2d 881 (N.H. 2001).

255. *See* N.Y. FAM. CT. ACT § 381.3 ("All police records relating to the arrest and disposition of any person under this article shall be kept in files separate and apart from the arrests of adults and shall be withheld from public inspection.")

256. *See* LA. CHILD. CODE ANN. art. 412 (2017) ("Records and reports concerning all matters or proceedings before the juvenile court . . . are confidential and shall not be disclosed except as expressly authorized by this Code.")

257. *See* VT. STAT. ANN. tit. 33, § 5117 (West 2016) ("[S]uch records and files shall not be open to public inspection nor their contents disclosed to the public by any person.")

258. *See, e.g.*, LA. CHILD. CODE ANN. art. 412.

259. *See, e.g.*, VT. STAT. ANN. tit. 33, § 5117.

260. *See, e.g.*, *id.*

261. *See, e.g.*, *id.*

records and destroyed once the child leaves the school district.[262]

All seven robust statutes model ways to protect court and law enforcement records. Including law enforcement records is an important part of this protection. In some partial protection states, law enforcement records are not included in confidentiality statutes, creating a major loophole in the state's protections.

Robust confidentiality statutes embody the ideals of the juvenile justice system. They not only establish a presumption of confidentiality, but also limit juvenile-record access to entities related to the juvenile's adjudication and treatment that are tasked with protecting the records, too.

2. Partial Protection Statutes

Over one-third of state confidentiality statutes offer only partial confidentiality protection. The result is that some juvenile records receive robust confidentiality protection, while other juvenile records are accessible to the public.[263] Most states are trying to balance their goals of holding juveniles accountable, protecting the public, and rehabilitation, causing them to turn to a partial confidentiality model that can have long-lasting consequences. Under some partial protection statutes, a juvenile's record is open to the public just as an adult's record is, making it more difficult to fully reintegrate. This section describes the varying degrees of partial protection.

The most prevalent way of weakening confidentiality protection is by exempting certain juveniles from the confidentiality requirement because of the juveniles' age, their multiple contacts with the system, the seriousness of the charges, or some combination of the three. In Tennessee, for example, records are publicly accessible when the juvenile is charged with serious violent felony offenses or sex offenses. Another charge-related approach is to disclose records only for juveniles who have at least two felony-level delinquencies and are charged with a third.[264]

More commonly, however, statutes include a broader sweep of offenses. Georgia offers no confidentiality protection to the records of a juvenile who is charged with a second delinquent offense.[265] Wisconsin orders the judge to disclose records for serious and repeat offenders for felony-level offenses and a person requesting the information to disclose it to others.[266] The partial confidentiality statutes in Minnesota, Oklahoma, and Indiana permit public access to juvenile record information for juveniles charged with even a first offense if it

262. *See* Riya Saha Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, New York*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-NY.pdf [https://perma.cc/SRJ5-LLUV].

263. *See* Shah et al., *supra* note 13, at 13.

264. *See* MASS. GEN. LAWS ch.119, § 60A (2016).

265. *See* GA. CODE ANN. §§ 15-11-700–15-11-704 (2016); IND. CODE ANN. § 31-39-2-8 (2016); OKLA. STAT. tit. 10A § 2-6-102(c)(5)–(c)(6) (2016).

266. *See* WIS. STAT. § 938.396(2g)(k)–(l) (2016).

would be a felony offense for an adult.[267] In some states, such offenses include theft charges, evading arrest if the juvenile is in a car, and home-burglary. Although they are not low-level offenses, many of these charges that trigger an exclusion from confidentiality protections map onto the impulsive behavior of juveniles, especially when committed with peers. More importantly, the exclusions are so broad that they dramatically erode confidentiality for juveniles. Once the information is publicly accessible, keeping it from surfacing beyond a juvenile's eighteenth birthday is difficult, if not impossible.

Another way state statutes provide less confidentiality protection to juvenile records is similar to the exceptions carved out of the robust statutes—they grant access to third parties like schools, government agencies, and housing authorities.[268] For example, Arkansas's statute includes "a school counselor," [269] and North Carolina's statute mandates notification of a school principal if a juvenile is accused of a felony.[270] Even more expansive is Colorado's statute, which includes giving access to the Department of Education if the person with a juvenile record has applied for a job.[271] That said, these public and private entities also have a corresponding obligation to keep the records protected. Moreover, this access is not always automatic, and gives juvenile judges great discretion over record dissemination. Some statutes, for example, require a showing of a particular "need" for the records. Ohio's statute requires a hearing and court order to grant access to probation, social services, detention facilities, treatment programs, and schools if they "demonstrate the need for specific records."[272] North Dakota allows access only upon court order in emergency circumstances: "if the interest of national security requires" it or if a juvenile has escaped from a secure facility.[273]

Finally, partial protection statutes also allow media outlets to access juvenile records automatically or on a case-by-case basis through a court order.[274] For example, Delaware's statute requires law enforcement to release the names of juveniles charged with certain felony or Class A misdemeanor crimes upon request.[275] Given the ease with which news coverage can be accessed on the Internet, one Google search can result in a hit that reveals a juvenile's record.

---

267. *See* MINN. STAT. §§ 260B.163(1)(c)(2), 260B.171(4)(a) (2016) (only if commission at age sixteen or older).

268. *See* Henning, *supra* note 34, at 529; Shah et al., *supra* note 13, at 16–17.

269. *See* ARK. CODE ANN. § 9-27-309(l) (2016).

270. *See* N.C. GEN. STAT. §§ 7B-3101, 115C-404 (2016).

271. *See* COLO. REV. STAT. § 19-1-304 (1)(a)(XVII) (2016); *see also*, COLO. REV. STAT. § 22-2-119 (limited use and confidentiality protections in place).

272. Ohio allows record access automatically only to the child, parent, or "through counsel." OHIO REV. CODE § 2151.18 (West 2017) ("The parents, guardian, or other custodian of any child affected . . . may inspect these records, either in person or by counsel . . . .").

273. *See* N.D. CENT. CODE §§ 27-20-51–27-20-52 (West 2016).

274. *See, e.g.*, *id.*

275. *See* DEL. CODE ANN. tit. 10, § 1063 (2016).

These partial protection statutes present a picture of how severely confidentiality protections have been eroded over time. Yet many of these same states have implemented sealing and expungement statutes that offer greater protection to the records when a juvenile's case is closed, or they age out of the system. This inconsistency can create a problem, especially for adults who know that the court records have been destroyed or that they are permitted to deny their existence, but that other sources, like news articles or criminal history databases, have made public or accessible so that an employer or other third party could find the information.

3. Public Access Statutes

Nine statutes allow public access to juvenile record information, offering virtually no confidentiality protection.[276] Although these states are outliers, their decision to make juvenile records public means that the juvenile records are treated no differently than adult records, and both are often housed in the same database online.[277]

More than half of the public record states make juvenile records available online for free.[278] For example, Montana makes records "open to the inspection" until they are sealed[279] and maintains a Correctional Offender Network Search that places juvenile records online with adult criminal records, giving the public access to the juvenile's charges, a photograph, and any identifying characteristics such as tattoos, scars, and birthmarks.[280] Washington not only makes parts of an arrest record available for free online, but it also sells juvenile records to the three central credit bureau reporting agencies.[281] Kansas, treating juvenile records "in the same manner as adult criminal records," permits public access via an online database to all official juvenile court files except those

276. *See* ARIZ. REV. STAT. ANN. § 8-208(G) (2016); IDAHO CODE § 20-525(1) (2016); IOWA CODE § 232.147 (2016); KAN. STAT. ANN. § 38-2309 (2016); MICH. COMP. LAWS § 712A.28 (2016); MONT. CODE ANN. §§ 41-5-215–41-5-16 (2016); OR. REV. STAT. § 419A.255 (2016); WASH. REV. CODE § 13.50.050 (2016).

277. For example, Iowa Judicial Branch's website includes juvenile histories. *See Online Search*, IOWA CTS., https://www.iowacourts.state.ia.us/ESAWebApp/DefaultFrame [https://perma.cc/3SZ4-P42A].

278. *See, e.g.*, IDAHO CODE § 20-525(1) (2016); IOWA CODE § 232.147 (2016); KAN. STAT. ANN. § 38-2309(a) (2016); MICH. COMP. LAWS § 712A.28 (2016); MONT. CODE ANN §§ 41-5-215–41-5-216 (2016); WASH. REV. CODE § 13.50.050 (2016).

279. MONT. CODE ANN. §§ 41-5-215–41-5-216.

280. *See Correctional Offender Network Search*, MONT. DEP'T CORRECTIONS, https://app.mt.gov/conweb [https://perma.cc/GEY7-GRFE]. An advanced search of the year 2000 reveals the record of a sixteen-year-old who was charged with a closed and deferred dangerous drugs charge when he was fourteen years old.

281. *See* Riya Saha Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Washington*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-WA.pdf [https://perma.cc/RB3Y-W46F].

pertaining to juveniles under age fourteen that are protected by a court order.[282] Nebraska's statute, the weakest of these online access states, keeps juvenile records confidential with one significant loophole.[283] Juvenile cases are accessible through online database for a $50 annual subscription fee and a fee for each case retrieved.[284]

Two states, Arizona and Michigan, allow complete public access to juvenile records, but they do not provide all records online.[285] Arizona includes all juvenile records in a person's criminal history record, but its statute only allows some juvenile records to be accessible on publicly disclosed "criminal history record[s]."[286]

Some public access states do limit the degree of information that is public. Oregon's public access statute only permits public access to identifying information about the youth, including the youth's name, charges, and the name of the youth's guardians, keeping juvenile court files, including sensitive documents like mental health reports, confidential unless the court grants access.[287] Washington simply provides access to the "official record of a juvenile court proceeding," which also excludes social services files, until "the record is sealed by court order."[288]

Although the default rule in public access states is that records are not protected, some states provide a means by which juveniles can move the court to make their records confidential. In Arizona, a court can keep records from "public inspection" if there is a "clear public interest in confidentiality."[289] Similarly, in Iowa, a juvenile court may order that records be kept confidential after a hearing if the court dismissed the case, no juvenile court jurisdiction remains, and keeping the records confidential is in the "best interest" of both the

282. *See* Riya Saha Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Kanasas*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-KS.pdf [https://perma.cc/56KH-DK2E].

283. *See* Riya Saha Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Nebraska*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-NE.pdf [https://perma.cc/2HZ4-948F] (citing NEB. REV. STAT. § 43-2,108 (2016)).

284. *Nebraska Trial Courts Online Case Search*, OFFICIAL NEB. GOV'T WEBSITE, https://www.nebraska.gov/justicecc/ccname.cgi [https://perma.cc/9RGS-RVKT].

285. *See* Riya Saha Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Arizona*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-AZ.pdf [https://perma.cc/F2EV-DMW6] (citing ARIZ. REV. STAT. ANN. § 8-208(A) (West 2016); Riya Saha Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Michigan*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-MI.pdf [https://perma.cc/5DL8-W6PE] (citing MICH. COMP. LAWS § 712A.28 (2016)).

286. *See* Shah et al., *Arizona*, *supra* note 285.

287. *See* Riya Saha Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Oregon*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-OR.pdf [https://perma.cc/4RXM-K5SN].

288. Shah et al., *Washington*, *supra* note 281.

289. ARIZ. REV. STAT. § 8-208(G).

juvenile and the public.[290]

Interestingly, many public-access states offer strong protections for juvenile records at the back end of the system through sealing or expungement mechanisms. For example, in Montana, where juvenile records are available online, court records are automatically sealed when the juvenile turns eighteen, and any agencies outside the Department of Youth must destroy copies of the court records.[291] Iowa and Idaho offer expungement of most juvenile records that were publicly available.[292] These sealing and expunging mechanisms help mitigate against the impact of making juvenile records public, but the initial lack of confidentiality still comes with a cost.

The weakened confidentiality presumptions in most states obstruct a juvenile's ability to move past his offense history and fully reintegrate. The ability to publicly access juvenile records also frustrates the effectiveness of sealing and expunging mechanisms. The dramatic range in confidentiality protections —from nearly complete protection to no protection—throughout the states also generates disparate results for juveniles charged with similar crimes. Because youth of color represent a disproportionate majority of the system, juvenile record accessibility will have a disproportionate impact on them.[293]

B. EXTINGUISHING JUVENILE RECORDS: SEALING AND EXPUNGEMENT STATUTES

Today, every state has an extinguishing statute on the books to expunge, seal, or set-aside juvenile records.[294] Even public-access states that place juvenile records online use methods to remove some or all juvenile records from permanent public view.[295] In fact, "[t]he practice of sealing and expunging criminal records was pioneered in the juvenile justice system."[296] Many early state statutes automatically expunged or sealed delinquency records when a case was closed, after some "waiting period," or when the juvenile reached a certain age.[297] This state action to remove the juvenile record from public view was consistent with the early reformers' view that juvenile courts should be closed

290. *See* Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Iowa*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-IA.pdf [https://perma.cc/7G63-NM4T].

291. *See* Shah et al., *supra* note 13, at 15 (citing MONT. CODE §§ 41-5-215–41-5-216 (2016)).

292. Shah et al., *Iowa*, *supra* note 290; Riya Saha Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Idaho*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-ID.pdf [https://perma.cc/272B-E9U7].

293. *See* Tamar R. Birckhead, *The Racialization of Juvenile Justice and the Role of the Defense Attorney*, 58 B.C.L. REV. 379, 421–31 (2017).

294. In this section, I use the term "extinguishing statutes" to refer to all state statutes that protect juvenile records once the case is closed or the juvenile becomes an adult. COLGATE LOVE ET AL., *supra* note 7, at 188.

295. *See infra* Table 2 (showing how every state, including the nine public access states, has some method for removing juvenile records from permanent view, and characterizing them by whether the statute expunges the records, seals the records, or does both (hybrid states)).

296. JACOBS, *supra* note 16, at 114.

297. *See* COLGATE LOVE ET AL., *supra* note 7, at 188, 485–86.

and that juvenile records be confidential.[298] Sealing and expunging juvenile records also acts to rehabilitate the child—a goal repeatedly included in state purpose statutes.[299]

It may be useful to pause here and define the terminology I will use for categorizing extinguishing statutes. The term "expungement" has been used to refer to both destroying records and sealing them.[300] The common perception of expungement is that criminal records are destroyed. But state statutes vary widely, and many use the term "expunge" when in reality they are only sealing the records from public access; the records still exist.[301] Because different consequences emanate from destruction and sealing, I consider them two separate mechanisms.[302] I define expungement as the process of physically destroying a juvenile's delinquency records, making them virtually inaccessible to anyone, from law enforcement to a private party.[303] Because expungement offers no future access to the record, it gives juveniles the most robust protection.

I define sealing, the most common state mechanism, as the process by which a juvenile record is made unavailable to the public, while typically still being accessible to law enforcement agencies, prosecutors, and judges.[304] The record is often placed "under seal," separated from other juvenile records, and only "unsealed" by a court order based on exceptions that are often listed in a state sealing statute.[305] For example, many state statutes allow law enforcement to access sealed juvenile records without a court order.[306] Three states employ the term "set-aside" to describe a process similar to sealing because it involves setting aside records "after a certain amount of time, limiting their accessibility to most but not all individuals."[307] Because set-asides and sealing statutes limit accessibility without destroying the records, I group them together as sealing provisions. Sealing provides less protection than expungement does because of the potential for continued access to a sealed juvenile record by the public or a private third party who can obtain a court order. Also, unlike expungement statutes, many sealing statutes do not permit the juvenile to lawfully deny that the record ever existed.

Like confidentiality protections, expunging and sealing protections have eroded over time. All states have juvenile sealing or expungement statutes on

298. *See* FELD, *supra* note 58, at 67.

299. *See infra* Section III.A (discussing the state purpose statutes of juvenile court systems throughout the country).

300. *See* Roberts, *supra* note 30, at 324 (explaining that "[t]here is no one definition of sealing or expungement").

301. *See id.*

302. *See id.*

303. *See Expungement*, BLACK'S LAW DICTIONARY 621 (10th ed. 2014) (defining "expungement" of record as "the removal of a conviction from a person's criminal record").

304. *See Seal*, *in* BLACK'S LAW DICTIONARY, *supra* note 303, at 1376 (defining "seal" as "to prevent access to").

305. *See* COLGATE LOVE ET AL., *supra* note 7, at 171, 188–89, 485–86, 657–76.

306. *See id.* at 189.

307. Shah et al., *supra* note 13, at 23.

the books, but which records are covered by these statutes varies.[308] Some statutes exclude certain juveniles based on their age or the seriousness and number of offenses.[309] These limitations on which juveniles are protected after their case is closed vary dramatically from state to state, which will be described in further detail below.

Other sealing and expungement statutes impose procedural requirements that make it difficult for juveniles to seal or expunge their records.[310] For example, some statutes require juveniles to return to court to file a petition that requests expungement, and do not even give the juvenile notice or information about this process when the case is closed.[311] Some states where petitions are required give judges discretion to deny the petition and give prosecutors the power to oppose them.[312] And in several, a filing fee, which could exceed $100, is required, making the process difficult to afford for those with fewer resources who may benefit the most from sealing or expunging their records.[313]

Finally, even the scope of records sealed or expunged differs dramatically by state.[314] Some states include law enforcement records, fingerprints, and DNA in their sealing or expungement statutes, while others seal or expunge only court records.[315] Most states expunge or seal court records, but only a fraction of those cover law enforcement records that include fingerprints and DNA.[316]

That so many differences exist in how states structure and execute expungement or sealing is a significant contributing factor to the juvenile record myth. That every state has some extinguishing mechanism in place creates the illusion that juvenile delinquency records, unlike their adult counterparts, are not permanent. But the vast differences in these mechanisms mean that sealing and expungement is not a reality for many juveniles with delinquency records.

As summarized in Table 2 and discussed below, juvenile sealing and expungement statutes fall into one of three categories: expungement-only statutes, sealing-only statutes, and hybrid statutes.

---

308. *See* COLGATE LOVE ET AL., *supra* note 7, at 188 ("Expungement or sealing of records may mean different things depending on the jurisdiction, but in almost every jurisdiction, there exists some mechanism for limiting public access to a juvenile record.").

309. *See id.*

310. *See id.* ("[M]ost states place the burden on an applicant for expungement to petition the court.")

311. Shah et al., *supra* note 13, at 28 ("Notification to youth of their rights is critical so that youth can take advantage of the sealing or expungement opportunities in their jurisdiction. Effective notice must be timely and informative. The majority of states do not meet this standard. In states that require notice, its content and timing vary widely.").

312. *See id.* at 35.

313. *See id.* at 44–45 (Eight states require a fee that exceeds $50).

314. *See id.* at 26.

315. *See id.* at 26–27.

316. *See* COLGATE LOVE ET AL., *supra* note 7, at 188.

Table 2. Sealing and Expungement Statutes[317]

Expunging-Only States	Sealing-Only States		Hybrid States
Arkansas	Alaska	Nebraska	Alabama
Connecticut	Colorado	Nevada	Arizona
Florida	Delaware	New Hampshire	California
Illinois	D.C.	New Jersey	Mississippi
Indiana	Georgia	New Mexico	Missouri
Louisiana	Hawaii	Rhode Island	Minnesota
Pennsylvania	Idaho	South Dakota	Montana
South Carolina	Iowa	Tennessee	New York
Virginia	Kansas	Texas	North Carolina
	Kentucky	Utah	North Dakota
	Maine	Vermont	Ohio
	Massachusetts	West Virginia	Oklahoma
	Michigan	Wyoming	Oregon
	Maryland		Washington
			Wisconsin

1. Expungement-Only Statutes

Several states have extinguishing statutes that use the word "expungement"; however, of these states, only nine define expungement as the actual physical destruction of records. For example, Illinois's statute defines expunge as to "physically destroy the records and to obliterate the minor's name from any official index or public record, or both."[318] Pennsylvania's statute describes expungement as the "remov[al] [of] information so that there is no trace or indication that such information existed."[319] For statutes that claim to expunge records but do not actually destroy or permanently remove them, these relief mechanism function more like sealing statutes so I include them in the sealing-only statutes covered in section IV.B.2.

The nine expungement-only statutes that do destroy records rarely cover *all* juvenile offenses though. The most common offenses that are expunged quickly and completely are cases that are dismissed, *nolle prossed*, or diverted.[320] Arkansas offers one of the few examples where the majority of juvenile records are expunged automatically after the juvenile is twenty-one, and courts have the

317. *See 50-State Comparison: Judicial Expungement, Sealing, and Set-Aside*, RESTORATION OF RIGHTS PROJECT (updated 2017), http://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/ [https://perma.cc/B226-MM5D].

318. 705 ILL. COMP. STAT. 405/5-915 (2017); *see also* KY. REV. STAT. ANN. § 610.330 (2017); *Illinois Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/illinois-restoration-of-rights-pardon-expungement-sealing [https://perma.cc/DZU4-QCN9].

319. 18 PA. CONS. STAT. § 9102 (2016).

320. *See 50-State Comparison*, *supra* note 317.

discretion to expunge *any* record at *any* age.[321] The only offenses that require a waiting period of ten years by statute are those where the juvenile could have been tried as an adult.[322] As the Arkansas statute shows, however, even statutes that cover all juvenile offenses can contain other limitations.

Most of the expungement-only statutes, however, place serious limiting factors on when and what records can be expunged. For example, Florida's statute is a bit misleading as an expungement-only statute. Florida permits courts to expunge adjudications after the person turns twenty-four,[323] but this is not a relief mechanism through which a juvenile can petition for expungement. It only controls record retention by giving courts the discretion to expunge.[324] Florida's only immediate expungement is after completion of diversion.[325] In addition, many of these nine states exclude violent felony offenses, sex offenses, and some misdemeanors from expungement.[326] For example, Louisiana excludes five serious felonies including murder and sex crimes.[327]

Although expungement has the potential to offer the most protection for juveniles because the records are destroyed, the expungement-only statutes have their limitations. Expungement-only states do not destroy all court and law enforcement records, and perhaps the most restrictive aspect is that they limit expungement eligibility by the age of the juvenile, offense level, or the required administrative process. By excluding juveniles with a serious felony or aggravated misdemeanor, states may be excluding those who would benefit the most from not having to reveal these records on applications for jobs, college, and housing. And expungement-only statutes that are not triggered until well into a person's twenties may wait too long to be useful. These obstacles may make expunging records nearly impossible for most youth with delinquency records, while the existence of expungement statutes feeds into the juvenile record myth.

Perhaps ironically, over the past several years, state legislatures have passed an increasing number of expungements statutes that destroy public criminal records, some include felony convictions, to help give adults with criminal histories a second chance.[328] The same trend has not extended to kids. As the next section shows, the most common post-adjudication protection for juveniles is a sealing statute.

---

321. *Arkansas Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/arkansas-restoration-of-rights-pardon-expungement-sealing [https://perma.cc/5LNY-ZVZB].

322. ARK. CODE ANN. § 9-27-309 (2016).

323. *See Florida Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/florida-restoration-of-rights-pardon-expungement-sealing [https://perma.cc/5XZ5-LPDX].

324. *See id.*

325. *See id.*

326. *See* S.C. CODE ANN. § 63-19-2050(A) (2016).

327. *See Louisiana Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/louisiana-restoration-of-rights-pardon-expungement-sealing [https://perma.cc/8F2G-6VL5].

328. Roberts, *supra* note 30, at 324–25.

2. Sealing-Only Statutes

Twenty-seven states have sealing-only statutes.[329] When compared to their expungement-only counterparts, these statutes cover more offenses and are more likely to occur automatically and sooner, on or before the juvenile's eighteenth birthday. Although they are not without their limitations, sealing-only statutes often provide more protection than expungement-only statutes.

Of the twenty-seven sealing statutes, many place *little* restriction on the offenses that can be sealed, sealing is automatic, and many types of records are included in the sealing. For example, New Mexico automatically seals juvenile records when the juvenile turns eighteen.[330] These records include *all* legal and social files, probation records, and *any* agency records involved in the juvenile's case.[331] Prior to turning eighteen, juveniles can petition to have their records sealed, provided that they meet certain factors and show "good cause."[332] New Hampshire, which offers extensive confidentiality protections as well, also automatically seals juvenile records, including court, police, and social services records, when a juvenile turns twenty-one.[333] Maine allows all juveniles to petition for sealing their records provided three years have passed since the end of their case and no open charges are pending.[334]

For the most part, states that exclude juvenile offenses from sealing limit such offenses to violent felonies and sex crimes. For example, Kentucky amended its statute in 2017 to expand the sealing provision to include one felony offense or a series of felonies from one event, but excludes sex crimes and "violent offender status" offenses.[335] California excludes only felony-level offenses that could be eligible for transfer to adult court, and traffic offenses for insurance reasons.[336] Kansas excludes only six violent offenses, including aggravated rape and arson.[337]

Tennessee offers an interesting example of passing a new 2017 sealing-only statute when historically it has been an expungement-only state. The statute became more expansive as it moved from expungement to sealing: allowing dismissals to automatically be sealed and lowering the age of eligibility to file a petition to seventeen (provided that one year has passed since the close of the case). Even though Tennessee excluded several violent felonies and sex offenses from sealing protection, the statute permits sealing if there is a finding of "such

329. *See supra* Table 2.

330. N.M. STAT. ANN. § 32A-2-26(A) (LexisNexis 2016).

331. *Id.* (But a motion is required to seal police records).

332. N.M. STAT. ANN. § 32A-2-26(A).

333. N.H. REV. STAT. ANN. § 169-B:35 (2016).

334. ME. REV. STAT. ANN. tit. 15, § 3308(8) (2016).

335. *See Kentucky Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/kentucky-restoration-of-rights-pardon-expungement-sealing [https://perma.cc/KB35-8SD6].

336. *See* Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, California*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-WA.pdf [https://perma.cc/UE9L-3MFB].

337. KAN. STAT. ANN. § 38-2312 (2016).

an adjustment of circumstances that the court, in its discretion, believes that expungement serves the best interest of the child and the community."[338] This makes Tennessee's statute more expansive than at first glance, provided that judges exercise their discretion.

Sealing-only statutes mostly restrict public access, and thus many permit court and law enforcement access. These statutes may be more politically palatable than expungement statutes in cases where juveniles reoffend. Most have provisions that allow for unsealing if another juvenile offense or adult conviction occurs. These processes allay concerns associated with expunging records—predominantly that these records are not accessible to law enforcement, prosecutors, or judges to determine a person's risk to the community or to consider when a person with a juvenile record is being sentenced for a later conviction. Sealing offers an option that promotes reintegration in the public but does not take away the state's power to consider juvenile history as a predictor of behavior for certain government positions or sentencing enhancements if the juvenile commits crimes as an adult.

3. Hybrid Statutes

Fifteen states have hybrid statutes that combine both sealing and expungement mechanisms, utilizing the benefits of both.[339] This combination has the potential of protecting records more efficiently and effectively. Many hybrid states stagger sealing and expungement over time. This mechanism may be the most politically appealing compromise because it offers the benefits of sealing—removing more offenses from public accessibility earlier but retaining information should the state have an interest in knowing about juvenile records because of a future adult offense—while also providing an opportunity for the records to ultimately be destroyed for individuals who have moved past their juvenile history with no offenses as adults.

One of the strongest hybrid statutes is North Dakota's statute which automatically seals a case once it is closed.[340] Once sealed, the case is placed on a retention schedule to be expunged. All delinquency offenses, with the exception of certain sex offenses, are expunged ten years after a case is closed or when the child turns eighteen, whichever is later.[341] A juvenile can petition earlier with good cause provided no charges are pending.[342] Sealing and expungement of court records do not include law enforcement records, but those records remain

338. TENN. CODE ANN. § 37-1-153(f)(1)(c) (Lexis 2017).

339. *See supra* Table 2.

340. *See* N.D. CENT. CODE § 27-20-51(1) (2016); N.D.R. JUV. P. 19; N.D. SUP. CT. ADMIN. R. 19, Records Retention Schedule, https://www.ndcourts.gov/court/rules/Administrative/Ar19sch.htm [https://perma.cc/3M2G-XC34] (may be destroyed earlier for good cause).

341. *See* N.D. CENT. CODE § 27-20-51(1).

342. *See North Dakota Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/north-dakota-restoration-of-rights-pardon-expungement-sealing [https://perma.cc/7PVB-MBND].

inaccessible to the public under North Dakota's robust confidentiality protections.[343] Once expunged, the case is treated as if it never existed.[344] Montana has a similar structure, but it only permits juveniles to apply for expungement after 10 years, if the judge and prosecutor consent.[345]

Ohio authorizes the sealing of any offense six months after a dismissal or the juvenile's discharge from the court's jurisdiction, by motion of the court, the state, or the juvenile (under a recent amendment).[346] The court seals juvenile offenses when the juvenile turns eighteen or when its jurisdiction ends if jurisdiction is extended beyond eighteen. Expungement is automatic either at twenty-three or five years after sealing, whichever comes first, and the juvenile can petition for expungement even earlier.[347]

Hybrid statutes do not come in a one-size-fits-all model, and admittedly some are not as effective or expansive as the three examples above. Their limitations, not surprisingly, mirror the limitations of both expungement-only and sealing-only statutes because the legislative concerns are generally the same. But most hybrid statutes are more expansive than expungement-only and sealing-only statutes, even in terms of who is eligible. For example, they allow sealing before a juvenile turns twenty-one, do not limit the type of eligible offense for sealing, and ultimately expunge many of the records.[348] This model presents the advantages of both sealing and expungement by employing both. In Maryland, all juveniles with a delinquent adjudication can move the court to seal their record for "good reason" once the case is closed, and all records are automatically sealed when a juvenile is twenty-one.[349] Even juveniles transferred to adult court can be eligible to have their adjudications expunged.[350]

C. AN UNDERUTILIZED COMPANION: NON-DISCLOSURE STATUTES

The prior discussion of confidentiality, sealing, and expungement statutes predominantly addresses the state's obligation to protect juvenile delinquency records from dissemination. They restrict judges, prosecutors, police departments, and court personnel from revealing information about a juvenile's case. Yet juveniles themselves may be the most likely culprit for providing juvenile delinquency information to third parties like potential employers. Juveniles often must answer questions about delinquency records or proceedings. The question on the Common Application for college, noted above, is only one example.[351] Applications for jobs, apartment leases, financial aid, and profes-

343. *See id.*
344. *See* N.D. CENT. CODE § 27-20-54(2).
345. MONT. CODE ANN. § 41-5-216 (2017).
346. OHIO REV. CODE ANN. §§ 2151.356(B)(1)(b)–(e) (LexisNexis 2016).
347. *Id.* § 2151.358.
348. *Id.*
349. *Id.*
350. *Id.*
351. COMMON APP, *supra* note 1.

sional licenses (like the bar application) also ask individuals to disclose juvenile record information that is confidential and may be even sealed or expunged. Common questions include ones that are general and offer no guidance about whether they are even asking about delinquency records: Have you ever been arrested? Have you ever been adjudicated guilty of an offense? Other questions, like those on bar applications or military applications, are crystal clear and ask if the applicant has ever been found guilty of a juvenile offense. Individuals facing these questions have little guidance about whether sealing or expungement affects how they should answer those questions.

Part of the problem is that most confidentiality, expungement, and sealing statutes are silent about the legal effect of the protections. Even the most skilled defense attorney may struggle to give definitive advice on how to answer the more general questions. Some statutes, like Wisconsin's expungement statute, will expunge juvenile records by petition after a juvenile turns seventeen, but the legal effect of that expungement is unclear.[352]

A handful of states have non-disclosure provisions that explain the legal effect of sealing or expungement without offering explicit guidance on how a juvenile should answer a question about their history.[353] Connecticut has a common non-disclosure statute, providing that sealing a record means that "a finding of delinquency . . . [is] deemed never to have occurred."[354] The person responsible for maintaining the records will not disclose that the records existed unless it is determined "in the best interests of [the] child to do so."[355] And for records purposes, no child whose case has been sealed shall be deemed to have been arrested.[356] That makes clear that if a private entity asks court personnel in charge of the records whether a person had a juvenile arrest or delinquency history, the clerk must answer no, even if one existed. But does that nondisclosure protection extend to the juvenile? Many statutes, like Connecticut's, fall short of answering that question.

Another way that non-disclosure protections are problematic is that they often protect only delinquency records that are *sealed* or *expunged*, meaning that in any other case juvenile records would need to be disclosed, even if it is protected by the state's confidentiality statute. In Oregon, both set-asides and expungement mean that records are treated as though they "never existed."[357] Not only do these statutes limit non-disclosure to sealed or expunged records, they fail to direct juveniles about whether they can lawfully deny their existence

352. WIS. STAT. § 938.355(2)(b)(4m) (2017) (expunging juvenile court records and all agencies are bound by the expungement order, but not indication about whether the juvenile, court or other agency can deny the existence of the record upon request).

353. *See* Shah et al., *supra* note 13, at 25.

354. CONN. GEN. STAT. § 46b-146 (2016).

355. *Id.*

356. *See id.*; Shah et al., *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records, Connecticut*, JUV. L. CTR. (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-CT.pdf [https://perma.cc/3ZUD-PB6L].

357. *See* OR. REV. STAT. § 419A.262(22) (2015).

even though the statutes may intend that result. For example, Colorado's statute says that sealed records are "deemed to have never existed" and expressly allows the juvenile and officials to deny that the records ever existed at all.[358]

Only eight states explain how the juvenile should respond to questions about their record. Take North Carolina's statute as a clear example: An expungement allows the person to proceed as if the offense did not occur.[359] After the records are expunged, a person who denies having a record is not committing perjury or giving a false statement and will not be compelled to reveal the records unless testifying in a delinquency proceeding.[360] In Georgia, once the records are sealed, "the proceeding shall be treated as if it never occurred" and "the person, the court, the law enforcement of officers . . . shall properly reply that no record exists."[361] Similarly, in Idaho, Kentucky, Louisiana, New Jersey, Ohio, South Carolina, and Washington, an individual may deny the existence of a juvenile adjudication if it has been sealed or expunged.[362]

Only one state currently shifts the burden away from the juvenile in determining whether their records should be disclosed. Illinois's statute bans questions on applications that may elicit information about juvenile charges that were expunged, by requiring all applications to contain specific language that the applicant is not obligated to disclose expunged juvenile records.[363] This burden-shifting, non-disclosure approach accomplishes two things that the predominant non-disclosure statutes do not. First, unlike other non-disclosure statutes, Illinois's statute does not put the individual in a position where answering "no" means she is being untruthful about her past. Second, individuals do not have to decipher whether questions are asking about their juvenile record or adult criminal records. The Illinois statute offers a model for how states could limit access to juvenile records without even worrying about sealing or expungement.

---

358. COLO. REV. STAT. § 19-1-306(1) (2016).

359. N.C. GEN. STAT. § 7B-3201 (2016).

360. *See id.* § 7B-3000(e).

361. GA. CODE ANN. § 15-11-701 (2016). Copies of the sealing order must be sent to the Georgia Crime Information Center (GCIC) and any other agencies named in that order.

362. *See* IDAHO CODE ANN. § 20-525–525A(5) (2017)("Upon the entry of the [expungement] order the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter."); OHIO REV. CODE ANN § 2151.357(A) (West 2017)("[T]he person who is subject of the order properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter . . . ."); *Kentucky Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/kentucky-restoration-of-rights-pardon-expungement-sealing// [https://perma.cc/584Q-XU2C]; *Louisiana Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/louisiana-restoration-of-rights-pardon-expungement-sealing// [https://perma.cc/VJ7Q-PJYA]; *New Jersey Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/new-jersey-restoration-of-rights-pardon-expungement-sealing/ [https://perma.cc/5UG6-P3KP]; *South Carolina Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/south-carolina-restoration-of-rights-pardon-expungement-sealing/ [https://perma.cc/9DPN-593B]; *Washington Profile*, RESTORATION OF RIGHTS PROJECT, http://ccresourcecenter.org/state-restoration-profiles/washington-restoration-of-rights-pardon-expungement-sealing// [https://perma.cc/5FA3-2G59].

363. 705 ILL. COMP. STAT. 405/5-915 (2016).

States could simply make juvenile records off limits through robust confidentiality statutes and non-disclosure statutes that prohibit private employers, universities, or public licensing agencies from asking about juvenile proceedings.

V. THE ROAD TO JUVENILE RECORD REFORM

Having surveyed the patchwork of state statutes that offer juvenile record protection, Part V presents a roadmap to comprehensive reform. Before outlining how state statutes can offer juvenile records complete protection, I explore four primary obstacles to this reform in section V.A. The first obstacle is the notion that juvenile records are useful predictors of future offenses, which has been debunked by neuroscience and criminologist research. The second obstacle is that state statutes do not comprehensively define what constitutes juvenile records so that some records related to the proceedings may not be covered by confidentiality or extinguishing statutes. The third obstacle is that the process all too often creates an onerous burden for the juvenile to petition to expunge or seal their records without affording them the right to counsel to do so. In this petition process, many states give judges discretion to deny the petition, which opens the door to unequal treatment of similarly situated defendants, especially as they appear before different judges throughout a state. Finally, because so few states have non-disclosure statutes in place, a fourth obstacle is the lack of enforceability for violations of statutes that guarantee record protection. These obstacles must be addressed as a part of any serious juvenile record reform effort.

Section V.B offers a means for states to begin such comprehensive reform. First, I examine the ABA's recently adopted model juvenile record protection statute. I outline key features of the statute and critique some of its shortcomings. The section also highlights key sections in the ABA model that are not common and are even nonexistent throughout the fifty states' juvenile record protection statutes as surveyed in Part IV. One significant contribution of the ABA model is a robust non-disclosure statute that protects against self-disclosure by prohibiting questions about juvenile delinquency records.

A. OBSTACLES TO THE CURRENT JUVENILE RECORD LANDSCAPE

Even in states with some of the strongest statutory protections, juveniles may not be able to leave their delinquency history in the past. This section highlights four prominent obstacles to comprehensive juvenile delinquency record reform.

1. The Public Protection Problem

One justification for eroding juvenile record protections in the 1980s was that making juvenile delinquency information public would help schools, landlords, and employers predict future unlawful behavior by former juvenile offenders and ultimately serve the government interest in protecting the public from future harm. States added the goal of "protecting the public" to their juvenile justice

statutes,[364] which created a tension with their strong confidentiality protections. The unsurprising result was that juvenile records became more accessible, and in some cases even public.

However, the new brain science and recidivism literature summarized in Part III offers new evidence that undermines existing assumptions about juvenile reoffending and risk. This science no longer depicts juveniles as "super-predators," but in a stage of brain development that helps to explain poor decision making, strong peer influences, and risk-taking behaviors.[365] And research shows that most juveniles with delinquent histories stop offending as their brains mature into their early twenties and thus pose no greater risk than their non-offending counterparts.[366] Once juvenile delinquency information is public, however, it is likely to be relied on to make unreliable inferences about the likelihood of reoffending that is not supported by criminologists' desistance research or brain development research.[367] States should recalibrate their protection statutes to account for this change. Robust confidentiality statutes can prevent the records' dissemination into the public sphere, where in today's Google age, information is virtually irretrievable.

In other areas of the juvenile justice system, state reforms are using brain science to justify policy changes. The Department of Education's guidance memo to universities cites brain science and adolescent development research to discourage schools from using information about delinquency records in their admissions decisions.[368] Yet states have not used this science and recidivism literature effectively to support removing or mitigating the consequences of a record. Considering this literature could encourage a return to more serious record protections.

2. The Record Definition Problem

Defining juvenile records for the purposes of confidentiality, sealing, and expungement is a critical dimension to the effectiveness of these statutes. For example, some states have broad definitions that include all types of records that emanate from a juvenile's arrest, including court records, probation records, law enforcement documentation, fingerprints, photographs, and DNA collection, and they encompass not just offense-related records but records created by other agencies or schools that are permitted to access copies of these records.[369] Other states define juvenile records narrowly as only court-produced documents.[370]

---

364. *See supra* Section III.A.

365. Feld, *supra* note 36, at 289–90.

366. *Id.* at 286.

367. *See supra* Sections III.B & III.C.

368. *See* U.S. DEP'T OF EDU., BEYOND THE BOX: INCREASING ACCESS TO HIGHER EDUCATION FOR JUSTICE-INVOLVED INDIVIDUALS 7 (May 9, 2016), https://www2.ed.gov/documents/beyond-the-box/guidance.pdf [https://perma.cc/GX4Z-UTNR].

369. *See* Shah et al., *supra* note 13, at 15.

370. *See id.*

The effectiveness of these protection statutes is greatly compromised if a third party can share or publicize juvenile records. For example, if court files are confidential but police records are not, employers might be able to receive juvenile delinquency history information from police records, making the court record protections ineffective.

Juvenile advocacy groups have comprehensively documented the range of "juvenile record" definitions that states use.[371] For example, in Montana, fingerprints, photographs, and DNA records are kept, while court documentation is automatically sealed when a juvenile turns eighteen.[372] Undeniably, this policy decision balances competing government interests. Finding a DNA or fingerprint match can be useful in future criminal investigation or for identification of suspects. If these are the limited government goals for the retention of these records, however, law enforcement agencies can be subject to confidentiality restrictions as well. A clear distinction can be made between what is permissible for public and private sharing. But so long as states retain some delinquency-related records, juveniles can never leave their juvenile history in the past.

3. The Process Problem: Notice, Petitions, and Discretion

Three related process problems exist for even the most comprehensive record protection statutes. First, an institutional player in juvenile court—the judge, a probation officer, or even the juvenile's public defender—must be required by law to inform juveniles and their parents about state-specific confidentiality protections and sealing or expungement protections. Currently, such notice requirements differ dramatically from state to state.[373] If a juvenile does not understand that the records are confidential and not accessible to a school official, they may unnecessarily disclose information about court appearances to explain school absences. More critically, in states that open records to the public, juveniles may assume juvenile court is private and not understand that records are accessible. In these contexts, juveniles may not properly answer questions about arrests or adjudications on applications. This mistake can be interpreted as lying, which is grounds for denying the juvenile a job, apartment, or even admission to college. Given the vast differences in protections offered by states, notice should be required.

Second, many sealing and expungement statutes do not provide for automatic relief, requiring juveniles to petition the court.[374] Sometimes juveniles cannot petition until years after their case is closed.[375] Many records may not be expunged or sealed simply because juveniles did not know that they needed to ask.

---

371. *See id.* at 6.

372. *See* MONT. CODE ANN. § 41-5-216(4) (2017).

373. *See* Shah et al., *supra* note 13, at 28–29.

374. *See, e.g.*, TENN. CODE ANN. § 37-1-153 (2016) (requiring a petition for expungement with an exception for dismissed cases).

375. *See Florida Profile*, *supra* note 323. In Florida, a juvenile must be twenty-four years old to request an expungement.

In addition to filing, some states require that juveniles collect all the documents that need to be sealed, or that they present evidence, with the potential for state opposition, at a more formal hearing.[376] Massachusetts, which has broad sealing provisions, mandates that a person with a juvenile record submit a notarized request to seal the record to the Commissioner of Probation.[377] These procedures may mean that juveniles do not benefit from their state's record protections, especially as compared to juveniles in states that shift the burden onto the state or court to initiate the proceeding or automatically seal or expunge records.

The third potential procedural hurdle for juveniles is judicial discretion.[378] Many state statutes require a judge to apply a balancing test when determining whether to seal or expunge a record.[379] Although judicial discretion is an inherent part of the juvenile and criminal system, especially in sentencing decisions, it creates a possibility for the records of similarly situated juveniles to be treated differently.

4. The Enforcement Problem

Finally, only a few confidentiality, sealing, and expungement statutes create an enforcement mechanism that punishes unlawful dissemination of juvenile records.[380] For example, a couple of states levy a fine of up to $2,000 on anyone who breaches confidentiality rules, while other states make it a misdemeanor to release record information.[381] This serves to deter and punish unlawful (even if not malicious) dissemination of delinquency records. Although such mechanisms would not be foolproof, they can keep record-keeping officials and any third party with access to the records more accountable.

B. THE ABA MODEL STATUTE

State juvenile record protections are all over the map. Some states are protective of juvenile record information with strong confidentiality protections at the front end and immediate sealing and expungement protections when the case is closed. Others make records publicly accessible until cases are closed and then they are quickly expunged. Still others offer minimal protections, mostly helping only juveniles charged for the first time or for minor misdemeanor offenses. This landscape means that juvenile records can impact a

376. *See id.*

377. *See* MASS. GEN. LAWS ch. 276, § 100B (2017).

378. *See* Shah et al., *supra* note 13, at 35.

379. *See* TENN. CODE ANN. § 37-1-153(f)(1)(B)–(C) (requiring a juvenile to be seventeen years old and to have "maintained a consistent and exemplary pattern of responsible, productive and civic-minded conduct for one (1) or more years immediately preceding the filing of the expunction motion" or to have "made such an adjustment of circumstances that the court, in its discretion, believes that expunction serves the best interest of the child and the community").

380. *See* Shah et al., *supra* note 13, at 21.

381. *See id.*

juvenile's current and future chances of getting a job, going to college, signing up for the military, or renting an apartment, just because of where they live. Although state-by-state experimentation is a key feature of a federal system, these differences create real obstacles for reintegration.

These obstacles can be lifted if states adopt the ABA model statute addressing the permanency of juvenile delinquency records.[382] The America Bar Association has a "long-standing history" of urging states to limit the collateral consequences of juvenile arrests and adjudications.[383] In 1979 and 1980, the ABA adopted standards to "protect youth from adverse consequences of records."[384] In 2010, the ABA adopted a resolution that federal, state, and local governments prevent discrimination against youth based on their involvement with the juvenile justice system.[385] In line with these decades of advocacy, in 2015, the ABA gave states a concrete roadmap for how to do it by unanimously passing the "Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records" (Model Act).[386] The Model Act refers to the significant obstacles to employment, housing, and education created by juvenile arrest, law enforcement, court, and probation records, and aims to "protect" juveniles from the "damage stemming from their juvenile delinquency records" and the "potential stigma that would result from their disclosure."[387] The Act mirrors state statutes with strong confidentiality, expungement, and sealing provisions.

Currently, there is a push in Illinois to adopt the Model Act's provisions,[388] and Tennessee passed recent legislation that includes several of them, too.[389] This section highlights the key provisions of the Model Act, which include an extensive definition of juvenile records, a notice requirement, automatic expungement, and a non-disclosure provision.[390] The ABA's goal was to balance the competing interests in protecting the public from future harm and reintegrating juveniles back into society by mitigating against permanent collateral consequences.

One of the Act's central features is a broad definition of juvenile records, which complements strong and immediate confidentiality and expungement provisions.[391] Juvenile records include all "records, reports, and information maintained in any form" created by the juvenile court, probation, or law

382. *See* MODEL ACT, *supra* note 22.
383. *Id.*, report at 2.
384. *Id.*
385. *See id.*, report at 6.
386. *See id.*, resolution.
387. *See id.* § 1.
388. *See* ILL. JUVENILE JUSTICE COMM'N, BURDENED FOR LIFE: THE MYTH OF JUVENILE RECORD CONFIDENTIALITY AND EXPUNGEMENT IN ILLINOIS (2016).
389. *See* H.B. 636, 110th Gen. Assemb., Reg. Sess. (Tenn. 2017), http://www.capitol.tn.gov/Bills/110/Bill/HB0636.pdf [https://perma.cc/ZZT5-P8YG] (including language from the Model Act in defining records and the non-disclosure provision).
390. *See* MODEL ACT, *supra* note 22, §§ 3(e), 4–7.
391. *See id.* §§ 3(e), 5–7.

enforcement.[392] The confidentiality section then lists more than a dozen court records and law enforcement records, including fingerprints and DNA records, which should be protected and maintained in juvenile files kept separately from other court and police records.[393] The Model Act also lists a limited number of actors—the juvenile, parents, the juvenile's attorney, treatment facilities, and prosecutors—authorized to access the information.[394]

But the Model Act is sensitive to the potential that other parties or individuals may have a compelling interest in accessing the records. In these situations, the juvenile court may allow a third party to request a hearing where the court weighs the juvenile's privacy interests against evidence that releasing the information will "protect the public health and safety."[395] The juvenile is given notice of the hearing and can object and challenge the evidence through appointed counsel.[396] Although this will create an additional administrative burden and cost to the courts, it provides a due process vehicle for the juvenile to offer reasons for opposition. To reduce that burden, courts could alternatively not require a hearing if the judge determines that no access should be granted based on the third-party petition alone, which itself must show a compelling interest in the records.

If, after a hearing, the requested information is released to the third party, the court is required to "execute a non-disclosure agreement" that guarantees the information will not be further disseminated and imposes a fine if it is.[397] The addition of this hearing and non-disclosure process creates a default that the records remain confidential, while recognizing that the state may have a compelling reason in individual cases to share information.

The Model Act has a comprehensive automatic expungement provision for most delinquency charges.[398] Charges that do not result in a delinquency adjudication are automatically expunged when the judge closes the case unless a chief law enforcement officer "certifies in writing that certain information is needed for a pending investigation."[399] Juveniles adjudicated delinquent can apply for expungement at any time after their case closes, but that request requires a hearing where the judge considers eight factors and the prosecutor can present opposition evidence.[400] The eight factors require a judge to weigh

392. *Id.* § 3(c).

393. *See id.* §§ 4–5.

394. *See id.* § 4(c).

395. *See id.* §§ 4(d), 5(c).

396. *See id.* §§ 4(e), 5(d).

397. *Id.* §§ 4(g), 5(b)(7) (stating the non-disclosure provision applies to all individuals authorized by statute to access the juvenile's records).

398. *See id.* § 3(c) (defining expunge to mean "to physically destroy the records, and in the case of electronic records to delete them, the legal effect of which is that the record never existed").

399. *Id.* § 6(a), 6(e).

400. *See id.* § 6(b)(1). The eight factors to be considered are: (1) the best interests of the person; (2) the age of the person during his or her contact with the juvenile court or law enforcement agency; (3) the nature of the offense; (4) the disposition of the case; (5) the manner in which the person participated

the seriousness of the offense, the efforts of the juvenile to rehabilitate, and the "adverse consequences" that a juvenile will face if the record is not expunged.[401] However, most delinquency adjudications would probably be expunged under the automatic provision, requiring no application, after a two-year waiting period from the close of the case, provided that the juvenile has no subsequent pending or adjudicated delinquency or criminal charges.[402] This two-year period is consistent with the desistence recidivism research and the trajectory recidivism research showing that most juveniles stop offending relatively quickly while a much smaller group of repeat offenders do so in clusters.[403] As with most state statutes, juveniles who continue to reoffend do not receive the benefit of expungement.

The ABA was careful to respond to the consistent state concern that prior to expunging the records of more serious, violent offenders, a hearing should be required so that judges who are closer to the juvenile's history can carefully consider the implications of expungement.[404] The waiting period for those cases is five years from the close of the case, the prosecutor can respond to the request, and the court is required to consider the same eight factors in its decision.[405]

Several additional provisions of the Model Act's expungement protections are not common features of most state statutes. First, under the Model Act, any agency or third party that possesses the delinquency records is required to expunge them.[406] Second, the Act requires the juvenile be given a complete copy of the records to be expunged just in case there is a need for them in the future.[407] Third, there is no fee for expunging records.[408] And finally, there is a provision addressing notification of expungement rights.[409] It requires the court, the child's attorney, and the court clerk to play a role in explaining and executing the expungement.[410] Ultimately, the juvenile must receive notice when the records are expunged.[411]

---

in any court-ordered rehabilitative programming or supervised services; (6) the time during which the person has been without contact with the juvenile court or with any law enforcement agency; (7) whether the person has any subsequent criminal involvement; and (8) the adverse consequences the person will suffer because of retention of his or her record.

401. *See id.*

402. *See id.* § 6(a)(2). Most adjudications will fall under this automatic provision because only very violent acts (first degree murder, aggravated rape) would not be automatic and therefore, require a petition and a five-year waiting period. *See id.* § 6(b)(2).

403. *See supra* Sections III.B & C.

404. *See* MODEL ACT, *supra* note 22, § 6(b)(2).

405. *See id.*

406. *See id.* § 6(a).

407. *See id.* § 6(c).

408. *See id.* § 6(d).

409. *See id.* § 7.

410. *See id.* §§ 7(a)–(c).

411. *See id.* § 7(d).

The ABA's statute may face resistance in some states because of the speed of expungement. Should states want to wait longer, North Dakota's hybrid statute offers a potential solution, allowing the records to be sealed at the close of the case, then adding the case to a retention schedule that expunges records automatically after ten years or when the juvenile turns eighteen, whichever is later. Juveniles can file an expungement petition at any time to request expungement relief earlier.[412] The sealing should help prevent access until the retention schedule permits expungement. The hybrid statutes may continue to be more politically palatable for legislators focused on public safety.

The final section of the Model Act contains a robust non-disclosure clause. It provides that, once a juvenile record is expunged, (1) the person shall not be required to disclose it and may properly reply that no such record exists, (2) if asked about it, the court, probation, law enforcement, or any agency shall reply that no record exists, and (3) a person cannot not be guilty of perjury or giving a false statement for a "failure to recite or acknowledge" that the expunged record existed.[413] Providing guidance about the legal effect of an expunged record would enhance many state statutes, even if states adopted no other provisions of the Model Act. The non-disclosure provision could also apply to sealing as well. One way this provision could guarantee non-disclosure for the purpose of applications is to copy Illinois's non-disclosure protection. States could prohibit applications from asking about juvenile records or require that applications make clear that they are not asking for an applicant to reveal juvenile record information. This would ensure that some applications do not circumvent expungement protections.

CONCLUSION

The political left and right have recently come together to consider reforming state juvenile justice systems in ways that recognize fundamental differences between punishing juveniles and adults. Research has shown that a more punitive approach can harm children more than it helps, and that creating obstacles to reintegration runs counter to the core purpose of the juvenile system: rehabilitation. In this vein, legislators, advocates, judges, and lawyers cannot overlook the role that nearly permanent juvenile records have played in holding juveniles back from full reintegration.

Each state, as reflected in their juvenile codes, has a unique obligation to reintegrate juveniles charged with delinquency offenses, especially considering new brain science and recidivism research. But the current landscape of confidentiality, sealing, expungement, and non-disclosure statutes shows that to achieve that end, states have work to do.

412. *See* N.D. CENT. CODE § 27-20-51(1) (2016).
413. MODEL ACT, *supra* note 22, § 8.

The Model Act offers legislators, reformers, and scholars a concrete example of how to structure robust juvenile delinquency record protections. The provisions balance the state's interest in protecting the public by carefully retaining confidential records for repeat or serious offenders with the state's interest in reintegrating desisting juveniles in a time-sensitive, meaningful way. This process offers juveniles notice about the implications of a juvenile record, removes judicial discretion that can result in disparate treatment, shifts the burden to the state to destroy most records automatically, and protects juveniles from self-disclosure by making clear they can lawfully deny delinquency record information on applications. The Model Act's key provisions are missing from most state protections today. We are seeing a fourth wave of juvenile justice reform, one that suggests many states seek not just to punish juveniles, but to reintegrate them. To fulfill that purpose—to truly help juveniles move beyond adolescent transgressions—states must address access to juvenile records.

APPENDIX A

State	Citation	Statutory Language[414]
Alabama	ALA. CODE § 12-15-101(a) (2016)	"The purpose of this chapter is to facilitate the care, protection, and discipline of children who come under the jurisdiction of the juvenile court, while acknowledging the responsibility of the juvenile court to preserve the public peace and security."
Alaska	ALASKA STAT. § 47.12.010(a) (2015)	"The goal of this chapter is to promote a balanced juvenile justice system in the state to protect the community, impose accountability for violations of law, and equip juvenile offenders with the skills needed to live responsibly and productively."
Arizona	Not found	
Arkansas	ARK. CODE ANN. § 9-27-302(1) (2016)	"To assure that all juveniles brought to the attention of the courts receive the guidance, care, and control, preferably in each juvenile's own home when the juvenile's health and safety are not at risk, that will best serve the emotional, mental, and physical welfare of the juvenile and the best interest of the state . . . ."
California	CAL. WELF. & INST. CODE § 202(a) (West 2016)	"The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public."

414. The quoted language is not necessarily the entirety of the cited statutory section.

State	Citation	Statutory Language[414]
Colorado	COLO. REV. STAT. § 19-1-102(1)(a) (2016)	"To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society . . . ."
Connecticut	CONN. GEN. STAT. § 46b-121h(1)–(3) (2016)	"It is the intent of the General Assembly that the juvenile justice system provide individualized supervision, care, accountability and treatment in a manner consistent with public safety to those juveniles who violate the law. The juvenile justice system shall also promote prevention efforts through the support of programs and services designed to meet the needs of juveniles charged with the commission of a delinquent act. The goals of the juvenile justice system shall be to: (1) Hold juveniles accountable for their unlawful behavior; (2) Provide secure and therapeutic confinement to those juveniles who present a danger to the community; (3) Adequately protect the community and juveniles . . . ."
Delaware	Not found	
Florida	FLA. STAT. § 985.01(1)(a) (2016)	"To increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children."

State	Citation	Statutory Language[414]
Georgia	GA. CODE ANN. § 15-11-1 (2016)	"The purpose of this chapter is to secure for each child who comes within the jurisdiction of the juvenile court such care and guidance, preferably in his or her own home, as will secure his or her moral, emotional, mental, and physical welfare as well as the safety of both the child and community. It is the intent of the General Assembly to promote a juvenile justice system that will protect the community, impose accountability for violations of law, provide treatment and rehabilitation, and equip juvenile offenders with the ability to live responsibly and productively. It is the intent of the General Assembly to preserve and strengthen family relationships, countenancing the removal of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability."
Hawaii	HAW. REV. STAT. § 571-1 (2016)	"This chapter creates within this State a system of family courts and it shall be a policy and purpose of said courts to promote the reconciliation of distressed juveniles with their families, foster the rehabilitation of juveniles in difficulty, render appropriate punishment to offenders, and reduce juvenile delinquency."

State	Citation	Statutory Language[414]
Idaho	IDAHO CODE § 20-501 (2016)	"It is the policy of the state of Idaho that the juvenile corrections system will be based on the following principles: accountability; community protection; and competency development. Where a juvenile has been found to be within the purview of the juvenile corrections act, the court shall impose a sentence that will protect the community, hold the juvenile offender accountable for his actions, and assist the juvenile offender in developing skills to become a contributing member of a diverse community."
Illinois	705 ILL. COMP. STAT. 405/1-2(1) (2016)	"The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal . . . ."
Indiana	Not found	
Iowa	IOWA CODE § 232.1 (2016)	"This chapter shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child's own home, the care, guidance and control that will best serve the child's welfare and the best interest of the state. When a child is removed from the control of the child's parents, the court shall secure for the child care as nearly as possible equivalent to that which should have been given by the parents."

State	Citation	Statutory Language[414]
Kansas	KAN. STAT. ANN. § 38-2301 (2016)	"The primary goals of the juvenile justice code are to promote public safety, hold juvenile offenders accountable for their behavior and improve their ability to live more productively and responsibly in the community."
Kentucky	KY. REV. STAT. ANN. § 600.010(2)(a), (e)–(f) (West 2016)	"(a) The Commonwealth shall direct its efforts to promoting protection of children; to the strengthening and encouragement of family life for the protection and care of children; to strengthening and maintaining the biological family unit; to ensuring that policies and practices utilized are supported by data and research and are monitored or measured for their effectiveness in achieving the intended results; and to offering all available resources to any family in need of them; . . . (e) [The juvenile public offenders chapter] shall be interpreted to promote the best interests of the child through providing treatment and sanctions to reduce recidivism and assist in making the child a productive citizen by involving the family, as appropriate, and by advancing the principles of personal responsibility, accountability, and reformation, while maintaining public safety, and seeking restitution and reparation; (f) [The juvenile youthful offenders chapter] shall be interpreted to promote public safety and the concept that every child be held accountable for his or her conduct through the use of restitution, reparation, and sanctions, in an effort to rehabilitate delinquent youth . . . ."

State	Citation	Statutory Language[414]
Louisiana	LA. CHILD. CODE ANN. art. 102 (2016)	"The provisions of this Code shall be liberally construed to the end that each child and parent coming within the jurisdiction of the court shall be accorded due process and that each child shall receive, preferably in his own home, the care, guidance, and control that will be conducive to his welfare. In those instances when he is removed from the control of his parents, the court shall secure for him care as nearly as possible equivalent to that which the parents should have given him. These Code provisions shall be construed to promote the stability of the family and to secure simplicity in procedure, fairness in adjudication and administration, and the elimination of unjustifiable delay."
Maine	ME. STAT. tit. 15, § 3002(A), (D)–(F) (2016)	"A. To secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile's own home, as will best serve the juvenile's welfare and the interests of society; . . . D. To secure for any juvenile removed from the custody of the juvenile's parents the necessary treatment, care, guidance and discipline to assist that juvenile in becoming a responsible and productive member of society; E. To provide procedures through which the provisions of the law are executed and enforced and that ensure that the parties receive fair hearings at which their rights as citizens are recognized and protected; and F. To provide consequences, which may include those of a punitive nature, for repeated serious criminal behavior or repeated violations of probation conditions. "

State	Citation	Statutory Language[414]
Maryland	MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02 (West 2016)	"(1) To ensure that the Juvenile Justice System balances the following objectives for children who have committed delinquent acts: (i) Public safety and the protection of the community; (ii) Accountability of the child to the victim and the community for offenses committed; and (iii) Competency and character development to assist children in becoming responsible and productive members of society; (2) To hold parents of children found to be delinquent responsible for the child's behavior and accountable to the victim and the community; (3) To hold parents of children found to be delinquent or in need of supervision responsible, where possible, for remedying the circumstances that required the court's intervention; (4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest . . . ."
Massachusetts	MASS. GEN. LAWS ch. 119, § 1 (2016)	"It is hereby declared to be the policy of this commonwealth to direct its efforts, first, to the strengthening and encouragement of family life for the care and protection of children; to assist and encourage the use by any family of all available resources to this end; and to provide substitute care of children only when the family itself or the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound health and normal physical, mental, spiritual and moral development."

State	Citation	Statutory Language[414]
Michigan	MICH. COMP. LAWS § 712A.1(3) (2016)	"This chapter shall be liberally construed so that each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile's welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents."
Minnesota	MINN. REV. JUV. DEL. P. 1.02 (2016)[415]	"The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth. These rules shall be construed to achieve these purposes."
Mississippi	MISS. CODE ANN. § 43-21-103 (2016)	"This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest."

415. This Juvenile Delinquency Procedure Rule is based upon MINN. STAT. § 260B.001 (2002).

State	Citation	Statutory Language[414]
Missouri	MO. REV. STAT. § 211.011 (2016)	"The purpose of this chapter is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court. This chapter shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control as will conduce to the child's welfare and the best interests of the state, and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them. The child welfare policy of this state is what is in the best interests of the child."
Montana	MONT. CODE ANN. § 41-5-102(2) (2015)	"(2) to prevent and reduce youth delinquency through a system that does not seek retribution but that provides: (a) immediate, consistent, enforceable, and avoidable consequences of youths' actions; (b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders; (c) in appropriate cases, restitution as ordered by the youth court; and (d) that, whenever removal from the home is necessary, the youth is entitled to maintain ethnic, cultural, or religious heritage whenever appropriate . . . ."
Nebraska	NEB. REV. STAT. § 43-246 (2016)	"(1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest . . . ."

State	Citation	Statutory Language[414]
Nevada	NEV. REV. STAT. § 62A.360(2) (2015)	"One of the purposes of this title is to promote the establishment, supervision and implementation of preventive programs that are designed to prevent a child from becoming subject to the jurisdiction of the juvenile court."
New Hampshire	N.H. REV. STAT. ANN. § 169-B:1(II) (2016)	"Consistent with the protection of the public interest, to promote the minor's acceptance of personal responsibility for delinquent acts committed by the minor, encourage the minor to understand and appreciate the personal consequences of such acts, and provide a minor who has committed delinquent acts with counseling, supervision, treatment, and rehabilitation and make parents aware of the extent if any to which they may have contributed to the delinquency and make them accountable for their role in its resolution."
New Jersey	N.J. STAT. ANN. § 2A:4A-21(b) (2016)	"Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public . . . ."

State	Citation	Statutory Language[414]
New Mexico	N.M. STAT. ANN. § 32A-1-3(A) (2016)	"[F]irst to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code and then to preserve the unity of the family whenever possible. A child's health and safety shall be the paramount concern. Permanent separation of a child from the child's family, however, would especially be considered when the child or another child of the parent has suffered permanent or severe injury or repeated abuse. It is the intent of the legislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit . . . ."
New York	N.Y. FAM. CT. ACT § 301.1 (McKinney 2016)	"The purpose of this article is to establish procedures in accordance with due process of law (a) to determine whether a person is a juvenile delinquent and (b) to issue an appropriate order of disposition for any person who is adjudged a juvenile delinquent. In any proceeding under this article, the court shall consider the needs and best interests of the respondent as well as the need for protection of the community."
North Carolina	N.C. GEN. STAT. § 7B-1500 (2016)	"(1) To protect the public from acts of delinquency. (2) To deter delinquency and crime, including patterns of repeat offending: a. By providing swift, effective dispositions that emphasize the juvenile offender's accountability for the juvenile's actions; and b. By providing appropriate rehabilitative services to juveniles and their families."
North Dakota	Not found	

State	Citation	Statutory Language[414]
Ohio	OHIO REV. CODE ANN. § 2151.01 (West 2015)	"(A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety . . . ."
Oklahoma	OKLA. STAT. tit. 10A, § 2-1-102 (2016)	"The purpose of the laws relating to juveniles alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency."
Oregon	OR. REV. STAT. § 419C.001(1) (2016)	"The Legislative Assembly declares that in delinquency cases, the purposes of the Oregon juvenile justice system from apprehension forward are to protect the public and reduce juvenile delinquency and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct. The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and to the community. The system shall provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs and swift and decisive intervention in delinquent behavior. The system shall be open and accountable to the people of Oregon and their elected representatives."

State	Citation	Statutory Language[414]
Pennsylvania	42 PA. CONS. STAT. § 6301(b)(2) (2016)	"Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community."
Rhode Island	14 R.I. GEN. LAWS § 14-1-2(1)–(3) (2016)	"The purpose of this chapter is: (1) To secure for each child under its jurisdiction the care, guidance, and control, preferably in his or her own home, that will serve the child's welfare and the best interests of the state; (2) To conserve and strengthen the child's family ties wherever possible, removing him or her from the custody of his or her parents only when his or her welfare or the safety and protection of the public cannot be adequately safeguarded without that removal; and (3) When a child is removed from his or her own family, to secure for him or her custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents."

State	Citation	Statutory Language[414]
South Carolina	S.C. CODE ANN. § 63-1-30 (2015)	"This title shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible as secure units of law-abiding members; and that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance and control that will conduce to his welfare and the best interests of the State, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him."
South Dakota	S.D. CODIFIED LAWS § 26-8C-1 (2016)	"It is the purpose of this chapter, in conjunction with [the juvenile court chapter], to establish an effective state and local system for delinquent children including a focus on community-based rehabilitation."
Tennessee	TENN. CODE ANN. § 37-1-101(a)(1)–(2) (2016)	"(a) This part shall be construed to effectuate the following public purposes: (1) Provide for the care, protection, and wholesome moral, mental and physical development of children coming within its provisions; (2) Consistent with the protection of the public interest, remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefor a program of treatment, training and rehabilitation . . . ."

State	Citation	Statutory Language[414]
Texas	TEX. FAM. CODE ANN. § 51.01 (West 2015)	"This title shall be construed to effectuate the following public purposes: (1) to provide for the protection of the public and public safety; (2) consistent with the protection of the public and public safety: (A) to promote the concept of punishment for criminal acts; (B) to remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and (C) to provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct; (3) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions; (4) to protect the welfare of the community and to control the commission of unlawful acts by children . . . ."
Utah	UTAH CODE ANN. § 78A-6-102(5) (2016)	"The purpose of the court under this chapter is to: (a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law; (b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship; (c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction . . . ."

State	Citation	Statutory Language[414]
Vermont	VT. STAT. ANN. tit. 33, § 5101(a) (2016)	"The juvenile judicial proceedings chapters shall be construed in accordance with the following purposes: (1) to provide for the care, protection, education, and healthy mental, physical, and social development of children coming within the provisions of the juvenile judicial proceedings chapters; (2) to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which ensure: (A) balanced attention to the protection of the community; (B) accountability to victims and the community for offenses; and (C) the development of competencies to enable children to become responsible and productive members of the community . . . ."
Virginia	VA. CODE ANN. § 16.1-227(4) (2016)	"To protect the community against those acts of its citizens, both juveniles and adults, which are harmful to others and to reduce the incidence of delinquent behavior and to hold offenders accountable for their behavior."

State	Citation	Statutory Language[414]
Washington	WASH. REV. CODE § 13.06.010 (2016)	"It is the intention of the legislature in enacting this chapter to increase the protection afforded the citizens of this state, to require community planning, to provide necessary services and supervision for juvenile offenders in the community when appropriate, to reduce reliance on state-operated correctional institutions for offenders whose standard range disposition does not include commitment of the offender to the department, and to encourage the community to efficiently and effectively provide community services to juvenile offenders through consolidation of service delivery systems."
West Virginia	W. VA. CODE § 49-1-105(b)(1)–(2), (8)–(12) (2016)	"The child welfare and juvenile justice system shall: (1) Assure each child care, safety and guidance; (2) Serve the mental and physical welfare of the child; . . . (8) Provide for early identification of the problems of children and their families, and respond appropriately to prevent abuse and neglect or delinquency; (9) Provide for the rehabilitation of status offenders and juvenile delinquents; (10) As necessary, provide for the secure detention of juveniles alleged or adjudicated delinquent; (11) Provide for secure incarceration of children or juveniles adjudicated delinquent and committed to the custody of the director of the Division of Juvenile Services; and (12) Protect the welfare of the general public."

State	Citation	Statutory Language[414]
Wisconsin	WIS. STAT. § 938.01(2) (2016)	"It is the intent of the legislature to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively."
Wyoming	WYO. STAT. ANN § 14-6-201(c)(ii)–(iii) (2016)	"(ii) Consistent with the best interests of the child and the protection of the public and public safety: (A) To promote the concept of punishment for criminal acts while recognizing and distinguishing the behavior of children who have been victimized or have disabilities, such as serious mental illness that requires treatment or children with a cognitive impairment that requires services; (B) To remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and (C) To provide treatment, training and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct, reduces recidivism and helps children to become functioning and contributing adults. (iii) To provide for the care, the protection and the wholesome moral, mental and physical development of children within the community whenever possible using the least restrictive and most appropriate interventions."

APPENDIX B

State	Rehabilitation or Treatment	Public Safety	Care & Protection	Discipline / Confinement/ Punishment	Accountability	Best Interests of Child / Welfare of Child	Best Interests of the State	Prevention / Reduce Juvenile Delinquency	Remove Taint of Criminality
TOTALS	30	30	28	16	17	16	14	12	4
Alabama		X	X	X					
Alaska	X								
Arizona									
Arkansas	X		X						
California		X							
Colorado			X			X	X		
Connecticut	X	X	X	X	X		X		
Delaware									
Florida	X	X						X	
Georgia	X		X	X	X	X			
Hawaii	X			X				X	
Idaho	X	X			X		X		
Illinois	X	X	X			X	X		
Indiana									

416. For the relevant statutes, see Appendix A.

State	Rehabilitation or Treatment	Public Safety	Care & Protection	Discipline / Confinement/ Punishment	Accountability	Best Interests of Child / Welfare of Child	Best Interests of the State	Prevention / Reduce Juvenile Delinquency	Remove Taint of Criminality
Iowa		X	X			X	X		
Kansas	X	X	X		X				
Kentucky	X	X	X	X	X	X		X	
Louisiana			X			X			
Maine	X		X	X		X	X		
Maryland	X	X	X		X	X	X		
Massachusetts	X		X						
Michigan			X	X		X	X		
Minnesota	X	X						X	
Mississippi	X		X		X	X	X		
Missouri			X	X					
Montana	X	X	X	X	X			X	
Nebraska		X	X						
Nevada								X	
New Hampshire	X	X			X		X		
New Jersey	X	X	X	X	X				X
New Mexico			X						
New York		X				X			

State	Rehabilitation or Treatment	Public Safety	Care & Protection	Discipline / Confinement/ Punishment	Accountability	Best Interests of Child / Welfare of Child	Best Interests of the State	Prevention / Reduce Juvenile Delinquency	Remove Taint of Criminality
North Carolina	X	X			X			X	
North Dakota									
Ohio	X	X				X			
Oklahoma		X						X	
Oregon	X	X			X			X	
Pennsylvania	X	X	X		X				
Rhode Island		X	X	X		X	X		
South Carolina			X			X	X		
South Dakota	X								
Tennessee	X	X	X						X
Texas	X	X	X	X			X		X
Utah	X	X	X	X	X			X	
Vermont									
Virginia		X			X			X	
Washington	X	X		X					
West Virginia	X	X	X	X		X			
Wisconsin	X	X			X				
Wyoming	X	X	X	X	X	X	X	X	X