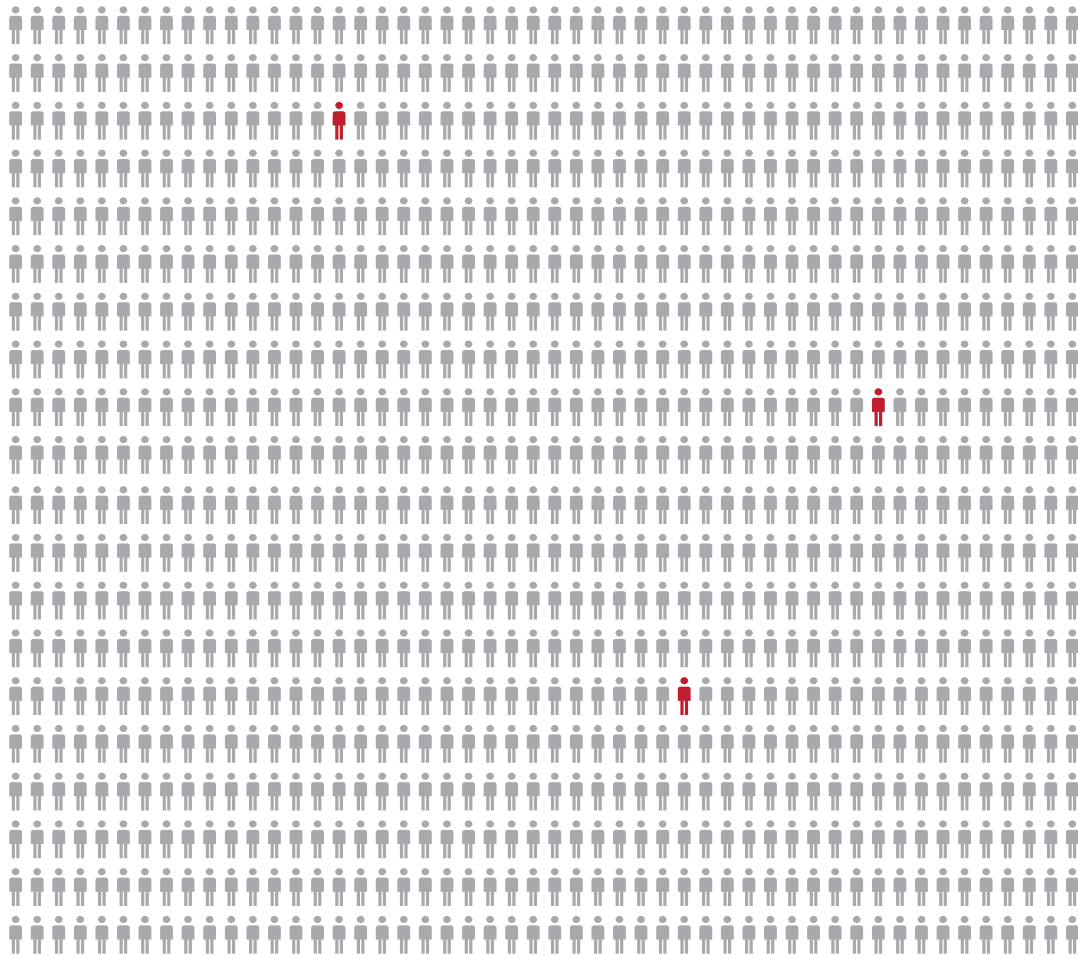


# Burdened for Life:

## The Myth of Juvenile Record Confidentiality and Expungement in Illinois

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



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

## ACKNOWLEDGMENTS

The Illinois Juvenile Justice Commission (the Commission) serves as the federally-mandated State Advisory Group to the Governor, General Assembly, and the Illinois Department of Human Services in developing, reviewing, and approving the state’s Juvenile Justice Plan for the expenditure of funds granted to Illinois by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

### Commission members include:

Rodney Ahitow <i>Cuba</i>	Esther Franco-Payne <i>Chicago</i>	Candice Jones <i>Chicago</i>	Judge Ben Roe <i>Rochelle</i>
Julie Biehl <i>Chicago</i>	George Hill <i>Forsyth</i>	Brendan Kelley <i>Swansea</i>	Judge George Timberlake <i>Mount Vernon</i> <i>Chairperson</i>
Jacqueline Bullard <i>Decatur</i>	Toni Irving <i>Chicago</i>	Patrick Nelson <i>Chicago</i>	Rick Velasquez <i>Oak Park</i>
Shelley Davis <i>Chicago</i>	Arnetra Jackson <i>Chicago</i>	Edward Rangel <i>Chicago</i>	Ethan Viets-Van Lear <i>Chicago</i>
Veronica Dixon <i>Decatur</i>	Lisa Jacobs <i>Wheaton</i> <i>Vice Chairperson</i>	Michael Rodriguez <i>Chicago</i>	Dana Weiner <i>Chicago</i>

The Commission acknowledges the generosity of many individuals and agencies who willingly shared their knowledge, experience, and data including youth, state’s attorneys, judges, law enforcement officials, circuit court clerks, public defenders, probation officers, and community-based service providers. In addition, the Commission is grateful to both the Illinois Criminal Justice Information Authority and the Illinois State Police for their extensive guidance and insight in the research and preparation of this report.

The Commission gratefully acknowledges the authors of this report, Northwestern Pritzker School of Law’s Clinical Assistant Professor Carolyn Frazier and law student Eric Andrew Sweigard. Without their dedication, hard work, and tenacity this report would not have been written. In addition, the Commission wishes to thank law student researchers Patricia Boone and Steven Cantor.

Finally, the Commission commends the leadership of the Illinois General Assembly for their commitment to reducing the barriers to positive outcomes for young people and communities that juvenile arrest and court records can create and appreciates their attention to the report’s recommendations.



# TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	6
BACKGROUND.....	17
METHODOLOGY.....	27
FINDINGS.....	31
<b>1. Weak Confidentiality Protections for Juvenile Records in Illinois Create Obstacles to Rehabilitation and Threaten Public Safety.</b> .....	<b>31</b>
A. Illinois’ Confidentiality Law Permits Overly Broad Access to Juvenile Records. ....	32
B. The Unlawful Sharing of Juvenile Records Is a Common Practice in Illinois. ....	40
C. The Widespread Sharing of Juvenile Records Harms Individuals with Records and Jeopardizes Public Safety by Creating Obstacles to Stable Employment, Housing, and Education. ....	42
D. There Are No Statutory Penalties for Unlawful Sharing of Juvenile Records and No Legal Remedies for Individuals Harmed by Such Sharing. ....	49
<b>2. The Juvenile Expungement Process in Illinois Is Dysfunctional.</b> .....	<b>51</b>
A. A Miniscule Proportion of Juvenile Records Are Expunged. ....	51
B. Restrictive Eligibility Criteria Bar Many Individuals from Expunging Their Juvenile Records. ....	56
C. A Burdensome, Complicated, and Expensive Process Discourages Eligible Individuals from Pursuing Expungement. ....	60
D. Law Enforcement Agencies and County Clerk’s Offices Too Often Neglect Their Statutorily-Mandated Duty to Inform Individuals of Their Right to Seek Expungement. ....	70
RECOMMENDATIONS.....	73
<b>1. Enhance Confidentiality Protections of Juvenile Records.</b> .....	<b>73</b>
A. Amend the Juvenile Court Act to Eliminate Instances When Juvenile Records May Be Shared with the General Public, Create a Robust Definition of Sealing, and Clarify That a Juvenile Adjudication Is Not a Conviction Under Illinois Law. ....	73
B. Close the Loopholes That Exclude Many Juvenile Records from the Confidentiality Protections Provided by Illinois Law. ....	74
C. Create Meaningful Sanctions and a Cause of Action for Improper Disclosure of Juvenile Records. ....	74
D. Provide Systemwide Education to Improve Compliance with Illinois’ Confidentiality Laws. ....	75

**2. Increase Access to Juvenile Record Expungement.** .....75

    A. Enact Real Automatic Expungement. ....75

    B. Expand the Scope of Eligibility for Expungement by Decreasing Waiting Periods and Minimum Age Limits and Adding Judicial Discretion to the Consideration of Subsequent Adult Convictions. ....76

    C. Eliminate Fees Charged for Expungement. ....76

    D. Provide Education to Law Enforcement Agencies and Clerk’s Offices to Improve Compliance with Illinois’ Juvenile Expungement Law. ....77

**CONCLUSION**.....79

**APPENDICES** .....80

    A. Methodology.....81

    B. ABA Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records, August 2015 .....86

    C. Further Readings.....94

    D. Confidentiality of Law Enforcement Records. 705 ILCS 405/1-7 .....95

    E. Confidentiality and Accessibility of Juvenile Court Records. 705 ILCS 405/1-8 .....99

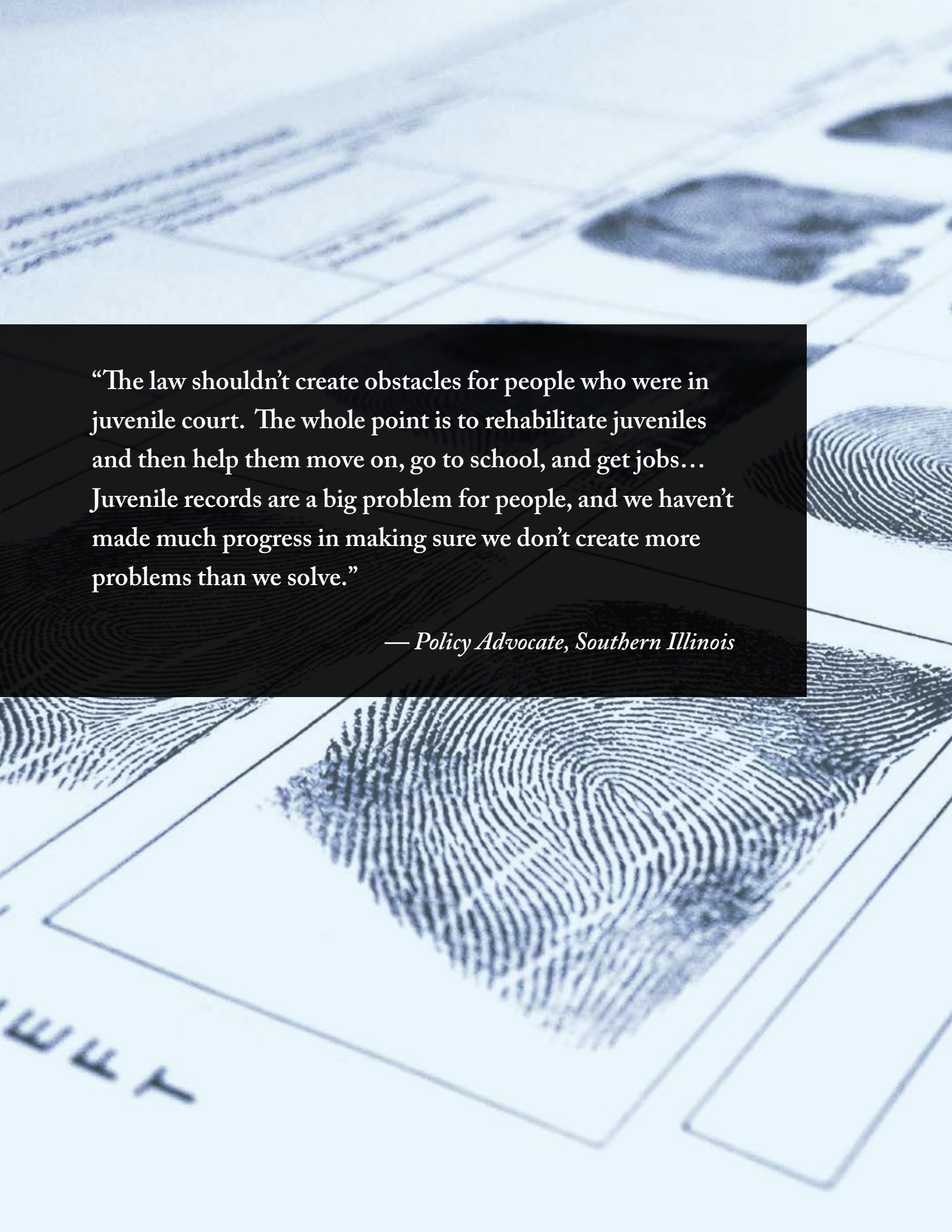
    F. Expungement of Juvenile Law Enforcement and Court Records. 705 ILCS 405/5-915 .....102

    G. Expungement Review. 705 ILCS 405/5-622 .....112

    H. The Commission’s Suggested Model Illinois Juvenile Record Confidentiality Statute.....113

    I. The Commission’s Suggested Model Illinois Juvenile Record Expungement Statute .....121

    J. Reported Juvenile Arrest and Expungement Data, 2004 – 2014.....125



“The law shouldn’t create obstacles for people who were in juvenile court. The whole point is to rehabilitate juveniles and then help them move on, go to school, and get jobs... Juvenile records are a big problem for people, and we haven’t made much progress in making sure we don’t create more problems than we solve.”

— *Policy Advocate, Southern Illinois*



## EXECUTIVE SUMMARY

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

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

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

**It is time for a change.**

### *What Is a Juvenile Record?*

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

Since establishing the world's first juvenile court in 1899, Illinois law has consistently emphasized the principle that a youth's mistakes should not brand him<sup>1</sup> for life. Currently, according to its guiding policy of balanced and restorative justice, the system endeavors to "equip juvenile offenders with competencies to live responsibly and productively...and enable a minor to mature into a productive member of society."<sup>2</sup> After holding a youth accountable for his conduct, society benefits from ensuring that individuals can move on from early mistakes, stay out of the costly justice system, work, pay taxes, and otherwise productively contribute. Keeping juvenile court and law enforcement records confidential is one important way that the juvenile system has aimed to help young people avoid the stigma of a criminal background as they enter adulthood.

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

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

---

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

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

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

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



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

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

---

## Ex•punge•ment —

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

---

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

---

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

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

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

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

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

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

---

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

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

## FINDINGS

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

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

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

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

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

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

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

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

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

<sup>9</sup> 705 ILCS 405/5-101(1).

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

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

**2. The Juvenile Expungement Process in Illinois Is Dysfunctional.**

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

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

**A. A Miniscule Proportion of Juvenile Records Are Expunged.**

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

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

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

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

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

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

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

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

## RECOMMENDATIONS

### 1. Enhance Confidentiality Protections of Juvenile Records.

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

### 2. Increase Access to Juvenile Expungement.

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

# By the numbers...



APPROXIMATELY  
**1.8 MILLION**

*Number of juvenile  
arrests in Illinois  
2004 – 2014*



**95.5%**

*Percentage of juvenile  
arrests that are for  
nonviolent offenses  
nationwide*



OVER  
**20,000**

*Number of LEADS  
(Law Enforcement Agencies  
Data System) computer  
terminals in Illinois*



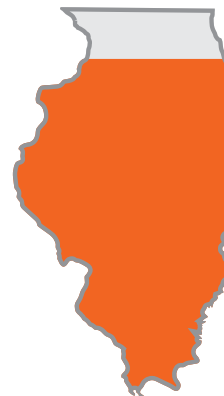
APPROXIMATELY  
**65,000**

*Number of individuals  
in Illinois with access  
to LEADS*



**0.29%**

*Percentage of juvenile arrests  
expunged in Illinois  
2004-2014  
(one-third of one percent)*



**87%**

*Percentage of counties in  
Illinois that averaged less than  
one juvenile expungement per  
year 2004-2014*



UP TO  
**\$320**  
PER ARREST

*Cost to youth  
to expunge a  
juvenile  
record in  
Illinois*





## BACKGROUND

Cook County established the nation’s first juvenile court in 1899, with a mission of rehabilitating – rather than punishing – youth in conflict with the law. This specialized treatment was based upon the understanding that youth are less culpable for their conduct and more capable of change than adults. Recent scientific advances have led to an improved understanding of adolescent psychological, neurological, and social development that further underscores the profound differences between youth and adults.<sup>10</sup> At this point, the notion that juveniles are less culpable for their actions and uniquely amenable to growth and rehabilitation is well established.<sup>11</sup>

### **The Abiding Importance of Confidentiality and Expungement to the Core Purpose of the Juvenile Court Act**

With the goal of rehabilitation in mind, Illinois’ juvenile courts long recognized the damage that the stigma of a criminal record could do to a youth’s chances of becoming a productive member of society. To this end, courts have consistently emphasized the importance of distinguishing juvenile delinquency from adult criminality. One prominent jurist noted that the original legislation creating the juvenile court strived “[t]o get away from the notion that the child is to be dealt with as a criminal; to save it from the brand of criminality, the brand that sticks to it for life; to take it in hand and instead of first stigmatizing and then reforming it, to protect it from the stigma.”<sup>12</sup>

From its very outset, the juvenile court aimed not just to reform young offenders, but also to ensure that efforts at rehabilitation were not thwarted by a stigma of criminality that could serve as an obstacle to becoming a productive member of society.

---

10 See generally *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005). See also Appendix C – Further Readings.

11 See Appendix C – Further Readings.

12 Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 109 (1909–10).

It is important to note that any youth who is arrested has a law enforcement record, even if the arrest never leads to charges being filed in court.

## What is a Juvenile Record?

For purposes of this report, the term “juvenile record” refers to an individual’s juvenile law enforcement record and juvenile court record.<sup>13</sup> It is important to note that any youth who is arrested has a law enforcement record, even if the arrest never leads to charges being filed in court.<sup>14</sup> An individual’s juvenile law enforcement record is the collection of all documentation, maintained by police in any format, of any interactions between that individual and law enforcement that occurred when the person was a minor.<sup>15</sup>

If the police refer an arrest to juvenile court, a juvenile court record is created. The juvenile court maintains this record after the case ends, regardless of whether the youth is found guilty or not. Similar to a juvenile law enforcement record, a juvenile court record includes all documentation maintained by a court regarding interactions between the individual and the juvenile court.<sup>16</sup>

## How Are Juvenile Records Created, Stored, and Accessed?

Juvenile records are created and stored in various formats by multiple agencies throughout the state. This recordkeeping begins most commonly at arrest. Some local law enforcement agencies keep only paper records; others, such as the Chicago Police Department’s Citizen and Law Enforcement Analysis and Reporting (CLEAR) Data Warehouse, have localized electronic databases to supplement paper records. In many instances, these modes of recordkeeping are archaic and cumbersome, leaving agencies unable to analyze their own data and effectively evaluate their practices. All local law enforcement records are governed by the confidentiality exceptions in the Juvenile Court Act (the JCA), making them available to a wide range of parties beyond law enforcement.<sup>17</sup>

---

13 In other contexts, the term “juvenile record” can include school records, medical and mental health records, drug or alcohol treatment records, traffic records, records of fishing and hunting violations, records of municipal ordinance violations, or any other official records pertaining to a specific juvenile.

14 Because a juvenile law enforcement record includes “any other records maintained by a law enforcement agency relating to a minor suspected of committing an offense,” records potentially exist even for those individuals never formally arrested. 705 ILCS 405/5-915(0.05). The Commission found little information on the prevalence of law enforcement records pertaining to non-arrested youth or efforts to expunge such records. As such, when discussing law enforcement records, this report focuses primarily on records of arrest. Future study is necessary to better understand the extent of law enforcement recordkeeping and information sharing related to non-arrested youth and the potential harms these activities cause to the subjects of the records.

15 As defined in the JCA, a law enforcement record “includes but is not limited to records of arrest, station adjustments, fingerprints, probation adjustments, the issuance of a notice to appear, or any other records maintained by a law enforcement agency relating to a minor suspected of committing an offense.” 705 ILCS 405/5-915(0.05).

16 A juvenile court record or court file “consists of the petitions, pleadings, victim impact statements, process, service of process, orders, writs and docket entries reflecting hearings held and judgments and decrees entered by the court.” 705 ILCS 405/5-901(1).

17 705 ILCS 405/1-7.

In addition to storing juvenile record information at the local level, local law enforcement agencies must also report certain information to the Illinois State Police (ISP).<sup>18</sup> At the state level, this data is stored electronically in the Criminal History Record Information database (CHRI), controlled by ISP's Bureau of Identification. Criminal justice agencies and authorized personnel throughout the state access information contained in the CHRI database, as well as other databases, using the Law Enforcement Agencies Data System (LEADS). Any person employed by a criminal justice agency in Illinois – a broad category of federal, state, and local agencies including law enforcement, court personnel, probation officers, corrections officers, and many others – may gain access to LEADS after becoming certified.<sup>19</sup> Roughly 65,000 people in Illinois have access to LEADS.<sup>20</sup> Initial certification requires the completion of a two- or four-hour course, depending on the level of access sought.<sup>21</sup> In addition to this training, ISP requires an ongoing biannual certification process to maintain access but allows new users a six-month grace period during which they can access confidential information with absolutely no training. ISP requires any agency applying for access to LEADS to have in place consequences for improper use and to report all violations to ISP.

Many Illinois juvenile law enforcement records are stored at the federal level by the Federal Bureau of Investigation. Prior to 2010, all juvenile arrest records reported by local arresting agencies to ISP were automatically forwarded to the FBI. This practice allowed Illinois juvenile law enforcement records to be seen by anyone with access to an FBI rap sheet, including a wide range of licensing bodies and employers. Recognizing the harm being caused by this sharing, Illinois passed a law in 2010 to end the practice of sharing juvenile record information with the FBI.<sup>22</sup> However, because the law was not retroactive, all pre-2010 juvenile law enforcement records that Illinois shared with the FBI remain in the FBI database.

If a juvenile arrest is referred to court, the individual has a juvenile court record as well as a law enforcement record. These records are maintained by the office of the clerk of the circuit court in the county where the proceedings take place. Similar to law enforcement records, each clerk's office adopts its own protocols for creating and storing records. At the close of proceedings, court officials are required by law to update law enforcement records to reflect the disposition of the juvenile's case.<sup>23</sup> However, this is frequently not done.<sup>24</sup> Juvenile court records may be accessed in accordance with the confidentiality provisions of the JCA.<sup>25</sup>

18 20 ILCS 2630/5. Local enforcement agencies must report the fingerprints, descriptions, and ethnic and racial background data for all minors age 10 and over arrested for an offense which would be a felony if committed by an adult. Misdemeanor juvenile arrests may be reported but are not required to be; Interview with Stakeholder Respondent 151, Law Enforcement Officer. Additional databases include those detailing stolen property, wanted persons, orders of protection, etc..

19 5 U.S.C.A. § 1901(a)(1). A "criminal justice agency" is any Federal, State, or local court, and any Federal, State, or local agency, or any subunit thereof, which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

20 Interview with Stakeholder Respondent 151, Law Enforcement Officer. Depending on the level of clearance, as determined by the FBI, different individuals have access to different information. Not all users have unrestricted access to the entire database.

21 Law Enforcement Agencies Data System (LEADS) Operator Certification Program (LOCP), *available at* <https://www.isp.state.il.us/leads/leadpub/locplan.pdf>.

22 20 ILCS 2630/5. Juvenile law enforcement records "shall not be forwarded to the Federal Bureau of Investigation unless those records relate to an arrest in which a minor was charged as an adult."

23 20 ILCS 2630/2.1(c).

24 ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, ASSESSING THE QUALITY OF ILLINOIS CRIMINAL HISTORY RECORD INFORMATION (CHRI) SYSTEM DATA ON JUVENILES (Jan. 22, 2016), *available at* <http://www.icjia.state.il.us/articles/assessing-the-quality-of-illinois-criminal-history-record-information-chri-system-data-on-juveniles> [hereinafter ICJIA Juvenile CHRI Data Report].

25 705 ILCS 405/1-8. If an individual's case progresses beyond juvenile court, several more records are created as the youth progresses through the justice system. Detention officials, probation departments, and any other agencies that interact with the youth keep their own separate records, stored in separate physical and/or electronic databases, according to their own recordkeeping formats and protocols. Further study is necessary to understand the creation, storage, and access to these

## Eroding Juvenile Record Confidentiality Protections

A juvenile record stands as a threat to the juvenile justice system’s goal of “equip[ping] juvenile offenders with competencies to live responsibly and productively.”<sup>26</sup> Recognizing this risk, Illinois law has historically limited the parties who may access juvenile records. The earliest confidentiality legislation provided for strict confidentiality – only the juvenile court judge could examine and consider juvenile court records.<sup>27</sup> In 1949, Illinois created the first exception to strict confidentiality, allowing adult criminal court judges access to an individual’s juvenile records in a very limited number of cases.<sup>28</sup> Over time, the legislature has enacted more and more exceptions to strict confidentiality by giving more parties access to juvenile records, broadening the circumstances in which these parties have such access, and relaxing the standards necessary to demonstrate a legitimate interest in the records.<sup>29</sup>

Current confidentiality laws give dozens of individuals, agencies, and groups access to juvenile law enforcement records and even more parties access to juvenile court records.<sup>30</sup> Granting access to groups as broad as “the general public” and “properly interested person[s],” the current statute represents a stark departure from the one-time promise of strict confidentiality.<sup>31</sup> As permissive sharing expands, the risk that records will be improperly disclosed also increases.<sup>32</sup> Once disseminated, juvenile records can cause significant obstacles to obtaining employment, housing, and education.<sup>33</sup>

## Permissive Sharing – Juvenile Law Enforcement Records

Under varying circumstances, Illinois currently allows for juvenile law enforcement records to be legally shared with more than 20 unique parties.<sup>34</sup> These parties include many professionals with direct involvement in the youth’s case and rehabilitation, such as probation officers and mental health professionals. In

---

types of records.

26 705 ILCS 405/5-101.

27 1907 ILL. REV. STAT., ch. 23, par. 190. This legislation only related to court records, not law enforcement records.

28 Compare 1907 ILL. REV. STAT., ch. 23, par. 190 (“A disposition of any child under this act or any evidence given in such cause, shall not, in any civil, criminal or other cause or proceeding whatever in any court, be lawful or proper evidence against such child for any purpose whatever, except in subsequent case [cases] against the same child under this act.”) with 1949 ILL. REV. STAT., ch. 23, par. 190 (Beginning with the same language as the 1907 statute, but continuing, “[p]rovided, however, that wherever a child who is found to be delinquent by decree of such court, shall subsequently be convicted of a felony in any court of record, and upon such conviction shall file or cause to be filed a motion for release on probation, the court before which such conviction has been entered may, in passing upon the application for probation, examine the records of disposition or evidence, which were made in the Family Court, upon written request by said court to such Family Court.”).

29 E.g., 1965 ILL. REV. STAT., ch. 23, par. 2001 (granting the Secretary of State access to juvenile court records for consideration in revoking driving privileges); 1973 ILL. REV. STAT., ch. 37, par. 702 (allowing Civil Service Commissions to view juvenile court records when “examining the character and fitness of an applicant for a position as a law enforcement officer”); 1983 ILL. REV. STAT., ch. 37, par. 702 & 703 (granting Prisoner Review Boards, authorized military personnel, persons engaged in bona fide research, school officials, and others access to juvenile court and law enforcement records); 705 ILCS 405/1-8 (1998) (expanding Civil Service Commissions’ access to include juvenile law enforcement for both applicants for employment with law enforcement agencies and corrections institutions).

30 705 ILCS 405/1-7; 705 ILCS 405/1-8. See also Part IV-A-i.

31 705 ILCS 405/1-7; 705 ILCS 405/1-8.

32 See *infra* pp. 44–46.

33 See *infra* pp. 46–53.

34 705 ILCS 405/1-7.

addition, sharing has now been expanded to include, in many circumstances, potential employers and the general public.<sup>35</sup>

## Permissive Sharing – Juvenile Court Records

Illinois law allows for juvenile court records to be legally shared with an even broader group of parties, under even less restrictive conditions, than juvenile law enforcement records. Under varying circumstances, juvenile court records may be legally shared with as many as 30 unique parties.<sup>36</sup> As with law enforcement records, the list of parties includes many professionals who have a direct involvement with the youth’s case and rehabilitation. However, the law also provides for instances in which juvenile records may be broadly shared with the general public.<sup>37</sup>

## The Juvenile Record Expungement Process

When done correctly, the term “juvenile expungement” refers to the erasure or destruction of all or part of an individual’s juvenile record. The resulting legal effect is the same as if the events had never occurred. Consistent with the principles of the juvenile court, expungement allows an individual to move on from past mistakes and develop “educational, vocational, social, emotional and basic life skills which enable [him] to mature into a productive member of society,” unburdened by the barriers created by a criminal record.<sup>38</sup> As confidentiality protections erode and lawful sharing expands, an effective expungement process is crucial to ensuring that an individual’s juvenile record does not threaten his transition to productive adulthood.

Expungement has not always been so complicated and difficult. The state first granted juveniles a statutory right to expungement in 1982,<sup>39</sup> five years after the Illinois Supreme Court recognized both the broad sharing permitted by the JCA and the threat that existing confidentiality protections “will either be circumvented or abused.”<sup>40</sup> The 1982 law was clear and concise. It defined two possible categories of expungement eligibility, excluded only murder from eligibility, and provided for no fees, no objections to expungement, and no hearings to determine applicability.<sup>41</sup> The process involved no discretion or subjectivity.<sup>42</sup>

By contrast, the law in its current form is confusing and burdensome. The expungement statute spans multi-

---

35 See Appendix D – Confidentiality of Law Enforcement Records. 705 ILCS 405/1-7.

36 See Appendix E – Confidentiality and Accessibility of Juvenile Court Records. 705 ILCS 405/1-8.

37 *Id.*

38 705 ILCS 405/5-101.

39 1983 ILL. REV. STAT., ch. 37, par. 702-11.

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

41 1983 ILL. REV. STAT., ch. 37, par. 702-11.

42 *Id.*

ple code sections, providing for five categories of eligibility with confusing and at times overlapping criteria.<sup>43</sup> Despite this apparent breadth, the statute excludes many more juvenile offenses from eligibility than its precursor and now bars otherwise eligible offenses from expungement based on unrelated – and often minor – misconduct after the youth turns 18.<sup>44</sup>

The poorly-defined process has resulted in different fees, forms, and procedures in each of the state’s 102 counties.

While the statute calls for police, county clerks, and judges to provide written and verbal notice of the expungement process to juveniles at various stages of the arrest and court process,<sup>45</sup> these duties are too often ignored, leaving youth in the dark about the complex process.<sup>46</sup>

The gradual complicating and ballooning of the laws surrounding expungement has left a process riddled with obstacles, confusion, and uncertainty for individuals seeking expungement as well as any professionals trying to assist them. As a result, juvenile record expungement is exceedingly rare. Between 2004 and 2014, only 0.29% – **less than one-third of one percent** – of juvenile arrests in Illinois were expunged, and 87% of counties granted an average of less than one juvenile expungement per year.<sup>47</sup> Expungement is virtually nonexistent in the majority of the state. The process is not working.



43 See Appendix F – Expungement of Juvenile Law Enforcement and Court Records. 705 ILCS 405/5-915; Appendix G – Expungement Review. 705 ILCS 405/5-622.

44 705 ILCS 405/5-915(2).

45 705 ILCS 405/5-915(2.5) & (2.6).

46 See *infra* pp. 73–75.

47 See *infra* pp. 55–59.

## Eligibility for Expungement

Whether and when a youth is eligible for expungement depends on several factors, including: the nature of the offense; the youth's age at arrest; whether the arrest was referred to court; the disposition of any resulting court case; and whether the youth subsequently picks up a conviction after turning 18.<sup>48</sup> Depending on the answers to these and other questions, a juvenile record falls into one or more of six expungement categories.

The chart below briefly outlines the various expungement eligibility categories under Illinois law. This chart illustrates just how complex Illinois' juvenile expungement laws have become.

### Illinois Expungement Statutes

Statute	Offenses/ Case Outcomes	Timing of Eligibility	Process
705 ILCS 405/5-915(1).	Arrested before 18th birthday but no delinquency petition was filed. No delinquency finding. Placed under supervision pursuant to Section 5-615, and the order of supervision has since been successfully terminated. Adjudicated for a Class B or C misdemeanor or a petty or business offense.	After 18th birthday once all juvenile court proceedings have ended.	Petition for Expungement
705 ILCS 405/5-915(2).	Arrested before 18th birthday but no criminal court proceedings. Adjudicated delinquent, except first degree murder and sex offenses.	After 21st birthday once 5 years have elapsed since all juvenile court proceedings relating to him or her have ended or his or her commitment to the Department of Juvenile Justice has ended, but only if not convicted for any crime since his or her 18th birthday.	Petition for Expungement
705 ILCS 405/5-622.	Charged with a misdemeanor as a first offense, regardless of the disposition of the case.	After 18th birthday once all juvenile court proceedings and any sentences have ended.	Expungement Review
705 ILCS 405/5-915(1.5).	Arrested or taken into custody on or after January 1, 2015 for an offense that if committed by an adult is not an offense classified as a Class 2 felony or higher offense, an offense under Article 11 of the Criminal Code of 1961 or the Criminal Code of 2012, or an offense under Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 and no petition of delinquency was filed with the clerk of the circuit court.	On or before January 1 of each year if the person has attained the age of 18 during the last calendar year and since the date of the minor's most recent arrest, at least 6 months have elapsed without an additional arrest, filing of a petition for delinquency whether related or not to a previous arrest, or filing of charges not initiated by arrest.	"Automatic Expungement" of Only ISP Records
705 ILCS 405/5-915(1.6).	Arrested or taken into custody before January 1, 2015, but no earlier than January 1, 1985, for an offense that if committed by an adult is not an offense classified as a Class 2 felony or higher offense, an offense under Article 11 of the Criminal Code of 1961 or the Criminal Code of 2012, or an offense under Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 and no petition of delinquency was filed with the clerk of the circuit court.	The person has attained the age of 18 and since the date of the minor's most recent arrest, at least 6 months have elapsed without an additional arrest, filing of a petition for delinquency whether related or not to a previous arrest, or filing of charges not initiated by arrest.	Access and Review
705 ICLS 405/5-915(2).	Adjudicated based upon first degree murder or sex offenses which would be felonies if committed by an adult. Adjudications based on any offense that would not be a Class B misdemeanor, Class C misdemeanor, or a petty or business offense if committed by an adult, if the individual has a subsequent criminal conviction for any offense after his 18th birthday.	Records in Category 6 are never eligible for expungement.	N/A

48 705 ILCS 405/5-915; 705 ILCS 405/5-622.

## Expungement Processes

Illinois law includes four different processes for pursuing expungement. It is important to note that not all processes may be used for all records. The great majority of records can only be expunged through the first process, a petition for expungement.

### Petition for Expungement

The expungement petition process is the most common way to expunge an individual's juvenile record. This process applies in the broadest number of situations, with individuals becoming eligible to expunge their record somewhere between age 18 and 26, depending on the details of the arrest or case. If eligible for any of the other expungement processes described below, an individual still remains eligible to petition for expungement. In most cases, petitioning for expungement requires in-person visits to each arresting agency and each juvenile court that conducted proceedings, lengthy paperwork, the payment of numerous filing and processing fees, and potentially additional court appearances. The petition process also involves an element of discretion by the court and allows for objections by the state and/or law enforcement, meaning that even if a young person successfully navigates the process, his request for expungement may be denied.

### Expungement Review

Introduced in 2010, the expungement review process is outlined in a statutory section completely separate from the provisions detailing every other path to expungement and involves its own distinct process.<sup>49</sup> The expungement review process applies only when a juvenile is tried for a misdemeanor as his first offense.<sup>50</sup> It does not apply in the vast majority of cases – e.g. when a youth is arrested but not charged, is tried for multiple offenses, is in juvenile court for a felony, or has a previous adjudication.

### “Automatic Expungement” (Only Applies to ISP Records)

Recognizing the many flaws of the expungement petition process, Illinois enacted the state's first and only “automatic expungement” provision, which became effective on January 1, 2015.<sup>51</sup> However, the many shortcomings of this provision undermine the notion that automatic expungement in Illinois is truly automatic. In theory, automatic expungement requires no knowledge or action on the part of the individual. Under the new law, ISP conducts an annual review and expunges those records that have become eligible in the past year.<sup>52</sup> However, this “automatic expungement” provision only applies to the limited number of juvenile arrests that were both reported by the arresting agency to ISP and did not result in court proceedings.<sup>53</sup>

---

49 705 ILCS 405/5-622.

50 *Id.*

51 705 ILCS 405/5-915(1.5) (as amended by P.A. 98-637).

52 *Id.*

53 The Commission's data collection efforts reveal that only approximately 27% of juvenile arrests are reported from the local arresting agency to ISP. See Appendix A– Methodology.



Under this provision, local law enforcement agencies and the records they maintain are not subject to automatic expungement; instead, an individual must still petition to expunge his local law enforcement records.<sup>54</sup>

Nothing in the statute requires ISP to notify individuals that their records have been destroyed. Instead, individuals must go through the Access and Review process, described below, to verify that expungement occurred. While leaving the process of record removal solely in the hands of ISP, the current statute specifically immunizes ISP personnel from civil or criminal liability for failing to expunge certain eligible records.<sup>55</sup> In a January 2016 report, the Illinois Criminal Justice Information Authority found that over three-quarters of juvenile law enforcement records in the CHRI database lacked the information needed to determine whether the record qualified for automatic expungement.<sup>56</sup>

Illinois' "automatic expungement" provision falls short by removing only part of an individual's record from one of the multiple places it is stored. Individuals must still take action to remove records from local law enforcement agencies and to verify that their records were even partially expunged from ISP's database. Such verification unfortunately becomes necessary when the sole agency overseeing "automatic expungement" keeps incomplete records and faces no consequences should it fail to perform its duties under the statute.<sup>57</sup>

#### **Access and Review Followed by a Request to Expunge**

Also introduced in 2015, the final expungement process serves as the means of expunging those ISP records that would otherwise qualify for "automatic expungement" in Illinois but concern individuals who turned 18 before the enactment of the "automatic expungement" provision.<sup>58</sup> It allowed ISP to put into place a new record management system to monitor eligibility for the annual purge of eligible arrest records without having to apply this system retroactively to older records. Instead, this process asks individuals to determine whether or not their older records might qualify and to cover the costs of making this determination.<sup>59</sup> Like the "automatic expungement" provision, this process applies only to law enforcement records held by ISP and places no requirement on local arresting agencies to expunge the records they hold.

---

54 See *infra* pp. 70–71.

55 705 ILCS 405/5-915(6.5).

56 *ICJIA Juvenile CHRI Data Report*, *supra* note 25, at 10–11.

57 705 ILCS 405/5-915(6.5). See also *ICJIA Juvenile CHRI Data Report*, *supra* note 25, at 10–11.

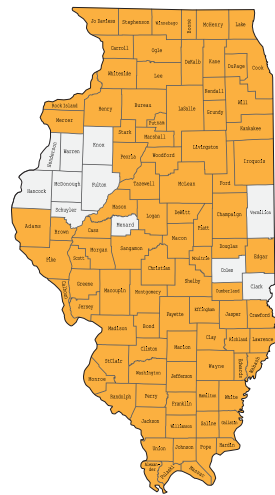
58 705 ILCS 405/5-915(1.6) & (10).

59 See *id.*; ILL. ADMIN. CODE tit. 20, § 1210 (2015).



# METHODOLOGY

The Illinois Juvenile Justice Commission (the Commission) compiled this report pursuant to Senate Joint Resolution 79 passed by the 98th General Assembly in December 2014. The General Assembly charged the Commission with gathering and analyzing information on Illinois' current policy and practice with respect to juvenile record confidentiality and expungement, as well as researching best practices in this area. Striving for wide coverage of the state, the Commission reached out to individuals in every county and received interview responses and/or data from each of the shaded counties below.



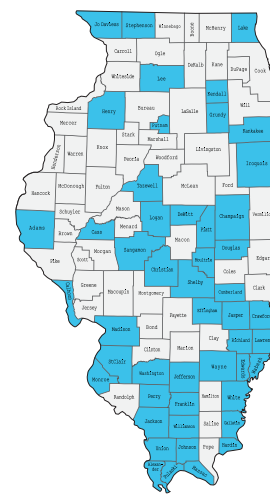
Counties that Responded to Inquiries



Counties that Supplied Expungement Data



Counties Represented by an Interviewed Stakeholder



Counties Responding to Clerk Practices Survey

In completing the report, the Commission undertook the following research and data collection efforts:

**Expungement Data Collection**

Objective, quantitative, *first-of-its-kind* study to determine how many juvenile record expungements were granted in each county in Illinois from 2004–2014.

**Stakeholder Interviews/Surveys**

Almost 150 interviews with or surveys of individuals who have experience and knowledge in the areas of juvenile confidentiality and expungement, represent a diverse cross-section of professions, and live and work in over 50 counties throughout Illinois.

**Youth Interviews**

Twenty-nine interviews with young adults who currently have juvenile records or experience with the juvenile expungement process.

**County Clerk Practices Survey**

Survey sent to every county clerk in Illinois to learn the juvenile expungement practices of each office, as well as each clerk’s knowledge of such practices.

**Police Department Practices Freedom of Information Act (FOIA) Requests**

FOIA requests to the police departments in: (1) the state’s 10 most populous cities to examine how closely police practices align with statutory requirements for expungement of juvenile records; and (2) the state’s 20 most populous cities to determine the proportion of juvenile arrests reported to ISP.

**Statute and Caselaw Review**

Review of existing Illinois statutes and caselaw regarding juvenile record confidentiality and expungement, as well as review of federal law and statutory reform efforts in various states.

**Database Policies and Practices Review**

Review of the policies and practices regarding law enforcement databases, and interviews with practitioners, to gain an understanding of the electronic databases used in Illinois to store juvenile law enforcement records.

**Comprehensive Literature Review**

Large-scale review of the history and development of juvenile confidentiality and expungement law and practice, in Illinois and nationwide.

**Employment Application Review**

Review of over 50 employers’ online employment applications available to youth in Illinois, to learn the extent to which employers are asking applicants to disclose juvenile record information.<sup>60</sup>

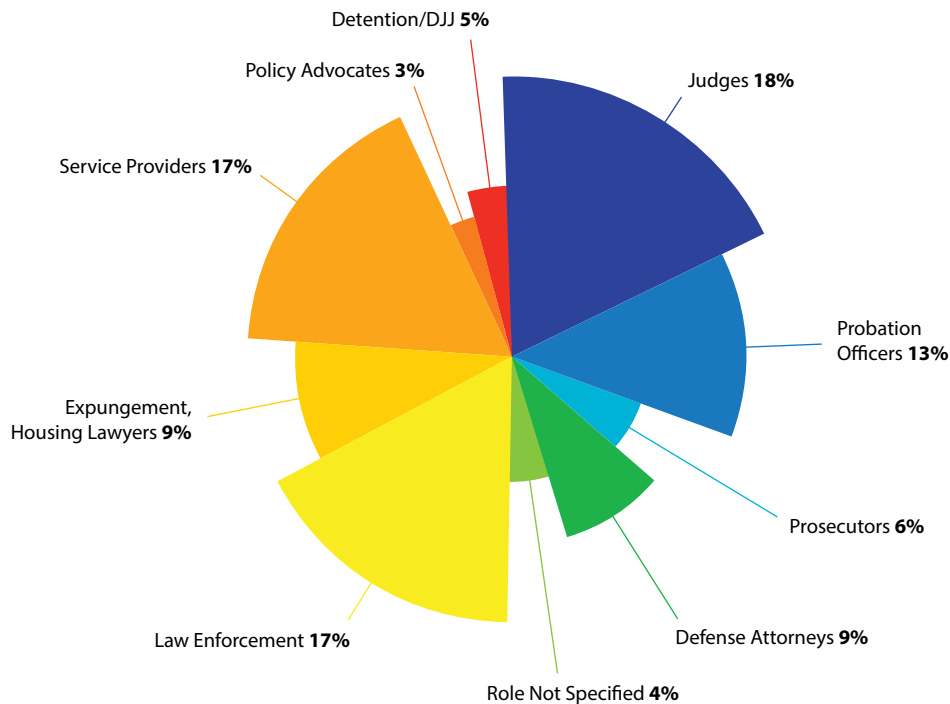
**Best Practices Review**

Review of materials regarding best practices in juvenile confidentiality and expungement law, with a particular focus on: (1) the American Bar Association (ABA)’s Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records, published in August 2015; and (2) the Juvenile Law Center’s 2014 50-state study, “Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records.”

---

<sup>60</sup> For a more detailed description of the Commission’s methodology, see Appendix A – Methodology.

## Stakeholder Interviews by Position



## Juvenile Law Center’s Core Principles for Record Protection <sup>61</sup>

Ideal systems will ensure that:

- ✔ Youths’ law enforcement and court records are not widely available and never available online.
- ✔ Sealed records are completely closed to the general public.
- ✔ Expungement means that records are electronically deleted and physically destroyed.
- ✔ At least one designated entity or individual is responsible for informing youth about the availability of sealing or expungement; eligibility criteria; and how the process works.
- ✔ Records of any offense may be eligible for expungement.
- ✔ Youth are eligible for expungement at the time their cases are closed.
- ✔ There are no costs or fees associated with the expungement process.
- ✔ The sealing and expunging of records are automatic—i.e., youth need not do anything to initiate the process and youth are notified when the process is completed.
- ✔ If sealing or expungement is not automatic, the process for obtaining expungement includes youth-friendly forms and is simple enough for youth to complete without the assistance of an attorney.
- ✔ Sanctions are imposed on individuals and agencies that unlawfully share confidential or expunged juvenile record information or fail to comply with expungement orders.

61 Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records, JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenilerecords>.



# FINDINGS

## FINDING 1

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

In Illinois, both youth and system stakeholders share a persistent misconception that juvenile records are completely confidential. The reality, however, is that after years of eroding confidentiality protections, Illinois law now permits broad sharing of juvenile records. The scope of such sharing extends, in some circumstances, as broadly as to include the general public.

As the scope of legal record sharing has increased and as electronic recordkeeping has become standard practice, the threat has grown that individuals or agencies with legitimate access to the records may – advertently or inadvertently – share information improperly. Juvenile justice practitioners confirm that this type of unlawful sharing is common.

Although disseminated juvenile records harm both youth and the public by creating barriers to housing, employment, and educational opportunities for individuals with such records, Illinois law currently provides no means to punish or deter unauthorized sharing. The creation of such barriers threatens public safety by making recidivism more likely. By failing to adequately protect the confidentiality of juvenile records, Illinois law directly impedes “the development of educational, vocational, social, emotional and basic life skills” – the very goals that the juvenile justice system aims to promote.<sup>62</sup>

---

By failing to adequately protect the confidentiality of juvenile records, Illinois law directly impedes “the development of educational, vocational, social, emotional and basic life skills” – the very goals that the juvenile justice system aims to promote.

---

62 705 ILCS 405/5-101.

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

### Twenty Distinct Parties Have Access to Juvenile Law Enforcement Records.

Under varying circumstances, Illinois' confidentiality statute allows juvenile law enforcement records to be legally shared with as many as 20 unique parties.<sup>63</sup> These parties include some entities – such as mental health professionals, the Department of Corrections, and probation officers – who have direct interactions with youth and a legitimate need for information in order to better assist them. However, under certain circumstances, juvenile law enforcement records may also be shared with potential employers like a park district or fire department. At times, the law even permits the general public to inspect juvenile law enforcement records. Far from the strict confidentiality many presume exists, Illinois law, in fact, provides for many instances when juvenile records are made widely available.

In a recent 50-state study of juvenile confidentiality laws conducted by the Juvenile Law Center (JLC), only 12 states ranked lower than Illinois, meaning that Illinois falls well short of best practices in this area.<sup>64</sup> States on the opposite end of the spectrum place much stricter limits on sharing juvenile law enforcement records. For example, New York only allows juvenile law enforcement records to be shared with law enforcement or court personnel under limited circumstances and never opens records to public inspection.<sup>65</sup>

In its Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records (the ABA Model Act), the American Bar Association (the ABA) likewise restricts the sharing of juvenile law enforcement records to a much more limited group than Illinois permits. Only the juvenile, his parents, his attorney, a prosecutor, the juvenile court, and law enforcement may access the records under specific circumstances.<sup>66</sup> Limited other parties may access parts of a juvenile law enforcement record but only with the express permission of the juvenile court. In these instances, the court must determine that the party seeking access has a “compelling reason” that outweighs the “privacy interests of the juvenile and potential risk of harm to the juvenile.”<sup>67</sup> The ABA Model Act does not allow juvenile records to be shared with the general public or otherwise made widely available; further, it punishes individuals with fines for sharing information with unauthorized parties.<sup>68</sup> These protections – restrictions on sharing and juvenile court oversight – ensure that juvenile records are not shared beyond the small circle of individuals and agencies directly serving the youth.

---

63 705 ILCS 405/1-7.

64 *Failed Polices, Forfeited Futures: A National Scorecard on Juvenile Records, “Are law enforcement records confidential?”*, JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenilerecords/#/category/confidentiality/confidentiality-law-enforcement-records>.

65 *Id.* See also N.Y. CRIM. PROC. LAW § 720.35 (“all official records and papers, whether on file with the court, a police agency or the division of criminal justice services, relating to a case involving a youth who has been adjudicated a youthful offender, are confidential and may not be made available to any person or public or private agency...”).

66 ABA Model Act, *supra* note 7, at § V.

67 *Id.* at § V(d).

68 *Id.* at § V(g).



### Thirty Parties Have Access to Juvenile Court Records.

Illinois law allows juvenile court records to be legally shared with an even broader group of parties, under even less restrictive conditions, than juvenile law enforcement records. Under varying circumstances, juvenile court records may be legally shared with as many as 30 unique parties.<sup>69</sup>

As with law enforcement records, this list includes many parties with a need for the information to further the juvenile court’s goals of promoting public safety and holding youth accountable. However, again the law provides for instances in which juvenile records may be widely shared with potential employers and groups as broad as the general public. This extensive sharing directly contradicts the Juvenile Court Act (the JCA)’s goal of helping youth build competencies in “educational, vocational, social, emotional and basic life skills,” while serving no clear purpose in furthering the JCA’s other goals.<sup>70</sup> Worse, the statute allows for disclosure to vaguely defined parties such as “properly interested person[s]” without setting forth the standard such parties would need to meet in order to prove a legitimate need for the information.

Illinois’ confidentiality laws for juvenile court records fall far below standards practiced in other states. JLC’s 50-state study revealed that only 10 states scored worse than Illinois with respect to protecting court records.<sup>71</sup>

The highest-ranking states place strict limits on unnecessary disclosure and prohibit widespread dissemination. For example, in Ohio, the law provides that juvenile court records “shall be considered confidential information and shall not be made public.”<sup>72</sup> The few parties with legal access to juvenile court records in that state – law enforcement, court actors, and certain school officials – must all get permission from the juvenile court on a case-by-case basis by demonstrating a legitimate need for specific pieces of a record.<sup>73</sup> Unlike Illinois, Ohio’s approach drastically limits unnecessary oversharing of juvenile information.

The ABA recommends limiting the sharing of juvenile court records to a much smaller group than is currently permitted by Illinois law. In the ABA Model Act, only courts, individuals, or agencies directly involved in the youth’s case may access the record without a court order<sup>74</sup> and a small number of additional agencies directly serving the youth may be granted access to the record, but only after consideration by a juvenile court judge.<sup>75</sup> All parties accessing a juvenile court record – except the juvenile, his parent, and his attorney – must sign a non-disclosure agreement and are subject to fines for violating the agreement under the ABA Model Act.<sup>76</sup> These recommended measures ensure that juvenile court records are not shared more broadly than necessary.

---

69 705 ILCS 405/1-7.

70 705 ILCS 405/5-101.

71 *Failed Polices, Forfeited Futures: A National Scorecard on Juvenile Records, “Are court records confidential?”*, JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenilerecords/#!/category/confidentiality/confidentiality-court-records>.

72 OHIO REV. CODE ANN. § 2151.14

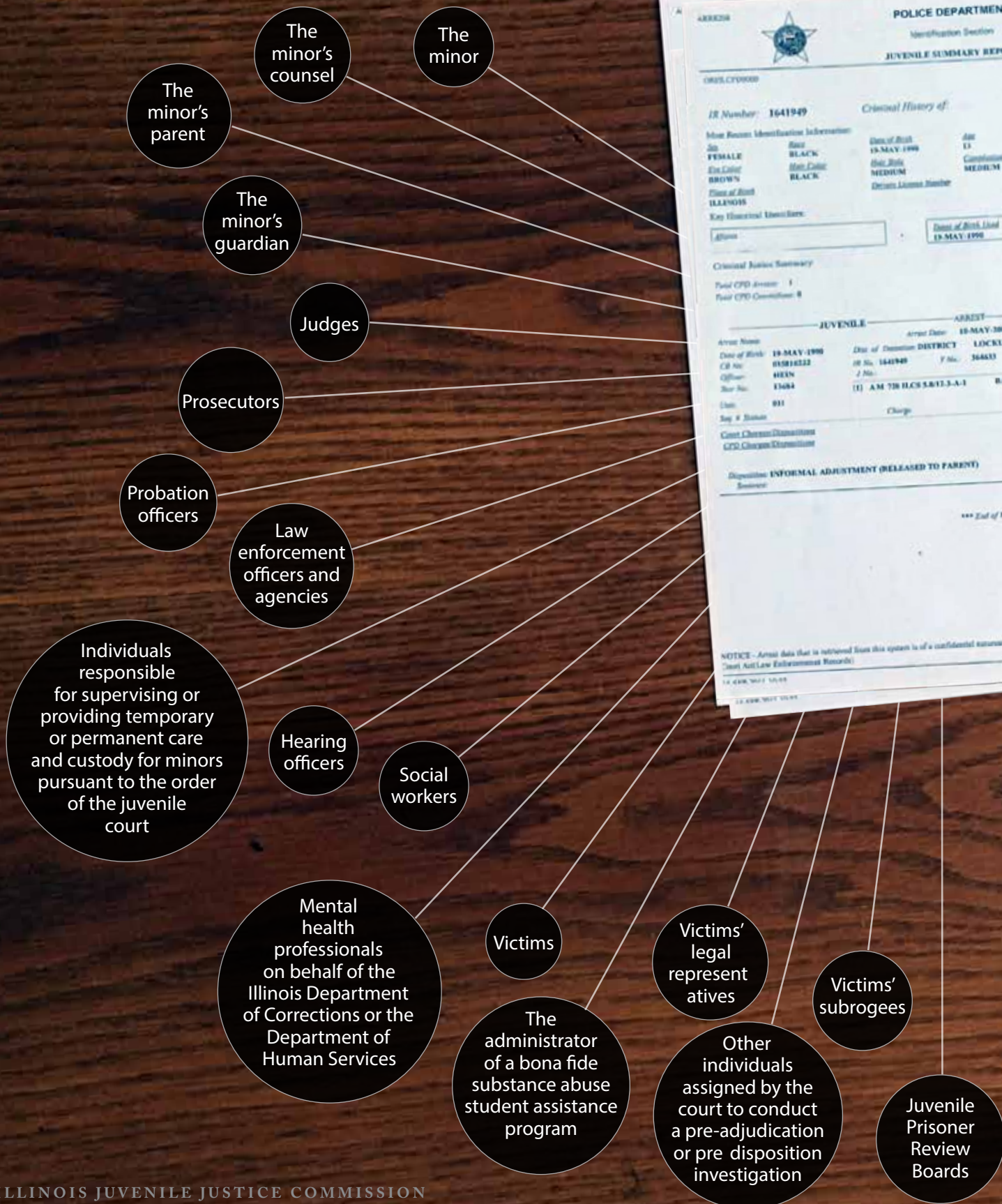
73 *Id.*

74 ABA Model Act, *supra* note 7, § IV.

75 *Id.* at §§ IV(d)–(f).

76 *Id.* at §§ IV(g) & IV(j).

# WHO HAS POTENTIAL LEGAL



# ACCESS TO JUVENILE RECORDS?



All of these disclosures are expressly provided by Illinois statutes using the exact language indicated above. All parties do not have access to all juvenile records under all circumstances.

“Administrative hearings and ordinance violations are a huge issue. These records come back to haunt people – even underage consumption, which can prevent them from getting jobs in social work, teaching, and counseling.”

— *Assistant State’s Attorney,  
Northern Illinois*

### **The Confidentiality Provisions of the Juvenile Court Act Do Not Apply to Municipal and Ordinance Violations.**

The JCA allows many low-level juvenile offenses to be prosecuted as either municipal or ordinance violations or as juvenile delinquency cases. This choice of jurisdiction can lead to a troubling double standard in the treatment of records for two youth accused of the exact same conduct, because municipal and ordinance violations do not enjoy the confidentiality protections of the JCA.

When faced with this choice of how to prosecute, municipalities often have a financial incentive to classify juvenile misconduct as an ordinance violation, because the punishment for ordinance violations is generally a fine that generates revenue for the municipality.<sup>77</sup> Sometimes, law enforcement may actually think it is helping a youth by routing the charge away from juvenile court, as ordinance violations are generally seen as being “less serious.”<sup>78</sup> However, classifying an offense as an ordinance violation denies the juvenile the confidentiality protections of the JCA and leaves the entire record of the offense open to the public.

### **Juvenile Record Information Shared with the FBI Prior to 2010 Is Accessible to Many Employers and Licensing Bodies Conducting Background Checks.**

Prior to 2010, ISP sent all juvenile arrest information it received from local law enforcement agencies directly to the FBI. That information is recorded on FBI rap sheets, making it available to a broad group of parties conducting background checks for employment and professional licensing. In 2010, Illinois enacted legislation ending ISP’s practice of sharing juvenile records with the FBI, recognizing that in many cases, records – even those for arrests that never resulted in charges being filed – were being used as justifications to deny applicants jobs or professional licenses.<sup>79</sup> While the change prevented future records from being shared, it was not made retroactive. As a result, juvenile records from before 2010 remain accessible to numerous employers and licensing bodies through the FBI database. FBI rap

---

77 Interview with Stakeholder Respondent 74, Former Expungement Attorney.

78 *Id.*

79 See 20 ILCS 2630/5. “Those law enforcement records maintained by the Department for minors arrested for an offense prior to their 17th birthday, or minors arrested for a non-felony offense, if committed by an adult, prior to their 18th birthday, shall not be forwarded to the Federal Bureau of Investigation unless those records relate to an arrest in which a minor was charged as an adult under any of the transfer provisions of the Juvenile Court Act of 1987.”

sheets generally do not distinguish between juvenile and adult offenses, nor do they always include information on how an arrest or case was resolved. Thus, employers and licensing bodies reviewing an FBI rap sheet can easily mistake a juvenile arrest that never even led to court proceedings as an adult conviction. Specific records can be removed on a case-by-case basis if an individual petitions for and is granted expungement. However, no effort has been made to remove the remaining records in bulk. In the meantime, the subjects of these records continue to face barriers as a result.

### **Misperceptions Persist About the Extent of Permissive Sharing.**

The true extent of legal sharing of juvenile records stands in stark contrast to widespread misperceptions about how these records are treated. Over three-quarters of responding stakeholders said that they had encountered misperceptions about juvenile record confidentiality. Stakeholders repeatedly mentioned that youth believe no one can see their juvenile records or that, at most, viewing is restricted to only law enforcement. Many others reported the belief that records remain hidden until the individual turns 18, at which point juvenile records are automatically erased.

In addition to youth's own misconceptions, many interviewed stakeholders admitted that they, too, were unsure of whether and when juvenile records may be shared, or made statements reflecting a clear misunderstanding of juvenile confidentiality laws. Many stated that these laws are too complex to fully understand, while others – like so many youth – shared the belief that juvenile records are completely confidential.

Part of the confusion appears to stem from the concept of “sealing,” which is referred to in the JCA but never defined.<sup>80</sup> In many states, “sealed” records are completely shielded from public view or other forms of broad sharing.<sup>81</sup> In Illinois, a sealed record simply falls under the default confidentiality protections that permit the extensive sharing, as discussed above.<sup>82</sup>

These misconceptions about juvenile record confidentiality have two troubling consequences.

“We do presentations throughout the community – Know Your Rights seminars. I can't tell you how many kids have come up to me afterwards and said they had no idea they had a record. It's very common.”

— *Juvenile Defense Attorney,  
Northern Illinois*

80 705 ILCS 405/5-915(5). “Records which have not been expunged are sealed...”

81 *See e.g.*, NEB. REV. STAT. § 43-2, 108.05(2). “The effect of having a record sealed...is that thereafter no person is allowed to release any information concerning such record.”

82 705 ILCS 405/5-915(5).

“People in the system do not understand confidentiality or expungement and they pass along misinformation. They think because these are juvenile cases that they are confidential and they’re not.”

— *Probation Supervisor,  
Northern Illinois*

First, if a system stakeholder does not fully understand when and with whom a juvenile record may be shared, he is more likely to inadvertently share a record with someone who should not have access. For example, several law enforcement officers reported incorrectly believing that when a youth turns 18, his records become public. As confidentiality protections become more complex and harder to understand and remember, the threat of unlawful sharing increases. Stakeholder misconceptions and misunderstandings about juvenile record confidentiality laws are likely contributing to the Commission’s finding that unauthorized sharing is unexpectedly common.<sup>83</sup>

Second, if both youth and juvenile justice professionals mistakenly believe no one can view juvenile records, they cannot understand the potential harm such records pose. As discussed later, juvenile records can present significant obstacles to obtaining housing, education, and employment.<sup>84</sup> But if individuals believe landlords, schools, and potential employers cannot access this information, they will not understand the extent to which a juvenile record can harm them until the harm is done and it is too late.

As a result of these persistent misconceptions, individuals are less likely to commit the time, effort, and money necessary to ensure their records are expunged.

---

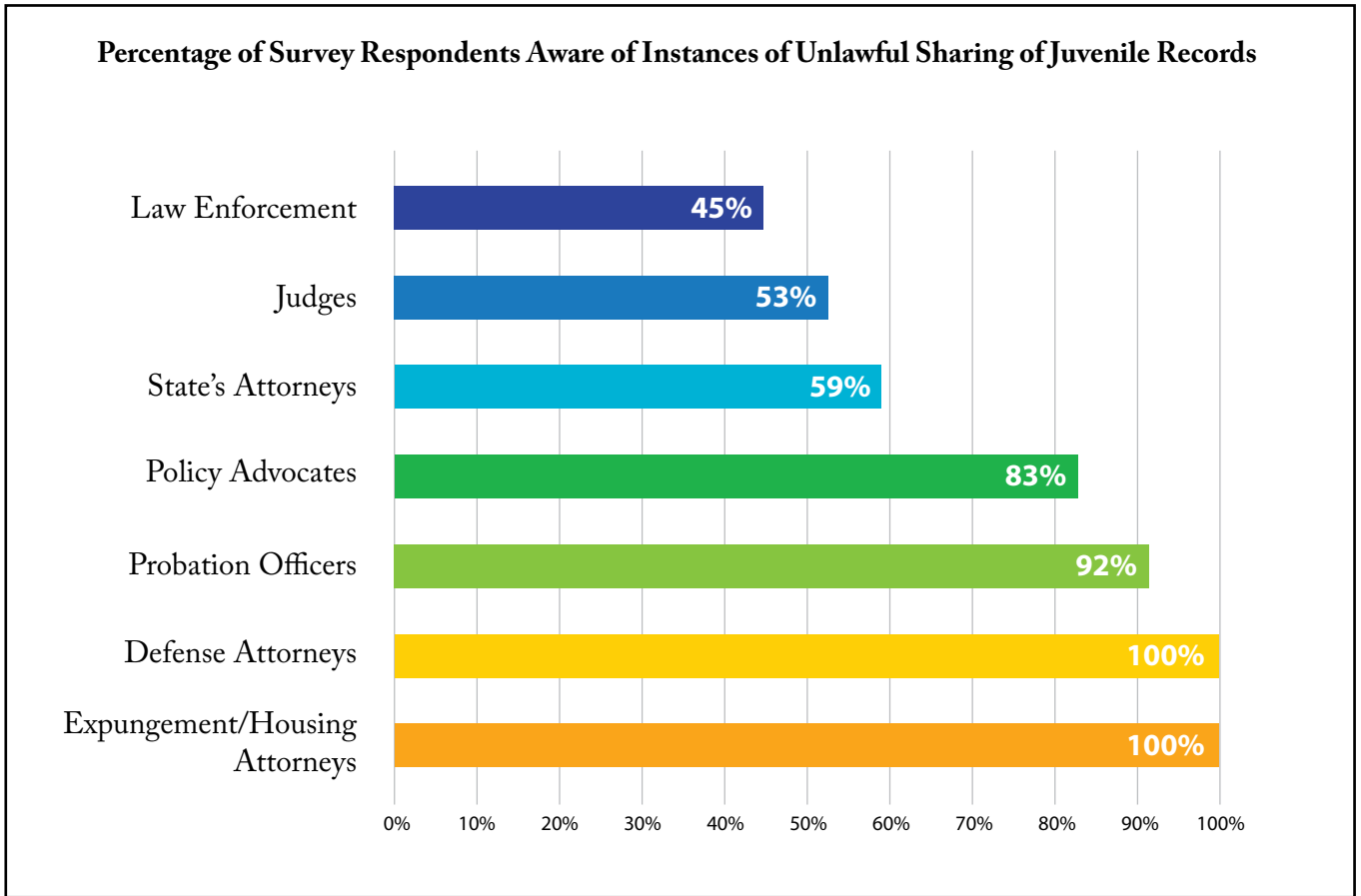
<sup>83</sup> See *infra* pp. 44–46.

<sup>84</sup> See *infra* pp. 46–53.



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

Apart from the broad sharing of juvenile records allowed by Illinois law, the Commission found that unlawful sharing of juvenile records is prevalent. Over 60% of responding stakeholders reported being aware of instances when juvenile records had been improperly shared. The following chart illustrates the percentage of respondents in each profession who reported being aware of such sharing:





Some of the more common examples of unauthorized record sharing cited by survey respondents include:

**Unauthorized Sharing by Local Law Enforcement or Other Professionals with Access to LEADS or Other Criminal Record Databases.** Respondents reported being aware of police personnel and others with access to criminal record databases improperly sharing confidential juvenile record information with employers, landlords, schools, background check companies, and the public.<sup>85</sup>

**Unauthorized Sharing by Juvenile Court or School Personnel.** Respondents reported being aware of various juvenile court actors (including clerks, attorneys, and probation officers) and school employees (including principals, counselors, and school resource officers) sharing confidential information from juvenile court files and school files beyond the scope allowed by law.<sup>86</sup>

**Unauthorized Sharing Through Private Criminal Background Check Companies and Private Data Brokers.** Background check companies are hired by employers, professional licensing bodies, landlords, and other entities to access and compile criminal histories on individual applicants. Criminal data brokers are companies that collect personal information about consumers and make that information publicly available online, accessible for a fee. Several survey respondents reported being aware of criminal background check companies and data brokers accessing and sharing juvenile records that should not have been available to them.<sup>87</sup>

---

85 *E.g.*, Interview with Stakeholder Respondent 30, Social Service Provider (police department in large Illinois city releasing information about juvenile arrests to the public once a youth turns 18); Interview with Stakeholder Respondent 65, Housing Attorney (local police department passing arrest reports on juvenile tenants directly to public housing authority, leading to formal or informal eviction); Interview with Stakeholder Respondent 49, Social Service Provider (principal of school ran “informal” background check on youth through a “police friend”); Interview with Stakeholder Respondent 78, State’s Attorney (has prosecuted multiple police officers for misusing LEADS); Interview with Stakeholder Respondent 130, Judge (aware of instances where individual with access to database improperly shared confidential juvenile information); Interview with Stakeholder Respondent 151, Law Enforcement Officer (reported being aware of other officers sharing prohibited information, at times for financial gain); Interview with Stakeholder Respondent 48, Defense Attorney (attended seminar where someone admitted sharing confidential juvenile record information when he had access to LEADS terminal as state employee, and observing other employees making side money at their jobs by selling information); Interview with Stakeholder Respondent 152, Policy Advocate (in response to Freedom of Information Act request for total number of juvenile arrests made in a particular city over past decade, local police department responded by sending 500-page list with full name and age of every juvenile arrested, as well as offense arrested for).

86 *E.g.*, Interview with Stakeholder Respondent 146, Assistant Public Defender (court officials put several juveniles’ information on public website); Interview with Stakeholder Respondent 103, Assistant Public Defender (clerk’s office sending out juvenile adjudications as adult convictions); Interview with Stakeholder Respondent 109, Director of Probation (employers and other agencies “continually calling asking for information on youth”); Interview with Stakeholder Respondent 152, Policy Advocate (told by background check company that they shared juvenile record information with employers because clerk’s office told them that juvenile records were unsealed when minors turn 18); Interview with Stakeholder 73, Law Enforcement Officer (observed attorneys and school employees verbally sharing confidential juvenile record information); Interview with Stakeholder Respondent 41, Probation Officer (when visiting schools, surprised to see how many unauthorized school employees have arrest information on youth); Interview with Stakeholder Respondent 55, Judge (has seen over-sharing of juvenile record information in schools cause youth to be improperly prohibited from activities).

87 Interview with Stakeholder Respondent 120, Probation Officer (worked with young woman recently fired from job as certified nursing assistant after a mere arrest – no court case – came up on random check); Interview with Stakeholder Respondent 48, Defense Attorney (client fired from job after organization instituted new background check policy and record of sole juvenile arrest came up, despite client’s positive job performance and fact that arrest never led to case in court); Interview with Stakeholder Respondent 135, State’s Attorney (frequently hears from people looking for help because old juvenile records “popped up” on background checks); Interview with Stakeholder Respondent 33, Social Service Provider (has the hardest time helping youth get jobs with larger companies that have money to hire background check companies); Interview with Stakeholder Respondent 112, Judge (people would apply for a job or college and have that information “pop up”).

In giving examples of juvenile records that had been improperly shared, some survey respondents cited instances where the person sharing the record did not seem to realize that doing so was not permitted by law. Others cited instances in which the individual knew they were not supposed to share the record but did so anyway. Still other professionals interviewed were troubled by the fact that although they had concrete evidence that an individual's juvenile record was being improperly shared, they were unable to determine exactly how this record had gotten out. As the scope of lawful record sharing continues to broaden, and as digital recordkeeping makes accessing, duplicating, and sharing records easier than ever, the risk of unlawful sharing continues to grow.

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

A key finding made by the Commission is that juvenile records are being used in ways that harm individuals and jeopardize public safety. While a certain level of criminal justice agency collaboration is necessary to promote public safety, over-sharing occurs when the harms caused by record sharing outweigh the benefits. When shared, juvenile records too often prevent individuals from obtaining the very things – a job, housing, and an education – that the JCA explicitly acknowledges they need to be productive members of society.<sup>88</sup> By hindering individuals' ability to build stable, productive lives, the current landscape of broad record sharing does not enhance public safety. To the contrary, it undermines public safety by limiting individuals' life stability, which leads to recidivism.

For purposes of this report, the Commission will focus on three cornerstones of productive adult citizenship: finding employment, securing housing, and obtaining an education.



#### **Employment and Occupational Licensing**

Finding stable employment is an essential step toward productive adulthood.<sup>89</sup> Unfortunately, in Illinois, having a juvenile record can act as a significant barrier to getting and keeping a job. Current law grants some potential employers access to juvenile records, allows others to ask about juvenile histories on applications or in interviews, and does little to prevent private data brokers from providing

88 See, e.g., CAROLYN E. FRAZIER, CHILDREN AND FAMILY JUSTICE CENTER, THE ILLINOIS JUVENILE COLLATERAL CONSEQUENCES CHECKLIST (2015), available at <http://www.law.northwestern.edu/legalclinic/cfc/documents/IllinoisCollateralConsequencesChecklist.pdf> (providing a comprehensive list of the short and long term consequences of a juvenile adjudication of delinquency in Illinois).

89 Work yields several benefits. First, steady employment produces financial gain. As legitimate work becomes more lucrative relative to crime, the rational individual is more likely to choose legitimate work and forgo criminal activity. Employment also generates a network of commitments and attachments that provide informal social controls. Once one has those attachments, he's less likely to risk disrupting this network by reoffending. Lastly, stable employment may generally foster positive aspirations for the future and a desire to avoid straying from a successful path. See generally Tim Wadsworth, *The Meaning of Work: Conceptualizing the Deterrent Effect of Employment on Crime Among Young Adults*, 49 Soc. PERSP. 343, 345–46 (2006).

background checks that disclose confidential juvenile information.

Illinois law allows some potential employers broad access to an applicant's juvenile record. For example, authorities examining applicants for a position with any municipal, county, or state law enforcement agency, correctional institution, or fire department are granted unfettered access to juvenile records.<sup>90</sup> Authorized military personnel also enjoy unrestricted access.<sup>91</sup> Even park districts may access an individual's juvenile records when considering an applicant for employment.<sup>92</sup>

Employers may ask about juvenile conduct directly on an application or less formally in an interview setting.<sup>93</sup> Even if an employer is only concerned with adult criminal conduct, inquiries about adult convictions may lead to unnecessary disclosure of juvenile histories. For example, the term "conviction" describes only findings of guilt in criminal court, as opposed to "adjudications" in juvenile court. However, while court professionals may be clear on the distinction, in common usage the two meanings are easily conflated. A youth hoping to begin a new job with a showing of honesty might unnecessarily disclose a past adjudication when prompted to disclose his convictions, and an employer might not distinguish between the two.

In its study of more than 50 corporations making online employment applications available to Illinois youth, the Commission found that nearly 70% of those employers asked applicants to disclose arrest or conviction history or required criminal background checks.<sup>94</sup> None of these applications drew an explicit distinction between juvenile and adult activity or made clear that applicants need not disclose events that occurred when they were minors.

"I absolutely believe that juvenile records affect employment. We advise our youth not to divulge their history, but I have had that hurt them. One youth said 'no' on his application and somehow his employer found out he had an arrest and he was fired because he 'lied' on his application."

— *Senior Juvenile Probation Officer, Central Illinois*

90 705 ILCS 405/1-7(G).

91 705 ILCS 405/1-7(A)(5); 705 ILCS 405/1-8(A)(6). While military access cannot be resolved at the state level, it serves as another example of a government employer screening applicants based on juvenile history. The military enrollment process not only allows but mandates one's juvenile record be taken into account when determining qualification for enlistment. As an initial step in enrollment, each branch of the military requires a background check that includes evaluation of juvenile records and prohibits enlistment for individuals with certain histories. For example, the Army denies enlistment to any individual with three or more offenses, including juvenile offenses, in the previous five years, regardless of the severity or circumstances of those offenses. Juveniles with a "major misconduct offense" are denied entry for at least five years and individuals with a history of juvenile detention face three to six month waiting periods if otherwise approved. Even if an individual overcomes these limitations placed on those with adjudications, a second step in the enrollment process requires an interview in which the applicant is asked about all juvenile arrests, even those that resulted in no formal charges, dismissal, or acquittal. Each of these hurdles presents an opportunity for one's juvenile record to obstruct his attempts to transition to a productive military career. *See e.g.*, ARMY REG. 601-210, ch. 4, available at [http://www.apd.army.mil/pdffiles/r601\\_210.pdf](http://www.apd.army.mil/pdffiles/r601_210.pdf).

92 705 ILCS 405/1-7(A)(10).

93 705 ILCS 405/5-915(8)(a). Records that have not been expunged may be the subject of questioning. Even if denied direct access to the non-expunged record, employers are not prohibited from "obtaining or using other information which indicates that a person actually engaged in the conduct for which he or she was arrested." 775 ILCS 5/2-103.

94 *See* Appendix A – Methodology.

“It shouldn’t be an issue, but we saw several cases where juvenile cases had somehow leaked out... There were lots of times that people called because they had applied for a job and the juvenile record had popped up. Sometimes it was because it was an ordinance violation, sometimes it was on an FBI record, and sometimes it was unclear how it had gotten out. How or why was often a frustrating question. Sometimes we would walk the individual through how to work with an employer – for example, tell them that it was a juvenile record or an expunged record, or point them to language in the Illinois Human Rights Act. The problem is that a lot of people never get to that point, because they aren’t informed about why they didn’t get a job. Or they are informed, but don’t know where to go for help.”

— *Expungement Attorney,  
Central and Southern Illinois*

Even absent disclosure by the individual himself, potential employers usually run criminal background checks that can wrongfully yield juvenile information. In some cases, juvenile information is erroneously contained in adult criminal history data that background check companies legitimately obtain from law enforcement. At other times, background check companies legally gain access to FBI records that contain juvenile information from before 2010. Background check companies can also legally disclose juvenile information by simply collecting and recycling information previously shared by other outlets.

Other private entities gain access to the information through illegal means. Both local and state law enforcement officers reported being aware of other officers sharing prohibited information, at times for financial gain.<sup>95</sup> In many cases, the original source of the confidential information provided to the employer is unknown. As one interviewed court professional explained, “I don’t know how employers gain access to juvenile records, but a lot seem to get the information.”<sup>96</sup>

Without stricter confidentiality laws or punishments to discourage improper sharing, information intended to remain private can be accessed and held against youth attempting to get a job.

High School			
College			
Bus. or Trade School			
Professional School			

HAVE YOU EVER BEEN CONVICTED OF A CRIME?  No  Yes

If yes, explain number of conviction(s), nature of offense(s) leading to conviction(s), how recently s committed, sentence(s) imposed, and type(s) of rehabilitation.

95 Interview with Stakeholder Respondent 151, Law Enforcement Officer.

96 Interview with Stakeholder Respondent 1, Chief Court Officer.

## Housing

The transition to productive adulthood depends on having stable housing.<sup>97</sup> Unfortunately, the sharing of juvenile records is negatively impacting youths' – and their families' – ability to find and maintain stable housing. Too often in Illinois, law enforcement's unauthorized sharing of juvenile records with landlords limits individuals' housing options. The repercussions of this sharing can affect not only the individual with the record, but his entire family as well.

Private landlords inquire about potential tenants' juvenile and criminal backgrounds in order to allay personal concerns and avoid the penalties of local “chronic nuisance property” ordinances. Such ordinances impose penalties on the owners of properties if repeated criminal activities or law enforcement interactions occur on a property.<sup>98</sup> In many cases, these ordinances punish landlords for juvenile offenses that occur on the property or make no distinction between juvenile and adult conduct.<sup>99</sup> Because Illinois law does not generally give private landlords legal access to juvenile law enforcement or court records unless that information is released to the general public, some rely on unauthorized sharing to vet potential tenants. Interviewed stakeholders confirm that such sharing by law enforcement is not uncommon.

Given the difficulties of meeting private landlords' screening criteria and the limited financial resources of many formerly system-involved youth, government-subsidized housing could provide the stability necessary to help avoid recidivism. However, federal statutes place strict housing restrictions on individuals with juvenile records and their families. A 2002 U.S. Supreme Court case held that federal regulations

“Parents are telling us that if their kid gets adjudicated and the building knows about it, the landlords say they will get tossed out of their housing for breaking the lease. I had a case where the kid was kicked out of his housing pretrial – the landlord knew about the charges because the offense happened in the building. The kid was later found not guilty after DNA exonerated him. He had never had a prior case. But it didn't matter, because the damage was already done when he was kicked out of his house before trial. We are creating a whole class of people who can live nowhere!”

— *Supervising Assistant  
Public Defender,  
Northern Illinois*

97 Juvenile offenders are disproportionately likely to enter the juvenile justice system from unstable home environments. At entry, court-involved youth are more likely to live in foster homes, less likely to live with parents, and less likely to have a permanent address than the broader population. When ending interactions with the justice system, the stability of their housing options is just as troubling. Youth with records of juvenile delinquency are over eight times more likely to experience homelessness than non-delinquent youth. Even among those who do not fall into literal homelessness, one third spend time living with friends and relatives, as they are unable to afford stable housing. The trend follows delinquent youth into adulthood. Studies of homeless adults have consistently found elevated rates of juvenile incarceration as compared to the population at large. This pattern of lifelong housing instability stems in part from the limited housing options available to individuals with juvenile records.

Ensuring rehabilitation requires removing barriers to housing. The lack of a stable living situation leads to what scholars describe as a “cycle of homelessness and incarceration.” If formerly system-involved youth return to the streets, they lack the structure and support necessary to avoid reverting to the same behaviors that initially led to arrest. As such, when the existence of a juvenile record limits one's housing options, it directly increases the likelihood of further criminal conduct. Conversely, expanding the availability of stable living situations decreases the likelihood of recidivism. See generally Paul A. Toro et al., *Homeless Youth in the United States: Recent Research Findings and Intervention Approaches, March 2007*, available at <http://aspe.hhs.gov/hsp/homelessness/symposium07/toro/report.pdf>.

98 See, e.g., SPRINGFIELD, IL., § 98.06 (available at <http://springfieldicon.org/icons-agenda/chronic-nuisance-properties-criminal-activities/>).

99 See *id.*

“Sadly, people become their kids’ records. The housing authorities accept federal funding but make their own determination if they will or will not take a ‘problem’ child. It seems to cause shame and embarrassment for the parents. What can we do?”

— *Senior Juvenile Probation Officer, Central Illinois*

require lease terms that allow local housing authorities to deny admission to potential tenants or evict existing tenants if they, any member of their family, or any guest engages in criminal activity that threatens the safety or peaceful enjoyment of other tenants.<sup>100</sup> Subsequent interpretations of this holding by Illinois courts permit federal housing landlords to access and consider even juvenile records during eviction proceedings.<sup>101</sup> Additional limitations on access to other forms of government assistance, such as food stamps, for individuals with juvenile records further threaten their stability and increase the risk of homelessness and recidivism among this group.<sup>102</sup>

The challenges faced by individuals with juvenile records in securing public housing and assistance have recently been recognized on a national level. In early 2016, the U.S. Department of Housing and Urban Development (HUD) made \$1.75 million available to Public Housing Authorities to aid individuals with records – specifically including juvenile records – in securing housing. In late 2015, HUD released an official guidance emphasizing second chances and reiterating the agency’s goal of “helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live.”<sup>103</sup>



100 HUD v. Rucker, 535 U.S. 125 (2002). *See also* 42 U.S.C.A. § 1437f (“any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy”).

101 *See e.g.*, Camco, Inc. v. Lowery, 839 N.E.2d 655 (Ill. App. 3d 2005) (holding that the property manager of a Section 8 federally subsidized housing project acted legitimately in accessing and considering a tenant’s juvenile arrest report).

102 *See e.g.*, 7 U.S.C.A. § 2015 (disqualifying families from the Supplemental Nutrition Assistance Program (SNAP) or food stamp program if any member of the household has been convicted of specified offenses); TANF State Plan for October 1, 2013 – December 31, 2015, Illinois Department of Human Services, §2-I-G, available at [http://www.dhs.state.il.us/page.aspx?item=69797#a\\_toc10](http://www.dhs.state.il.us/page.aspx?item=69797#a_toc10) (excluding individuals who have committed drug-related felonies from eligibility for Temporary Assistance for Needy Families (TANF) and stating that the ineligible individual could be a child).

103 Notice PIH 2015-19, U.S. Department of Housing and Urban Development, Office of Public and Indian Housing (Nov. 2, 2015), <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>.



## Education

Like employment and housing, education is a fundamental building block of a stable, productive life.<sup>104</sup> Having a juvenile record can threaten a youth’s educational progress. At the elementary and secondary school level, Illinois law requires that law enforcement and court actors share many juvenile records – both arrests and adjudications – with school officials.<sup>105</sup> When this sharing results in stigmatization, expulsion, or derailing a student’s progress toward graduation, it produces a negative ripple effect that increases the likelihood of recidivism. This problem has been widely written about as part of the “school-to-prison pipeline” phenomenon.<sup>106</sup>

Schools often receive incomplete information regarding arrests that are never prosecuted and cases that do not result in a guilty finding. For example, law

104 Several explanations illustrate the value of education with respect to deterring criminal activity. First, wages increase with educational attainment. This decreases the incentive to engage in less lucrative crime and makes punishment more costly, as time spent incarcerated and out of the labor market represents higher lost wages. Second, schooling alters individual’s patience, risk-aversion, and perceived psychic costs of crime. Lastly, education has value merely as a time-filler. If occupied in a classroom, youth are necessarily off the streets and not engaging in crime.

Statistics confirm the importance of education in preventing recidivism. A 2004 study examining the link between schooling and incarceration found that each additional year of schooling reduces one’s probability of future imprisonment by as much as 0.37 percentage points. High school graduation is a particularly significant milestone. Incarceration rates among high school graduates are up to 3.4 percentage points lower than among dropouts. Researchers found a similar link between education and arrest rates, as “a one-year increase in average education levels is estimated to reduce arrest rates by 11 percent.” Beyond simply the likelihood of committing subsequent crime, education influences the types of crime in which individuals engage. Further education greatly reduces the chances that an individual will commit a violent offense. The same single year increase in average educational attainment discussed above is predicted to reduce the commission of murder and assault by 30%.

See generally Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 155 (2004).

105 705 ILCS 405/1-7(A)(8) (listing a series of offenses which law enforcement may report to school officials); 705 ICLS 405/1-8(F) (requiring the State’s Attorney to provide a copy of the dispositional order to school officials after a juvenile is adjudicated for a number of specified offenses).

106 See generally Deborah N. Archer, *Introduction: Challenging the School-to-Prison Pipeline*, 54 N.Y.L. SCH. L. REV. 867 (2010); Chancee D. Smith, *Deconstructing the Pipeline: Evaluation School-to-Prison Pipeline Equal Protection Cases through a Structural Racism Framework*, 36 FORDHAM URB. L.J. 1009 (2009).

“Some colleges are ok (with juvenile records), some aren’t – it depends on the school. Some will let the kid in, others will find other reasons to keep them out.”

— *Youth Service Provider,  
Northern and Central Illinois*

enforcement may inform a school that one of its students was arrested. If the student’s case is later dismissed or he is found not delinquent, however, no one is responsible for following up with the school to ensure that no disciplinary action or stigma results from the sharing of the initial arrest report.

A juvenile record presents further hurdles for youth with aspirations beyond high school.<sup>107</sup> The Common Application, used by more than 500 colleges and universities, specifically requires disclosure of an applicant’s juvenile history when it asks, “[h]ave you ever been adjudicated guilty or convicted of a misdemeanor, felony, or other crime?”<sup>108</sup> The application’s instructions further clarify, “[i]f you have a juvenile delinquency on your record, you must answer ‘yes’ to this question.”<sup>109</sup> Even if he was never charged with a crime, let alone found guilty of one, a youth applying to college may still have to report his juvenile arrest if it led to school disciplinary action. This is a common scenario due to the mandated sharing with school officials discussed above. The Common Application requires applicants to report and explain any “probation, suspension, removal, dismissal, or expulsion.”<sup>110</sup> In this case, even without a finding of guilt, the mere existence of a juvenile arrest record puts an individual at a potentially significant disadvantage when attempting to further his education.

---

107 See generally Stephanie Saul, *Colleges That Ask Applicants About Brushes With the Law Draw Scrutiny*, N.Y. TIMES, Jan. 28, 2016, [http://www.nytimes.com/2016/01/29/us/colleges-that-ask-applicants-about-brushes-with-the-law-draw-scrutiny.html?hp&action=click&pgtype=Homepage&click-source=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&\\_r=1](http://www.nytimes.com/2016/01/29/us/colleges-that-ask-applicants-about-brushes-with-the-law-draw-scrutiny.html?hp&action=click&pgtype=Homepage&click-source=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=1).

108 THE COMMON APPLICATION, available at <http://www.commonapp.org>.

109 THE COMMON APPLICATION, <https://appsupport.commonapp.org/ics/support/kbanswer.asp?deptID=33013&task=knowledge&questionID=778> (last visited Mar. 24, 2015).

110 THE COMMON APPLICATION, *supra* note 114.



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

Without meaningful repercussions for unauthorized sharing, confidentiality laws essentially operate on an honor system. Contrary to the recommendations of the ABA as well as practice in many other states, in Illinois there are no consistent consequences for unauthorized sharing by the individuals tasked with protecting juvenile information and no statutory penalties in Illinois law for illegal sharing of juvenile law enforcement or court records by private individuals or entities.<sup>111</sup> Beyond failing to punish those who share records in violation of confidentiality laws, current law provides no recourse for the individuals harmed by this illegal disclosure. If information contained in an improperly shared juvenile record is used against an individual to disqualify him from housing, employment, or educational opportunities, the damage is irreparable as Illinois law provides no cause of action to address the harm caused.

In a rare example of policing against unauthorized record sharing in Illinois, LEADS – the criminal information-sharing interface overseen by ISP – requires criminal justice agencies seeking access to the system to have methods of disciplining improper use.<sup>112</sup> However, each agency has its own discipline system, and it is unclear to what extent such discipline is actually carried out.

In contrast to Illinois, many other states have statutory provisions either criminalizing the improper sharing of juvenile records, imposing fines or sanctions on offenders, and/or granting harmed youth a cause of action against the offending parties. For example, 15 states and the District of Columbia all punish improper disclosure as a misdemeanor.<sup>113</sup> Missouri goes further by considering a disclosure of records for financial gain a felony.<sup>114</sup> The District of Columbia and West Virginia permit imprisonment of up to 90 days or 6 months, respectively.<sup>115</sup> Three other states punish disclosure as contempt of court.<sup>116</sup> In states that impose fines, the fines range from \$200 to \$1000.<sup>117</sup> Lastly, Oregon and West Virginia give affected youth a civil cause of action, with the latter imposing no upper bound on potential damages.<sup>118</sup>

The ABA recently recognized, in its Model Act, the need for meaningful consequences for unauthorized disclosure of juvenile information. The ABA Model Act specifically criminalizes improper disclosure of the following: juvenile court or probation records; law enforcement records; and expunged juvenile

111 See *Failed Polices, Forfeited Futures: A National Scorecard on Juvenile Records*, JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenilerecords/#/map> (“Sanctions are imposed on individuals and agencies that unlawfully share confidential or expunged juvenile record information or fail to comply with expungement orders”); ABA Model Act, *supra* note 7, at §§ IV(j), V(h) & VI(g).

112 Interview with Stakeholder Respondent 151, Law Enforcement Officer.

113 See e.g., ALA. CODE § 12-15-134(f) (“...whoever directly or indirectly discloses or makes use of or knowingly permits the use of information described in this section that identifies a child, or the family of a child, who is or was under the jurisdiction of the juvenile court, upon conviction thereof, shall be guilty of a Class A misdemeanor under the jurisdiction of the juvenile court.”); MONT. CODE ANN. § 41-5-221 (“A person who discloses or accesses a formal youth court record, an informal youth court record, or a department record in violation of 41-5-215 or 41-5-216 is guilty of a misdemeanor and shall be fined \$500.”).

114 MO. REV. STAT. § 610.125.

115 D.C. CODE § 22-3571.01(b)(3); W. VA. CODE § 49-5-18(f).

116 KAN. STAT. ANN. § 38-2312(g); MONT. CODE ANN. § 41-5-216(2); NEB. REV. STAT. § 43-2,108.05(6).

117 See e.g., FLA. STAT. § 775.083(1)(d) (imposing a fine of up to \$1000); N.J. STAT. ANN. § 2C:52-30 (imposing a fine of up to \$200).

118 OR. REV. STAT. § 419A.262 (25); W. VA. CODE § 49-5-18(f).

The American Bar Association recently recognized, in its Model Act, the need for meaningful consequences for unauthorized disclosure of juvenile information.

records.<sup>119</sup> Categorizing each offense as a misdemeanor, the ABA recommends the imposition of a fine upon offending parties. When jurisdictions provide meaningful consequences for unauthorized disclosure, they discourage illegal sharing and mitigate the harms such sharing causes.

In its Model Act, the ABA recommends further steps to prohibit unauthorized sharing. To better track the flow of information, the proposed language requires that law enforcement keep a record of what juvenile information is released, when, to whom, and why.<sup>120</sup> The ABA Model Act also recommends that individuals accessing juvenile court records must sign a non-disclosure agreement in which they certify that they understand the boundaries of lawful sharing and agree not to disclose information to unauthorized persons.<sup>121</sup> Lastly, the ABA suggests that all shared juvenile records are marked with a clearly visible label warning individuals of the punishments for improper disclosure.<sup>122</sup> When combined with meaningful sanctions for unauthorized sharing, these measures can help deter both deliberate and inadvertent unlawful sharing of juvenile information. Illinois currently employs none of these measures.

---

119 ABA Model Act, *supra* note 7, at §§ IV(j), V(h) & VI(g) (addressing disclosure of juvenile court and probation records, juvenile law enforcement records, and expunged juvenile records respectively).

120 *Id.* at § V(e).

121 *Id.* at § IV(g).

122 *Id.* at §§ IV(i) & V(g).

## FINDING 2

**The Juvenile Expungement Process in Illinois is Dysfunctional.**

Illinois' weak confidentiality protections allow for widespread lawful and unlawful sharing of juvenile records. Given this reality, the expungement process stands as the primary means of ensuring that individuals' youthful mistakes do not cause them problems in adulthood.

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

With no oversight or transparency, this broken process has remained in place, with effectively no juvenile record expungement in the majority of the state over the past decade despite the fact that hundreds of thousands of individuals stand to benefit from it.

**A. A Miniscule Proportion of Juvenile Records Are Expunged.**

After requesting data from court clerks in all of Illinois' 102 counties, the Commission received responses from 62 counties representing nearly 77% of the state's population. Every responding county reported an abysmally low rate of juvenile expungement between 2004 and 2014.

Statewide, less than one-third of one percent – 0.29% – of juvenile arrests were expunged. This low rate remained relatively consistent regardless of the number of individuals arrested in the jurisdiction.<sup>123</sup>

---

123 Statewide projections were created by using the expungement data reported by 61 non-Cook counties to project the numbers in the 40 non-reporting counties. Cook County's reported data was added to this estimate to reach a statewide projection. *See* Appendix A – Methodology.



FOR EVERY  
**1,000**  
JUVENILE ARRESTS IN ILLINOIS

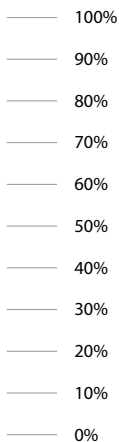
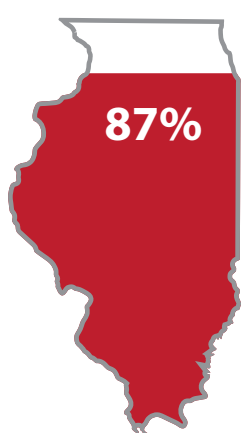


ONLY  
**3**  
ARE EXPUNGED\*

\* Between 2004 and 2014, only 0.29% – less than one-third of one percent – of juvenile arrests in Illinois were expunged.

### Juvenile Arrests and Expungements – 2004 to 2014<sup>124</sup>

	Counties Reporting Expungement Data		Non-Reporting Counties (Group 3)	Statewide Projections
	Cook County (Group 1)	Non-Cook Counties (Group 2)		
Number of Counties	1	61	40	102
Percent of State Population	40.5%	36.2%	23.3%	100%
Expungements Granted (2004 – 2014)	4,028	747	535	5,310
Juvenile Arrests Reported to ISP (2004 – 2014)	323,234	102,783	73,654	499,671
Estimated Total Juvenile Arrests (2004 – 2014)	1,197,163	380,678	272,793	1,850,633
Proportion of Estimated Total Juvenile Arrests Expunged	0.34%	0.20%	0.20%	0.29%

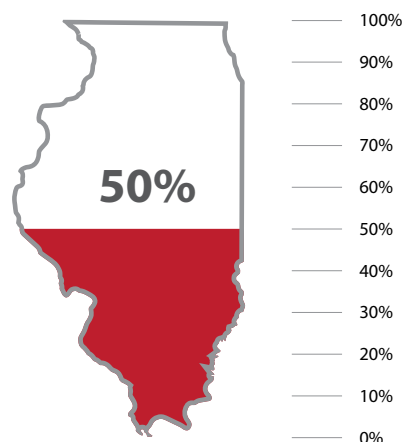


**Between 2004 and 2014, 87% of Responding Counties Reported an Average of Less Than One Juvenile Expungement Per Year.**

The clerks of 54 counties, comprising 87% of those that supplied expungement data to the Commission, reported processing a combined total of only 76 expungements between 2004 and 2014. Each of these counties individually reported nine or fewer expungements over that same period, meaning each county granted an average of less than one juvenile record expungement per year. The same 54 counties reported nearly 43,000 juvenile arrests over the same period, meaning at best, less than two-tenths of one percent of juvenile arrests were expunged in

124 See Appendix J – Reported Juvenile Arrest and Expungement Data, 2004 – 2014.

these counties.<sup>125</sup> When considering unreported misdemeanor arrests, the total number of juvenile arrests was likely more than 155,000, meaning less than one in every 2,000 juvenile arrests was expunged in these counties.



### **Between 2004 and 2014, 50% of Responding Counties Reported Zero Juvenile Expungements.**

The clerks of 31 counties, or half of those that reported their expungement data to the Commission, reported that their county granted zero juvenile expungements during the entire period from 2004-2014, despite reporting nearly 8,500 juvenile arrests during that same time frame.<sup>126</sup> When considering unreported misdemeanor arrests, the total number of juvenile arrests in these counties was likely well over 30,000. None of these arrests were expunged.

### **The Lack of Transparency Limits Evaluation of Expungement Policies.**

No agency in Illinois compiles statewide statistics on the number of juvenile record expungements granted every year.<sup>127</sup> As such, the Commission's efforts to analyze the frequency at which juvenile expungements are sought and granted represented a first-of-its-kind effort.<sup>128</sup> The lack of publicly available juvenile expungement data in Illinois presented several challenges. Police departments and county clerk's offices both reported difficulty providing complete and accurate juvenile arrest and expungement data.<sup>129</sup> While the Illinois State Police (ISP) compiles juvenile arrest data, these numbers reflect only those arrests reported to ISP by local law enforcement agencies, and omit many of the misdemeanor arrests that account for the majority of juvenile interactions with law enforcement.<sup>130</sup> The clerks of 40 counties failed to provide any expungement statistics to the Commission, despite repeated requests for data. The difficulty in obtaining expungement data makes it hard to evaluate Illinois' expungement laws and policies on an ongoing basis.

125 These 54 counties reported 42,968 juvenile arrests to ISP between 2004 and 2014.

126 The 31 counties whose clerks reported zero juvenile expungements to the Commission reported 8,479 juvenile arrests to ISP between 2004 and 2014.

127 While the Expungement Backlog Accountability Law, 20 ILCS 2630/14, requires the Department of State Police to report expungement statistics to the governor, these totals do not independently consider juvenile record expungements.

128 See Appendix A – Methodology.

129 For example, some local police departments responded that compiling juvenile arrest data would be “unduly burdensome” and would “require a review of a voluminous number of...records.” See, e.g., Letter from Sandra Tomschin, Freedom of Information Officer, Town of Cicero, to Eric Sweigard, Bluhm Legal Clinic (Oct. 5, 2015).

130 20 ILCS 2630/5.

## Adolescent Brain Science and the Law

The past 20 years have seen an explosion in scientific research on adolescent brain development. This research shows that contrary to earlier beliefs, the brain does not finish maturing until an individual reaches his early to mid 20s. In particular, the part of the brain which governs impulse control, judgment, and the ability to anticipate consequences is the last to fully develop. This means that adolescents are biologically less equipped than adults to make sound decisions, and biologically more capable of change and rehabilitation.

This new scientific understanding of the developmental immaturity of the adolescent brain has led the U.S. Supreme Court to announce, in a series of recent decisions including *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S.Ct. 2455 (2012), an important constitutional principle: that “children are different” for purposes of criminal punishment. These decisions, in recognizing juvenile offenders’ diminished culpability and heightened prospects for reform, provide a helpful blueprint for reconsidering juvenile confidentiality and expungement laws that allow for broad record sharing and restrict an individual’s ability to put his youthful mistakes behind him.

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

One reason so few individuals successfully expunge their juvenile records is because restrictive eligibility criteria leave many of these records either temporarily or permanently ineligible for expungement. As these exclusions extend to more and more juvenile records, juvenile expungement falls short in its essential role of allowing people to put their youthful mistakes behind them and transition to productive adulthood. By limiting access to expungement, restrictive eligibility criteria increase the likelihood of recidivism for young people precluded from erasing their juvenile records.<sup>131</sup>

### **Categorically Barring Juvenile Offenses from Eligibility for Expungement Runs Counter to Best Practices and Current Scientific Understandings of Adolescent Brain Development.**

Records of juvenile adjudications can be ineligible for expungement in two ways. First, some adjudications are categorically barred based on the nature of the offense.<sup>132</sup> Second and more common, records of juvenile adjudications for Class A misdemeanors or felonies become ineligible for expungement if a youth is convicted of any offense after his 18th birthday.<sup>133</sup> Regardless of how minor this subsequent offense might be, or whether it is related in any way to the juvenile conduct, any adult conviction automatically renders all such juvenile adjudications permanently ineligible for expungement. By including these absolute bars against relief in its juvenile expungement code, Illinois law has fallen out of step with the current science of adolescent brain development (see sidebar at left) and the long-held, core juvenile

131 See generally Meyli Chapin, et al., *A Cost-Benefit Analysis of Criminal Record Expungement in Santa Clara County* (Mar. 2014), available at <https://publicpolicy.stanford.edu/publications/cost-benefit-analysis-criminal-record-expungement-santa-clara-county>.

132 705 ILCS 405/5-915(2). See also GUIDE TO EXPUNGE OR SEAL YOUR ILLINOIS JUVENILE RECORD, THE OFFICE OF THE STATE APPELLATE DEFENDER, 2 (Jan. 22, 2014), available at <https://www.illinois.gov/osad/Expungement/Documents/Juvenile%20Exp%20Guide/JuvenileExpungementGuide.pdf>.

133 705 ILCS 405/5-915(2).



court principles that justify offering juvenile expungement in the first place.<sup>134</sup>

Illinois offers juvenile expungement based in part on the recognition that a teenager’s behavior does not indicate how he will behave as a fully-grown adult. Adolescents’ underdeveloped cognitive processes are equally present whether a juvenile commits a minor misdemeanor or a more serious offense. By excluding some juvenile offenses from eligibility, the current statute effectively treats certain adolescent decisions as if they were made by adults, thus ignoring the very reasoning behind the creation of the juvenile court. Further, the science that explains how the different stages of brain development account for major differences in adolescent and adult behavior supports considering adult and juvenile offenses differently. Rather than using any adult conduct as an absolute bar to expunging juvenile adjudications, a court should consider whether the conduct indicates a pattern of behavior and determine whether society’s interest in maintaining the record outweighs both society’s and the individual’s interest in having the record expunged.

Absolute bars to expungement also contradict the ABA’s Model Act.<sup>135</sup> Overall, only 13 states in the JLC study had a more limited scope of expungement eligibility than Illinois.<sup>136</sup> In its Model Act, the ABA addressed concerns about serious juvenile offending by recommending a five-year waiting period for adjudications stemming from the most serious offenses, while still leaving such offenses eligible for later expungement.<sup>137</sup> The District of Columbia and 19 states have adopted measures consistent with the ABA recommendations, embracing the policy that no juvenile offenses should be barred from eligibility for expungement.<sup>138</sup>

“Many youth get caught up in behaviors simply due to their age and development. These are not actions that should define them for the rest of their lives.”

— *Probation Officer,  
Southern Illinois*

134 For more on the U.S. Supreme Court’s consideration of adolescent brain development, see *Roper v. Simmons*, 543 U.S.551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

135 ABA Model Act, *supra* note 7, at § VI(b)(2).

136 *Failed Polices, Forfeited Futures: A National Scorecard on Juvenile Records, “What offenses are excluded from sealing or expungement?”*, JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenile-records/#/category/expungement/expungement-excluded>.

137 ABA Model Act, *supra* note 7, at § VI(b)(2).

138 See e.g., CAL. WELF. & INST. CODE § 781(2014) (“the person or the county probation officer may... in any case...petition the court for [expungement] of the records”) (emphasis added). See also *Failed Polices, Forfeited Futures: A National Scorecard on Juvenile Records, “What offenses are excluded from sealing or expungement?”*, JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenilerecords/#/category/expungement/expungement-excluded>.

### **Lengthy Waiting Periods and Minimum Age Limits Delay Expungement Eligibility for Too Long.**

In Illinois, all juvenile offenses require waiting periods or minimum age limits before expungement can occur. Any individual with a juvenile record – even a single arrest that never resulted in court proceedings – must wait until at least age 18 to become eligible for expungement, while individuals with more serious offenses may not become eligible until as late as age 26.<sup>139</sup>

Such lengthy waiting periods and minimum age limits present several obstacles that severely limit the use of expungement.

First, they prescribe a mandatory period during which the stigma of a juvenile record threatens an individual's successful transition into productive adulthood, even in instances when the state lacked sufficient evidence to bring or substantiate charges. This mandatory period coincides with a crucial phase of development, when young people are trying to get their first job or establish a career path, graduate high school and go to college, and live independently. Rather than helping youth avoid the stigma of justice system involvement during this critical period, the limitations built into the expungement statute risk setting young people back precisely during the time they are trying hard to move forward.

Second, lengthy waiting periods and minimum age limits mean that a youth may have to wait several years after his involvement with the system for his records to become eligible for expungement. This makes pursuing expungement more difficult. During the years an individual must wait to expunge, he may move, making mailed eligibility notices less likely to reach him and the already burdensome requirement of appearing in person to obtain copies of his records and attend court even harder. No longer represented by an attorney and without access to a court-appointed public defender, individuals rarely have the guidance necessary to understand or carry out the process. Lastly, any notice that may have been provided to a youth regarding his expungement rights may be long forgotten, despite the potential harms of the record's continued existence.

According to the JLC, these minimum age limits and long waiting periods place Illinois among the 20 worst in the nation in terms of the timing of expungement eligibility.<sup>140</sup> Some states make expungement available in all juvenile cases at the time the case closes.<sup>141</sup> Others require minimum age limits or waiting periods only for expungements stemming from particularly serious offenses, while granting immediate eligibility to the majority of youth.<sup>142</sup> The ABA recommends the latter approach, calling for immediate expungement eligibility for any arrest not resulting in a delinquency petition being filed, any case not resulting in a finding of delinquency, any dismissed case, and any case where diversion has been successfully completed.<sup>143</sup> This policy makes particular sense in Illinois, where adults in similar circumstances have the right to immediate expungement of their record.<sup>144</sup>

---

139 705 ILCS 405/5-915.

140 *Failed Polices, Forfeited Futures: A National Scorecard on Juvenile Records*, "When may a juvenile's records be sealed or expunged?", JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenilerecords/#/category/expungement/expungement-timing>.

141 *See e.g.*, IND. CODE § 31-39-8-2 ("Any person may petition a juvenile court at any time to remove...those records pertaining to the person's involvement in juvenile court proceedings.") (emphasis added).

142 *See e.g.*, COLO. REV. STAT. § 19-1-306(6)(a) (providing for immediate eligibility for expungement upon a finding of non-delinquency, dismissal of a juvenile petition, or successful completion of a juvenile diversion program, a deferred adjudication, or an informal adjustment).

143 ABA Model Act, *supra* note 7, at § VI(a)(1).

144 20 ILCS 2630/5.2(b)(2)(a) ("When the arrest or charge not initiated by arrest sought to be expunged resulted in an acquittal, dismissal, the petitioner's release without

## Recent Attempts to Reduce the Burden of Lengthy Waiting Periods Have Increased the Rate of Juvenile Expungement.

In 2010, Illinois introduced the expungement review process, which applies only to youth charged with a misdemeanor as a first offense.<sup>145</sup> The process allows a youth to file a motion within 30 days of an entry of judgment in the juvenile court, regardless of the outcome of the case. The judge then sets a future hearing date for when the record becomes eligible for expungement.<sup>146</sup> While this process does not make individuals eligible for expungement any sooner, it allows them to begin the process while they are still represented by a lawyer who can help them through the process and ensure their rights are exercised.

Early results of the introduction of expungement review suggest that attorney assistance with the expungement process significantly increases the rate at which youth seek and are granted expungement. From 2004 to 2009, only an estimated 0.729% of juvenile arrests reported to ISP were successfully expunged. After 2010, that rate more than doubled to 1.719%.<sup>147</sup> The post-2010 expungement rate is still extremely low and the expungement review process, which applies to only a very limited number of cases, did not fix Illinois' broken expungement laws. However, the change demonstrated that attorney involvement leads to better results than requiring individuals to face the expungement process alone.

Some counties reported particularly impressive increases and deserve recognition for making expungement review filings standard operating procedure for juvenile defense attorneys. Will County, for example, reported a total of only three expungement petitions filed between 2004 and 2009. Beginning in 2010, the number of petitions filed spiked to over 170 per year.<sup>148</sup> Before the addition of expungement review, hundreds of individuals would not even be eligible to submit the paperwork needed to begin the expungement process. Now, with an attorney's help, they are much farther along in the process.

“Without the juvenile expungement help desk, a kid would get the form and have no idea what to do. They'd be totally lost.”

— *Juvenile Defense Attorney,  
Northern Illinois*

---

charging, or the reversal or vacation of a conviction, there is no waiting period to petition for the expungement of such records”).

145 705 ILCS 405/5-622.

146 *Id.*

147 These figures do not consider cases in which an expungement hearing date has already been set, though expungement has not yet been granted. The rates cited also do not consider the majority of juvenile arrests that are not reported from local law enforcement to ISP. The rates of total juvenile arrests expunged during both periods are significantly lower. *See* Appendix A – Methodology.

148 Letter from Barb McDaniel, Deputy Chief of Juvenile Office of Pamela J. McGuire, Will County Circuit Clerk, to Patricia Boone, Bluhm Legal Clinic (Sept. 10, 2015) (on file with the Commission).

“I used their expungement packet...and I carefully followed the process outlined – and I was still corrected and had multiple problems filing the petition and getting the proper paperwork before the judge. I feel like the process needs to be more clearly outlined – if I have had so many difficulties, then I am sure young people get discouraged and walk away from filing.”

— *Youth Respondent*

Another effort to provide individuals with guidance through the expungement process that has had a positive impact on expungement rates is Cook County’s Juvenile Expungement Help Desk (the Help Desk).<sup>149</sup> The Help Desk provides free legal guidance to individuals seeking to expunge their juvenile records in Cook County. Stakeholders repeatedly stressed to the Commission the value of the Help Desk in making the expungement process easier to understand and complete.

The success of these efforts demonstrates how youth benefit from assistance and encouragement while seeking expungement, and highlight that the current process is too complicated for youth to navigate alone.

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

Illinois’ juvenile expungement statute creates confusion and presents numerous obstacles that prevent many individuals from completing – or even beginning – the expungement process. Worse still, even many of the court and law enforcement officials overseeing the expungement system do not fully understand the confusing intricacies of the process. The result is a situation in which individuals are unable to navigate the process alone and system actors are unable to provide accurate information or much-needed guidance.

---

<sup>149</sup> The Help Desk is a collaboration between LAF (formerly the Legal Assistance Foundation of Metropolitan Chicago), Cabrini Green Legal Aid, the Clerk of the Circuit Court of Cook County, and the office of the Honorable Michael P. Toomin, Presiding Judge of the Juvenile Justice Division of the Circuit Court of Cook County.

### Individuals Struggle to Obtain Complete and Accurate Copies of Their Own Juvenile Records.

To begin the expungement process, a person must first obtain a copy of his own juvenile records by going in person to each police station where he was arrested and each court where juvenile proceedings occurred. This requirement presents a number of hurdles that prove insurmountable for many people. These hurdles include:

- Some police stations only take requests for records during limited hours and only on weekdays. These hours require people to miss work or class to begin the expungement process, something that many cannot afford to do. If arrested in more than one county, an individual may have to miss multiple days of work or school just to collect his records.
- People who have moved in the years since their arrest oftentimes cannot afford the time or money it takes to travel to request their records in person.
- The lack of uniformity in the expungement process from jurisdiction to jurisdiction means that the individual may have to navigate multiple different forms, rules, and processes to get the records they need.
- Many agencies charge fees to obtain copies of records, which adds to the overall financial burden of expungement.
- For many young people, the requirement to visit a police station or court is emotionally difficult, as individuals associate these settings with the shame of being arrested or prosecuted.

Stakeholders and youth consistently repeated the critique that at every step in this complicated process, youth face hurdles and misinformation, causing many individuals to get discouraged and give up on the expungement process.

“I had a kid who sought expungement and he had three arrests: one arrest was a no charge/no adjudication; the other two arrests resulted in an adjudication and then there was a reversal on appeal. It took this kid well over a year to get the right paperwork from the various arresting jurisdictions, and the court had to literally walk this kid through the process (helped with drafting, etc.). The kid was eventually able to get his record expunged, but he was very determined! Most kids would have given up early on, not wanting to repeatedly return to court.”

— *Judge, Central Illinois*

“Sometimes, agencies [that hold the records] may not know the exact rules they are supposed to be following. For the average person, if they walk in and get told ‘no,’ that might be it – they might give up.”

— *Expungement Attorney, Statewide*

### High Fees Deter Many Individuals From Pursuing Expungement.

Expungement fees stand as a significant obstacle for youth, especially given the challenges of finding employment with a juvenile record.<sup>150</sup> The current statute permits local circuit court clerks to charge individuals seeking juvenile expungement a fee “equivalent to the cost associated with expungement of records by the clerk and the Department of State Police.”<sup>151</sup> Clerks reported wide-ranging fee structures depending on jurisdiction. Many cited a \$60 fee charged by ISP, which some reported could not be waived.<sup>152</sup> The most common fee called for was \$120 – a \$60 filing fee payable to the local clerk and a \$60 ISP fee.<sup>153</sup> A few counties charge no filing fee – but still charge the \$60 ISP fee – while others have combined filing and mailing fees that total over \$200 per arrest.<sup>154</sup>

Many counties, including Cook County, charge per arrest rather than per applicant to expunge a juvenile record, meaning that expungement fees can easily run upwards of several hundred dollars, even for youth who have never been charged with a crime. In some jurisdictions, applicants can request a fee waiver, but several clerks reported that fee waivers are unavailable in their counties.<sup>155</sup> This practice deters economically disadvantaged individuals from pursuing expungement, discriminates against the poor, and violates Illinois statutory law, case law, and procedural rules.<sup>156</sup>

Many other states recognize the significant barrier to expungement

“The poor are not able to afford the fee. More fees should be waived.”

— Judge, Southern Illinois

150 See *supra* pp. 46–48.

151 705 ILCS 405/5-915(3).

152 See *e.g.*, Interview with Clerk Respondent 23 (“There is a \$60 filing fee and a \$26.96 fee to send certified copies to agencies. After it is granted the clerk’s office will collect additional fees: \$60 for ISP and \$25 for certified copies. The total cost is \$166.96 per case. Petitioners may file a fee waiver and if granted the court fees are waived but not ISP fee.”).

153 See *e.g.*, Interview with Clerk Respondent 45 (“\$60 to file a petition and \$60 to the Illinois State Police once the order is signed.”).

154 Compare Interview with Clerk Respondent 44 (“There is no fee to file in our office, but with ISP, there is a \$60 fee, which is sent along with the order.”) with Interview with Clerk Respondent 20 (“\$148 + \$60 to ISP”).

155 See *e.g.*, Interview with Clerk Respondent 43 (“There’s no fee waiver.”).

156 The juvenile expungement statute only references fee waivers on sample forms included in the statute as mere suggestions. However, several areas of Illinois law have conclusively decided that when filing for juvenile record expungement, fee waivers must be made available to indigent individuals. *People v. Lewis*, 961 N.E.2d 1237 (Ill. App. 5th 2011) established that an expungement proceeding is a civil action, and as such the fee waiver protocols for civil actions, as opposed to criminal actions, apply. The Illinois Rules on Civil Proceedings state that, “[t]he clerk must allow an applicant to file an Application for Waiver of Court Fees in the court where his case will be heard.” ILCS S. Ct. Rule 298. Further, Illinois’ Code of Civil Procedure states that in a civil action “[i]f the court finds that the applicant is an indigent person, the court shall enter an order permitting the applicant to sue or defend without payment of fees, costs, or charges.” 735 ILCS 5/5-105(c).

that high fees create. Seventeen states bar clerks from charging any fee at all, while six others cap the fee at \$50.<sup>157</sup> The ABA discourages the practice currently in place in Illinois, finding that for juvenile expungement to be accessible, no fees should be charged for any aspect of the process.<sup>158</sup>

---

Many counties, including Cook County, charge per arrest rather than per applicant to expunge a juvenile record, meaning that expungement fees can easily run upwards of several hundred dollars, even for youth who have never been charged with a case.

---



---

157 See e.g., COLO. REV. STAT. ANN. § 19-1-306(5)(a) (“No filing fee shall be required.”); MD. CODE ANN., CRIM. PROC. § 10-103(g) (“A person who is entitled to expungement under this section may not be required to pay any fee or costs in connection with the expungement.”); See also *Failed Polices, Forfeited Futures: A National Scorecard on Juvenile Records, “Must the youth pay a fee for sealing or expungement?”*, JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenile-records/#/category/expungement/expungement-fees>.

158 ABA Model Act, *supra* note 7, at § VI(d).



# Navigating the Expungement Process

**1** The individual seeking to expunge his record must visit each police or sheriff's station in person to first request and then retrieve a copy of his arrest history. Often this does not happen on the same day and requires multiple trips to the station house. This may require the payment of a processing fee.

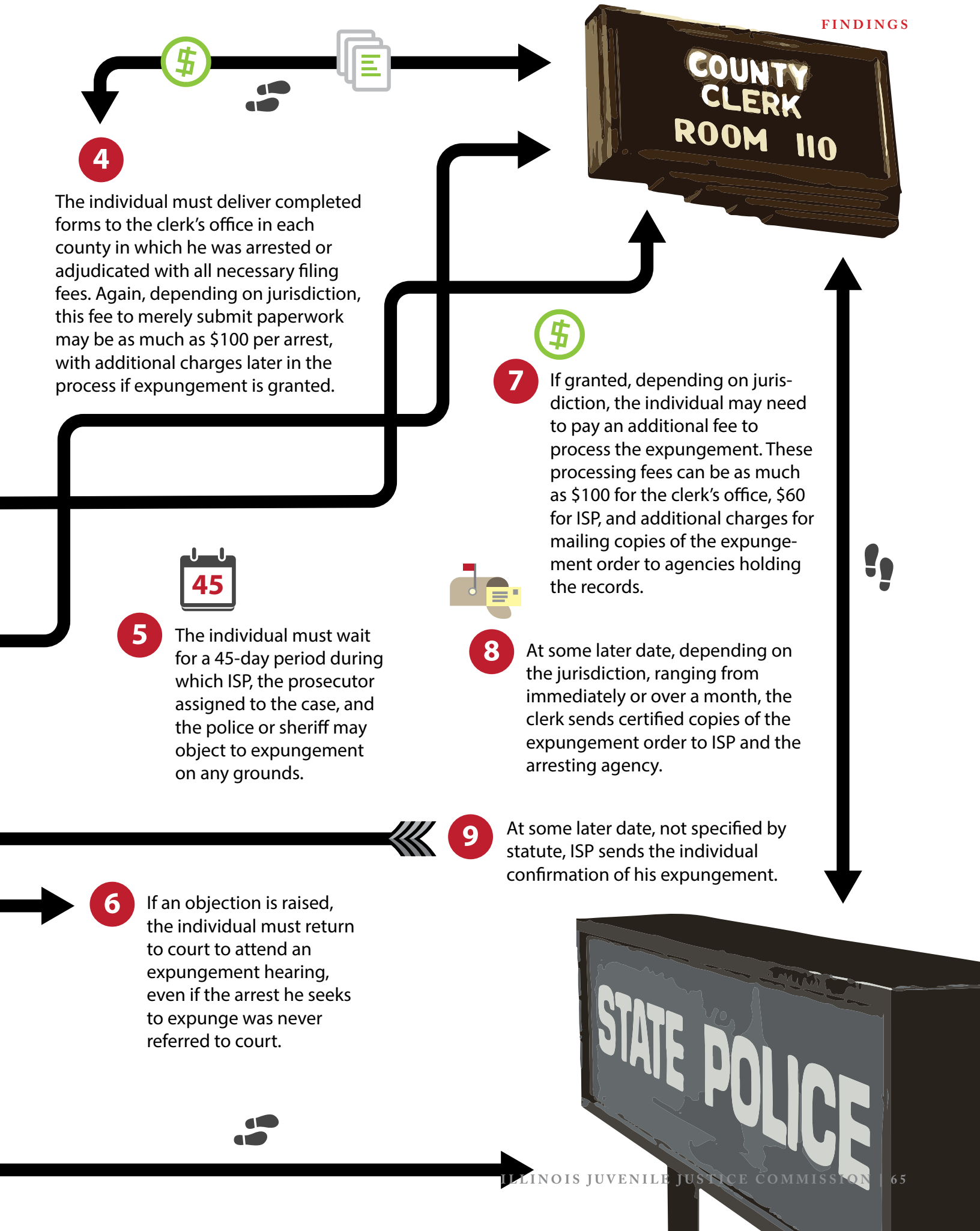


**2** The individual must visit the circuit clerk office in each county in which he participated in juvenile court proceedings to first request and then retrieve a copy of all disposition information. Often this does not happen on the same day and requires multiple trips to the clerk's office. This may require the payment of a processing fee.

**3** The individual must figure out his statutory eligibility category for expungement and obtain the appropriate forms from the clerk's office in each county in which he was arrested or adjudicated. This may require completing a separate form for each arrest or juvenile court case the individual seeks to expunge.







4

The individual must deliver completed forms to the clerk's office in each county in which he was arrested or adjudicated with all necessary filing fees. Again, depending on jurisdiction, this fee to merely submit paperwork may be as much as \$100 per arrest, with additional charges later in the process if expungement is granted.



5



The individual must wait for a 45-day period during which ISP, the prosecutor assigned to the case, and the police or sheriff may object to expungement on any grounds.

7



If granted, depending on jurisdiction, the individual may need to pay an additional fee to process the expungement. These processing fees can be as much as \$100 for the clerk's office, \$60 for ISP, and additional charges for mailing copies of the expungement order to agencies holding the records.

8



At some later date, depending on the jurisdiction, ranging from immediately or over a month, the clerk sends certified copies of the expungement order to ISP and the arresting agency.

9

At some later date, not specified by statute, ISP sends the individual confirmation of his expungement.

6

If an objection is raised, the individual must return to court to attend an expungement hearing, even if the arrest he seeks to expunge was never referred to court.



### **Illinois’ “Automatic Expungement” Provision Is Misleading, Limited, and Incomplete.**

When done correctly, automatic expungement requires no action on the part of the individual. The process ensures that records are expunged as soon as they become eligible and removes many of the obstacles that plague the petition process. The individual does not need to understand the complicated intricacies of the expungement process or even realize that he has records that are eligible to be removed. Law enforcement agencies and clerk’s offices need not provide notice or information packets, because records are removed whether or not individuals understand that expungement is available. Removing the individual from the process also necessarily removes the fees, eliminating an obstacle that prevents many economically disadvantaged people from pursuing expungement. An automatic process also eliminates the challenges faced by individuals who move in between their justice system involvement and their eligibility to seek expungement.

Unfortunately, Illinois’ current “automatic expungement” provision is extremely limited because it only applies to ISP records, and it only includes arrests that did not result in court proceedings. This limits the impact of the new statute in three key ways:

First, because local law enforcement agencies do not report about 73% of juvenile arrests to ISP, the majority of juvenile arrest records are excluded from the “automatic expungement” law.<sup>159</sup> The arrests not reported to ISP are, by statute, all misdemeanors.<sup>160</sup> While the Commission supports limiting the scope of juvenile record sharing, it questions the logic of excluding the lowest-level arrests from the “automatic expungement” process, especially given the fact that misdemeanor arrest records often lead to the harms described earlier in this report.<sup>161</sup>

Second, the current “automatic” provision does not expunge records kept by local arresting agencies, which create and maintain the initial records of all arrests. Even if expunged from ISP’s database, a record of the arrest remains at the local law enforcement level. In order to be sure that his whole record is expunged, an individual must still go through the process of petitioning for expungement. True automatic expungement would expunge all existing records.

Finally, Illinois’ incomplete or inaccurate records hamper ISP’s ability to automatically expunge thousands of arrest records that qualify but cannot be verified as eligible. An Illinois Criminal Justice Information Authority (ICJIA) recent audit found that 78% of juvenile arrest records in CHRI are incomplete, missing information about diversion or court resolution.<sup>162</sup> ISP has no way to determine whether the reported arrests resulted

---

159 The Commission’s FOIA requests for juvenile arrest data suggest that Illinois’ local police departments report approximately 27% of juvenile arrests to ISP. *See* Appendix A – Methodology.

160 Local arresting agencies are only required to report arrests for felony offenses. Misdemeanors, which make up the majority of juvenile arrests, can be retained only at the local level, or they can be sent to ISP. 20 ILCS 2630/5.

161 *See supra* pp. 46–53.

162 *ICJIA Juvenile CHRI Data Report*, *supra* note 25, at 10–11. The audit found that only 10% of juvenile arrests reported to CHRI contained an “indicator of diversion from prosecution,” meaning the arrests did not result in court proceedings and would potentially be eligible for automatic expungement. Troublingly, the same audit found that only 12% of juvenile arrest records contained court disposition information. The remaining 78% are incomplete.

in court proceedings, and thus, cannot verify whether the records are eligible for automatic expungement. In short, the vast majority of records in ISP's database are excluded from automatic expungement because stakeholders fail to report statutorily mandated information.

The result is an “automatic expungement” provision that affects only a tiny fraction of the intended records, it is designed to expunge, and renders the word “automatic” a misnomer by requiring individuals to petition to expunge their records at the local level.

By contrast, numerous other states have adopted true automatic expungement. Twelve states currently make the expungement process automatic, requiring no action on the part of the individual.<sup>163</sup> The ABA recommends that all juvenile arrests resulting in no court action, juvenile court cases that do not result in findings of delinquency, and diverted cases where a youth successfully completes his diversion requirements should be automatically and immediately expunged.<sup>164</sup> Under the ABA Model Act, all other findings of delinquency, except for the most severe violent offenses, should be automatically expunged after two years.<sup>165</sup>

### **Removing Obstacles to Juvenile Record Expungement Will Enhance Public Safety and Produce Taxpayer Savings.**

When juvenile records limit an individual's employment, educational, and housing options, the entire state bears the burden.<sup>166</sup> Removing obstacles in order to make expungement more widely available will produce benefits in terms of both public safety and economic savings.

Research shows that securing employment and education after justice system involvement decreases the risk of recidivism.<sup>167</sup> By removing limits on employment, education, and housing options, expungement can reduce recidivism and protect the public from subsequent crime. Though intending to reduce criminal activity, extensive juvenile record sharing actually risks having the opposite effect.<sup>168</sup> When a burdensome expungement process unnecessarily leaves individuals saddled with a record, it places the public at greater risk of subsequent future crime.

163 See e.g., ALASKA STAT. ANN. § 47.12.300(d); See also *Failed Polices, Forfeited Futures: A National Scorecard on Juvenile Records*, “Is sealing or expungement automatic or must the youth or some other individual or entity file a petition to initiate the process?”, JUVENILE LAW CENTER, available at <http://juvenilerecords.jlc.org/juvenile-records/#/category/expungement/expungement-automatic>.

164 ABA Model Act, *supra* note 7, at § VI(a)(1).

165 *Id.* at § VI(a)(2).

166 See RIYA SAHA SHAH & JEAN STROUT, JUVENILE LAW CENTER, *FUTURE INTERRUPTED: THE COLLATERAL DAMAGE CAUSED BY PROLIFERATION OF JUVENILE RECORDS*, 5–6, 9–11 (2016) (describing the negative impact on society that results when a juvenile record keeps someone from securing employment, housing, and education).

167 Stephen J. Tripodi et al., *Is Employment Associated With Reduced Recidivism?*, 54 INT'L J. OFFENDER THERAPY AND COMP. CRIMINOLOGY 706 (2010) (Collecting studies that collectively indicate a “strong inverse relationship between employment and crime, suggesting that ex-prisoners who obtain employment are at significantly reduced risk for reoffending.”); John M. Nally et al., *The Post-Release Employment and Recidivism Among Different Types of Offenders with a Different Level of Education: A 5-Year Follow-Up Study in Indiana*, 9 JUST. POL'Y J.J. 1 (2012) (Finding that uneducated or under-educated offenders were more likely than those offenders who had a higher education to return to custody after release, regardless of the type of offender).

168 See *supra* p. 33.

“From a fiscal responsibility perspective, the long-term economic consequences to our society (of youth carrying records) are huge. We’re better off if these young people can move on from their records and transition to long-term employment sooner rather than later. We can’t build strong policy based solely on the most extreme cases.”

— *Youth Service Provider,  
Northern Illinois*

As recidivism entails significant societal costs, expungement as a path to avoiding recidivism is a way to create sizable savings.<sup>169</sup> Beyond reducing the threat of future crime, removing juvenile records helps realize several ongoing financial benefits for the individual and society at large: increased income, increased tax revenues, a reduction in government assistance expenditures, a reduction in law enforcement costs associated with recidivism, and an increase in additional societal benefits, such as access to housing.<sup>170</sup> Conversely, the costs of expungement to taxpayers are minimal and mostly one-time expenses.<sup>171</sup> Some of these costs are currently offset by fee collection. Streamlining record storage and removal procedures would produce even more savings. For example, an expanded automatic expungement procedure would eliminate the court costs and legal fees associated with conducting expungement hearings. Overall, the financial benefits of expungement outweigh the costs.

A 2014 study conducted at Stanford University found that the estimated financial benefits of each expungement outweigh the costs by \$5,760 per expungement in the first year alone.<sup>172</sup> This number is likely an underestimation of the ongoing benefits of expungement as benefits extend indefinitely while the administrative and legal costs of expungement occur up front and only once. Further, nearly 92% of the measured costs stem from legal and assistance fees that could be entirely eliminated through automatic expungement processes.<sup>173</sup>

---

169 For a discussion of the costs of recidivism, *see generally* Christian Henrichson & Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers* (VERA Institute of Justice), Jul. 20, 2012; *Recidivism’s High Cost and a Way to Cut It*, N.Y. TIMES, Apr. 28, 2011, at A24.

170 Chapin, *supra* note 140, at 4.

171 Such expenses include: legal assistance for those pursuing expungement, processing costs for the probation office, law enforcement, and the court system.

172 Chapin, *supra* note 140.

173 *Id.*



None of the youth [in her courtroom] have ever asked for their records to be expunged. There is a lack of knowledge among juveniles and their families that there even is a process.

— *Judge, Central Illinois*

“Most people are completely unaware of expungement.”

— *Law enforcement officer, Northern Illinois*

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

Illinois law requires law enforcement agencies, judges, and county clerks to provide juveniles with written and verbal information about expungement. If a youth is arrested and no petition of delinquency is filed, upon release from custody, an officer must provide verbal notification and an “expungement information packet” to the youth or his parent or guardian.<sup>174</sup> In any case that results in proceedings in juvenile court, except adjudications based on first-degree murder or felony sex offenses, at sentencing or dismissal of the case, the judge must verbally explain to the youth his right to petition for expungement. At the same time, the clerk of the circuit court must provide the youth with an “expungement information packet.”<sup>175</sup> The Commission found that the majority of law enforcement agencies and county clerk’s offices neglect this duty to inform, and as a result, thousands of individuals who stand to benefit from expungement do not even know that it exists.

A review of practices at the police departments of the state’s 10 largest cities suggest that law enforcement is not meeting its duty under the statute. Of these 10 agencies:

- None provide any training or resources to officers regarding verbal notification of expungement rights to youth.
- Seven could not produce an expungement information packet. Some candidly admitted the “[d]epartment does not provide an ‘expungement information packet’”<sup>176</sup> while others claimed “no documents...could be located” or “no records exist.”<sup>177</sup>
- Of the three police departments that did produce expungement packets, only one was accurate. The others reflected outdated statutes, and contained errors about expungement eligibility.<sup>178</sup>

174 705 ILCS 405/5-915(2.5).

175 705 ILCS 405/5-915(2.6).

176 Letter from Marquita L. Trotter, Assistant Corporation Counsel, City of Springfield, Illinois, to Eric Andrew Sweigard, Bluhm Legal Clinic (Oct. 12, 2015) (on file with the Commission).

177 Letter from Sandra Tomschin, Freedom of Information Officer, Town of Cicero, to Eric Andrew Sweigard, Bluhm Legal Clinic (Oct. 13, 2015) (on file with the Commission).

178 2013 Ill. Legis. Serv. P.A. 98-61 (H.B. 2404) (West) (amending the expungement statute to change the lowest age of eligibility from 17 to 18 years of age); Letter from Jo Ann Osberg, Records Manager,

---

Fifty of the 51 circuit court clerks responding to the Commission’s questionnaire were unaware of their duty to inform youth about their expungement rights.

---

The Commission found that circuit clerk’s offices have even more troubling rates of noncompliance with statutory notification requirements. Fifty of the 51 clerks responding to the Commission’s questionnaire were unaware of their duty to inform youth about their expungement rights. When asked “[w]ho tells the youth about his/her right to expunge juvenile records?” many clerks indicated that they were unsure, and others specifically stated that their office did not. In direct contradiction with the law, others indicated that they were specifically barred from giving youth any information or guidance about expungement.

While acknowledging that they do not provide youth with the information, about one-third of responding clerks indicated that they were aware that the Office of the State of Illinois Appellate Defender (OSAD) makes an expungement information packet available on its website.<sup>179</sup> The statute requires that OSAD provide printed and electronic versions of “brochures, pamphlets, and other materials” detailing the expungement process.<sup>180</sup> While compliant, OSAD’s documents fall short.<sup>181</sup> First, the packet discusses only some of the categories of eligibility and possible processes for obtaining expungement. Second, OSAD’s materials don’t – and likely couldn’t – contain the details necessary to help applicants understand the local idiosyncracies of the expungement process in each county.

Without proper notice, a uniform, easy-to-follow statewide process or a source of information that thoroughly explains the particulars of expungement in each jurisdiction, youth must approach the expungement process with insufficient information about how to proceed – if they even know about expungement in the first place.

---

Aurora Police Department, to Eric Andrew Sweigard, Bluhm Legal Clinic (Oct. 15, 2015) (including an ‘expungement information packet’ stating, “the minor has a right to petition to have his/her arrest record expunged when the minor attains the age of 17”); Letter from Sally Ryan, Elgin Police Department, to Eric Sweigard, Bluhm Legal Clinic (Oct. 7, 2015) (including a packet claiming eligibility at age 17). It is worth noting that though containing inaccuracies about eligibility criteria, the Elgin Police Department’s expungement information packets contained two unique elements that could be models for other agencies. First, Elgin offered forms in both English and Spanish. Second, the forms contained a place for the juvenile and a representative of the agency to sign indicating that both written and verbal notification of expungement rights was provided.

179 Sixteen of the 51 reporting clerks – 31% – were aware of the OSAD packet.

180 705 ILCS 405/5-915(7).

181 OFFICE OF THE STATE APPELLATE DEFENDER, INSTRUCTIONS FOR EXPUNGEMENT OPTIONS 1 & 2, available at [https://www.illinois.gov/osad/Expungement/Instructions\\_Forms/Documents/Instructions/ExpungementJuvOptionsInstructions.pdf](https://www.illinois.gov/osad/Expungement/Instructions_Forms/Documents/Instructions/ExpungementJuvOptionsInstructions.pdf); OFFICE OF THE STATE APPELLATE DEFENDER, GUIDE TO EXPUNGE OF SEAL YOUR ILLINOIS JUVENILE RECORD, available at <https://www.illinois.gov/osad/Expungement/Documents/Juvenile%20Exp%20Guide/JuvenileExpungementGuide.pdf>.





# RECOMMENDATIONS

## RECOMMENDATION 1

### **Enhance Confidentiality Protections of Juvenile Records.**

#### **A. Amend the Juvenile Court Act to Eliminate Instances When Juvenile Records May Be Shared with the General Public, Create a Robust Definition of Sealing, and Clarify That a Juvenile Adjudication Is Not a Conviction Under Illinois Law.**

Illinois law allows for widespread sharing of juvenile records, at times permitting disclosure to the general public. As the bounds of legal sharing widen, so too does the threat of harmful unauthorized sharing. To achieve the Juvenile Court Act (the JCA)'s coexisting goals of public safety and building youth competency, access to juvenile records should be limited to parties with an essential need for the information. To accomplish this, Illinois should remove all statutory provisions permitting general public access to juvenile information.<sup>182</sup>

For further protection and clarity regarding juvenile records, the JCA should be amended to add a strong definition of sealing to its confidentiality provisions. This definition should make clear that all juvenile records are sealed unless the JCA explicitly states otherwise; that they remain sealed when the minor turns 18; that sealed records may not be shared beyond the bounds specifically allowed by law; and that such records shall only be shared with the approval of the juvenile court, when good cause is shown that their use is needed.

Additionally, the JCA should be amended to clearly state that a juvenile adjudication is not a “conviction” under Illinois law. The amended language should clarify that a finding of guilt in juvenile court does not impose any of the civil disabilities ordinarily resulting from an adult conviction.

---

182 See Appendix H – The Commission's Suggested Model Illinois Juvenile Record Confidentiality Statute.

## **B. Close the Loopholes That Exclude Many Juvenile Records from the Confidentiality Protections Provided by Illinois Law.**

The confidentiality protections of the JCA should be extended to records of municipal and ordinance violations. This simple fix would close a loophole that currently leaves thousands of juvenile records completely available to the public, including employers and housing authorities.

Additionally, Illinois should create a mechanism to remove all pre-2010 juvenile records from FBI databases. As explained on pages 36-37, Illinois passed a law in 2010 ending the practice of sending juvenile record information to the FBI. This law recognized that such records – including records of arrests that did not result in court proceedings – were being accessed by employers and used as reasons to deny jobs and professional licensing to applicants. While this law was a meaningful step in combating the misuse of juvenile records, it was not retroactive. This means that thousands of juvenile records from before 2010 remain in the FBI database, available to certain employers and licensing bodies. The majority of these records are for nonviolent offenses, and many are for arrests that were never referred to court.

FBI rap sheets do not distinguish between juvenile and adult offenses. Further, dispositional information – for example, information that an arrest ended in no filing of charges – rarely appears on the FBI rap sheet. Presented with such limited and incomplete information, employers and others are left to assume the worst: that information on FBI rap sheets reflects adult convictions. Removing these juvenile records from the FBI database would provide relief for thousands of individuals; thus, a mechanism to do so should be created and implemented immediately.

## **C. Create Meaningful Sanctions and a Cause of Action for Improper Disclosure of Juvenile Records.**

Without repercussions for unauthorized sharing of juvenile information, individuals and organizations have little incentive to comply with the JCA's confidentiality protections.<sup>183</sup> Following the lead of 16 other states and the American Bar Association (the ABA)'s Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records (the ABA Model Act), Illinois should enact sanctions for improper sharing of records, making such sharing a misdemeanor and imposing a fine.<sup>184</sup> Additionally, Illinois should create a civil cause of action to allow harmed individuals to recover damages from those individuals or entities that illegally disclose confidential information. Such a provision would allow some recourse for individuals harmed by unlawful sharing and would deter sharing.

---

183 See *supra* pp. 53–55.

184 The Commission notes that the JCA already makes the sharing of juvenile medical or psychological records a Class C misdemeanor. 705 ILCS 405/5-910(2).

## D. Provide Systemwide Education to Improve Compliance with Illinois' Confidentiality Laws.

Even the strictest confidentiality laws will fail if the system actors charged with protecting juvenile records do not understand the laws that guide their responsibilities. To improve compliance with juvenile record confidentiality laws, police departments and clerk's offices throughout the state must increase education and training on this issue. These programs should emphasize the legal boundaries of information sharing, the potential harm done to individuals when records are improperly shared, and the consequences of unauthorized disclosure.

### RECOMMENDATION 2

## Increase Access to Juvenile Record Expungement.

### A. Enact Real Automatic Expungement.

Automatic expungement is the ideal approach to the expungement of juvenile records; given the Commission's findings, it may in fact be the only way to ensure that expungement happens to any meaningful extent in Illinois. Illinois' lone "automatic expungement" provision is misleading and incomplete, as it erases records from only one of potentially several places where they are stored, leaving individuals in the position of still needing to petition the court in order to complete the process.<sup>185</sup> Additionally, this provision falls short by applying to only a small proportion of juvenile records.

Consistent with the ABA's recommendations, Illinois should significantly expand automatic expungement and join 12 other states that have already automated the process. Automatic expungement should be immediate for juvenile arrests where no charges are filed, as well as juvenile cases that are dismissed or result in findings of not guilty. In cases resulting in a finding of delinquency, expungement should be made automatic upon the successful closing of the youth's case. To accomplish these goals, Illinois should amend the JCA's expungement statute by incorporating the language proposed in the Commission's Suggested Model Illinois Juvenile Expungement Statute.<sup>186</sup>

185 See *supra* pp. 70–71.

186 See Appendix I – The Commission's Suggested Model Illinois Juvenile Record Expungement Statute.

## **B. Expand the Scope of Eligibility for Expungement by Decreasing Waiting Periods and Minimum Age Limits and Adding Judicial Discretion to the Consideration of Subsequent Adult Convictions.**

By creating too long of a gap between when an offense occurs and when a record may be expunged, the waiting periods and minimum age limits in Illinois' juvenile expungement law hamper an individual's ability to expunge. In doing so, the law creates of purgatory where youth struggle to set their lives on a positive course because of the obstacles their juvenile records create. This, in turn, only increases the risks of reoffending.

Consistent with the ABA's recommendations, as well as Illinois law regarding the expungement of adult criminal records, waiting periods and minimum age limits should be eliminated in all juvenile cases that do not result in a delinquency finding. This includes arrests that do not lead to charges being filed, cases that are diverted, dismissed cases, and cases that result in not guilty findings. Waiting periods and minimum age limits for youth found delinquent should be aligned more closely with the conclusion of the youth's case.

Completely barring individuals from expunging their juvenile adjudications because of any subsequent conviction at or after age 18 conflicts with current scientific research on adolescent brain development. The U.S. Supreme Court, Illinois courts, and the Illinois General Assembly have explicitly acknowledged the importance of this science in crafting laws regarding youth. Given what we now know about adolescent development, laws that create absolute bars to relief based on conduct that occurs while a young person is still developing do not make sense. In the expungement context, a judge should have the opportunity to review an individual's juvenile record and consider the nature and circumstances of any offenses as well as the individual's present attitude and circumstances before determining whether to deny expungement. The Illinois General Assembly should amend the language of the JCA to remove absolute bars to expungement and, in previously barred cases, grant judges the discretion to determine whether expungement serves the best interests of the individual and society at large.<sup>187</sup>

## **C. Eliminate Fees Charged for Expungement.**

Individuals involved in the juvenile justice system disproportionately come from economically disadvantaged communities. Out of the many obstacles discussed in this report that deter individuals from seeking expungement, fees may be the biggest barrier of all. Juvenile expungement fees, which can range upwards of several hundred dollars even for individuals who were never charged with a crime, can be especially hard to pay given the difficulty of finding a job with a juvenile record. While fee waivers exist in theory, the Commission found that in reality they are often unavailable to the people who need them most.

---

187 See Appendix B – ABA Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records.

Despite the often insurmountable obstacle these fees present to the individual, the overall revenue received by governmental agencies from such fees is negligible. Streamlining the expungement process and working toward systemwide efficiency could easily outsize these revenues. Following the ABA's recommendation and the lead of 17 states that prohibit clerks from charging fees for juvenile expungement, Illinois should eliminate all fees associated with the juvenile expungement process.

#### **D. Provide Education to Law Enforcement Agencies and Clerk's Offices to Improve Compliance with Illinois' Juvenile Expungement Law.**

The court clerks and law enforcement officials tasked with overseeing the juvenile expungement process too often do not understand Illinois expungement law or their statutorily-mandated responsibilities. As a result, they often fail to inform youth of their expungement rights and perpetuate misconceptions among both youth and juvenile justice system actors. Law enforcement agencies and court clerk's offices must increase their training and education on the juvenile expungement process to ensure an understanding of these issues and compliance with their duties. These programs should emphasize the procedural steps needed to pursue expungement as well as the value of expungement, both to the individual and to public safety.



## CONCLUSION

The Illinois Juvenile Justice Commission completed a comprehensive study aimed at better understanding current Illinois laws and policies regarding the confidentiality and expungement of juvenile records. Our findings overwhelmingly suggest that a major overhaul of these laws and policies is needed to bring Illinois in line with the Juvenile Court Act's goals and the ABA Model Act. With dwindling confidentiality protections and a limited, ineffective juvenile expungement process, Illinois' treatment of juvenile records is out of step with foundational principles of the juvenile court, scientifically confirmed understandings of adolescent development, and best practices being increasingly employed around the country. Illinois, a state that once led the nation in championing the cause of juvenile justice, now lags behind with an outdated and ineffective approach to the confidentiality and expungement of juvenile records.

In order to protect public safety and better serve individuals with juvenile records, the state should take steps to limit the unnecessary sharing of records and provide a straightforward path to expungement in a broader range of juvenile cases. We, the members of the Illinois Juvenile Justice Commission, respectfully request that the Governor and General Assembly of the State of Illinois give consideration to the findings and recommendations outlined in this report and take all necessary action to ensure the state enacts a more effective and responsible approach to the treatment of juvenile records.

## APPENDICES

<b>Appendix A</b> – Methodology .....	81
<b>Appendix B</b> – ABA Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records, August 2015 .....	86
<b>Appendix C</b> – Further Readings .....	94
<b>Appendix D</b> – Confidentiality of Law Enforcement Records. 705 ILCS 405/1-7.....	95
<b>Appendix E</b> – Confidentiality and Accessibility of Juvenile Court Records. 705 ILCS 405/1-8.....	99
<b>Appendix F</b> – Expungement of Juvenile Law Enforcement and Court Records. 705 ILCS 405/5-915.....	102
<b>Appendix G</b> – Expungement Review. 705 ILCS 405/5-622 .....	112
<b>Appendix H</b> – The Commission’s Suggested Model Illinois Juvenile Record Confidentiality Statute.....	113
<b>Appendix I</b> – The Commission’s Suggested Model Illinois Juvenile Record Expungement Statute .....	121
<b>Appendix J</b> – Reported Juvenile Arrest and Expungement Data, 2004 – 2014.....	125



## Appendix A – Methodology

### Expungement Data Collection

**Step 1** – On June 10, 2015, the Illinois Juvenile Justice Commission (the Commission) sent a letter to the county clerk in each of Illinois’ 102 counties. Among other things, the letter asked the number of juvenile expungement petitions granted and denied in the county for each year starting in 2004 and ending in 2014. The Commission followed up via telephone and e-mail to ensure receipt of the letter and encourage responses. Sixty-two counties provided the Commission with expungement data.

No agency compiles statewide statistics on the number of juvenile record expungements granted every year.<sup>188</sup> As such, the Commission’s effort to track down and quantitatively analyze data on juvenile expungements represented a first of its kind effort. However, the lack of publicly available data resulted in a challenging collection process. While the 62 responding counties account for over 77% of the state’s population, the Commission needed to use the reported data in order to reach statewide projections.

**Step 2** – In order to convert the provided information into statewide estimates, the Commission relied on juvenile arrest data supplied by the Illinois Criminal Justice Information Authority (ICJIA), which that organization retrieved from the Illinois State Police’s (ISP) Criminal History Record Information (CHRI) database. The Commission asked for the total aggregate number of juvenile arrests reported by each county to ISP from 2004 through 2014.

**Step 3** – Because local law enforcement agencies are only required to report juvenile felony arrests to ISP, the Commission sought a better understanding of the number of juvenile misdemeanor arrests that may be omitted from the CHRI arrest totals. Between November 18 and November 25, 2015, the Commission submitted Freedom of Information Act (FOIA) requests to the police departments in the state’s 20 most populous cities: Chicago, Aurora, Rockford, Joliet, Naperville, Springfield, Peoria, Elgin, Waukegan, Cicero, Champaign, Bloomington, Arlington Heights, Evanston, Schaumburg, Decatur, Bolingbrook, Palatine, Skokie, and Des Plaines. The FOIA requests sought the number of juvenile arrests made by each department for each year from 2004 to 2014.

**Step 4** – The Commission then asked ICJIA to provide the number of juvenile arrests reported to ISP/CHRI by each of the 20 specific arresting agencies in each year from 2004 to 2014. Because these agencies accounted for over 45.8% of juvenile arrests reported to CHRI during the time period studied, the Commission felt confident that these 20 police departments represented a sufficient sample size.<sup>189</sup> By comparing the numbers provided by each agency to the number in CHRI in Step 3, the Commission was able to determine the proportion of juvenile arrests reported to ISP. During the period studied, the agencies reported approximately 27% of the total juvenile arrests made to ISP.<sup>190</sup>

**Step 5** – Based on its analysis in Step 4, the Commission assumed that the number of juvenile arrests reported by each county to CHRI, as found in Step 2, represented only 27% of the total juvenile arrests, consistent with the proportion found in Step 4. We divided each county’s number from Step 2 by 0.27 to reach an estimated total number of juvenile arrests, including both those reported to ISP and those that remained at the local level.

<sup>188</sup> While the Expungement Backlog Accountability Law, 20 ILS 2630/14, requires the Department of State Police to report expungement statistics to the governor, these totals do not independently consider juvenile record expungements.

<sup>189</sup> The 20 agencies accounted for 228,263 of the 499,671 total juvenile arrests reported to ISP between 2004 and 2014, though the former total reflects Chicago PD arrest data for 2004 through 2010, while the latter represents the entire state for the entire period from 2004 through 2014. As such, the studied local agencies actually account for significantly more than 45.8% of juvenile arrests reported to CHRI.

<sup>190</sup> See Appendix J – Reported Juvenile Arrest and Expungement Data.

**Step 6** – At this point, our analysis gave rise to three distinct groups. Cook County stood out significantly from the other counties that provided data. Cook accounts for ~40% of the state’s population, 64% of the juvenile arrests reported to CHRI from 2004 through 2014, and 85% of the total number of expungements reported to the Commission. The county is a significant outlier and does not represent the remainder of the state. As such, Cook was considered separately from the other reporting counties as “Group 1.”

The 61 non-Cook Counties that provided expungement data were “Group 2,” while the 40 non-reporting counties were “Group 3.” Groups 2 and 3 were remarkably similar and clearly distinct from Cook in terms of population size and number of arrests reported to CHRI. The average county in Group 2 had a 2010 population of 76,206 and the average county in Group 3 had a population of 74,685. Similarly, the average county in Group 2 reported 2,180 arrests to ISP between 2004 and 2014, while the average county in Group 3 reported 1,814. On the other hand, Cook County’s 2010 population was nearly 5.2 million (approximately 70 times larger than the average county in the other groups) and reported over 307,000 arrests to ISP between 2004 and 2014 (more than 140 times as many as reported by the average county in the other groups).

The Commission determined that the missing data from Group 3 was likely more similar to that of Group 2 than Cook County’s data. The data from Group 2 was used to estimate the situation in Group 3.

**Step 7** – The Commission then compared the number of juvenile record expungements reported by each county clerk, as found in Step 1, with the estimated number of total juvenile arrests, as found in Step 5, to arrive at the proportion of arrests expunged for each of Group 1 and Group 2, as defined in Step 6. For example, the counties in Group 2 reported 747 expungements (Step 1) and accounted for an estimated 364,237 total juvenile arrests (Step 5) over the time period studied. As such, 0.21% of juvenile arrests were expunged during that period.

**Step 8** – Next, to estimate the number of expungements granted in Group 3, the non-reporting counties, the Commission applied the proportion of arrests expunged in Group 2, as found in Step 7, to the estimated total number of juvenile arrests for Group 3, as found in Step 5. Given the similarities between Groups 2 and 3, as described in Step 6, we expect that the non-reporting counties of Group 3 expunge arrests at a similar rate as those in Group 2. So if the counties of Group 3 expunged 0.21% (Step 7) of their 265,211 estimated total juvenile arrests from 2004 through 2014 (Step 5), the Commission estimated that they granted approximately 556 expungements over the same time period.

**Step 9** – Finally, to reach a statewide total, the Commission added the number of expungements reported by Cook County (Group 1), as found in Step 1, the number of expungements reported by the 61 other responding counties (Group 2), as found in Step 1, and the estimated number of expungements granted in the non-reporting counties (Group 3), as found in Step 8. To find a statewide rate of expungement, this total was divided by the estimated total juvenile arrests for all three groups, as found in Step 5.

For a more detailed reported and estimated expungement and arrest data, please see Appendix J.

## Practitioner Interviews

The Commission completed approximately 150 interviews with professionals who have experience and knowledge in the areas of juvenile confidentiality and expungement, represent a diverse cross-section of professions, and live and work in counties throughout Illinois. The interviews spanned individuals in a variety of positions: judges; court administrators; probation officers; state's attorneys; law enforcement professionals; public defenders/defense attorneys; detention officials; expungement law practitioners; housing law practitioners; service providers (including employment, reentry, educational, and social service professionals); Juvenile Justice Council members; and policy advocates. For each type of position, an effort was made to ensure that the Commission conducted interviews with individuals from Cook County and from other counties.

In total, 62 counties are represented by at least one respondent. The Commission conducted most of the first wave of interviews in-person or on the phone using a standardized template. The template asked an exhaustive list of questions regarding the interviewee's experience with and opinions about the systems governing juvenile confidentiality and expungement. In a few instances, the interviewee entered his responses directly into a Survey Monkey.

To broaden the pool of interviewees, the Commission distributed an abridged interview template via multiple listservs. Those listservs included: public defenders; state's attorneys; judges; law enforcement professionals; and probation officers. The abridged interview template removed questions from the survey that would not apply to interviewees on the particular listserv, but was otherwise identical to the original template.

In all cases, the Commission promised the interviewee anonymity to encourage a full and frank response.

## Youth Interviews

The Commission interviewed young adults who currently have either juvenile records or experience with the juvenile expungement process. The Commission contacted approximately 65 service providers and individuals who work with young adults in order to identify potential interviewees, and ultimately interviewed 29 young adults using a standardized template. The Commission guaranteed interviewees anonymity both to protect the confidentiality of their juvenile records and to encourage full and frank responses.

The interview questions addressed the interviewee's experience with the confidentiality of his juvenile records and his knowledge of and encounters with the juvenile expungement process. The questions track the statutory requirements for confidentiality and expungement set forth in the Illinois Juvenile Court Act. The interviewee's responses show how the system works in practice and whether statutory mandates are being followed.

### **County Clerk Practices Survey**

On June 10, 2015, the Commission sent a questionnaire to the county clerk in each of Illinois' 102 counties seeking information on the clerk's knowledge of and practices concerning the expungement of juvenile court records. After the Commission persistently followed up to ensure receipt and encourage responses, 51 county clerks – exactly half – responded. The questionnaire asked the following:

- What is your juvenile expungement process?
- How much does it cost?
- Who tells the youth about his/her right to expunge juvenile records?
- What is your process/response when someone calls asking about juvenile records?

### **Police Department Practices FOIA Requests**

Attempting to examine how closely police practices align with statutory requirements, on September 28, 2015, the Commission submitted FOIA requests to the police departments in the state's 10 most populous cities: Chicago, Aurora, Rockford, Joliet, Naperville, Springfield, Peoria, Elgin, Waukegan, and Cicero. The requests sought the following information:

- All records and documents related to the police department's protocols and procedures with respect to notifying juveniles of their right to petition to have arrest records expunged, pursuant to 705 ILCS 405/5-915.
- A copy of the "expungement information packet," as required by 705 ILCS 405/5-915(2.5), provided to minors at the time the minor is released from police custody.
- A description of any training activities or resources made available to police department personnel that relate to providing verbal notification to juveniles of their right to petition to have arrest records expunged.
- A description of any efforts to compile a list or index of individuals to whom verbal and written notification of the right to petition to expunge arrest records has been provided or any other efforts taken to ensure every minor and/or his or her parent or guardian has been informed of this right.

### **Comprehensive Statutory Review**

The Commission's research efforts began with a complete review of the Illinois law pertaining to juvenile record confidentiality and expungement, including 705 ILCS 405/1-7 (confidentiality of law enforcement records), 705 ILCS 405/1-8 (confidentiality and accessibility of juvenile court records), 705 ILCS 405/5-915 (expungement of juvenile law enforcement and court records), and 705 ILCS 405/5-622 (expungement review). Next, the Commission researched relevant law in other states. To that end, the Juvenile Law Center provided the Commission with the 50-state survey data used to compile their 2014 report *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing, and Expungement*. For further comparison, the Commission examined the American Bar Association's 2015 *Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records* and the Record Expungement Designed to Enhance Employment Act (the "REDEEM Act"), proposed federal legislation from 2014 that addresses the subject.

The Commission then compared provisions in Illinois' confidentiality and expungement statutes to analogous provisions in statutes from other jurisdictions. For example, the Commission compared the availability of automatic expungement in Illinois to the availability of automatic expungement in other states, examined the differences between

Illinois' waiting periods for expungement and other states' waiting periods, and contrasted the accessibility of court records in Illinois with their accessibility in the ABA Model Act. The comprehensive statutory review allowed the Commission to identify relative strengths and weaknesses in Illinois' juvenile confidentiality and expungement law, and make suggestions for improvement.

### **Review of Database Policies and Practices**

In order to gain an understanding of the electronic databases used throughout the state to store juvenile law enforcement records, the Commission reviewed all publically available information relating to the policies and practices of various law enforcement databases. The Commission paid particular attention to the Law Enforcement Agencies Data System (LEADS), controlled by the ISP's Division of Administration, the Criminal History Record Information database, controlled by the ISP's Bureau of Identification, and the Citizen and Law Enforcement Analysis and Reporting (CLEAR) Data Warehouse, controlled by the Chicago Police Department.

In addition, the Commission conducted interviews with a supervisor of the ISP's Bureau of Identification, and a LEADS Program Manager with the ISP's Division of Administration. Interviews with the Associate Director of Research and Analysis for ICIJIA and the Manager of the Criminal Justice Clearinghouse and Analysis Center for ICJIA, provided further insight into the records databases.

### **Review of Private Data Brokers and Background Check Companies**

The Commission interviewed representatives from five data brokers: Accurate Background, Inc., ADP Screening and Selection Services, Hireright, and Sterling Background Check. The five were selected for being among the larger companies in their field, but they neither constitute a random sample nor an exhaustive set of industry participants. The review provides a qualitative and cursory overview of the way that data brokers handle juveniles' information, and serves as a basis for further study of any areas of particular concern that arise from the initial review. In each interview, the Commission asked a series of questions, including:

- How does your company treat juvenile records?
- Does your company have a policy that specifically prohibits the release of juvenile records?
- Does your company have procedures in place to ensure the accuracy of your records?
- How does your company treat expunged records?

## **Appendix B – ABA Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records**

AMERICAN BAR ASSOCIATION

SECTION OF LITIGATION  
CRIMINAL JUSTICE SECTION  
COMMISSION ON HOMELESSNESS AND POVERTY  
COMMISSION ON YOUTH AT RISK

REPORT TO THE HOUSE OF DELEGATES

### **RESOLUTION**

**RESOLVED**, That the American Bar Association adopts the *Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records*, dated August, 2015.

**MODEL ACT GOVERNING THE  
CONFIDENTIALITY AND EXPUNGEMENT OF  
JUVENILE DELINQUENCY RECORDS**

**Section I. Purpose**

Juvenile arrest, law enforcement, court, and probation records are a hindrance to an individual's present and future ability to obtain employment, education, housing, and credit. This Act is intended to protect juvenile and adult citizens against the damage stemming from their juvenile delinquency records, and the unauthorized use or disclosure of confidential records and any potential stigma that would result from their disclosure.

**Section II. Scope**

This Act governs the confidentiality and expungement of juvenile delinquency records as those terms are defined in Section III. This Act does not govern public access and admittance to juvenile delinquency court proceedings.

**Section III. Definitions**

In this Act,

- (a) "adjudication" means a juvenile court judge's determination that a youth committed a delinquent offense. A juvenile adjudication is akin to, but distinct from, an adult criminal conviction.
- (b) "conviction" means a judgment or disposition in criminal court against a person following a finding of guilt by a judge or jury.
- (c) "expunge" means 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. All references to the juvenile's arrest, detention, adjudication, disposition, and probation must be destroyed and in the case of electronic records deleted from the files of the juvenile court, juvenile probation, law enforcement agencies, and any other person, department, agency, or entity that provided services to the juvenile pursuant to court order. The term is distinguished from "seal" which means to close the record from public viewing so that it cannot be examined by any individual except by court order.
- (d) "juvenile" means [reference to definition of juvenile in state law]
- (e) "juvenile delinquency record" refers to the records, reports and information maintained in any form, including electronic, by the juvenile court, juvenile probation, and law enforcement agencies documenting the juvenile's journey through the juvenile justicesystem. Although juvenile court, probation, and law enforcement records may have different levels of accessibility, for purposes of expungement, when a court orders expungement of a juvenile record, all law enforcement, juvenile probation, and juvenile court records relating to the juvenile's delinquency court involvement must be expunged.

**Section IV. Confidentiality of Juvenile Delinquency Records Maintained by Juvenile Court and Juvenile Probation**

- (a) The following records, reports, and information acquired or generated in juvenile courts or juvenile probation concerning juveniles shall be confidential and shall not be open to inspection nor released to any person, department, agency, or entity except as provided elsewhere in this section:
  - 1) Juvenile legal files (including formal documents such as petitions, notices, motions, legal memoranda, orders, and decrees).
  - 2) Law enforcement records, including but not limited to:

- i. Fingerprints.
  - ii. DNA samples.
- 3) State juvenile/criminal justice information system records.
- 4) Juvenile sex offender registration and notification records.
- 5) Social records, including but not limited to:
  - i. Records of juvenile probation officers.
  - ii. Records of the Department of Human Resources [or its equivalent].
  - iii. Records of the Department of Children and Youth Services [or its equivalent].
  - iv. Medical records.
  - v. Psychiatric or psychological records, including records of screening and assessment instruments administered to the juvenile.
  - vi. Reports of preliminary inquiries and predisposition studies.
  - vii. Supervision records.
  - viii. Birth certificates.
  - ix. Individualized service plans.
  - x. Education records, including, but not limited to, Individualized Education Plans (IEPs) as those terms are defined in the Family Educational Rights and Privacy Act of 1974 .
  - xi. Detention records.
  - xii. Demographic information that identifies a juvenile or the family of a juvenile.
- (b) The records, reports, and information described in subsection (a) shall be filed separately from other files and records of the court. The juvenile legal files described in subsection (1) of subsection (a) shall be maintained in a separate file from all other juvenile records, reports, and information.
- (c) Subject to applicable federal law, the records, reports, and information described in subsection (a) shall not be open to public inspection and shall be open to inspection and copying only by the following under these specified circumstances:
  - 1) The juvenile court having the juvenile before it in any judicial proceeding.
  - 2) Juvenile probation officers or other court professional staff ordered by the juvenile court to serve the juvenile.
  - 3) Representatives of a public or private agency or department having custody or control of the juvenile pursuant to a court's order.
  - 4) The juvenile and his or her attorney, including an attorney or guardian *ad litem* who is representing the juvenile in another matter.
  - 5) The parent (except when parental rights have been terminated), the legal guardian, and the legal custodian of the juvenile.
  - 6) The prosecutor authorized to prosecute criminal or juvenile cases under state law.
  - 7) A court in which the juvenile is convicted of a criminal offense for the purpose of imposing sentence upon or supervising the juvenile, or by officials of penal institutions and other penal facilities to which the juvenile is committed, or by a parole board in considering the juvenile's parole or discharge or in exercising supervision over the juvenile.
  - 8) Any person or agency for research purposes, assuming that person or agency is employed by the state or is under contract with the state and is authorized by [STATE AGENCY] to conduct such research; and the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and that access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed.



- 9) A person, department, agency, or entity identified in a juvenile court order issued pursuant to subsection (d) or (e).
- 10) A person, department, agency, or entity identified in subsection (f).
- (d) Subject to applicable federal law, upon a written petition and a finding that a release of information will serve to protect the public health or safety, the juvenile court may order release of the juvenile's name and designated portions of the records, reports, and information described in subsections (a)(1) and (a)(2) to a person, department, entity or agency charged under law to protect the public health or safety. The court may include in its order restrictions on the use and re-disclosure of the released information.
- (e) Subject to applicable federal law, upon a written petition and a finding of legitimate interest, and in accordance with the conditions below, the juvenile court may order release of the juvenile's name and designated portions of the records, reports, and information described in subsections (a)(1) and (a)(2) to another person, department, entity, or agency.
- 1) The juvenile court shall provide notice to the juvenile and his or her attorney of the petition and an opportunity to object.
  - 2) The juvenile court shall hold a hearing on the petition if requested by the petitioner or the juvenile.
  - 3) The petition filed with the juvenile court and served on the juvenile and his or her attorney shall state the following:
    - i. The reason the person, department, entity, or agency is requesting the information;
    - ii. The use to be made of the information, including any intended re-disclosure; and
    - iii. The names of those persons within the department, entity, or agency who will have access to the information.
  - 4) In ruling on the petition, the juvenile court shall consider the privacy interests of the juvenile and potential risk of harm to the juvenile, whether a compelling reason exists for release of the information, and whether the release is necessary for the protection of a legitimate interest.
  - 5) The juvenile court may impose restrictions on the use and re-disclosure of the released information.
- (f) Subject to applicable federal and state laws, the juvenile court shall provide access to or release designated portions of the records, reports, and information described in subsections (a)(1) to the person, department, agency, or entity listed below as follows:
- 1) The juvenile court shall provide access to the state department of motor vehicles to information related to traffic offenses that is specifically required by statute to be given to the department for purposes of regulating automobile licensing.
  - 2) The juvenile court shall provide access to summary information in the juvenile's record as to the nature of the complaint, a summary of the formal proceedings, and the result of the proceedings to a law enforcement agency for the purpose of executing an arrest warrant or other compulsory process, or for a current investigation.
  - 3) The juvenile court shall notify the law enforcement agency that arrested the juvenile or that initiated the filing of the complaint or petition of the final disposition of the case.
- (g) Each person, other than the juvenile who is the subject of a juvenile record, his or her parents, and his or her attorney, to whom a juvenile record or information from a juvenile record is to be disclosed pursuant to this section, is required to execute a nondisclosure agreement in which the person certifies that he or she is familiar with the applicable disclosure provisions and promises not to disclose any information to an unauthorized person.
- (h) The juvenile court shall create a procedure by which the juvenile and his or her attorney can challenge the correctness of the juvenile's record, and provide notice to the juvenile and his or her attorney as to that procedure.
- (i) Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A [X] DEGREE MISDEMEANOR PUNISHABLE BY A FINE UP TO [XXXXX].
- (j) Any person found to be in violation of this section is guilty of a misdemeanor in the [X] degree or subject to a fine of [XXXXX]. This subsection shall not apply to the person who is the subject of the record.

**Section V. Confidentiality of Juvenile Delinquency Records Maintained by Law Enforcement Agencies**

- (a) Except as provided elsewhere in this section, all law enforcement records, reports or information, including but not limited to fingerprints and DNA evidence, generated or acquired by law enforcement agencies relating to the arrest, detention, apprehension, and disposition of any juvenile under the jurisdiction of the juvenile court shall be maintained separate from the records and files of other persons. Such records and files shall not be open to public inspection nor their contents disclosed to the public by any person.
- (b) Notwithstanding the foregoing, inspection of such law enforcement records, reports, or information by the following is not prohibited:
  - 1) The juvenile court having the juvenile before it in any judicial proceeding.
  - 2) Juvenile probation officers or other court professional staff ordered by the juvenile court to serve the juvenile.
  - 3) The juvenile and his or her attorney, including an attorney or guardian *ad litem* who is representing the juvenile in another matter.
  - 4) The parent (except when parental rights have been terminated), the legal guardian, and the legal custodian of the juvenile.
  - 5) The prosecutor authorized to prosecute criminal or juvenile cases under state law.
  - 6) Representatives of a public or private agency or department having custody or control of the juvenile pursuant to a court's order.
  - 7) Any person or agency for research purposes, assuming that person or agency is employed by the state or is under contract with the state and is authorized by [STATE AGENCY] services to conduct such research; and the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and that access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed.
  - 7) To persons such as law enforcement officials to whom it is necessary to disclose information for the limited purpose of investigating a crime, apprehending a juvenile, or determining whether to detain a juvenile. The information released should include the disposition or current status of the case. The recipient must execute a nondisclosure agreement that states that the recipient shall only disclose the information to law enforcement personnel, probation officers, judges and prosecutors who are currently concerned with the juvenile.
  - 8) A person, department, agency, or entity identified in a juvenile court order issued pursuant to subsection (c) or (d).
- (c) Subject to applicable federal law, upon a written petition and a finding that a release of information will serve to protect the public health or safety, the juvenile court may order release of the juvenile's name and designated portions of the records, reports, and information described in subsection (a) to a person, department, entity or agency charged under law to protect the public health or safety. The court may include in its order restrictions on the use and re-disclosure of the released information.
- (d) Subject to applicable federal law, upon a written petition and a finding of legitimate interest, and in accordance with the conditions below, the juvenile court may order release of the juvenile's name and designated portions of the records, reports, and information described in subsection (a) to another person, department, entity, or agency.
  - 1) The juvenile court shall provide notice to the juvenile and his or her attorney of the petition and an opportunity to object.
  - 2) The juvenile court shall hold a hearing on the petition if requested by the petitioner or the juvenile.
  - 3) The petition filed with the juvenile court and served on the juvenile and his or her attorney shall state the following:
    - i. The reason the person, department, entity, or agency is requesting the information;
    - ii. The use to be made of the information, including any intended re-disclosure; and
    - iii. The names of those persons within the department, entity, or agency who will have access to the information.

- 4) In ruling on the petition, the juvenile court shall consider the privacy interests of the juvenile and potential risk of harm to the juvenile, whether a compelling reason exists for release of the information, and whether the release is necessary for the protection of a legitimate interest.
- 5) The juvenile court may impose restrictions on the use and re-disclosure of the released information.
- (e) Law enforcement agencies shall keep a record of all persons, departments, entities or agencies to whom information in the law enforcement records has been released, the dates of the request, the reasons for the request, and the disposition of the request.
- (f) The law enforcement agency shall create a procedure by which the juvenile and his or her attorney can challenge the correctness of the juvenile's record.
- (g) Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A [X] DEGREE MISDEMEANOR PUNISHABLE BY A FINE UP TO [\$XXXX].
- (h) Any person found to be in violation of this section is guilty of a misdemeanor in the [X] degree or subject to a fine of [\$XXXX]. This subsection shall not apply to the person who is the subject of the record.

## Section VI. Expungement

- (a) Automatic Expungement.
  - 1) Records, reports and information maintained by juvenile court, juvenile probation and law enforcement agencies that relate to cases in which there was no adjudication of delinquency shall be expunged immediately following the court's discharge of the case. This includes dismissed cases in which the time for the government to appeal the dismissal has ended, diverted cases in which the juvenile has successfully completed diversion, cases in which the juvenile was ruled not involved, cases in which charges were not substantiated, and cases in which the law enforcement agency did not refer the juvenile to court. This requires no application or action on the part of the juvenile. If the chief law enforcement officer of the agency, or his or her designee, certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner.
  - 2) Except for those offenses listed in subsection (b)(2), in cases in which there was an adjudication of delinquency the juvenile court shall automatically order the expungement of the juvenile records two (2) years after the juvenile's case was closed if no delinquency or criminal proceeding is pending and the person has had no subsequent delinquency adjudication or criminal conviction. This requires no application or action on the part of the person. Upon receipt of the court order, all agencies shall immediately destroy the records except that if the chief law enforcement officer of the agency, or his or her designee, certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner.
- (b) Expungement Upon Application.
  - 1) At any time after a person's juvenile case has been closed, he or she may petition the court for expungement of his or her juvenile record. The prosecutor shall be notified and given the opportunity to present evidence at a hearing in which the juvenile court will rule on the expungement after considering the following:
    - i. the best interests of the person;
    - ii. the age of the person during his or her contact with the juvenile court or law enforcement agency;
    - iii. the nature of the offense;
    - iv. the disposition of the case;
    - v. the manner in which the person participated in any court ordered rehabilitative programming or supervised services;
    - vi. the time during which the person has been without contact with the juvenile court or with any law enforcement agency;

- vii. whether the person has any subsequent criminal involvement; and
  - viii. the adverse consequences the person will suffer as a result of retention of his or her record.
- 2) Persons who were adjudicated delinquent for acts that would have constituted first degree murder, aggravated rape, or [first degree XXXX] if committed by an adult may petition the juvenile court for the expungement of the juvenile record five (5) years after the court's discharge of the case. The prosecutor shall be notified and given the opportunity to present evidence at a hearing in which the juvenile court will rule on the expungement after considering the factors listed in subsection (b)(1).
- (c) Prior to expungement, the juvenile court shall provide a copy of the records to be destroyed to the juvenile about whom the records pertain.
  - (d) Fee for expungement. There shall be no cost for filing a petition requesting expungement of a juvenile record, for the court to issue an order of expungement, or for agencies subject to the order to physically expunge the records.
  - (e) Verification of Expungement. If the court grants the expungement petition, the court shall order all agencies named in the juvenile's court and probation files, including each law enforcement agency, other state agencies who may have records of the juvenile's adjudication, public or private correctional, detention, and treatment facilities and each individual who provided treatment or rehabilitation services for the juvenile under an order of the court, to send that person's juvenile records to the court. The court shall then destroy the paper and electronic records and mail an Affidavit of Expungement to the person. Additionally, each law enforcement agency shall also affirm in an Affidavit of Expungement to the court that it destroyed all paper and electronic copies of the expunged records, except that if the chief law enforcement officer certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner.
  - (f) Subsection (e) does not apply any person or agency that previously-received records for research purposes that are subsequently expunged, assuming that person or agency is employed by the state or is under contract with the state and is authorized by [STATE AGENCY] services to conduct such research; and the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and that access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed.
  - (g) Sanction for disclosure of expunged record. The disclosure of an expunged record in violation of this section shall be unlawful. A person who discloses an expunged record in violation of this section is guilty of a misdemeanor in the [X] degree or a fine of [XXXX]. This subsection shall not apply to the person whose record was expunged.

## **Section VII. Notification of Expungement Rights**

- (a) Notification by Juvenile's Attorney. It shall be the duty of the juvenile's attorney to inform the juvenile of the consequences of being adjudicated delinquent, the definition of expungement, and the timeline for expungement that is automatic and that which is available upon application.
- (b) Notification by Court.
  - a. At the time of dismissal or disposition of the case, the judge shall inform the juvenile of his or her expungement rights. The court shall provide an expungement information packet to the juvenile, written in plain language, that contains the following:
    - i. information about the rights and procedures described in Section VI;
    - ii. instructions to the juvenile that once the case is expunged, it shall be treated as if it never occurred and the juvenile shall not be required to disclose that he or she had a juvenile record;
    - iii. a sample petition for expungement;
    - iv. a list of resources for expungement assistance.
  - b. The failure of the judge to inform the juvenile of the right to petition for expungement as provided by law

does not create a substantive right, nor is does that failure constitute grounds for a reversal of an adjudication of delinquency, a new trial, or an appeal.

- (c) Notification by Clerk of Court. The clerk of the juvenile court shall send a “Notification of a Possible Right to Expungement” to the juvenile at the address last received by the clerk of the juvenile court on the date that the juvenile’s case is discharged from court supervision. Notification may be by electronic means if available. This message will include the same information provided by the court at the time of dismissal or disposition of the case as described in subsection (b).
- (d) Notification upon Expungement. Once a juvenile’s records have been expunged by the court, the clerk of the juvenile court shall send by United States Postal Service to the juvenile at the address last received by the clerk of the juvenile court a statement verifying that the records have been expunged.

### **Section VIII. Effect of Expunged Record**

- (a) Once a person’s juvenile record is expunged, the person shall not be required to disclose that he or she had a juvenile record and properly may reply that no record exists upon inquiry.
- (b) The juvenile court, juvenile probation office, law enforcement offices and any agencies that provided treatment and/or rehabilitation services shall reply, and all persons shall reply, to an inquiry that no juvenile record exists with respect to that person.

With respect to the matter in which the record was expunged, the person who is the subject of the record and the person’s parent shall not be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person’s failure to recite or acknowledge such record or response to any inquiry made of the person or the person’s parent for any purpose, except that if the person is to testify as a witness in a criminal or juvenile delinquency case, the person may be ordered to testify about the expunged case.

## Appendix C – Further Readings

- BUREAU OF JUSTICE STATISTICS, *PRIVACY AND JUVENILE JUSTICE RECORDS: A MID-DECADE STATUS REPORT* (1997).
- CAROLYN E. FRAZIER, CHILDREN AND FAMILY JUSTICE CENTER, *THE ILLINOIS JUVENILE COLLATERAL CONSEQUENCES CHECKLIST* (2015), available at <http://www.law.northwestern.edu/legalclinic/cfjc/documents/IllinoisCollateralConsequencesChecklist.pdf>.
- CATHRYN CRAWFORD ET AL., CHILDREN AND FAMILY JUSTICE CENTER, BLUHM LEGAL CLINIC, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, AND THE NATIONAL JUVENILE DEFENDER CENTER, *ILLINOIS: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS* (2007).
- Christopher Gowen et al., *The ABA's Approach to Juvenile Justice Reform: Education, Eviction, and Employment: The Collateral Consequences of Juvenile Adjudication*, 3 DUKE F.L. & SOC. CHANGE 187 (2011).
- *Collateral Consequences of Juvenile Proceedings Part I*, CRIMINAL JUSTICE (Am. Bar Ass'n, Chicago, Ill.) Summer 2000.
- Dylan Walsh, *The Crimes of Children*, THE ATLANTIC (Aug 10, 2015), <http://www.theatlantic.com/politics/archive/2015/08/the-crimes-of-children/398543/>.
- EMILY WERTH, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, *THE COST OF BEING "CRIME FREE"* (2013).
- *Expungement Reconsidered*, HUMAN RIGHTS (Ill. State Bar Ass'n, Springfield, Ill.), May 2010.
- Failed Polices, *Forfeited Futures: A Nationwide Scorecard on Juvenile Records*, JUVENILE LAW CENTER, <http://juvenilerecords.jlc.org/juvenilerecords#!/state/illinois> (follow "Fact sheet: Download" hyperlink) (last visited Jan. 25, 2016).
- Gary Fields & John R. Emshwiller, *As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime*, WALL ST. J. (Aug 18, 2014, 10:30 PM), <http://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-life-time-1408415402>.
- Gary Fields, *Permanent Record: How Arrests Stick with Tens of Millions of Americans*, *Washington Wire*, WALL ST. J. (Aug 19, 2014, 11:19 AM), <http://blogs.wsj.com/washwire/2014/08/19/permanent-record-how-arrests-stick-with-tens-of-millions-of-americans/>.
- Kevin Lapp, *Databasing Delinquency*, 67 HASTINGS L.J. 195 (2015).
- Kristin N. Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520 (2004).
- Letter from Dalene Dutton, Immediate Past Chair, and Jim Moeser, Vice-Chair, Fed. Advisory Comm. on Juvenile Justice, to Robert Listenbee, Adm'r, Office of Juvenile Justice and Delinquency Prevention (Oct. 14, 2015).
- *Letters to the Editor*, WASH. POST (Oct. 31, 2011), [https://www.washingtonpost.com/opinions/why-we-need-confidentiality-laws-for-juvenile-suspects/2011/10/30/gIQAJsZaM\\_story.html](https://www.washingtonpost.com/opinions/why-we-need-confidentiality-laws-for-juvenile-suspects/2011/10/30/gIQAJsZaM_story.html).
- Linda Paul, *Why is it so Hard to Expunge Juvenile Records in Cook County?*, WBEZ 91.5 CHICAGO (Feb. 4, 2013), <http://www.wbez.org/news/why-it-is-so-hard-expunge-juvenile-records-cook-county-105257>.
- Logan Danielle Wayne, *The Data-Broker Threat: Proposing Federal Legislation to Protect Post-Expungement Privacy*, 102 J. CRIM. L. & CRIMINOLOGY 253 (2012).
- NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, *POLICY STATEMENT: CONFIDENTIALITY OF JUVENILE COURT PROCEEDINGS AND RECORDS* (1998).
- RIYA SAHA SHAH, ET AL., JUVENILE LAW CENTER, *JUVENILE RECORDS: A NATIONAL REVIEW OF STATE LAWS ON CONFIDENTIALITY, SEALING AND EXPUNGEMENT* (2014).
- Stephanie Clifford, *From the Bench, a New Look at Punishment*, N.Y. TIMES (Aug. 26, 2015), <http://www.nytimes.com/2015/08/27/nyregion/from-the-bench-a-new-look-at-punishment.html>.
- Yian Q. Mui, *Growing Use of FBI Screens Raises Concerns Over Accuracy, Racial Bias*, WASH. POST (July 29, 2013), [https://www.washingtonpost.com/business/economy/growing-use-of-fbi-screens-raises-concerns-over-accuracy-racial-bias/2013/07/29/d201ecda-f49f-11e2-aa2e-4088616498b4\\_story.html](https://www.washingtonpost.com/business/economy/growing-use-of-fbi-screens-raises-concerns-over-accuracy-racial-bias/2013/07/29/d201ecda-f49f-11e2-aa2e-4088616498b4_story.html).

## Appendix D – Confidentiality of law enforcement records. 705 ILCS 405/1-7.

### § 1-7. Confidentiality of law enforcement records.

- (A) Inspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted to the following:
- (1) Any local, State or federal law enforcement officers of any jurisdiction or agency when necessary for the discharge of their official duties during the investigation or prosecution of a crime or relating to a minor who has been adjudicated delinquent and there has been a previous finding that the act which constitutes the previous offense was committed in furtherance of criminal activities by a criminal street gang, or, when necessary for the discharge of its official duties in connection with a particular investigation of the conduct of a law enforcement officer, an independent agency or its staff created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers. For purposes of this Section, “criminal street gang” has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.
  - (2) Prosecutors, probation officers, social workers, or other individuals assigned by the court to conduct a pre-adjudication or pre-disposition investigation, and individuals responsible for supervising or providing temporary or permanent care and custody for minors pursuant to the order of the juvenile court, when essential to performing their responsibilities.
  - (3) Prosecutors and probation officers:
    - (a) in the course of a trial when institution of criminal proceedings has been permitted or required under Section 5-805; or
    - (b) when institution of criminal proceedings has been permitted or required under Section 5-805 and such minor is the subject of a proceeding to determine the amount of bail; or
    - (c) when criminal proceedings have been permitted or required under Section 5-805 and such minor is the subject of a pre-trial investigation, pre-sentence investigation, fitness hearing, or proceedings on an application for probation.
  - (4) Adult and Juvenile Prisoner Review Board.
  - (5) Authorized military personnel.
  - (6) Persons engaged in bona fide research, with the permission of the Presiding Judge of the Juvenile Court and the chief executive of the respective law enforcement agency; provided that publication of such research results in no disclosure of a minor’s identity and protects the confidentiality of the minor’s record.
  - (7) Department of Children and Family Services child protection investigators acting in their official capacity.
  - (8) The appropriate school official only if the agency or officer believes that there is an imminent threat of physical harm to students, school personnel, or others who are present in the school or on school grounds.
    - (a) Inspection and copying shall be limited to law enforcement records transmitted to the appropriate school official or officials whom the school has determined to have a legitimate educational or safety interest by a local law enforcement agency under a reciprocal reporting system established and maintained between the school district and the local law enforcement agency under Section 10-20.14 of the School Code concerning a minor enrolled in a school within the school district who has been arrested or taken into custody for any of the following offenses:
      - (i) any violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012;<sup>3</sup>
      - (ii) a violation of the Illinois Controlled Substances Act;<sup>4</sup>

- (iii) a violation of the Cannabis Control Act;<sup>5</sup>
- (iv) a forcible felony as defined in Section 2-8 of the Criminal Code of 1961 or the Criminal Code of 2012;<sup>6</sup>
- (v) a violation of the Methamphetamine Control and Community Protection Act;
- (vi) a violation of Section 1-2 of the Harassing and Obscene Communications Act;
- (vii) a violation of the Hazing Act; or
- (viii) a violation of Section 12-1, 12-2, 12-3, 12-3.05, 12-3.1, 12-3.2, 12-3.4, 12-3.5, 12-5, 12-7.3, 12-7.4, 12-7.5, 25-1, or 25-5 of the Criminal Code of 1961 or the Criminal Code of 2012.

The information derived from the law enforcement records shall be kept separate from and shall not become a part of the official school record of that child and shall not be a public record. The information shall be used solely by the appropriate school official or officials whom the school has determined to have a legitimate educational or safety interest to aid in the proper rehabilitation of the child and to protect the safety of students and employees in the school. If the designated law enforcement and school officials deem it to be in the best interest of the minor, the student may be referred to in-school or community based social services if those services are available. “Rehabilitation services” may include interventions by school support personnel, evaluation for eligibility for special education, referrals to community-based agencies such as youth services, behavioral healthcare service providers, drug and alcohol prevention or treatment programs, and other interventions as deemed appropriate for the student.

- (b) Any information provided to appropriate school officials whom the school has determined to have a legitimate educational or safety interest by local law enforcement officials about a minor who is the subject of a current police investigation that is directly related to school safety shall consist of oral information only, and not written law enforcement records, and shall be used solely by the appropriate school official or officials to protect the safety of students and employees in the school and aid in the proper rehabilitation of the child. The information derived orally from the local law enforcement officials shall be kept separate from and shall not become a part of the official school record of the child and shall not be a public record. This limitation on the use of information about a minor who is the subject of a current police investigation shall in no way limit the use of this information by prosecutors in pursuing criminal charges arising out of the information disclosed during a police investigation of the minor. For purposes of this paragraph, “investigation” means an official systematic inquiry by a law enforcement agency into actual or suspected criminal activity.
- (9) Mental health professionals on behalf of the Illinois Department of Corrections or the Department of Human Services or prosecutors who are evaluating, prosecuting, or investigating a potential or actual petition brought under the Sexually Violent Persons Commitment Act<sup>7</sup> relating to a person who is the subject of juvenile law enforcement records or the respondent to a petition brought under the Sexually Violent Persons Commitment Act who is the subject of the juvenile law enforcement records sought. Any records and any information obtained from those records under this paragraph (9) may be used only in sexually violent persons commitment proceedings.
  - (10) The president of a park district. Inspection and copying shall be limited to law enforcement records transmitted to the president of the park district by the Illinois State Police under Section 8-23 of the Park District Code or Section 16a-5 of the Chicago Park District Act concerning a person who is seeking employment with that park district and who has been adjudicated a juveniledelinquent for any of the offenses listed in subsection (c) of Section 8-23 of the Park District Code or subsection (c) of Section 16a-5 of the Chicago Park District Act.



(B)

- (1) Except as provided in paragraph (2), no law enforcement officer or other person or agency may knowingly transmit to the Department of Corrections or the Department of State Police or to the Federal Bureau of Investigation any fingerprint or photograph relating to a minor who has been arrested or taken into custody before his or her 18th birthday, unless the court in proceedings under this Act authorizes the transmission or enters an order under Section 5-805 permitting or requiring the institution of criminal proceedings.
- (2) Law enforcement officers or other persons or agencies shall transmit to the Department of State Police copies of fingerprints and descriptions of all minors who have been arrested or taken into custody before their 18th birthday for the offense of unlawful use of weapons under Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012,<sup>8</sup> a Class X or Class 1 felony, a forcible felony as defined in Section 2-8 of the Criminal Code of 1961 or the Criminal Code of 2012, or a Class 2 or greater felony under the Cannabis Control Act, the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or Chapter 4 of the Illinois Vehicle Code,<sup>9</sup> pursuant to Section 5 of the Criminal Identification Act.<sup>10</sup> Information reported to the Department pursuant to this Section may be maintained with records that the Department files pursuant to Section 2.1 of the Criminal Identification Act.<sup>11</sup> Nothing in this Act prohibits a law enforcement agency from fingerprinting a minor taken into custody or arrested before his or her 18th birthday for an offense other than those listed in this paragraph (2).

(C) The records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 18 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public except by order of the court presiding over matters pursuant to this Act or when the institution of criminal proceedings has been permitted or required under Section 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation or when provided by law. For purposes of obtaining documents pursuant to this Section, a civil subpoena is not an order of the court.

- (1) In cases where the law enforcement, or independent agency, records concern a pending juvenile court case, the party seeking to inspect the records shall provide actual notice to the attorney or guardian ad litem of the minor whose records are sought.
- (2) In cases where the records concern a juvenile court case that is no longer pending, the party seeking to inspect the records shall provide actual notice to the minor or the minor's parent or legal guardian, and the matter shall be referred to the chief judge presiding over matters pursuant to this Act.
- (3) In determining whether the records should be available for inspection, the court shall consider the minor's interest in confidentiality and rehabilitation over the moving party's interest in obtaining the information. Any records obtained in violation of this subsection (C) shall not be admissible in any criminal or civil proceeding, or operate to disqualify a minor from subsequently holding public office or securing employment, or operate as a forfeiture of any public benefit, right, privilege, or right to receive any license granted by public authority.

(D) Nothing contained in subsection (C) of this Section shall prohibit the inspection or disclosure to victims and witnesses of photographs contained in the records of law enforcement agencies when the inspection and disclosure is conducted in the presence of a law enforcement officer for the purpose of the identification or apprehension of any person subject to the provisions of this Act or for the investigation or prosecution of any crime.

(E) Law enforcement officers, and personnel of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, may not disclose the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor.

- (F) Nothing contained in this Section shall prohibit law enforcement agencies from communicating with each other by letter, memorandum, teletype or intelligence alert bulletin or other means the identity or other relevant information pertaining to a person under 18 years of age if there are reasonable grounds to believe that the person poses a real and present danger to the safety of the public or law enforcement officers. The information provided under this subsection (F) shall remain confidential and shall not be publicly disclosed, except as otherwise allowed by law.
- (G) Nothing in this Section shall prohibit the right of a Civil Service Commission or appointing authority of any state, county or municipality examining the character and fitness of an applicant for employment with a law enforcement agency, correctional institution, or fire department from obtaining and examining the records of any law enforcement agency relating to any record of the applicant having been arrested or taken into custody before the applicant's 18th birthday.
- (H) The changes made to this Section by Public Act 98-61 apply to law enforcement records of a minor who has been arrested or taken into custody on or after January 1, 2014 (the effective date of Public Act 98-61)

## **Appendix E – Confidentiality and accessibility of juvenile court records. 705 ILCS 405/1-8.**

§ 1-8. Confidentiality and accessibility of juvenile court records.

(A) Inspection and copying of juvenile court records relating to a minor who is the subject of a proceeding under this Act shall be restricted to the following:

- (1) The minor who is the subject of record, his parents, guardian and counsel.
- (2) Law enforcement officers and law enforcement agencies when such information is essential to executing an arrest or search warrant or other compulsory process, or to conducting an ongoing investigation or relating to a minor who has been adjudicated delinquent and there has been a previous finding that the act which constitutes the previous offense was committed in furtherance of criminal activities by a criminal street gang.

Before July 1, 1994, for the purposes of this Section, “criminal street gang” means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts and that has a common name or common identifying sign, symbol or specific color apparel displayed, and whose members individually or collectively engage in or have engaged in a pattern of criminal activity.

Beginning July 1, 1994, for purposes of this Section, “criminal street gang” has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.

- (3) Judges, hearing officers, prosecutors, probation officers, social workers or other individuals assigned by the court to conduct a pre-adjudication or predisposition investigation, and individuals responsible for supervising or providing temporary or permanent care and custody for minors pursuant to the order of the juvenile court when essential to performing their responsibilities.
- (4) Judges, prosecutors and probation officers:
  - (a) in the course of a trial when institution of criminal proceedings has been permitted or required under Section 5-805; or
  - (b) when criminal proceedings have been permitted or required under Section 5-805 and a minor is the subject of a proceeding to determine the amount of bail; or
  - (c) when criminal proceedings have been permitted or required under Section 5-805 and a minor is the subject of a pre-trial investigation, pre-sentence investigation or fitness hearing, or proceedings on an application for probation; or
  - (d) when a minor becomes 18 years of age or older, and is the subject of criminal proceedings, including a hearing to determine the amount of bail, a pre-trial investigation, a pre-sentence investigation, a fitness hearing, or proceedings on an application for probation.
- (5) Adult and Juvenile Prisoner Review Boards.
- (6) Authorized military personnel.
- (7) Victims, their subrogees and legal representatives; however, such persons shall have access only to the name and address of the minor and information pertaining to the disposition or alternative adjustment plan of the juvenile court.
- (8) Persons engaged in bona fide research, with the permission of the presiding judge of the juvenile court and the chief executive of the agency that prepared the particular records; provided that publication of such research results in no disclosure of a minor’s identity and protects the confidentiality of the record.

- (9) The Secretary of State to whom the Clerk of the Court shall report the disposition of all cases, as required in Section 6-204 of the Illinois Vehicle Code.<sup>2</sup> However, information reported relative to these offenses shall be privileged and available only to the Secretary of State, courts, and police officers.
- (10) The administrator of a bonafide substance abuse student assistance program with the permission of the presiding judge of the juvenile court.
- (11) Mental health professionals on behalf of the Illinois Department of Corrections or the Department of Human Services or prosecutors who are evaluating, prosecuting, or investigating a potential or actual petition brought under the Sexually Violent Persons Commitment Act<sup>3</sup> relating to a person who is the subject of juvenile court records or the respondent to a petition brought under the Sexually Violent Persons Commitment Act, who is the subject of juvenile court records sought. Any records and any information obtained from those records under this paragraph (11) may be used only in sexually violent persons commitment proceedings.

(A-1) Findings and exclusions of paternity entered in proceedings occurring under Article II of this Act shall be disclosed, in a manner and form approved by the Presiding Judge of the Juvenile Court, to the Department of Healthcare and Family Services when necessary to discharge the duties of the Department of Healthcare and Family Services under Article X of the Illinois Public Aid Code.

(B) A minor who is the victim in a juvenile proceeding shall be provided the same confidentiality regarding disclosure of identity as the minor who is the subject of record.

(C) Except as otherwise provided in this subsection (C), juvenile court records shall not be made available to the general public. Subject to the limitations in paragraphs (0.1) through (0.4) of this subsection (C), the judge presiding over a juvenile court proceeding brought under this Act, in his or her discretion, may order that juvenile court records of an individual case be made available for inspection upon request by a representative of an agency, association, or news media entity or by a properly interested person. For purposes of inspecting documents under this subsection (C), a civil subpoena is not an order of the court

(0.1) In cases where the records concern a pending juvenile court case, the requesting party seeking to inspect the juvenile court records shall provide actual notice to the attorney or guardian ad litem of the minor whose records are sought.

(0.2) In cases where the records concern a juvenile court case that is no longer pending, the requesting party seeking to inspect the juvenile court records shall provide actual notice to the minor or the minor's parent or legal guardian, and the matter shall be referred to the chief judge presiding over matters pursuant to this Act.

(0.3) In determining whether records should be made available for inspection and whether inspection should be limited to certain parts of the file, the court shall consider the minor's interest in confidentiality and rehabilitation over the requesting party's interest in obtaining the information. The State's Attorney, the minor, and the minor's parents, guardian, and counsel shall at all times have the right to examine court files and records.

(0.4) Any records obtained in violation of this subsection (C) shall not be admissible in any criminal or civil proceeding, or operate to disqualify a minor from subsequently holding public office, or operate as a forfeiture of any public benefit, right, privilege, or right to receive any license granted by public authority.

(1) The court shall allow the general public to have access to the name, address, and offense of a minor who is adjudicated a delinquent minor under this Act under either of the following circumstances:

(a) The adjudication of delinquency was based upon the minor's commission of first degree murder, attempt to commit first degree murder, aggravated criminal sexual assault, or criminal sexual assault; or

(b) The court has made a finding that the minor was at least 13 years of age at the time the act was committed and the adjudication of delinquency was based upon the minor's commission of: (i) an act in furtherance of the commission of a felony as a member of or on behalf of a criminal street gang, (ii) an act involving the use of a firearm in the commission of a felony, (iii) an act that would be a Class X felony offense under or the minor's second or subsequent Class 2 or greater felony offense under the Cannabis Control Act<sup>4</sup> if committed by an adult, (iv) an act that would be a second or subsequent offense under Section 402 of the Illinois Controlled Substances Act<sup>5</sup> if committed by an adult, (v) an act that would be an offense under

Section 401 of the Illinois Controlled Substances Act<sup>6</sup> if committed by an adult, (vi) an act that would be a second or subsequent offense under Section 60 of the Methamphetamine Control and Community Protection Act, or (vii) an act that would be an offense under another Section of the Methamphetamine Control and Community Protection Act.

- (2) The court shall allow the general public to have access to the name, address, and offense of a minor who is at least 13 years of age at the time the offense is committed and who is convicted, in criminal proceedings permitted or required under Section 5-4, under either of the following circumstances:
- (a) The minor has been convicted of first degree murder, attempt to commit first degree murder, aggravated criminal sexual assault, or criminal sexual assault,
  - (b) The court has made a finding that the minor was at least 13 years of age at the time the offense was committed and the conviction was based upon the minor's commission of: (i) an offense in furtherance of the commission of a felony as a member of or on behalf of a criminal street gang, (ii) an offense involving the use of a firearm in the commission of a felony, (iii) a Class X felony offense under or a second or subsequent Class 2 or greater felony offense under the Cannabis Control Act, (iv) a second or subsequent offense under Section 402 of the Illinois Controlled Substances Act, (v) an offense under Section 401 of the Illinois Controlled Substances Act, (vi) an act that would be a second or subsequent offense under Section 60 of the Methamphetamine Control and Community Protection Act, or (vii) an act that would be an offense under another Section of the Methamphetamine Control and Community Protection Act.
- (D) Pending or following any adjudication of delinquency for any offense defined in Sections 11-1.20 through 11-1.60 or 12-13 through 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012,<sup>7</sup> the victim of any such offense shall receive the rights set out in Sections 4 and 6 of the Bill of Rights for Victims and Witnesses of Violent Crime Act; and the juvenile who is the subject of the adjudication, notwithstanding any other provision of this Act, shall be treated as an adult for the purpose of affording such rights to the victim.
- (E) Nothing in this Section shall affect the right of a Civil Service Commission or appointing authority of any state, county or municipality examining the character and fitness of an applicant for employment with a law enforcement agency, correctional institution, or fire department to ascertain whether that applicant was ever adjudicated to be a delinquent minor and, if so, to examine the records of disposition or evidence which were made in proceedings under this Act.
- (F) Following any adjudication of delinquency for a crime which would be a felony if committed by an adult, or following any adjudication of delinquency for a violation of Section 24-1, 24-3, 24-3.1, or 24-5 of the Criminal Code of 1961 or the Criminal Code of 2012, the State's Attorney shall ascertain whether the minor respondent is enrolled in school and, if so, shall provide a copy of the dispositional order to the principal or chief administrative officer of the school. Access to such juvenile records shall be limited to the principal or chief administrative officer of the school and any guidance counselor designated by him.
- (G) Nothing contained in this Act prevents the sharing or disclosure of information or records relating or pertaining to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action Program when that information is used to assist in the early identification and treatment of habitual juvenile offenders.
- (H) When a Court hearing a proceeding under Article II of this Act becomes aware that an earlier proceeding under Article II had been heard in a different county, that Court shall request, and the Court in which the earlier proceedings were initiated shall transmit, an authenticated copy of the Court record, including all documents, petitions, and orders filed therein and the minute orders, transcript of proceedings, and docket entries of the Court.
- (I) The Clerk of the Circuit Court shall report to the Department of State Police, in the form and manner required by the Department of State Police, the final disposition of each minor who has been arrested or taken into custody before his or her 18th birthday for those offenses required to be reported under Section 5 of the Criminal Identification Act. Information reported to the Department under this Section may be maintained with records that the Department files under Section 2.1 of the Criminal Identification Act.
- (J) The changes made to this Section by Public Act 98-61 apply to law enforcement records of a minor who has been arrested or taken into custody on or after January 1, 2014 (the effective date of Public Act 98-61).

## Appendix F – Expungement of juvenile law enforcement and court records. 705 ILCS 405/5-915.

§ 5-915. Expungement of juvenile law enforcement and court records.

(0.05) For purposes of this Section and Section 5-622:

“Expunge” means to physically destroy the records and to obliterate the minor’s name from any official index or public record, or both. Nothing in this Act shall require the physical destruction of the internal office records, files, or databases maintained by a State’s Attorney’s Office or other prosecutor.

“Law enforcement record” includes but is not limited to records of arrest, station adjustments, fingerprints, probation adjustments, the issuance of a notice to appear, or any other records maintained by a law enforcement agency relating to a minor suspected of committing an offense.

(1) Whenever any person has attained the age of 18 or whenever all juvenile court proceedings relating to that person have been terminated, whichever is later, the person may petition the court to expunge law enforcement records relating to incidents occurring before his or her 18th birthday or his or her juvenile court records, or both, but only in the following circumstances:

- (a) the minor was arrested and no petition for delinquency was filed with the clerk of the circuit court; or
- (b) the minor was charged with an offense and was found not delinquent of that offense; or
- (c) the minor was placed under supervision pursuant to Section 5-615, and the order of supervision has since been successfully terminated; or
- (d) the minor was adjudicated for an offense which would be a Class B misdemeanor, Class C misdemeanor, or a petty or business offense if committed by an adult.

(1.5) Commencing 180 days after the effective date of this amendatory Act of the 98th General Assembly, the Department of State Police shall automatically expunge, on or before January 1 of each year, a person’s law enforcement records relating to incidents occurring before his or her 18th birthday in the Department’s possession or control and which contains the final disposition which pertain to the person when arrested as a minor if:

- (a) the minor was arrested for an eligible offense and no petition for delinquency was filed with the clerk of the circuit court; and
- (b) the person attained the age of 18 years during the last calendar year; and
- (c) since the date of the minor’s most recent arrest, at least 6 months have elapsed without an additional arrest, filing of a petition for delinquency whether related or not to a previous arrest, or filing of charges not initiated by arrest.

The Department of State Police shall allow a person to use the Access and Review process, established in the Department of State Police, for verifying that his or her law enforcement records relating to incidents occurring before his or her 18th birthday eligible under this subsection have been expunged as provided in this subsection.

The Department of State Police shall provide by rule the process for access, review, and automatic expungement.

(1.6) Commencing on the effective date of this amendatory Act of the 98th General Assembly, a person whose law enforcement records are not subject to subsection (1.5) of this Section and who has attained the age of 18 years may use the Access and Review process, established in the Department of State Police, for verifying his or her law enforcement records relating to incidents occurring before his or her 18th birthday in the Department’s possession or control which pertain to the person when arrested as a minor, if the incident occurred no earlier than 30 years before the effective date of this amendatory Act of the 98th General Assembly. If the person identifies a law enforcement record of an eligible offense that meets the requirements of this subsection, paragraphs (a) and (c) of subsection (1.5) of this Section, and all juvenile court proceedings related to the person have been terminated, the person may file a Request for Expungement of Juvenile Law Enforcement Records, in the form and manner prescribed by the Department of State Police, with the Department and the Department shall consider expungement of the record as otherwise provided for automatic

expungement under subsection (1.5) of this Section. The person shall provide notice and a copy of the Request for Expungement of Juvenile Law Enforcement Records to the arresting agency, prosecutor charged with the prosecution of the minor, or the State's Attorney of the county that prosecuted the minor. The Department of State Police shall provide by rule the process for access, review, and Request for Expungement of Juvenile Law Enforcement Records.

(1.7) Nothing in subsections (1.5) and (1.6) of this Section precludes a person from filing a petition under subsection (1) for expungement of records subject to automatic expungement under subsection (1.5) or (1.6) of this Section.

(1.8) For the purposes of subsections (1.5) and (1.6) of this Section, "eligible offense" means records relating to an arrest or incident occurring before the person's 18th birthday that if committed by an adult is not an offense classified as a Class 2 felony or higher offense, an offense under Article 11 of the Criminal Code of 1961 or the Criminal Code of 2012, or an offense under Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961.

(2) Any person may petition the court to expunge all law enforcement records relating to any incidents occurring before his or her 18th birthday which did not result in proceedings in criminal court and all juvenile court records with respect to any adjudications except those based upon first degree murder and sex offenses which would be felonies if committed by an adult, if the person for whom expungement is sought has had no convictions for any crime since his or her 18th birthday and:

(a) has attained the age of 21 years; or

(b) 5 years have elapsed since all juvenile court proceedings relating to him or her have been terminated or his or her commitment to the Department of Juvenile Justice pursuant to this Act has been terminated; whichever is later of (a) or (b). Nothing in this Section 5-915 precludes a minor from obtaining expungement under Section 5-622.

(2.5) If a minor is arrested and no petition for delinquency is filed with the clerk of the circuit court as provided in paragraph (a) of subsection (1) at the time the minor is released from custody, the youth officer, if applicable, or other designated person from the arresting agency, shall notify verbally and in writing to the minor or the minor's parents or guardians that if the State's Attorney does not file a petition for delinquency, the minor has a right to petition to have his or her arrest record expunged when the minor attains the age of 18 or when all juvenile court proceedings relating to that minor have been terminated and that unless a petition to expunge is filed, the minor shall have an arrest record and shall provide the minor and the minor's parents or guardians with an expungement information packet, including a petition to expunge juvenile records obtained from the clerk of the circuit court.

(2.6) If a minor is charged with an offense and is found not delinquent of that offense; or if a minor is placed under supervision under Section 5-615, and the order of supervision is successfully terminated; or if a minor is adjudicated for an offense that would be a Class B misdemeanor, a Class C misdemeanor, or a business or petty offense if committed by an adult; or if a minor has incidents occurring before his or her 18th birthday that have not resulted in proceedings in criminal court, or resulted in proceedings in juvenile court, and the adjudications were not based upon first degree murder or sex offenses that would be felonies if committed by an adult; then at the time of sentencing or dismissal of the case, the judge shall inform the delinquent minor of his or her right to petition for expungement as provided by law, and the clerk of the circuit court shall provide an expungement information packet to the delinquent minor, written in plain language, including a petition for expungement, a sample of a completed petition, expungement instructions that shall include information informing the minor that (i) once the case is expunged, it shall be treated as if it never occurred, (ii) he or she may apply to have petition fees waived, (iii) once he or she obtains an expungement, he or she may not be required to disclose that he or she had a juvenile record, and (iv) he or she may file the petition on his or her own or with the assistance of an attorney. The failure of the judge to inform the delinquent minor of his or her right to petition for expungement as provided by law does not create a substantive right, nor is that failure grounds for: (i) a reversal of an adjudication of delinquency, (ii) a new trial; or (iii) an appeal.

(2.7) For counties with a population over 3,000,000, the clerk of the circuit court shall send a "Notification of a Possible Right to Expungement" post card to the minor at the address last received by the clerk of the circuit court on the date that the minor attains the age of 18 based on the birthdate provided to the court by the minor or his or her guardian in cases under paragraphs (b), (c), and (d) of subsection (1); and when the minor attains the age of 21 based on the birthdate provided to the court by the minor or his or her guardian in cases under subsection (2).

(2.8) The petition for expungement for subsection (1) may include multiple offenses on the same petition and shall be substantially in the following form:

IN THE CIRCUIT OF \_\_\_\_\_, ILLINOIS

\_\_\_\_\_ JUDICIAL COURT

IN THE INTEREST OF ) NO.

)

)

\_\_\_\_\_)

(Name of Petitioner )

PETITION TO EXPUNGE JUVENILE RECORDS

(705 ILCS 405/5-915 (SUBSECTION 1))

Now comes ....., petitioner, and respectfully requests that this Honorable Court enter an order expunging all juvenile law enforcement and court records of petitioner and in support thereof states that: Petitioner has attained the age of 18, his/her birth date being ..., or all Juvenile Court proceedings terminated as of ..., whichever occurred later. Petitioner was arrested on ... by the ... Police Department for the offense or offenses of ..., and:

(Check All That Apply:)

- a. no petition or petitions were filed with the Clerk of the Circuit Court.
- b. was charged with ... and was found not delinquent of the offense or offenses.
- c. a petition or petitions were filed and the petition or petitions were dismissed without a finding of delinquency on ....
- d. on ... placed under supervision pursuant to Section 5-615 of the Juvenile Court Act of 1987 and such order of supervision successfully terminated on ....
- e. was adjudicated for the offense or offenses, which would have been a Class B misdemeanor, a Class C misdemeanor, or a petty offense or business offense if committed by an adult.

Petitioner ... has ... has not been arrested on charges in this or any county other than the charges listed above. If petitioner has been arrested on additional charges, please list the charges below:

Charge(s): ...

Arresting Agency or Agencies: ...

Disposition/Result: (choose from a. through e., above): ...

WHEREFORE, the petitioner respectfully requests this Honorable Court to (1) order all law enforcement agencies to expunge all records of petitioner to this incident or incidents, and (2) to order the Clerk of the Court to expunge all records concerning the petitioner regarding this incident or incidents.

.....

Petitioner (Signature)

.....

Petitioner's Street Address

.....

City, State, Zip Code

.....

Petitioner's Telephone Number

Pursuant to the penalties of perjury under the Code of Civil Procedure, 735 ILCS 5/1-109, I hereby certify that the statements in this petition are true and correct, or on information and belief I believe the same to be true.

.....

Petitioner (Signature)



The Petition for Expungement for subsection (2) shall be substantially in the following form:

IN THE CIRCUIT OF \_\_\_\_\_, ILLINOIS  
\_\_\_\_\_  
JUDICIAL COURT  
IN THE INTEREST OF ) NO.  
)  
)  
)

(Name of Petitioner )  
PETITION TO EXPUNGE JUVENILE RECORDS  
(705 ILCS 405/5-915 (SUBSECTION 2))  
(Please prepare a separate petition for each offense)

Now comes ....., petitioner, and respectfully requests that this Honorable Court enter an order expunging all Juvenile Law Enforcement and Court records of petitioner and in support thereof states that:

The incident for which the Petitioner seeks expungement occurred before the Petitioner’s 18th birthday and did not result in proceedings in criminal court and the Petitioner has not had any convictions for any crime since his/her 18th birthday; and

The incident for which the Petitioner seeks expungement occurred before the Petitioner’s 18th birthday and the adjudication was not based upon first-degree murder or sex offenses which would be felonies if committed by an adult, and the Petitioner has not had any convictions for any crime since his/her 18th birthday.

Petitioner was arrested on ... by the ... Police Department for the offense of ..., and:

(Check whichever one occurred the latest:)

- a. The Petitioner has attained the age of 21 years, his/her birthday being ...; or
- b. 5 years have elapsed since all juvenile court proceedings relating to the Petitioner have been terminated; or the Petitioner’s commitment to the Department of Juvenile Justice pursuant to the expungement of juvenile law enforcement and court records provisions of the Juvenile Court Act of 1987 has been terminated. Petitioner ...has ...has not been arrested on charges in this or any other county other than the charge listed above. If petitioner has been arrested on additional charges, please list the charges below:

Charge(s): ...

Arresting Agency or Agencies: ...

Disposition/Result: (choose from a or b, above): ...

WHEREFORE, the petitioner respectfully requests this Honorable Court to (1) order all law enforcement agencies to expunge all records of petitioner related to this incident, and (2) to order the Clerk of the Court to expunge all records concerning the petitioner regarding this incident.

.....  
Petitioner (Signature)

.....  
Petitioner’s Street Address

...  
City, State, Zip Code

.....  
Petitioner’s Telephone Number

Pursuant to the penalties of perjury under the Code of Civil Procedure, 735 ILCS 5/1-109, I hereby certify that the statements in this petition are true and correct, or on information and belief I believe the same to be true.

...  
Petitioner (Signature)

- (3) The chief judge of the circuit in which an arrest was made or a charge was brought or any judge of that circuit designated by the chief judge may, upon verified petition of a person who is the subject of an arrest or a juvenile court proceeding under subsection (1) or (2) of this Section, order the law enforcement records or official court file, or both, to be expunged from the official records of the arresting authority, the clerk of the circuit court and the Department of State Police. The person whose records are to be expunged shall petition the court using the appropriate form containing his or her current address and shall promptly notify the clerk of the circuit court of any change of address. Notice of the petition shall be served upon the State's Attorney or prosecutor charged with the duty of prosecuting the offense, the Department of State Police, and the arresting agency or agencies by the clerk of the circuit court. If an objection is filed within 45 days of the notice of the petition, the clerk of the circuit court shall set a date for hearing after the 45 day objection period. At the hearing the court shall hear evidence on whether the expungement should or should not be granted. Unless the State's Attorney or prosecutor, the Department of State Police, or an arresting agency objects to the expungement within 45 days of the notice, the court may enter an order granting expungement. The person whose records are to be expunged shall pay the clerk of the circuit court a fee equivalent to the cost associated with expungement of records by the clerk and the Department of State Police. The clerk shall forward a certified copy of the order to the Department of State Police, the appropriate portion of the fee to the Department of State Police for processing, and deliver a certified copy of the order to the arresting agency.

(3.1) The Notice of Expungement shall be in substantially the following form:

IN THE CIRCUIT OF \_\_\_\_\_, ILLINOIS  
\_\_\_\_\_ JUDICIAL COURT

IN THE INTEREST OF ) NO.

)  
)  
\_\_\_\_\_)

(Name of Petitioner )

NOTICE

TO: State's Attorney

TO: Arresting Agency

.....  
.....  
.....  
.....

TO: Illinois State Police

.....  
.....

ATTENTION: Expungement

You are hereby notified that on ..., at ..., in courtroom ..., located at ..., before the Honorable ..., Judge, or any judge sitting in his/her stead, I shall then and there present a Petition to Expunge Juvenile records in the above-entitled matter, at which time and place you may appear.

.....

Petitioner's Signature

.....

Petitioner's Street Address

.....

City, State, Zip Code

.....

Petitioner's Telephone Number

PROOF OF SERVICE

On the ... day of ..., 20..., I on oath state that I served this notice and true and correct copies of the above-checked documents by:

(Check One:)

delivering copies personally to each entity to whom they are directed;

or

by mailing copies to each entity to whom they are directed by depositing the same in the U.S. Mail, proper postage fully prepaid, before the hour of 5:00 p.m., at the United States Postal Depository located at .....

.....

Signature

Clerk of the Circuit Court or Deputy Clerk

Printed Name of Delinquent Minor/Petitioner: ...

Address: .....

Telephone Number: .....

(3.2) The Order of Expungement shall be in substantially the following form:

IN THE CIRCUIT OF \_\_\_\_\_, ILLINOIS  
\_\_\_\_\_ JUDICIAL COURT

IN THE INTEREST OF ) NO.

)  
)  
\_\_\_\_\_)

(Name of Petitioner )  
DOB .....  
Arresting Agency/Agencies ...  
ORDER OF EXPUNGEMENT  
705 ILCS 405/5-915 (SUBSECTION 3))

This matter having been heard on the petitioner’s motion and the court being fully advised in the premises does find that the petitioner is indigent or has presented reasonable cause to waive all costs in this matter, IT IS HEREBY ORDERED that:

- ( ) 1. Clerk of Court and Department of State Police costs are hereby waived in this matter.
- ( ) 2. The Illinois State Police Bureau of Identification and the following law enforcement agencies expunge all records of petitioner relating to an arrest dated ... for the offense of ....

Law Enforcement Agencies:

.....

.....

- ( ) 3. IT IS FURTHER ORDERED that the Clerk of the Circuit Court expunge all records regarding the above-captioned case.

ENTER:

.....

JUDGE

DATED: ...

Name:

Attorney for:

Address: City/State/Zip:

Attorney Number:

(3.3) The Notice of Objection shall be in substantially the following form:

IN THE CIRCUIT OF \_\_\_\_\_, ILLINOIS  
\_\_\_\_\_ JUDICIAL COURT

IN THE INTEREST OF ) NO.

)  
)  
\_\_\_\_\_)

(Name of Petitioner )

NOTICE OF OBJECTION

TO:(Attorney, Public Defender, Minor)

.....

TO:(Illinois State Police)

.....

TO:(Clerk of the Court)

.....

TO:(Judge)

.....

TO:(Arresting Agency/Agencies)

.....

.....

ATTENTION: You are hereby notified that an objection has been filed by the following entity regarding the above-named minor's petition for expungement of juvenile records:

- State's Attorney's Office;
- Prosecutor (other than State's Attorney's Office) charged with the duty of prosecuting the offense sought to be expunged;
- Department of Illinois State Police; or
- Arresting Agency or Agencies.

The agency checked above respectfully requests that this case be continued and set for hearing on whether the expungement should or should not be granted.

DATED: ...

Name:

Attorney For:

Address:

City/State/Zip:

Telephone:

Attorney No.:

FOR USE BY CLERK OF THE COURT PERSONNEL ONLY

This matter has been set for hearing on the foregoing objection, on ... in room ..., located at ..., before the Honorable ..., Judge, or any judge sitting in his/her stead. (Only one hearing shall be set, regardless of the number of Notices of Objection received on the same case).

A copy of this completed Notice of Objection containing the court date, time, and location, has been sent via regular U.S. Mail to the following entities. (If more than one Notice of Objection is received on the same case, each one must be completed with the court date, time and location and mailed to the following entities):

- Attorney, Public Defender or Minor;
- State's Attorney's Office;
- Prosecutor (other than State's Attorney's Office) charged with the duty of prosecuting the offense sought to be expunged;
- Department of Illinois State Police; and
- Arresting agency or agencies.

Date: ...

Initials of Clerk completing this section: ...

- (4) Upon entry of an order expunging records or files, the offense, which the records or files concern shall be treated as if it never occurred. Law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the person.
- (5) Records which have not been expunged are sealed, and may be obtained only under the provisions of Sections 5-901, 5-905 and 5-915.
- (6) Nothing in this Section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the offender. This information may only be used for statistical and bona fide research purposes.
  - (6.5) The Department of State Police or any employee of the Department shall be immune from civil or criminal liability for failure to expunge any records of arrest that are subject to expungement under subsection (1.5) or (1.6) of this Section because of inability to verify a record. Nothing in subsection (1.5) or (1.6) of this Section shall create Department of State Police liability or responsibility for the expungement of law enforcement records it does not possess.
- (7)
  - (a) The State Appellate Defender shall establish, maintain, and carry out, by December 31, 2004, a juvenile expungement program to provide information and assistance to minors eligible to have their juvenile records expunged.
  - (b) The State Appellate Defender shall develop brochures, pamphlets, and other materials in printed form and through the agency's World Wide Web site. The pamphlets and other materials shall include at a minimum the following information:
    - (i) An explanation of the State's juvenile expungement process;
    - (ii) The circumstances under which juvenile expungement may occur;
    - (iii) The juvenile offenses that may be expunged;
    - (iv) The steps necessary to initiate and complete the juvenile expungement process; and
    - (v) Directions on how to contact the State Appellate Defender.
  - (c) The State Appellate Defender shall establish and maintain a statewide toll-free telephone number that a person may use to receive information or assistance concerning the expungement of juvenile records. The State Appellate Defender shall advertise the toll-free telephone number statewide. The State Appellate Defender shall develop an expungement information packet that may be sent to eligible persons seeking expungement of their juvenile records, which may include, but is not limited to, a pre-printed expungement petition with instructions on how to complete the petition and a pamphlet containing information that would assist individuals through the juvenile expungement process.
  - (d) The State Appellate Defender shall compile a statewide list of volunteer attorneys willing to assist eligible individuals through the juvenile expungement process.
  - (e) This Section shall be implemented from funds appropriated by the General Assembly to the State Appellate Defender for this purpose. The State Appellate Defender shall employ the necessary staff and adopt the necessary rules for implementation of this Section.

(8)

- (a) Except with respect to law enforcement agencies, the Department of Corrections, State's Attorneys, or other prosecutors, an expunged juvenile record may not be considered by any private or public entity in employment matters, certification, licensing, revocation of certification or licensure, or registration. Applications for employment must contain specific language that states that the applicant is not obligated to disclose expunged juvenile records of conviction or arrest. Employers may not ask if an applicant has had a juvenile record expunged. Effective January 1, 2005, the Department of Labor shall develop a link on the Department's website to inform employers that employers may not ask if an applicant had a juvenile record expunged and that application for employment must contain specific language that states that the applicant is not obligated to disclose expunged juvenile records of arrest or conviction.
- (b) A person whose juvenile records have been expunged is not entitled to remission of any fines, costs, or other money paid as a consequence of expungement. This amendatory Act of the 93rd General Assembly does not affect the right of the victim of a crime to prosecute or defend a civil action for damages.
- (c) The expungement of juvenile records under Section 5-622 shall be funded by the additional fine imposed under Section 5-9-1.17 of the Unified Code of Corrections and additional appropriations made by the General Assembly for such purpose.

(9) The changes made to this Section by Public Act 98-61 apply to law enforcement records of a minor who has been arrested or taken into custody on or after January 1, 2014 (the effective date of Public Act 98-61).

(10) The changes made in subsection (1.5) of this Section by this amendatory Act of the 98th General Assembly apply to law enforcement records of a minor who has been arrested or taken into custody on or after January 1, 2015. The changes made in subsection (1.6) of this Section by this amendatory Act of the 98th General Assembly apply to law enforcement records of a minor who has been arrested or taken into custody before January 1, 2015.

## Appendix G – Expungement review. 705 ILCS 405/5-622.

§ 5-622. Expungement review.

Any minor charged with a misdemeanor offense as a first offense, regardless of the disposition of the charge, is eligible for expungement review by the court upon his or her 18th birthday or upon completion of the minor's sentence or disposition of the charge against the minor, whichever is later. Upon motion by counsel filed within 30 days after entry of the judgment of the court, the court shall set a time for an expungement review hearing within a month of the minor's 18th birthday or within a month of completion of the minor's sentence or disposition of the charge against the minor, whichever is later. No hearing shall be held if the minor fails to appear, and no penalty shall attach to the minor. If the minor appears in person or by counsel the court shall hold a hearing to determine whether to expunge the law enforcement and court records of the minor. Objections to expungement shall be limited to the following:

- (a) that the offense for which the minor was arrested is still under active investigation;
- (b) that the minor is a potential witness in an upcoming court proceeding and that such arrest record is relevant to that proceeding;
- (c) that the arrest at issue was for one of the following offenses:
  - (i) any homicide;
  - (ii) an offense involving a deadly weapon;
  - (iii) a sex offense as defined in the Sex Offender Registration Act;
  - (iv) aggravated domestic battery.

In the absence of an objection, or if the objecting party fails to prove one of the above-listed objections, the court shall enter an order granting expungement. The clerk shall forward a certified copy of the order to the Department of State Police and the arresting agency. The Department and the arresting agency shall comply with such order to expunge within 60 days of receipt. An objection or a denial of an expungement order under this subsection does not operate to bar the filing of a Petition to Expunge by the minor under subsection (2) of Section 5-915 where applicable.



## Appendix H – The Commission’s Suggested Model Illinois Juvenile Record Confidentiality Statute

§ 1-7. Confidentiality of law enforcement, municipal, and ordinance violation records.

(I) All juvenile records which have not been expunged are sealed and may never be disclosed to the general public or otherwise made widely available. Sealed records may be obtained only under the provisions of this section and Section 1-8 and 5-915 of this Act, when their use is needed for good cause and with the approval of the juvenile court, as required.

Inspection and copying of law enforcement records maintained by law enforcement agencies or records of ordinance or municipal violations maintained by any state, local, or municipal agency that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted to the following:

- (1) Any local, State or federal law enforcement officers of any jurisdiction or agency when necessary for the discharge of their official duties during the investigation or prosecution of a crime or relating to a minor who has been adjudicated delinquent and there has been a previous finding that the act which constitutes the previous offense was committed in furtherance of criminal activities by a criminal street gang, or, when necessary for the discharge of its official duties in connection with a particular investigation of the conduct of a law enforcement officer, an independent agency or its staff created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers. For purposes of this Section, “criminal street gang” has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.
- (2) Prosecutors, probation officers, social workers, or other individuals assigned by the court to conduct a pre-adjudication or pre-disposition investigation, and individuals responsible for supervising or providing temporary or permanent care and custody for minors pursuant to the order of the juvenile court, when essential to performing their responsibilities.
- (3) Prosecutors and probation officers:
  - (a) in the course of a trial when institution of criminal proceedings has been permitted or required under Section 5-805; or
  - (b) when institution of criminal proceedings has been permitted or required under Section 5-805 and such minor is the subject of a proceeding to determine the amount of bail; or
  - (c) when criminal proceedings have been permitted or required under Section 5-805 and such minor is the subject of a pre-trial investigation, pre-sentence investigation, fitness hearing, or proceedings on an application for probation.
- (4) Adult and Juvenile Prisoner Review Board.
- (5) Authorized military personnel.
- (6) Persons engaged in bona fide research, with the permission of the Presiding Judge of the Juvenile Court and the chief executive of the respective law enforcement agency; provided that publication of such research results in no disclosure of a minor’s identity and protects the confidentiality of the minor’s record.
- (7) Department of Children and Family Services child protection investigators acting in their official capacity.
- (8) The appropriate school official only if the agency or officer believes that there is an imminent threat of physical harm to students, school personnel, or others who are present in the school or on school grounds.
  - (a) Inspection and copying shall be limited to law enforcement records transmitted to the appropriate school official or officials whom the school has determined to have a legitimate educational or safety interest by a local law enforcement agency under a reciprocal reporting system established and maintained between the school district and the local law enforcement agency under Section 10-20.14 of the School Code concern-

ing a minor enrolled in a school within the school district who has been arrested or taken into custody for any of the following offenses:

- (i) any violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012;<sup>3</sup>
- (ii) a violation of the Illinois Controlled Substances Act;<sup>4</sup>
- (iii) a violation of the Cannabis Control Act;<sup>5</sup>
- (iv) a forcible felony as defined in Section 2-8 of the Criminal Code of 1961 or the Criminal Code of 2012;<sup>6</sup>
- (v) a violation of the Methamphetamine Control and Community Protection Act;
- (vi) a violation of Section 1-2 of the Harassing and Obscene Communications Act;
- (vii) a violation of the Hazing Act; or
- (viii) a violation of Section 12-1, 12-2, 12-3, 12-3.05, 12-3.1, 12-3.2, 12-3.4, 12-3.5, 12-5, 12-7.3, 12-7.4, 12-7.5, 25-1, or 25-5 of the Criminal Code of 1961 or the Criminal Code of 2012.

The information derived from the law enforcement records shall be kept separate from and shall not become a part of the official school record of that child and shall not be a public record. The information shall be used solely by the appropriate school official or officials whom the school has determined to have a legitimate educational or safety interest to aid in the proper rehabilitation of the child and to protect the safety of students and employees in the school. If the designated law enforcement and school officials deem it to be in the best interest of the minor, the student may be referred to in-school or community based social services if those services are available. “Rehabilitation services” may include interventions by school support personnel, evaluation for eligibility for special education, referrals to community-based agencies such as youth services, behavioral healthcare service providers, drug and alcohol prevention or treatment programs, and other interventions as deemed appropriate for the student.

- (b) Any information provided to appropriate school officials whom the school has determined to have a legitimate educational or safety interest by local law enforcement officials about a minor who is the subject of a current police investigation that is directly related to school safety shall consist of oral information only, and not written law enforcement records, and shall be used solely by the appropriate school official or officials to protect the safety of students and employees in the school and aid in the proper rehabilitation of the child. The information derived orally from the local law enforcement officials shall be kept separate from and shall not become a part of the official school record of the child and shall not be a public record. This limitation on the use of information about a minor who is the subject of a current police investigation shall in no way limit the use of this information by prosecutors in pursuing criminal charges arising out of the information disclosed during a police investigation of the minor. For purposes of this paragraph, “investigation” means an official systematic inquiry by a law enforcement agency into actual or suspected criminal activity.
- (9) Mental health professionals on behalf of the Illinois Department of Corrections or the Department of Human Services or prosecutors who are evaluating, prosecuting, or investigating a potential or actual petition brought under the Sexually Violent Persons Commitment Act<sup>7</sup> relating to a person who is the subject of juvenile law enforcement records or the respondent to a petition brought under the Sexually Violent Persons Commitment Act who is the subject of the juvenile law enforcement records sought. Any records and any information obtained from those records under this paragraph (9) may be used only in sexually violent persons commitment proceedings.
- (10) The president of a park district. Inspection and copying shall be limited to law enforcement records transmitted to the president of the park district by the Illinois State Police under Section 8-23 of the Park District Code or Section 16a-5 of the Chicago Park District Act concerning a person who is seeking employment with that park district and who has been adjudicated a juvenile delinquent for any of the offenses listed in subsection (c) of Section 8-23 of the Park District Code or subsection (c) of Section 16a-5 of the Chicago Park District Act.

(II)

- (1) Except as provided in paragraph (2), no law enforcement officer or other person or agency may knowingly

transmit to the Department of Corrections or the Department of State Police or to the Federal Bureau of Investigation any fingerprint or photograph relating to a minor who has been arrested or taken into custody before his or her 18th birthday, unless the court in proceedings under this Act authorizes the transmission or enters an order under Section 5-805 permitting or requiring the institution of criminal proceedings.

- (2) Law enforcement officers or other persons or agencies shall transmit to the Department of State Police copies of fingerprints and descriptions of all minors who have been arrested or taken into custody before their 18th birthday for the offense of unlawful use of weapons under Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012,<sup>8</sup> a Class X or Class 1 felony, a forcible felony as defined in Section 2-8 of the Criminal Code of 1961 or the Criminal Code of 2012, or a Class 2 or greater felony under the Cannabis Control Act, the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or Chapter 4 of the Illinois Vehicle Code,<sup>9</sup> pursuant to Section 5 of the Criminal Identification Act.<sup>10</sup> Information reported to the Department pursuant to this Section may be maintained with records that the Department files pursuant to Section 2.1 of the Criminal Identification Act.<sup>11</sup> Nothing in this Act prohibits a law enforcement agency from fingerprinting a minor taken into custody or arrested before his or her 18th birthday for an offense other than those listed in this paragraph (2).
- (III) The records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 18 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public ~~[except by order of the court presiding over matters pursuant to this Act or] when the institution of criminal proceedings has been permitted or required under Section 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation or when provided by law. For purposes of obtaining documents pursuant to this Section, a civil subpoena is not an order of the court].~~
- (1) ~~In cases where the law enforcement, or independent agency, records concern a pending juvenile court case, the party seeking to inspect the records shall provide actual notice to the attorney or guardian ad litem of the minor whose records are sought.~~
- (2) ~~In cases where the records concern a juvenile court case that is no longer pending, the party seeking to inspect the records shall provide actual notice to the minor or the minor's parent or legal guardian, and the matter shall be referred to the chief judge presiding over matters pursuant to this Act.~~
- (3) ~~In determining whether the records should be available for inspection, the court shall consider the minor's interest in confidentiality and rehabilitation over the moving party's interest in obtaining the information. Any records obtained in violation of this subsection (C) shall not be admissible in any criminal or civil proceeding, or operate to disqualify a minor from subsequently holding public office or securing employment, or operate as a forfeiture of any public benefit, right, privilege, or right to receive any license granted by public authority.~~
- (IV) Nothing contained in subsection (C) of this Section shall prohibit the inspection or disclosure to victims and witnesses of photographs contained in the records of law enforcement agencies when the inspection and disclosure is conducted in the presence of a law enforcement officer for the purpose of the identification or apprehension of any person subject to the provisions of this Act or for the investigation or prosecution of any crime.
- (V) Law enforcement officers, and personnel of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, may not disclose the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor.
- (VI) Nothing contained in this Section shall prohibit law enforcement agencies from communicating with each other by letter, memorandum, teletype or intelligence alert bulletin or other means the identity or other relevant information pertaining to a person under 18 years of age if there are reasonable grounds to believe that the person poses a real and present danger to the safety of the public or law enforcement officers. The information provided under this subsection (F) shall remain confidential and shall not be publicly disclosed, except as otherwise allowed by law.
- (VII) Nothing in this Section shall prohibit the right of a Civil Service Commission or appointing authority of any state, county or municipality examining the character and fitness of an applicant for employment with a law en-

forcement agency, correctional institution, or fire department from obtaining and examining the records of any law enforcement agency relating to any record of the applicant having been arrested or taken into custody before the applicant's 18th birthday.

(VIII) The changes made to this Section by Public Act 98-61 apply to law enforcement records of a minor who has been arrested or taken into custody on or after January 1, 2014 (the effective date of Public Act 98-61)

(IX) Any person found to be in violation of this section is guilty of a Class B misdemeanor and subject to a fine of \$1,000 per instance. This subsection shall not apply to the person who is the subject of the record.

(X) A person convicted of violating this section is liable for damages in the amount of \$1,000 or actual damages, whichever is greater.

§ 1-8. Confidentiality and accessibility of juvenile court records.

- (1) A juvenile adjudication shall never be considered a conviction nor shall an adjudicated individual be considered a criminal. A juvenile adjudication shall not operate to impose upon the individual any of the civil disabilities ordinarily imposed by or resulting from conviction. Adjudications shall not prejudice or disqualify the individual in any civil service application or appointment; from holding public office; or from receiving any license granted by public authority.

All juvenile records which have not been expunged are sealed and may never be disclosed to the general public or otherwise made widely available. Sealed records may be obtained only under the provisions of this section and Section 1-7 and 5-915 of this Act, when their use is needed for good cause and with the approval of the juvenile court, as required.

Inspection and copying of juvenile court records relating to a minor who is the subject of a proceeding under this Act shall be restricted to the following:

- (1) The minor who is the subject of record, his parents, guardian and counsel.
- (2) Law enforcement officers and law enforcement agencies when such information is essential to executing an arrest or search warrant or other compulsory process, or to conducting an ongoing investigation or relating to a minor who has been adjudicated delinquent and there has been a previous finding that the act which constitutes the previous offense was committed in furtherance of criminal activities by a criminal street gang.

Before July 1, 1994, for the purposes of this Section, “criminal street gang” means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts and that has a common name or common identifying sign, symbol or specific color apparel displayed, and whose members individually or collectively engage in or have engaged in a pattern of criminal activity.

Beginning July 1, 1994, for purposes of this Section, “criminal street gang” has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.

- (3) Judges, hearing officers, prosecutors, probation officers, social workers or other individuals assigned by the court to conduct a pre-adjudication or predisposition investigation, and individuals responsible for supervising or providing temporary or permanent care and custody for minors pursuant to the order of the juvenile court when essential to performing their responsibilities.
- (4) Judges, prosecutors and probation officers:
  - (a) in the course of a trial when institution of criminal proceedings has been permitted or required under Section 5-805; or
  - (b) when criminal proceedings have been permitted or required under Section 5-805 and a minor is the subject of a proceeding to determine the amount of bail; or
  - (c) when criminal proceedings have been permitted or required under Section 5-805 and a minor is the subject of a pre-trial investigation, pre-sentence investigation or fitness hearing, or proceedings on an application for probation; or
  - (d) when a minor becomes 18 years of age or older, and is the subject of criminal proceedings, including a hearing to determine the amount of bail, a pre-trial investigation, a pre-sentence investigation, a fitness hearing, or proceedings on an application for probation.
- (5) Adult and Juvenile Prisoner Review Boards.

- (6) Authorized military personnel.
  - (7) Victims, their subrogees and legal representatives; however, such persons shall have access only to the name and address of the minor and information pertaining to the disposition or alternative adjustment plan of the juvenile court.
  - (8) Persons engaged in bona fide research, with the permission of the presiding judge of the juvenile court and the chief executive of the agency that prepared the particular records; provided that publication of such research results in no disclosure of a minor's identity and protects the confidentiality of the record.
  - (9) The Secretary of State to whom the Clerk of the Court shall report the disposition of all cases, as required in Section 6-204 of the Illinois Vehicle Code.<sup>2</sup> However, information reported relative to these offenses shall be privileged and available only to the Secretary of State, courts, and police officers.
  - (10) The administrator of a bonafide substance abuse student assistance program with the permission of the presiding judge of the juvenile court.
  - (11) Mental health professionals on behalf of the Illinois Department of Corrections or the Department of Human Services or prosecutors who are evaluating, prosecuting, or investigating a potential or actual petition brought under the Sexually Violent Persons Commitment Act<sup>3</sup> relating to a person who is the subject of juvenile court records or the respondent to a petition brought under the Sexually Violent Persons Commitment Act, who is the subject of juvenile court records sought. Any records and any information obtained from those records under this paragraph (11) may be used only in sexually violent persons commitment proceedings.
- (A-1) Findings and exclusions of paternity entered in proceedings occurring under Article II of this Act shall be disclosed, in a manner and form approved by the Presiding Judge of the Juvenile Court, to the Department of Healthcare and Family Services when necessary to discharge the duties of the Department of Healthcare and Family Services under Article X of the Illinois Public Aid Code.
- (B) A minor who is the victim in a juvenile proceeding shall be provided the same confidentiality regarding disclosure of identity as the minor who is the subject of record.
- (C) ~~[Except as otherwise provided in this subsection (C),]~~ Juvenile court records shall ~~[not]~~ never be made available to the general public. ~~[Subject to the limitations in paragraphs (0.1) through (0.4) of this subsection (C), the judge presiding over a juvenile court proceeding brought under this Act, in his or her discretion, may order that juvenile court records of an individual case be made available for inspection upon request by a representative of an agency, association, or news media entity or by a properly interested person. For purposes of inspecting documents under this subsection (C), a civil subpoena is not an order of the court~~
- ~~• (0.1) In cases where the records concern a pending juvenile court case, the requesting party seeking to inspect the juvenile court records shall provide actual notice to the attorney or guardian ad litem of the minor whose records are sought.~~
  - ~~• (0.2) In cases where the records concern a juvenile court case that is no longer pending, the requesting party seeking to inspect the juvenile court records shall provide actual notice to the minor or the minor's parent or legal guardian, and the matter shall be referred to the chief judge presiding over matters pursuant to this Act.~~
  - ~~• (0.3) In determining whether records should be made available for inspection and whether inspection should be limited to certain parts of the file, the court shall consider the minor's interest in confidentiality and rehabilitation over the requesting party's interest in obtaining the information. The State's Attorney, the minor, and the minor's parents, guardian, and counsel shall at all times have the right to examine court files and records.~~
  - ~~• (0.4) Any records obtained in violation of this subsection (C) shall not be admissible in any criminal or civil proceeding, or operate to disqualify a minor from subsequently holding public office, or operate as a forfeiture of any public benefit, right, privilege, or right to receive any license granted by public authority.~~
- (1) The court shall allow the general public to have access to the name, address, and offense of a minor who is adjudicated a delinquent minor under this Act under either of the following circumstances:
    - (a) ~~The adjudication of delinquency was based upon the minor's commission of first degree murder, attempt~~

~~to commit first degree murder, aggravated criminal sexual assault, or criminal sexual assault; or~~

- ~~(b) The court has made a finding that the minor was at least 13 years of age at the time the act was committed and the adjudication of delinquency was based upon the minor's commission of: (i) an act in furtherance of the commission of a felony as a member of or on behalf of a criminal street gang, (ii) an act involving the use of a firearm in the commission of a felony, (iii) an act that would be a Class X felony offense under or the minor's second or subsequent Class 2 or greater felony offense under the Cannabis Control Act<sup>4</sup> if committed by an adult, (iv) an act that would be a second or subsequent offense under Section 402 of the Illinois Controlled Substances Act<sup>5</sup> if committed by an adult, (v) an act that would be an offense under Section 401 of the Illinois Controlled Substances Act<sup>6</sup> if committed by an adult, (vi) an act that would be a second or subsequent offense under Section 60 of the Methamphetamine Control and Community Protection Act, or (vii) an act that would be an offense under another Section of the Methamphetamine Control and Community Protection Act.~~

- ~~(2) The court shall allow the general public to have access to the name, address, and offense of a minor who is at least 13 years of age at the time the offense is committed and who is convicted, in criminal proceedings permitted or required under Section 5-4, under either of the following circumstances:~~

- ~~(a) The minor has been convicted of first degree murder, attempt to commit first degree murder, aggravated criminal sexual assault, or criminal sexual assault,~~
- ~~(b) The court has made a finding that the minor was at least 13 years of age at the time the offense was committed and the conviction was based upon the minor's commission of: (i) an offense in furtherance of the commission of a felony as a member of or on behalf of a criminal street gang, (ii) an offense involving the use of a firearm in the commission of a felony, (iii) a Class X felony offense under or a second or subsequent Class 2 or greater felony offense under the Cannabis Control Act, (iv) a second or subsequent offense under Section 402 of the Illinois Controlled Substances Act, (v) an offense under Section 401 of the Illinois Controlled Substances Act, (vi) an act that would be a second or subsequent offense under Section 60 of the Methamphetamine Control and Community Protection Act, or (vii) an act that would be an offense under another Section of the Methamphetamine Control and Community Protection Act.]~~

- (D) Pending or following any adjudication of delinquency for any offense defined in Sections 11-1.20 through 11-1.60 or 12-13 through 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012,<sup>7</sup> the victim of any such offense shall receive the rights set out in Sections 4 and 6 of the Bill of Rights for Victims and Witnesses of Violent Crime Act; and the juvenile who is the subject of the adjudication, notwithstanding any other provision of this Act, shall be treated as an adult for the purpose of affording such rights to the victim.
- (E) Nothing in this Section shall affect the right of a Civil Service Commission or appointing authority of any state, county or municipality examining the character and fitness of an applicant for employment with a law enforcement agency, correctional institution, or fire department to ascertain whether that applicant was ever adjudicated to be a delinquent minor and, if so, to examine the records of disposition or evidence which were made in proceedings under this Act.
- (F) Following any adjudication of delinquency for a crime which would be a felony if committed by an adult, or following any adjudication of delinquency for a violation of Section 24-1, 24-3, 24-3.1, or 24-5 of the Criminal Code of 1961 or the Criminal Code of 2012, the State's Attorney shall ascertain whether the minor respondent is enrolled in school and, if so, shall provide a copy of the dispositional order to the principal or chief administrative officer of the school. Access to such juvenile records shall be limited to the principal or chief administrative officer of the school and any guidance counselor designated by him.
- (G) Nothing contained in this Act prevents the sharing or disclosure of information or records relating or pertaining to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action Program when that information is used to assist in the early identification and treatment of habitual juvenile offenders.
- (H) When a Court hearing a proceeding under Article II of this Act becomes aware that an earlier proceeding under Article II had been heard in a different county, that Court shall request, and the Court in which the earlier proceedings were initiated shall transmit, an authenticated copy of the Court record, including all documents, petitions, and orders filed therein and the minute orders, transcript of proceedings, and docket entries of the Court.

- (I) The Clerk of the Circuit Court shall report to the Department of State Police, in the form and manner required by the Department of State Police, the final disposition of each minor who has been arrested or taken into custody before his or her 18th birthday for those offenses required to be reported under Section 5 of the Criminal Identification Act. Information reported to the Department under this Section may be maintained with records that the Department files under Section 2.1 of the Criminal Identification Act.
- (J) The changes made to this Section by Public Act 98-61 apply to law enforcement records of a minor who has been arrested or taken into custody on or after January 1, 2014 (the effective date of Public Act 98-61).
- (K) Any person found to be in violation of this section is guilty of a Class B misdemeanor and subject to a fine of \$1,000 per instance. This subsection shall not apply to the person who is the subject of the record.
- (L) A person convicted of violating this section is liable for damages in the amount of \$1,000 or actual damages, whichever is greater.



## Appendix I – The Commission’s Suggested Model Illinois Juvenile Record Expungement Statute

§ 5-915.1 Expungement of juvenile law enforcement and court records.

(1) For purposes of this Section:

- (a) “Dissemination” or “disseminate” means to publish, produce, print, manufacture, distribute, sell, lease, exhibit, broadcast, display, transmit, or otherwise share information in any format so as to make the information accessible to others.
- (b) “Expunge” means to physically destroy the records and to obliterate the minor’s name and records of the minor’s applicable actions from any official index, public record, or electronic database. No evidence of the records in any format may be retained by any law enforcement agency, the juvenile court, or by any municipal, county, or state agency or department.
- (c) “Juvenile court record” includes but is not limited to:
  1. all documents filed in or maintained by the juvenile court pertaining to a specific incident, proceeding, or individual;
  2. all documents relating to a specific incident, proceeding, or individual made available to or maintained by probation officers, social workers, or other individuals assigned by the court to conduct a pre-adjudication or predisposition investigation, or by individuals responsible for supervising or providing temporary or permanent care and custody for minors pursuant to the order of the juvenile court;
  3. all documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings;
  4. all documents, transcripts, records, reports or other evidence prepared by, maintained by, or released by any municipal, county, or state agency or department, in any format, if indicating involvement with the juvenile court relating to a specific incident, proceeding, or individual.
- (d) “Law enforcement record” includes but is not limited to records of arrest, station adjustments, fingerprints, probation adjustments, the issuance of a notice to appear, or any other records or documents maintained by any law enforcement agency relating to a minor suspected of committing an offense or evidence of interacting with law enforcement in any format

(2) Automatic Expungement of Law Enforcement Records Relating to Mere Arrests.

- (a) The Department of State Police and all law enforcement agencies within the State shall automatically expunge, on or before January 1 of each year, all law enforcement records relating to events occurring before an individual’s 18<sup>th</sup> birthday if:
  1. one year or more has elapsed since the date of the arrest or law enforcement interaction documented in the records;
  2. no petition for delinquency or criminal charges were filed with the clerk of the circuit court relating to the arrest or law enforcement interaction documented in the records; and
  3. 6 months have elapsed without an additional subsequent arrest or filing of a petition for delinquency or criminal charges whether related or not to the arrest or law enforcement interaction documented in the records.

- (b) If unable to verify the satisfaction of conditions (2) and (3) of the preceding subsection (2)(a), records satisfying condition (1) shall be automatically expunged if the records relate to an offense that if committed by an adult is not an offense classified as a Class 2 felony or higher offense, an offense under Article 11 of the Criminal Code of 1961 or the Criminal Code of 2012, or an offense under Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961.
- (c) All law enforcement agencies within the State shall develop an Access and Review process that allows individuals to determine whether his or her law enforcement records relating to incidents occurring before his or her 18th birthday are eligible for expungement under this subsection and whether records eligible under this subsection have been expunged as provided in this subsection. This Access and Review process shall not involve a fee.

(3) Automatic and Immediate Expungement of Records Relating to Dismissed Cases and Cases Resulting in Findings of Non-delinquency.

- (a) Upon dismissal of a petition alleging delinquency or upon a finding of not delinquent, the court shall order all agencies named in the juvenile's court and probation files, including each law enforcement agency, other municipal, county or state agencies who may have records of the juvenile's adjudication, public or private correctional, detention, and treatment facilities and each individual who provided treatment or rehabilitation services for the juvenile under an order of the court, to send that person's juvenile records to the court within 5 business days. The court shall then destroy the paper and electronic records and mail an Affidavit of Expungement to the person. Additionally, each law enforcement agency shall also affirm in an Affidavit of Expungement to the court that it destroyed all paper and electronic copies of the expunged records, except as provided in (3)(b).
- (b) If the chief law enforcement officer of the agency, or his or her designee, certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner. Retention of a portion of a juvenile's law enforcement record does not disqualify the remainder of his or her record from immediate automatic expungement.

(4) Automatic Expungement of Records Relating to Findings of Delinquency.

- (a) Upon an adjudication of delinquency based on any offense except first degree murder, the juvenile court shall automatically order the expungement of the juvenile records two (2) years after the juvenile's case was closed if no delinquency or criminal proceeding is pending and the person has had no subsequent delinquency adjudication or criminal conviction. This requires no application or action on the part of the person. Upon receipt of the court order, all agencies named in the juvenile's court and probation files, including each law enforcement agency, other municipal, county or state agencies who may have records of the juvenile's adjudication, public or private correctional, detention, and treatment facilities and each individual who provided treatment or rehabilitation services for the juvenile under an order of the court, to send that person's juvenile records to the court within 5 business days. The court shall then destroy the paper and electronic records and mail an Affidavit of Expungement to the person. Additionally, each law enforcement agency shall also affirm in an Affidavit of Expungement to the court that it destroyed all paper and electronic copies of the expunged records, except as provided in (4)(b).

- (b) If the chief law enforcement officer of the agency, or his or her designee, certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner. Retention of a portion of a juvenile's law enforcement record does not disqualify the remainder of his or her record from immediate automatic expungement.

(5) Effect of Expungement.

- (a) Upon automatic expungement under subsection (2)(a) or upon the entry of an order to expunge records under subsections (3) and (4), the arrest and any resulting proceedings in the case shall be deemed never to have occurred. The subject of the records may properly reply that no record exists upon any inquiry into the matter and shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or any other type of application. The juvenile court and any municipal, county, or state agency or department subject to the expungement order shall reply that no record exists upon any inquiry into the matter and shall never acknowledge the records' former existence or expungement.
- (b) Except with respect to authorized military personnel, an expunged juvenile record may not be considered by any private or public entity in employment matters, certification, licensing, revocation of certification or licensure, or registration. Applications for employment within the State must contain specific language that states that the applicant is not obligated to disclose expunged juvenile records of adjudication or arrest. Employers may not ask, in any format or context, if an applicant has had a juvenile record expunged. Information about an expunged record obtained by a potential employer, even inadvertently, from an employment application that does not contain specific language that states that the applicant is not obligated to disclose expunged juvenile records of conviction or arrest, shall be treated as dissemination of an expunged record by the employer.
- (c) A person whose juvenile records have been expunged is not entitled to remission of any fines, costs, or other money paid as a consequence of expungement.

(6) Failure to Expunge Records Eligible for Automatic Expungement.

- (a) Whether or not expunged, records eligible for automatic expungement under (2)(a), (3)(a), or (4)(a) may be treated as expunged by the individual subject to the records.
- (b) Whether or not expunged, dissemination – by any law enforcement officer or agency, any official of the juvenile court, any municipal, county or state agency or department subject to an order of expungement or any individual employed by such agency or department – of any information contained in records eligible for automatic expungement under subsection (2)(a), (3)(a), or (4)(a) shall be treated as dissemination of expunged records.

(7) Nothing in this Section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the relevant individual. This information may only be used for anonymous statistical and bona fide research purposes.

(8) Dissemination of Expunged Records

- (a) Dissemination of any information contained in an expunged record shall be treated as a Class B/C misdemeanor and punishable by a fine of \$1000. Dissemination by an employee of any municipal, county, or state agency, including law enforcement, shall be grounds for unpaid suspension upon the first offense, and dismissal upon any subsequent offense.
- (b) Dissemination for financial gain of any information contained in an expunged record shall be treated as Class 4 felony. Dissemination for financial gain by an employee of any municipal, county, or state agency, including law enforcement, shall result in immediate termination.
- (c) The person whose record was expunged has a right of action against any person who intentionally disseminates an expunged record. In the proceeding, punitive damages up to an amount of \$1,000 may be sought in addition to any actual damages. The prevailing party shall be entitled to costs and reasonable attorney fees.
- (d) The punishments for dissemination of an expunged record shall never apply to the person whose record was expunged.

## Appendix J – Reported Juvenile Arrest and Expungement Data, 2004 –2014.

Reported Juvenile Expungement and Arrest Data by County

<b>Group 1</b>			
<b>County</b>	<b>Population (2010 Census)</b>	<b>Juvenile Arrests Reported to ISP (2004 – 2014)</b>	<b>Juvenile Expungements tReported (2004 – 2014)</b>
Cook County	5,194,675	323,234	4,028
<b>Group 1 Total</b>	<b>5,194,675</b>	<b>323,234</b>	<b>4,028</b>

<b>Group 2</b>			
<b>County</b>	<b>Population (2010 Census)</b>	<b>Juvenile Arrests Reported to ISP (2004 – 2014)</b>	<b>Juvenile Expungements Reported (2004 – 2014)</b>
Adams County	67,103	725	0
Bond County	17,768	53	0
Brown County	6,937	82	1
Bureau County	34,978	352	6
Calhoun County	5,089	31	0
Carroll County	15,387	312	0
Cass County	13,642	27	0
Champaign County	201,081	5,048	1
Clay County	13,815	49	0
Clinton County	37,762	440	5
Crawford County	19,817	20	0
Cumberland County	11,048	148	0
Dekalb County	105,160	3,060	3
DeWitt County	16,561	117	0
DuPage County	916,924	16,811	64
Edgar County	18,576	26	0
Edwards County	6,721	46	0
Franklin County	39,561	145	2
Gallatin County	5,589	<10	0
Greene County	13,886	71	1
Grundy County	50,063	780	0
Hardin County	4,320	16	0
Henry County	50,486	568	1
Jackson County	60,218	395	1
Jasper County	9,698	75	0
Jersey County	22,985	203	0
Jo Daviess County	22,678	77	0
Johnson County	12,582	152	14
Kane County	515,269	21,162	56
Kendall County	114,736	3,166	8
Livingston County	38,950	1,596	0
Logan County	30,305	294	2
Macon County	110,768	3,297	1
Macoupin County	47,765	159	0
Marion County	39,437	1,719	1

Marshall County	12,640	107	0
Mason County	14,666	75	0
Massac County	15,429	278	0
McHenry County	308,760	7,083	46
McLean County	169,572	5,528	9
Mercer County	16,434	318	0
Monroe County	32,957	360	2
Montgomery County	30,104	381	0
Morgan County	35,547	2,419	0
Moultrie County	14,846	93	1
Ogle County	53,497	1,064	15
Piatt County	16,729	138	1
Pike County	16,430	48	0
Pope County	4,470	<10	0
Putnam County	6,006	31	0
Richland County	16,233	228	0
Sangamon County	197,465	4,251	4
Stark County	5,994	79	0
Stephenson County	47,711	571	2
Tazewell County	135,394	2,239	4
Union County	17,808	129	9
Washington County	14,716	184	8
Wayne County	16,760	55	0
White County	14,665	165	15
Whiteside County	58,498	2,359	3
Will County	677,560	13,378	461
<b>Group 2 Total</b>	<b>4,648,556</b>	<b>102,783</b>	<b>747</b>

<b>Group 3</b>			
<b>County</b>	<b>Population (2010 Census)</b>	<b>Juvenile Arrests Reported to ISP (2004 – 2014)</b>	<b>Juvenile Expungements Reported (2004 – 2014)</b>
Alexander County	8,238	162	Not Reported
Boone County	54,165	1,180	Not Reported
Christian County	34,800	402	Not Reported
Clark County	16,335	176	Not Reported
Coles County	53,873	1,119	Not Reported
Douglas County	19,980	74	Not Reported
Effingham County	34,242	904	Not Reported
Fayette County	22,140	380	Not Reported
Ford County	14,081	32	Not Reported
Fulton County	37,069	615	Not Reported
Hamilton County	8,457	20	Not Reported
Hancock County	19,104	168	Not Reported
Henderson County	7,331	73	Not Reported
Iroquois County	29,718	149	Not Reported
Jefferson County	38,827	1,605	Not Reported
Kankakee County	113,449	4,274	Not Reported
Knox County	52,919	1,012	Not Reported
Lake County	703,462	19,029	Not Reported
LaSalle County	113,924	2,426	Not Reported
Lawrence County	16,833	183	Not Reported
Lee County	36,031	2,295	Not Reported
Madison County	269,282	5,014	Not Reported
McDonough County	32,612	1,120	Not Reported
Menard County	12,705	229	Not Reported
Peoria County	186,494	3,157	Not Reported
Perry County	22,350	247	Not Reported
Pulaski County	6,161	49	Not Reported
Randolph County	33,476	34	Not Reported
Rock Island County	147,546	2,689	Not Reported
Saline County	24,913	225	Not Reported
Schuyler County	7,544	192	Not Reported
Scott County	5,355	28	Not Reported
Shelby County	22,363	346	Not Reported
St. Clair County	270,056	3,743	Not Reported
Vermilion County	81,625	1,176	Not Reported



Wabash County	11,947	343	Not Reported
Warren County	17,707	792	Not Reported
Williamson County	66,357	757	Not Reported
Winnebago County	295,266	17,022	Not Reported
Woodford County	38,664	213	Not Reported
<b>Group 3 Total</b>	<b>2,987,401</b>	<b>73,654</b>	<b>N/A</b>

### Statewide Arrest and Expungement Projections

	Counties Reporting Expungement Data		Non-Reporting Counties (Group 3)	Statewide Projections
	Cook County (Group 1)	Non-Cook Counties (Group 2)		
<b>Number of Counties</b>	1	61	40	102
<b>Percent of State Population</b>	40.5%	36.2%	23.3%	100%
<b>Expungements Granted (2004 – 2014)</b>	4,028	747	535	5,310
<b>Juvenile Arrests Reported to ISP (2004 – 2014)</b>	323,234	102,783	73,654	499,671
<b>Estimated Total Juvenile Arrests (2004 – 2014)</b>	1,197,163	380,678	272,793	1,850,633
<b>Proportion of Estimated Total Juvenile Arrests Expunged</b>	0.34%	0.20%	0.20%	0.29%

## Juvenile Arrest Data FOIA Responses

City	County	2010 Pop.	Total Juv. Arrests 2004-2014	Juv. Arrests Reported to ISP 2004-2014	% of Juv. Arrests Reported to ISP
Chicago	Cook	2,695,598	676,457	171,364 <sup>208</sup>	25.3%
Aurora	Kane	197,899	14,541	9,739	67.0%
Rockford	Winnebago	152,871	18,297	5,860 <sup>209</sup>	32.0%
Joliet	Will	147,433	11,138	6,227	55.9%
Naperville	DuPage	141,853	1,840	1,731 <sup>210</sup>	94.1%
Springfield	Sangamon	116,250	19,376	2,476	12.8%
Peoria	Peoria	115,007	29,916	1,855	6.2%
Elgin	Kane	108,188	8,160	5,551	68.0%
Waukegan	Lake	89,078	9,705	2,021	20.8%
Cicero	Cook	83,891	No Response	2,391 <sup>211</sup>	N/A
Champaign	Champaign	81,055	2,540	2,086	82.1%
Bloomington	McLean	76,610	3,170	3,170 <sup>212</sup>	100.0%
Decatur	Macon	76,122	882	597	67.7%
Arlington Heights	Cook	75,101	1,997	1,169	58.5%
Evanston	Cook	74,486	3,386	1,339 <sup>213</sup>	39.5%
Schaumburg	Cook	74,227	3,697	3,407	92.2%
Bolingbrook	Will	73,366	4,567	2,468	54.0%
Palatine	Cook	68,557	2,638	1,836	69.6%
Skokie	Cook	64,784	18,424	589 <sup>214</sup>	3.2%
Des Plaines	Cook	58,364	1,623	552	34.0%
<b>TOTAL</b>	<b>N/A</b>	<b>4,570,740</b>	<b>832,354</b>	<b>224,037</b>	<b>26.9%</b>

---

191 See Appendix H – Methodology.

192 The Chicago PD did not supply data directly to the Commission. Instead, the Commission obtained total juvenile arrests data from reports issued by the Chicago PD annually from 2004 through 2010. As such, the data for both total juvenile arrests and juvenile arrests reported to ISP reflect only 2004 through 2010 data.

193 The Rockford PD supplied total juvenile arrest data for 2006 through 2014. As such, both total juvenile arrests and juvenile arrests reported to ISP reflect only 2006 through 2014 data.

194 Both total juvenile arrests and juvenile arrests reported to ISP reflect only 2009 through 2014 data as the Naperville Police Department concluded, “there is no accurate means to provide you your requested stats prior to 2009.”

195 The 2,391 juvenile arrests reported to ISP by the Cicero PD are not included in the summed total below, as Cicero did not provide any data on the total number of juvenile arrests the department made over the time period studied.

196 The Bloomington PD responded to the Commission that they made fewer total juvenile arrests than they reported to ISP. To arrive at a conservative estimate, we assumed the agency reported all juvenile arrests to ISP and used the 3,170 reported to ISP as both the number reported and total number of juvenile arrests made.

197 The Evanston PD supplied total juvenile arrest data for 2005 through 2014. As such, the data for both total juvenile arrests and juvenile arrests reported to ISP reflect only 2005 through 2015 data.

198 The Skokie PD supplied total juvenile arrest data for 2005 through 2014. As such, the data for both total juvenile arrests and juvenile arrests reported to ISP reflect only 2005 through 2015 data.

