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## Juvenile Record Expunction: The Rehabilitating Remedy

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# JUVENILE RECORD EXPUNCTION: THE REHABILITATING REMEDY

## I. INTRODUCTION

The Massachusetts legislature shields the confidentiality of juvenile records from the general public.<sup>1</sup> Public scrutiny, however, is not the only potential harm in maintaining juvenile records.<sup>2</sup> The numerous agencies with access to juvenile records also pose a serious threat to a juvenile's future.<sup>3</sup> The accessibility of records for schools, future employers, the press, local law enforcement, the armed forces and the state's judiciary are some examples of where the protection of confidentiality ends.<sup>4</sup>

The confidential shield afforded juvenile records exists to protect the extensive breadth of personal information archived within them.<sup>5</sup> A juvenile's record may contain delinquency dispositions and detailed reports of the incident bringing him or her before the court, in addition to the juvenile's name and address.<sup>6</sup> A common misconception is that a

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<sup>1</sup> See MASS. GEN. LAWS ch. 119, § 60A (2001). Juvenile records arising from delinquency proceedings are not available for public inspection unless the court grants a party express permission for access. *Id.*

<sup>2</sup> See *Davis v. Alaska*, 415 U.S. 308 (1974). The Supreme Court held prosecutors had the right to use juvenile record of an adverse testifying witness for impeachment purposes. *Id.* at 320. The Court also stated the public policy interest of protecting the confidentiality of a juvenile's record would be outweighed by the constitutional due process right to an effective cross-examination for bias of an adverse witness. *Id.*

<sup>3</sup> See *Police Comm'r of Boston v. Municipal Ct. of Dorchester Dist.*, 374 Mass. 640, 643-44 (1978). The Massachusetts Department of Public Safety and the Federal Bureau of Investigation are two examples of agencies outside of Massachusetts state law enforcement given copies of an arrested juvenile's fingerprints by the Boston Police Department. *Id.*

<sup>4</sup> See Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (Nat'l Ctr. for Juv. Justice) ch. 4 at 17, Sept. 1999, at <http://www.ncjrs.org/html/ojjdp/nationalreport99/toc.html> (discussing numerous agencies given juvenile record information countrywide). See also *Police Comm'r of Boston*, 374 Mass. at 643-44 (listing various agencies within state given fingerprints, photographs, booking sheets of arrested juveniles).

<sup>5</sup> See *Police Comm'r of Boston*, 374 Mass. at 643-44. Copies of an arrested juvenile's fingerprints, front and side photographs, arrest booking sheets, and incident reports are all included in a juvenile's record after coming into contact with Massachusetts law enforcement officers. *Id.*

<sup>6</sup> See *Police Comm'r of Boston*, 374 Mass. At 643-44. Juvenile's records were distributed to numerous agencies contained copies of the juvenile's fingerprints,

juvenile's record disappears once he or she reaches the age of majority.<sup>7</sup> However, in Massachusetts, records remain as accessible to agencies in adulthood as they were during the juvenile's minority.<sup>8</sup> Many juvenile records are not even sealed without an explicit request made to the Commissioner of Probation.<sup>9</sup>

This Note will examine the juvenile court system's use of expunction as a valuable means of protecting juveniles' privacy into adulthood. The Note focuses on the philosophy of juvenile court systems in states across the country in the administration of expunction of juvenile records, focusing primarily on Massachusetts juvenile procedures. Part II states the mission of the juvenile justice system. Part III details the differences between sealing juvenile records and expunging juvenile records. Part IV explains the competing interests of juveniles and law enforcement in the maintenance of juvenile records. Part V addresses the adverse consequences juveniles suffer when records are retained and disseminated to multiple parties. Part VI examines when and if courts use expunction, or if it only exists as a legal fiction. Finally, Part VII concludes with some suggestions for using expunction as a tool to further the mission of the juvenile court system in Massachusetts and across the country.

## II. THE MISSION OF THE MASSACHUSETTS JUVENILE JUSTICE SYSTEM

The juvenile court system was never intended to be a system criminalizing juveniles, but rather a system for rehabilitation.<sup>10</sup> The

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photographs, an arrest booking sheet form, and an incident report. *Id.* at 643. The juvenile was arrested and charged with assault with force and intent as an act of delinquency. *Id.* at 642. The prosecution was unable to produce a victim and the case was subsequently dismissed with prejudice. *Id.* This juvenile made a motion to expunge his record. *Id.* at 643. The trial judge ordered his record expunged. *Id.*

<sup>7</sup> See Edward Niam, Jr., *Do You Know Who You Are Hiring? Preventing Workplace and Employee Violence*, USA TODAY, July 1997, at 51. "Juvenile records are not accessible for pre-employment screening. Once an individual reaches the age of 18, the record is expunged." *Id.*

<sup>8</sup> See *Police Comm'r of Boston*, 374 Mass. at 643-44 (discussing availability of records to various government agencies).

<sup>9</sup> See MASS. GEN. LAWS ch. 276, § 100b (2000). Any juvenile with a record of delinquency in Massachusetts may request to have his or her record sealed by obtaining a form provided by the Office of the Commissioner of Probation and making a formal request. *Id.*

<sup>10</sup> See MASS. GEN. LAWS ch. 119, § 53 (2000) (stating children as in need of aid, encouragement and guidance, rather than criminals). See *e.g.*, *Commonwealth v. Balboni*, 419 Mass. 42, 45 (1994) (treating youthful offenders as children in need of aid); *Police Comm'r of Boston v. Municipal Ct. of Dorchester Dist.*, 374 Mass. 640, 666 (1978) (rehabilitating equally delinquents of serious crimes or minor offenses); *Metcalf v. Commonwealth*, 338 Mass. 648, 651 (1959) (treating children as needing guidance rather

Massachusetts legislature likened the court's role to one of a surrogate parent who would provide aid, guidance and encouragement to the Commonwealth's troubled youth.<sup>11</sup> The purpose of the juvenile court system is to create a separate judiciary department apart from adult criminal proceedings, allowing delinquent children the opportunity for rehabilitation without attaching the stigma of criminality.<sup>12</sup> The juvenile court system fulfills this mission by not deeming juvenile proceedings as criminal.<sup>13</sup> In accordance with the juvenile court's mission of rehabilitation, a child does not plead his or her guilt or innocence, but rather pleads delinquent or not delinquent.<sup>14</sup> Furthering the rehabilitative purpose is the option of sealing a juvenile's record upon submitting a formal request to the Commissioner of Probation.<sup>15</sup>

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than as criminals).

<sup>11</sup> See MASS. GEN. LAWS ch. 119, § 53 (2000). The legislature stated, "[c]ustody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents." *Id.*

<sup>12</sup> See *Police Comm'r of Boston*, 374 Mass. at 666 (stating ch. 119, § 53 avoids stigmatization of juveniles as criminals). See also MASS. GEN. LAWS ch. 119, § 53 (2000). "Proceedings against children under said sections shall not be deemed criminal proceedings." *Id.*

<sup>13</sup> See generally MASS. GEN. LAWS ch. 119, § 53 (2000). "[T]he care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance." *Id.*

<sup>14</sup> See *Metcalfe v. Commonwealth*, 338 Mass. 648, 650 (1959) (stating juvenile offense dispositions state findings of delinquency not criminal guilt).

<sup>15</sup> MASS. GEN. LAWS ch. 276, § 100b (2000). Certain conditions must be met for a sealing request to be processed including:

- (1) that any court appearance or disposition including court supervision, probation, commitment or parole, the records for which are to be sealed, terminated not less than three years to said request; (2) that said person has not been adjudicated delinquent or found guilty of any criminal offense within the commonwealth in the three years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars nor been imprisoned under sentence or committed as a delinquent within the commonwealth within the preceding three years; and (3) said form includes a statement by the petitioner that he has not been adjudicated delinquent or found guilty of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or committed as a delinquent in any state or county within the preceding three years.

*Id.* The juveniles' records are not automatically sealed upon reaching the age of majority, but rather a juvenile must meet the aforementioned conditions and submit a formal request. *Id.*

## III. DISTINCTION BETWEEN EXPUNGING AND SEALING OF JUVENILE RECORDS

The most important distinction to recognize between expunging and sealing juvenile records is the permanence of the action.<sup>16</sup> Expunging a record is equivalent to an order to destroy a record, so there is no evidence the record ever existed.<sup>17</sup> On the other hand, sealing a juvenile record entails segregating the record of a particular juvenile from the general juvenile records to ensure confidentiality from certain groups or agencies.<sup>18</sup> Juvenile records that are neither sealed by court order nor expunged are permanently maintained by law enforcement agencies.<sup>19</sup> Sealing a record does offer confidentiality in regards to employment and credit checks; however, there are law enforcement agencies with access to these records even after they are sealed.<sup>20</sup> For a juvenile delinquent, the effect of having his or her record expunged makes him or her equivalent to a juvenile who has never had contact with the court system.<sup>21</sup> Expunction affords a juvenile a clean slate because every agency given copies of a juvenile's record in the past is court ordered to relinquish the copy for expungement purposes.<sup>22</sup>

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<sup>16</sup> See *Police Comm'r of Boston*, 374 Mass. at 648 (stating sealing records permits access, while expunging destroys records with no possibility of future access).

<sup>17</sup> *Id.* The Legislature envisioned "that no trace of the information remains." *Id.* The term expungement of record is defined as: "the removal of a conviction (esp. for a first offense) from a person's criminal record." BLACK'S LAW DICTIONARY 603 (7<sup>th</sup> ed. 1999).

<sup>18</sup> See *Police Comm'r of Boston*, 374 Mass. at 648 (ensuring juvenile record confidentiality to extent specified in statute). See also, MASS. GEN. LAWS ch. 276, § 100b (2000) (discussing procedure for gaining access to sealed juvenile records). Sealing records is "[t]he act or practice of officially preventing access to particular (esp. juvenile-criminal) records, in the absence of a court order." BLACK'S LAW DICTIONARY 603 (7<sup>th</sup> ed. 1999).

<sup>19</sup> See *Police Comm'r of Boston*, 374 Mass. at 647 (stating while no explicit statutory requirement exists, maintenance of juvenile records normal procedure within police departments).

<sup>20</sup> See MASS. GEN. LAWS ch. 276, § 100b (2000) (stating sealed records reported to authorized agencies or persons only). See also Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (Nat'l Ctr. for Juv. Justice) ch. 4 at 17, Sept. 1999, at <http://www.ncjrs.org/html/ojjdp/nationalreport99/toc.html> (discussing procedures in many states for authorizing agencies access to sealed juvenile records).

<sup>21</sup> See *Police Comm'r of Boston*, 374 Mass. at 648 (distinguishing expunction from sealing orders).

<sup>22</sup> See *id.* at 643 (ordering retrieval of all identifying data concerning juvenile so that no trace of information remains).

#### IV. BALANCING INTERESTS OF LAW ENFORCEMENT VERSUS INTERESTS OF JUVENILES IN MAINTAINING RECORDS

The balance between the interests of law enforcement and the interests of juveniles dictates the maintenance of juvenile records.<sup>23</sup> Massachusetts courts determine whether the right of law enforcement to maintain and disseminate juvenile records is of greater or lesser importance than the privacy of juveniles.<sup>24</sup> A case-by-case analysis of individual facts and circumstances determines the balance of these rights.<sup>25</sup>

##### *A. Interests of Law Enforcement in Maintaining Juvenile Records*

In Massachusetts, there is no statutory provision or judicial order against keeping juvenile records, and the courts view them as properly kept.<sup>26</sup> Law enforcement agencies contend there are legitimate investigative, prosecutorial, and dispositional reasons for maintaining records.<sup>27</sup> These agencies state there is a general policy to maintain juvenile records in order to ensure the efficiency of law enforcement agencies.<sup>28</sup> Law enforcement agencies give some justification for how maintaining juvenile records contributes to this efficiency.<sup>29</sup> Positive identification is one reason for the maintenance of these records because fingerprinting allows for concise and accurate identification.<sup>30</sup>

Law enforcement agencies contend the maintenance of juvenile records addresses legitimate social concerns.<sup>31</sup> These agencies consider record maintenance an indispensable asset to the rehabilitative powers of juvenile courts.<sup>32</sup> The records contain the prior history of juveniles, which

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<sup>23</sup> See *id.* at 641-42 (weighing harm to juvenile against necessity to law enforcement officials).

<sup>24</sup> See *id.* (discussing appropriate avenues for protecting both interests whether through sealing, expunging, or restricting access to records).

<sup>25</sup> See *id.* (requiring careful consideration of facts and circumstances involved).

<sup>26</sup> See *Police Comm'r of Boston*, 374 Mass. at 647 (maintaining records proper absent contrary statutory provision or valid judicial order).

<sup>27</sup> See *id.* at 656 (describing how arrest records play integral role in criminal justice system).

<sup>28</sup> See *id.* at 647 (stating while no explicit statutory requirement exists, maintenance of juvenile records normal procedure within police departments).

<sup>29</sup> See *id.* at 642 (indicating if little or no law enforcement purpose served, limitations on access to juvenile records possible).

<sup>30</sup> See *id.* at 655 (identifying persons printed in previous incidents with those printed in subsequent incidents).

<sup>31</sup> See *Police Comm'r of Boston*, 374 Mass. at 655 (maintaining juvenile records as method of public protection from future crime).

<sup>32</sup> See *id.* at 656 (denying requests for expungement based on importance of records to juvenile court).

courts claim to be predictive of future criminal behavior.<sup>33</sup> Law enforcement agencies also believe minor incidents might be informally handled when an officer has a record available.<sup>34</sup>

### B. *Interests of Juveniles in Expunging Juvenile Records*

The comfort of a clean slate is the most important interest for juveniles in expunging their records.<sup>35</sup> Upon their records being expunged, the paper trail proving an incident with law enforcement ever occurred no longer exists.<sup>36</sup> Specifically, this interest is rooted in privacy from the disclosure of past encounters with the law that may have occurred "by happenstance or pure mistake."<sup>37</sup> Once a juvenile's record is expunged, his or her answer to the question of whether or not he or she was ever arrested or held in police custody may change drastically.<sup>38</sup> Although sealing records allows for the denial of the existence of a record in some applications and inquiries, numerous law enforcement agencies maintain access to the past records.<sup>39</sup> No record exists after expunction, which allows no law enforcement or other agency access to the prior resolved incident.<sup>40</sup>

Juveniles have a fundamental constitutional right at stake when it comes to the maintenance of their records, and that right is the right to

<sup>33</sup> See *id.* (stating juvenile records aid in determining appropriate dispositions in cases of repeat offenders).

<sup>34</sup> See *id.* at 655-56 (disposing of minor cases without necessity of judicial involvement).

<sup>35</sup> See *id.* at 648 (stating expunged records allow for no trace of prior incident to remain).

<sup>36</sup> See *Police Comm'r of Boston*, 374 Mass. at 648 (stating purging allows no proof incident occurred or proof of expunging of incident ever occurred).

<sup>37</sup> See *id.* There are certain instances where expungement is ordered, such as with a person being detained and not arrested, with a dismissal of charges or *nolle prosequi* entered before trial, where facts exonerated any prior taint of criminal activity, or where arrests are tainted with illegality, bad faith, malice or misconduct by law enforcement agencies. *Id.*

<sup>38</sup> See *id.* at 650. Inquiries of prior expunged juvenile records are only to be answered with no record, because none exists. *Id.* However, with sealed records or records of limited access, the answer to inquiries is determined not by the status of the record, but rather by the status of the agency of inquiry. *Id.* Agency status will determine whether they have access to the record, no matter what the disposition of the incident, or whether there was a disposition at all. *Id.*

<sup>39</sup> See *Davidson v. Dill*, 180 Colo. 123, 127 (1972) (using arrest records by prosecutors in determining charging accused or allowance to act as juror).

<sup>40</sup> See *Police Comm'r of Boston*, 374 Mass. at 648 (sealing records still permits access, while expunging completely destroys records with no possibility of future access). Expunction destroys a record "so that no trace of the information remains." *Id.* The phrase "expungement of record" is defined as "the removal of a conviction (esp. for a first offense) from a person's criminal record." BLACK'S LAW DICTIONARY 603 (7<sup>th</sup> ed. 1999).

privacy.<sup>41</sup> This fundamental right to privacy protects all individuals, including juveniles, from invasion by the government.<sup>42</sup> The ability of law enforcement agencies to distribute or divulge the information contained in juvenile records to countless government agencies, credit companies, the armed forces, future employers, and possibly colleges and universities, is seen as a great invasion of this fundamental right of privacy.<sup>43</sup> Inherent with the distribution of such information is potential discrimination and economic harm for the juvenile.<sup>44</sup> Moreover, the information disclosed typically lacks the final disposition after an arrest, which creates situations where a juvenile may face discrimination for a completely exonerated offense.<sup>45</sup>

## V. ADVERSE CONSEQUENCES OF MAINTAINING JUVENILE RECORDS

The consequences of maintaining juvenile records are detrimental to the success of a juvenile in his or her adult life when the disposition did not result in a finding of delinquency.<sup>46</sup> Specifically, future endeavors such as careers in law enforcement, politics, and most other licensed professions require applicants to disclose whether they have ever been arrested.<sup>47</sup> Similarly, most job applications question the existence of any prior criminal record and do not specifically exclude the existence of juvenile

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<sup>41</sup> See *Davidson*, 180 Colo. at 128 (recognizing individuals fundamental right to be left alone). See also *Griswold v. Connecticut*, 381 U.S. 479 (1965) (stating concept of liberty protects fundamental personal rights not only those enumerated).

<sup>42</sup> See *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). "[I]t is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense..." *Id.* See also *Police Comm'r of Boston*, 374 Mass. at 64i-42. Similarly, juveniles never give up their right to privacy due to a conviction of a public offense because the only cases where consideration of expungement is discussed is with regards to the instances where no conviction occurred. *Id.*

<sup>43</sup> See *Police Comm'r of Boston*, 374 Mass. at 645. Juvenile records are disseminated to criminal justice agencies, other individuals and agencies authorized access to criminal offender records by statute. *Id.* See also Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (Nat'l Ctr. for Juv. Justice) ch. 4 at 17, Sept. 1999, at <http://www.ncjrs.org/html/ojdp/nationalreport99/toc.html> (discussing confidentiality of juvenile records and when confidentiality ends within government agencies).

<sup>44</sup> See *Police Comm'r of Boston*, 374 Mass. at 659 (discussing injuries possible to juvenile of economic harm, defamation or bias in court system).

<sup>45</sup> See *Davidson*, 180 Colo. at 127 (recording of arrest often serious impediment to employment dealing with professional or occupational licenses).

<sup>46</sup> See *id.* Most employers and employment agencies take the existence of an arrest record into account upon the hiring of new employees. *Id.*

<sup>47</sup> See *Davidson*, 180 Colo. at 127 (recording of arrest often serious impediment to employment dealing with professional or occupational licenses).

records from such inquiries.<sup>48</sup> All branches of the armed forces also ask about whether or not there were any infractions in the applicant's past on both applications and in the recruitment interview.<sup>49</sup>

## VI. ANALYSIS

Many states acknowledge the availability of expunction to remedy the injury that might befall a juvenile due to the maintenance of these records.<sup>50</sup> Massachusetts is no exception.<sup>51</sup> The courts weigh the competing interests of preserving records for effective law enforcement versus protecting the juveniles' privacy and the potential for their successful future.<sup>52</sup>

Another issue is the breadth of expunction and which juveniles will even be considered suitable candidates for such a remedy.<sup>53</sup> Courts across the country, Massachusetts included, look only to those juveniles whose records state a case of mistaken identity, dismissal of charges due to lack of evidence, or a finding of innocence.<sup>54</sup> However, there are minor

<sup>48</sup> See *id.* at 127. "An affirmative answer to this question, regardless of whether a conviction resulted, is often sufficient to deny the applicant further consideration." *Id.*

<sup>49</sup> Interview by Jennifer Danis with Ricardo Ortiz, Staff Sergeant, U.S. Marine Corps, Boston, Ma. (June 20, 2000); Interview by Jennifer Danis with John Wilson, Staff Sergeant, U.S. Army Downtown Crossing Recruiting Station, Boston, MA (June 20, 2000); Air Force Air Education and Training Command Instruction 36-2002, Ch. 4, *Criteria Waivers and Eligibility Determinations*, April 18, 2000; National Guard, Appendix A, FY 00 Enlistment Criteria (2000); Army, *Regulations Waiver and Nonwaiver Enlistment Criteria*, AR 601-210, Ch. 4, February 28, 1995.

<sup>50</sup> See *L.H. v. State*, 333 Ark. 613 (1998) (demonstrating expunction available for certain circumstances depending on type of delinquency); *In Re J.*, 353 NYS2d 695 (1974) (holding proper to order expunction where retention offers no benefit to society); *State v. TK*, 94 Wash. App. 286 (Div. 1 1999) (holding where all condition of expunction met, there exists statutory right to expunction of records). See also 71 A.L.R. 3d 753 (2001). The annotation dealt with the issue of whether juvenile records should be expunged and what case law exists across the country to support or refute the use of expunction in regards to juvenile records. *Id.*

<sup>51</sup> See *Police Comm'r of Boston*, 374 Mass. at 641 (holding Juvenile Court judge has jurisdiction to order records expunged to protect juvenile).

<sup>52</sup> See *id.* at 642. "[T]he right to maintain and disseminate such records must be balanced against the interests of the affected juvenile from being unnecessarily harmed by their existence." *Id.*

<sup>53</sup> See *id.* at 662. The Court determines the availability of expunction by the subjective evaluation of whether any use of the records by law enforcement outweighs the possible detriment to the juvenile in the record maintenance. *Id.*

<sup>54</sup> See *id.* at 656. The Court states numerous instances where the incident to which the juvenile was a supposed party will provide little or no indication of his or her involvement in future criminal activities. *Id.* The Court sees the maintenance of juvenile records in the following instances as not providing a substantial law enforcement purpose that outweighs a juvenile's right to privacy: a) where defendant detained but not arrested; b) where case is dismissed or *nolle prosequi* is entered before trial; c) where defendant acquitted on charges; d) where defendant clearly free of suspicion due to factors exonerating him or her of any

infractions that hinder a juvenile's future and are not, on an individual basis, considered a danger to society.<sup>55</sup> Minor offenses such as disturbing the peace, trespassing, tagging, and petty larceny are all common juvenile offenses.<sup>56</sup> If these minor offenses are kept on a juvenile's record and continue to follow him throughout adulthood, substantial detrimental consequences are likely to ensue.<sup>57</sup> Although not all juveniles end up being one-time offenders, for those who are, a record of arrest for a minor infraction could carry dire consequences later in life when they have already paid their debt to society.<sup>58</sup> Those juveniles who are repeat offenders maintain their juvenile record history to aid law enforcement in sentencing and identification in any future criminal conduct.<sup>59</sup> Therefore, if the court currently makes determinations regarding expunction on a factual case-by-case analysis, extending the availability of expunction to circumstances of one-time petty offenses would be possible.<sup>60</sup>

Juvenile record expunction furthers the rehabilitative purpose of the juvenile court system.<sup>61</sup> Across the country, juvenile courts boast of maintaining a philosophy of protecting the interests of children and their rights.<sup>62</sup> This philosophy appears hollow in the wake of maintaining and

wrong doing; and e) where defendant's arrest proved to be illegal, made with bad faith, malice or misconduct on the part of law enforcement. *Id.*

<sup>55</sup> See Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (Nat'l Ctr. for Juv. Justice) Sept. 1999, at <http://www.ncjrs.org/html/ojdp/nationalreport99/toc.html> (discussing certain crimes described as minor infractions of juveniles).

<sup>56</sup> *Id.*

<sup>57</sup> See *Police Comm'r of Boston*, 374 Mass. at 659-60. The court discusses how records stigmatize an individual in the community and can be a further impediment to obtaining employment. *Id.*

<sup>58</sup> See *United States v. Dooley*, 364 F.Supp. 75, 78-9 (E.D. Pa. 1973) (discussing cloud of prosecution following through employment inquiries or investigations concerning later criminal offenses).

<sup>59</sup> See *Police Comm'r of Boston*, 374 Mass. at 655 (noting arrest records assist in identification or apprehension of criminals).

<sup>60</sup> See *id.* at 648. "[I]t is clear that in the proper circumstances a final, complete and effective disposition of the juvenile complaint will require expungement." *Id.*

<sup>61</sup> See *e.g.*, *Commonwealth v. Balboni*, 419 Mass. 42, 45 (1994) (treating youthful offenders as children in need of aid); *Police Comm'r of Boston v. Municipal Ct. of Dorchester Dist.*, 374 Mass. 640, 666 (1978) (rehabilitating equally delinquents of serious crimes or minor offenses); *Metcalf v. Commonwealth*, 338 Mass. 648, 651 (1959) (treating children as needing guidance rather than as criminals). See also MASS. GEN. LAWS ch. 119, § 53 (2000). "[C]ustody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents..." *Id.*

<sup>62</sup> Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (Nat'l Ctr. for Juv. Justice) ch. 4, Sept. 1999, at <http://www.ncjrs.org/html/ojdp/nationalreport99/toc.html>. The report focuses on the rights of juveniles and how those rights have changed since the inception of the juvenile justice system. See *id.*, generally.

disseminating juvenile records throughout government agencies.<sup>63</sup> Rehabilitation is the hallmark of the juvenile court system, yet little possibility exists for rehabilitation if a record of minor mistakes shackles a juvenile during his or her adolescent years.<sup>64</sup>

## VII. CONCLUSION

Massachusetts juvenile courts claim discretionary power in the expunction of juvenile records. With that discretion comes the ability to decide a record is to be expunged after a juvenile reaches the age of majority and is not involved in any further delinquent activity. Rehabilitation through expunction ensures the prior delinquency will no longer follow a juvenile through his or her adult endeavors and hinder his or her ability to achieve success. Discretionary power takes on the role of assessing each case by its own facts and circumstances, including the individual's family life, support systems, academic success, and future aspirations. A court will be able to determine what, if any, need law enforcement has with regards to the maintenance of these records. Courts are in the perfect position to further their own philosophy of guidance and rehabilitation by offering the adult with a juvenile record a chance at a clean slate.

In the past, the juvenile system has demonstrated an unwillingness to use expunction to remedy the substantial discrimination and hardships hindering adults with juvenile records. More often than not, Massachusetts courts will seal a record rather than order expunction. Accordingly, we must ask, is expunction available for actual use, or is it merely a legal fiction?

Furthermore, its incumbent on juvenile attorneys to seek out the remedy of expunction in cases where dispositions were concluded with a dismissal or a finding of not delinquent. This is especially necessary in cases where the juvenile has made substantial strides to stay out of trouble and was only involved in a minor nonviolent incident. In these circumstances, expunction of the juvenile's record would best serve the juvenile's future interests. The consideration, in light of the individual facts and circumstances, will always be in the hands of the court. It is up to juvenile attorneys to bring these facts and circumstances before the court

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<sup>63</sup> See *Police Comm'r of Boston*, 374 Mass. at 643-44. Copies of an arrested juvenile's fingerprints, front and side photographs, arrest booking sheets, and incident reports are all included in a juvenile's record after coming into contact with Massachusetts law enforcement officers. *Id.*

<sup>64</sup> See *Police Comm'r of Boston*, 374 Mass. at 648 (noting sealing records permits access, while expunging destroys records with no possibility of future access). See also MASS. GEN. LAWS ch. 119, § 53 (2000) (stating rehabilitative philosophy of avoiding attachment of criminal stigma to juvenile delinquents).

in order to prevent an individual's rights from being hindered by the continued maintenance of juvenile records.

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