

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 8-9, 2010

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges federal, state, territorial and local  
2 governments to increase the opportunities of youth involved with the juvenile or criminal justice  
3 systems and to prevent the continuing discrimination against those who have been involved with  
4 these systems in the past by limiting the collateral consequences of juvenile arrests,  
5 adjudications, and convictions.  
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7 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and  
8 local governments to adopt and enforce laws and policies which:  
9

10 Prohibit employers, colleges, universities, vocational and technical schools, financial aid offices,  
11 licensing authorities and similar agencies from inquiring about or considering an arrest of a  
12 juvenile that did not lead to a finding of guilt, an adjudication or a conviction, or basing the  
13 denial of educational or vocational opportunities to applicants on such arrest;  
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15 Prohibit employers and educational institutions from considering any records pertaining to an  
16 arrest, adjudication or conviction of an applicant that occurred while the applicant was a juvenile  
17 if such records have been sealed or expunged by the court;  
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19 Prohibit colleges, universities, financial aid offices, other educational institutions and employers  
20 and employment licensing authorities:(1) from considering juvenile adjudications or criminal  
21 convictions unless engaging in the conduct underlying the adjudication or conviction would  
22 provide a substantial basis for denial of a benefit or opportunity even if the person had not been  
23 adjudicated or convicted, and (2) if the underlying conduct does provide such a basis:(a) from  
24 considering a juvenile adjudication, if three years have passed following the applicant's discharge  
25 from custody or supervision without being adjudicated or convicted of a subsequent offense; and  
26 (b) from considering a criminal conviction, if five years have passed following the applicant's  
27 release from custody or supervision without being convicted of a subsequent offense.  
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29 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and  
30 local governments to adopt and enforce policies encouraging employers, colleges, universities,  
31 financial aid offices, licensing authorities and other agencies to give consideration to a juvenile's  
32 successful completion of a community re-entry program or the terms of their probation.  
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34 FURTHER RESOLVED, That the American Bar Association urges federal, state territorial and  
35 local governments to adopt and enforce policies encouraging employers, colleges, universities,  
36 financial aid offices, licensing authorities and other agencies to include on applications clear  
37 definitions of legal terms such as arrest, adjudication, and conviction.

## REPORT

The ABA has a long history of addressing the collateral consequences faced by adjudicated and convicted persons through its Criminal Justice Standards.<sup>1</sup> This resolution represents an extension of all of the already published standards to include areas where collateral consequences occur not by “operation of law”<sup>2</sup> but rather through a policy, procedure or by the discretion of an employer or admissions committee. Laws, rules, regulations and policies that require disclosure of juvenile adjudications can lead to numerous individuals being denied opportunities as an adult based upon a mistake(s) made when they were a child. The ABA recognizes the language used by the United States Supreme Court in *Roper v. Simmons*, 543 U.S. 551 that children are different than adults because of: “A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”<sup>3</sup> Therefore, the ABA is recommending that the collateral consequences of committing a crime as a youth be severely reduced by reducing barriers to education and vocational opportunities because of a juvenile incident. Furthermore there should be limited exceptions that only exist when the incident is directly relevant to the position sought or a concern of a school.

For the purposes of this recommendation and report:

- (a) The term “**adjudication**” means a sentence imposed in juvenile court against a juvenile following a finding of guilt by the judge. Adjudication is not a conviction.
- (b) The term “**conviction**” means the act or process of judicially finding a juvenile that has been certified as an adult guilty of a crime.
- (c) The term “**arrest**” means a juvenile being taken into custody usually in relation to an investigation. Arrests may or may not lead to charges being filed and/or an adjudication or conviction.
- (d) The term “**juvenile**” means an individual that is under the age of majority (18 years old). Also synonymous with “youth”, “child”, and “adolescent”.
- (e) The term “**collateral sanction**” means a penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual’s conviction for an offense that applies by operation of law whether or not it is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.
- (f) The term “**discretionary disqualification**” means a penalty, disability, or disadvantage, however denominated, that an administrative agency, governmental official, or a court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual’s conviction for an offense.

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<sup>1</sup> Juvenile Justice Standards, Standards relating to Disposition (1979); ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualifications of Convicted Persons No. 3, (2004).

<sup>2</sup> Juvenile Justice Standards, Standards relating to Disposition, Standard 1.2.I (1979).

<sup>3</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

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- (g) The term “**collateral consequence**” means a collateral sanction or a discretionary disqualification.
- (h) The term “**sealed**” means that the record cannot be examined except by court order or by designated officials. Such statutes commonly refer to juvenile offenders.
- (i) The term “**expunged**” refers to the process by which record of criminal conviction is destroyed or sealed after the expiration of time.
- (j) The term “**custody**” refers to one’s liberty restrained by either detention, jail, or prison.

Two-thirds of individuals released from prison will wind back up in the criminal justice system within three years of their release.<sup>4</sup> Barriers that prevent or make it more difficult for released inmates to obtain employment or education, especially if due to a juvenile adjudication or conviction, exacerbate this problem. American Bar Association policy has long promoted individualized treatment of court-involved youths, limitations on the dissemination of juvenile records and prohibitions against collateral consequences for juvenile behavior by operation of law. The ABA juvenile justice policy – developed in conjunction with the Institute of Judicial Administration and set forth in twenty volumes of IJA-Juvenile Justice Standards (“Standards”) – calls for individually tailored treatment of court-involved youths that is fair in purpose and scope:

The purpose of the juvenile correction system is to reduce juvenile crime by maintaining the integrity of the substantive law proscribing certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of juveniles, and that give juveniles access to opportunities for personal and social growth.<sup>5</sup>

The Standards also set forth clear parameters for juvenile justice sanctions, stating that the definition and applications should not only address public safety, but also give fair warning about prohibited conduct and recognize “the unique physical, psychological, and social features of young persons.”<sup>6</sup> These Standards – along with accepted research – recognize that youths and adolescents differ from adults in terms of culpability,<sup>7</sup> and that their patterns of offending differ from those of adults, as well.

A review of applications for public employment, financial aid or admissions to public colleges and universities reveals that many applications call for information about past arrests or

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<sup>4</sup> Patrick A. Langan and David Levin, *Recidivism of Prisoners Released in 1994*, Bureau of Justice Statistics Special Report NCJ 193427 (Washington, DC: U.S. Department of Justice, 2002), cited in Amy Solomon, et al., *Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute’s Prisoner Reentry Portfolio*, Urban Institute – Justice Policy Center, January 2006.

<sup>5</sup> Juvenile Justice Standards, Standards relating to Disposition § 1.1 (1979)

<sup>6</sup> Juvenile Justice Standards, Standards relating to Disposition § 1.1 (1979); ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualifications of Convicted Persons No. 3, §1.2 (2004).

<sup>7</sup> *Id.* at Part III: General Principles of Liability. See also *Roper v. Simmons*, 543 U.S. 551, 570 (2005)

(“From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed”).

criminal convictions, but frequently fail to distinguish between adult criminal activity and child arrests or juvenile proceedings.<sup>8</sup> It is unclear in these circumstances whether those employers or educators even intend to inquire about juvenile arrests or adjudications. At a minimum, to avoid confusion and unnecessary disclosures that could result in impediments to employment or education opportunities, applications for employment, education and professional licenses requesting past arrest or criminal records should make clear that juvenile arrest or adjudication records should not be disclosed. The ABA proposes that these applications include a parenthetical explaining the difference between an adjudication and conviction to make clear that juveniles need not disclose their respective adjudications. The ABA recommends the following language in the parenthetical: “Convictions do not include proceedings or adjudications that take place in a juvenile court system.”

As the Supreme Court stated in *Roper*, there are three main reasons why juveniles and adults differ in terms of culpability:

First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” Johnson, *supra*, at 367, 113 S.Ct. 2658; see also Eddings, *supra*, at 115-116, 102 S.Ct. 869 (“Even the normal 16-year-old customarily lacks the maturity of an adult”). It has been noted that “adolescents are overrepresented statistically in virtually every category of reckless behavior.” Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339 (1992). In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent. See Appendixes B-D, *infra*.

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. Eddings, *supra*, at 115, 102 S.Ct. 869 (“[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage”). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. See Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003) (hereinafter Steinberg & Scott) (“[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting”).

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In contrast, some applications appropriately limit the scope of their inquiry to adult criminal convictions, *See, e.g., SUNY Undergrad Application*, [http://www.suny.edu/student/paper\\_app.cfm](http://www.suny.edu/student/paper_app.cfm). Question 20a asks if the applicant has ever been convicted of a felony. The instructions for the question specifically state: “If you have been adjudicated as having juvenile delinquent or youthful offender status, you are required to respond to the felony question 20a by indicating a response of ‘no.’”

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The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. See generally E. Erikson, *Identity: Youth and Crisis* (1968). . . . These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult.” Thompson, *supra*, at 835, 108 S.Ct. 2687 (plurality opinion).<sup>9</sup>

Thus, ABA policy supports sanctions that vary in restrictiveness and intensity, are developmentally appropriate, and are limited in duration.

In light of these goals of the juvenile justice system, and of the transitory characteristics of youth offenders, ABA policy also limits the compilation and dissemination of juvenile records. In general, the Standards disapprove of “labeling” offenders, call for very careful control of records, and prohibit making juvenile records public:

Access to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention.<sup>10</sup>

This privacy requirement is essential because most adolescent anti-social activity is not predictive of future criminal activity.

Concerns over the labeling of child offenders, and the public access to and dissemination of juvenile records, are inextricably linked with the potential impact a child’s conduct will have on his or her subsequent attempts to re-engage with the community and become productive citizens. The Standards state that “[n]o collateral disabilities extending beyond the term of the disposition should be imposed by the court, by operation of law, or by any person or agency exercising authority over the juvenile.”<sup>11</sup> A recent ABA resolution provided that “[c]ollateral consequences that [are] normally attendant to the justice process should not necessarily apply to all youth arrested for crimes committed before age 18.”<sup>12</sup> Relatedly, the ABA Criminal Justice Section Standards object to “ineligibility for governmental benefits relevant to successful reentry into society, such as educational and job training programs”<sup>13</sup> resulting from a criminal conviction.

Three impediments to the implementation of these ABA policies are addressed by this resolution:

- 1. Adverse consequences for educational opportunities resulting from inquiries into juvenile arrests and charges even where these do not result in an adjudication.**

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<sup>9</sup> *Roper*, 543 U.S. at 569-70.

<sup>10</sup> Standards Relating to Juvenile Records and Information Services, Part XV: Access to Juvenile Records.

<sup>11</sup> Standards Relating to Dispositions, Part I, 1.2.

<sup>12</sup> *Reports of American Bar Association*, 2002 Volume 127, Number 1 at 445.

<sup>13</sup> Part II, Standard 19-2.6, prohibited collateral sanctions (f).

Heightened security concerns have encouraged public and private employers, institutions of higher education and others to seek access to criminal history information on their applications. Even where a law does not create an absolute bar to employment, people with a record are less likely to be given an opportunity in a climate that rewards risk-avoidance. The policies and practices of many public employers, universities, state financial aid offices and others allowing or even requiring the consideration of child arrest and adjudication records of applicants for employment, admission or assistance pose a substantial risk of adverse collateral consequences to court-adjudicated youths.

Moreover, many people who sought and obtained the expungement of their juvenile arrest or adjudication records still feel compelled to disclose that information. Some applications ask if the applicant was ever suspended or expelled from school, has ever been adjudicated, has ever entered a pre-trial diversion program or has ever entered a plea of no contest or *nolo contendere* under a first offender act.<sup>14</sup> Some state licensing requirements for certain professional work require candidates to make similar disclosures of past arrests or criminal activity.<sup>15</sup> Many youths seeking entry into military service are denied that opportunity based on juvenile arrests or charges that did not result in a finding of guilt or delinquency. All of this suggests that a child's single, first-time juvenile court involvement, including proceedings that were expunged or did not result in a finding of delinquency, still hinder that child's pursuit of further employment, education or other opportunities. Such collateral consequences undermine the very purpose of expungement statutes and the broader ABA policies and societal interests supporting the re-entry of juveniles into the community.

Higher education and employment opportunities are critical for many former youths detained within the juvenile justice system seeking to re-engage with the community and become productive citizens able to reach their highest potential. The childhood or adolescent experience of youths in the juvenile justice system should not be used to preclude an educational, vocational or employment opportunity unless the government can sustain a heavy burden demonstrating a specific societal interest why juvenile records should be disclosed. Absent an employer or educational institution satisfying that burden, applications for such opportunities should specifically state that disclosure of juvenile arrests or adjudications – particularly those that have been expunged or where arrests or charges did not result in a finding of delinquency – is not required in response to any inquiry on any application that inquires about criminal arrests or convictions. Accordingly, any such application should clearly and prominently indicate after any inquiry concerning criminal arrests or convictions that the applicant need not disclose any information concerning juvenile arrests or adjudications.

Some jurisdictions are taking steps toward limiting the collateral consequences associated with convictions by creating policy that encourages employers to hire ex-offenders via grants, tax-breaks, and other means. The District of Columbia has gone further by introducing a bill to the city council that would amend the *Human Rights Act of 1977* and prohibit employment and educational discrimination based on arrest/conviction records unless there is a rational relationship between the record and the position sought. If passed, the bill will restrict employers and educational institutions from taking an individual's criminal record into account unless

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<sup>14</sup> [www.gacollege411.org](http://www.gacollege411.org)

<sup>15</sup> <http://courts.delaware.gov/bbe>

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certain conditions apply, such as a rational relationship and the length of time since the conviction. The policy is not effective on employer's that provide care or services for children or the elderly nor on specific types of government employers.

The principle that at least some licenses, benefits and employment opportunities should not be denied to people with criminal convictions unless the conviction is significantly related to the opportunity is well established in state codes. More than 30 states have statutory restrictions on collateral sanctions and disqualifications imposed by state accords; a core principle of these laws is that individuals should not be excluded if there is no connection between the crime committed and the opportunity sought.<sup>16</sup>

When determining if a juvenile conviction is substantially related to a position or opportunity, several key factors should be considered:

- a) The value to the public of encouraging the employment of persons who have been convicted;
- b) The specific duties and responsibilities that are required for the position or opportunity being sought;
- c) Whether the criminal offence(s) for which the individual was convicted bears any light on the person's fitness or ability necessary for the position or opportunity;
- d) The amount of time which has lapsed since the commission of the offense;
- e) The gravity of the offense;
- f) All information produced that reflects on the individual's rehabilitation and good conduct since the conviction; and
- g) The legitimate issues of individual or public safety arising from the position or opportunity.

And as a final note, this policy only affects the admissions process. If this were to be adopted as law, colleges and universities would still be free to consider previous criminal records, whether juvenile or adult, when making decisions regarding housing and special needs that a student might have.

## **2. Adverse collateral consequences resulting from the accessibility of juvenile arrest and court records that have been sealed or expunged.**

The resolution provides that colleges and universities should not inquire into an arrest or adjudication that has been sealed or expunged. This is necessary because of the patchwork of state and local laws requiring varying levels of protection for – or permit the disclosure of – child arrest and adjudication records. In some states, delinquency records may only be inspected with the court's permission and only under certain limited circumstances or by certain individuals demonstrating a legitimate interest in those records.<sup>17</sup> In other states such as California, it means that the disposition is simply changed from conviction to dismissed, but all other details of the

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<sup>16</sup> See National Conference of Commissioners on Uniform State Laws, *Uniform Collateral Consequences of Conviction Act* § 9 (Draft for Approval, May 31, 2009).

<sup>17</sup> A.C.A. §§ 9-27-309, 352; § 9-28-217, § 16-90-903; Alaska Stat. § 40.25.120, §§ 47/12.300-320.

case are the same.<sup>18</sup> Some states require the automatic sealing of certain delinquency records following the passage of time,<sup>19</sup> while other states seal records only by motion of the offender or the discretion of the court.<sup>20</sup> Still other states allow for the destruction rather than the sealing of certain records.<sup>21</sup> Nonetheless, when a juvenile record is sealed and expunged it should truly be unavailable to an employer or a school. For example, in Minnesota, expunged records can be open for criminal investigations or where an individual is being considered for particular government employment.<sup>22</sup>

### 3. Consideration of Participation in Re-entry Programs and Completion of Probation Terms

The fourth issue addressed by this report involves urging an employer or admissions council to consider the offender's successful completion of a community re-entry program, or if a juvenile does not have access to a re-entry program, then urging one to recognize if the offender has successfully completed the terms of his or her probation. Many re-entry programs across the country reduce youth recidivism and reduce the behavior that correlates with high levels of continuous criminal behavior.<sup>23</sup> Their goal is to reduce criminal recidivism by providing the formerly incarcerated with the tools and support they need to remain drug-free, crime-free, and employed.<sup>24</sup> Thus, employers, colleges, universities, financial aid offices, licensing authorities and other agencies should consider juvenile participation in re-entry due to its cited success rate.

Specifically in Brooklyn, New York's Community and Law Enforcement Resources Together program (ComALERT), run by the Brooklyn district attorney, Charles "Joe" Hynes, has promoted rehabilitation through employment as a way of improving public safety in Brooklyn's poor, high crime neighborhoods.<sup>25</sup> More recently, his office established a program of treatment and community supervision, as an alternative to incarceration, for nonviolent drug offenders. ComALERT also provides jobs, in addition to referring parolees to job-placement services; program parolees who enroll with the Doe Fund, a welfare-to-work organization, are employed in street cleaning and other low skill jobs for \$5.50 to \$6.50 an hour. These jobs can't provide economic independence, but they do allow ex-inmates to build work histories and experience with continuous employment. New research and the experience of re-entry organizations like ComALERT show that disadvantaged communities need social investments, not just intensive policing, to absorb the large numbers of men returning home from penal institutions.<sup>26</sup> Prisoner re-entry programs offer a way not to confine and separate them but to

<sup>18</sup> Cal. Rules of Court, Rules 5.830, 1497; *see also*, Margaret Colgate Love, *Relief from the Collateral Consequences of a Criminal Conviction*, March 2007, pp. 125-30.

<sup>19</sup> Alaska Stat., § 47.12.300; Cal. Wel & Inst. Code §§ 781-781.5 and Cal. Rules of Court, Rules 5.830, 1497; *see also*, Margaret Colgate Love, *Relief from the Collateral Consequences of a Criminal Conviction*, March 2007, pp. 125-30.

<sup>20</sup> Burns. Ind. Code §§ 31-39-5-7; 31-39-8-1 through 8-7.

<sup>21</sup> A.C.A. §§ 9-27-323, 16-90-601 to 605, and 16-90-901 to 906.

<sup>22</sup> Minnesota Chapter A609A.03 (2008).

<sup>23</sup> *See* <http://www.brooklynda.org/grasp/grasp.htm>.

<sup>24</sup> *See* <http://www.brooklynda.org/comalert/comalert.htm>

<sup>25</sup> [http://www.accessmylibrary.com/coms2/summary\\_0286-19769423\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-19769423_ITM)

<sup>26</sup> [http://www.accessmylibrary.com/coms2/summary\\_0286-19769423\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-19769423_ITM)

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reintegrate them through expanded opportunity--and to increase public safety in the process. Such programs offer a way to get smart, rather than tough, on crime.

Re-entry program results appear extremely promising. Gatling reports that after one year, about 16 percent of Brooklyn parolees are rearrested, while recidivism among ComALERT parolees is just 6.6 percent.<sup>27</sup> Over three years, 41 percent of parolees in Brooklyn commit new crimes compared with less than 17 percent among ComALERT participants.<sup>28</sup>

## **Important Note Regarding Sex Crimes Involving Children**

The third paragraph of the first Further Resolved clause distinguishes between consideration of the juvenile's case and consideration of the conduct underlying the case. Clause (1) of the paragraph would prohibit employers and licensing authorities from ever considering any juvenile or criminal adjudications or convictions unless the underlying conduct is relevant to the benefit or opportunity being considered. Clause (2) provides two timelines to be adhered to when the underlying conduct is relevant. The first time line (3 years) would apply to children adjudicated or found guilty in juvenile court and the second (5 years) would apply to children convicted in adult court. Both reflect the ABA's recommendation of time that must pass before a person who was previously found to have committed a relevant crime and has not subsequently been arrested should no longer have to answer questions about their juvenile or criminal records.

It is important to note that both the three and five year clock would start ticking only after the state has released all control and custody of the person, including all reporting requirements under the Adam Walsh Child Protection and Safety Act of 2006<sup>29</sup>. This would mean that once a child has been found to have committed a qualifying offense under the Adam Walsh Act, either through a juvenile adjudication or after a conviction if tried as an adult, that person would then have to complete his or her entire sentence including any period of probation or parole, and then also complete anywhere from 15 years to lifetime reporting under the Adam Walsh Act before the three or five-year clocks would begin.

The Adam Walsh Act seeks "to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims"<sup>30</sup>. To meet these goals, the Act categorizes sex offenders into three tiers. Tier one addresses sex-related crimes punishable by less than one year in prison. Tier two addresses sex crimes punishable by more than one year in prison and includes: sex trafficking, transportation with intent to engage in criminal sexual activity, abusive sexual contact, use of a minor in sexual performance, solicitation of child prostitution, possession or distribution of child pornography, or any sex crime committed by a tier one sex offender. Tier three addresses sex crimes punishable by more than one year of imprisonment and includes: aggravated sex abuse, abusive sexual contact with a minor under 13, kidnapping of a minor, or any sexual crime committed by a level two sex offender<sup>31</sup>.

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<sup>27</sup> [http://www.accessmylibrary.com/coms2/summary\\_0286-19769423\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-19769423_ITM)

<sup>28</sup> [http://www.accessmylibrary.com/coms2/summary\\_0286-19769423\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-19769423_ITM)

<sup>29</sup> Adam Walsh Child Protection and Safety Act of 2006. Public Law 109-248. 109<sup>th</sup> Congress

<sup>30</sup> See Id.

<sup>31</sup> See Id.

Under the Act, sex offenders must update their registration with the sex offender registry within their jurisdiction. Tier one sex offenders must update their registration every year for fifteen years; tier two sex offenders must update their registration every six months for twenty five years; and tier three sex offenders must update their registration every three months for life. Updating registration includes arriving in person at the sex offender registry, updating personal information including address, and allowing a current picture to be taken. A national sex offender registry is kept online available to the public. The Adam Walsh Act applies to all 50 states, the District of Columbia and all United States territories<sup>32</sup>.

Therefore, anyone under the age of 18 adjudicated for, or found guilty of, a sexual offense on a child that triggers the Adam Walsh Act's requirements who is applying for any job that would have them come in contact with children as part of their job would have to wait a minimum of 15 years before even the lowest level offender is released of the Act's requirements, plus the time they served for their sentence and then also the five or three year waiting period before this resolution would allow them to not answer a question about their adjudication or conviction on a job application.

### **Related Standards**

*ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualification of Convicted Persons* Standard 19-1.2 (3d ed. 2004) provides that collateral consequences should be minimized to lessen the frustrations experienced by a convicted person upon reentry. Furthermore, the standard urges the abolition of automatic disqualification from benefits and opportunities based solely on conviction. Standard 19-2.6. *ABA Juvenile Justice Standards, Standards Relating to Dispositions* Standard 1.1 (1979) states that the juvenile justice system should recognize the unique characteristics and needs of juveniles by ensuring they maintain access to "opportunities for personal and social growth." *Standards Relating to Dispositions* Standard 1.2.I calls for the prohibition of collateral disabilities that extend beyond the disposition being "imposed by the court, by operation of law, or by any person or agency exercising authority over the juvenile."

### **CONCLUSION**

Collateral consequences for acts made as a juvenile can adversely affect an individual's educational and employment opportunities throughout her or his life. While the ABA has historically addressed problems with collateral consequences through its Criminal Justice Standards, this resolution goes beyond those previous standards to specifically suggest reduction of collateral consequences related to juvenile adjudications, convictions, or arrests through policy, procedure, and by discretion of employers and admissions committees. Through this policy, the ABA hopes to develop individual responsibility for lawful behavior through means that are fair and just, that recognize the unique characteristics and needs of children and adolescents, and that give court-involved children access to opportunities for education and employment necessary for personal and social growth, and for a re-engagement with the community.

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<sup>32</sup> Ibid.

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Respectfully submitted,  
Charles Joseph Hynes  
Chair, Criminal Justice Section  
February 2010

GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Criminal Justice Section

Submitted By: Charles Joseph Hynes, Section Chair

1. Summary of Recommendation(s).

The ABA has a long history of addressing the collateral consequences faced by adjudicated and convicted persons through its Criminal Justice Standards.<sup>33</sup> This resolution represents an extension of all of the already published standards to include areas where collateral consequences occur not by “operation of law”<sup>34</sup> but rather through a policy, procedure or by the discretion of an employer or admissions committee. Laws, rules, regulations and policies that require disclosure of juvenile adjudications can lead to numerous individuals being denied opportunities as an adult based upon a mistake(s) made when they were a child. The ABA recognizes the language used by the United States Supreme Court in *Roper v. Evans*, 543 U.S. 551 that children are different than adults because of: “A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”<sup>35</sup> Therefore, the ABA is recommending that the collateral consequences of committing a crime as a youth be severely reduced by reducing barriers to education and vocational opportunities because of a juvenile incident. Furthermore there should be limited exceptions that only exist when the incident is directly relevant to the position sought or a concern of a school.

2. Approval by Submitting Entity.

The proposed *Juvenile Justice Collateral consequences resolution* was approved on July 31, 2009 at the ABA annual meeting by the Criminal Justice Section Council.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

A resolution was introduced and subsequently withdrawn in 2006 that dealt with adult collateral consequences. No recommendation dealing with Juvenile collateral consequences has been introduced before.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualification of Convicted Persons Standard 19-1.2 (3d ed. 2004)

provides that collateral consequences should be minimized to lessen the frustrations experienced by a convicted person upon reentry. Furthermore, the standard urges the abolition of automatic disqualification from benefits and opportunities based solely on

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<sup>33</sup> Juvenile Justice Standards, Standards relating to Disposition (1979); ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualifications of Convicted Persons No. 3, (2004).

<sup>34</sup> Juvenile Justice Standards, Standards relating to Disposition, Standard 1.2.I (1979).

<sup>35</sup> *Roper v. Evans*, 543 U.S. 551, 569 (2005).

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conviction. Standard 19-2.6. *ABA Juvenile Justice Standards, Standards Relating to Dispositions* Standard 1.1 (1979) states that the juvenile justice system should recognize the unique characteristics and needs of juveniles by ensuring they maintain access to “opportunities for personal and social growth.” *Standards Relating to Dispositions* Standard 1.2.I calls for the prohibition of collateral disabilities that extend beyond the disposition being “imposed by the court, by operation of law, or by any person or agency exercising authority over the juvenile.”

5. What urgency exists which requires action at this meeting of the House?  
Children across the country are faced with unbelievable burdens when they try to recover from contact with the juvenile justice system. Many find themselves ineligible for work, school and licenses. Thus they have no legal options to survive.
6. Status of Legislation. (If applicable.)  
N/A
7. Cost to the Association. (Both direct and indirect costs.)  
None except those relating to ABA testimony on related matters.
8. Disclosure of Interest. (If applicable.)  
No known conflict of interest.
9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)  
Concurrently with the submission of this report to the ABA Policy Administration Office for calendaring on the February 2010 House of Delegates agenda it is being circulated to the following:

Section, Divisions, Forums

Judicial Division  
Individual Rights and Responsibilities Section  
Family Law Section  
Standing Committee on Legal Aid & Indigent Defendants  
Council on Ethnic and Racial Justice  
Commission on Youth at Risk  
Commission on Homelessness and Poverty  
Section on Labor and Employment Law  
Section on Legal Education and admission to the Bar  
Young Lawyers Division  
Section of Litigation  
Center for Children and the Law  
General Practice, Solo and Small Firm Division

10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

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## EXECUTIVE SUMMARY

### **A. Summary of Recommendation.**

The ABA has a long history of addressing the collateral consequences faced by adjudicated and convicted persons through its Criminal Justice Standards.<sup>36</sup> This resolution represents an extension of all of the already published standards to include areas where collateral consequences occur not by “operation of law”<sup>37</sup> but rather through a policy, procedure or by the discretion of an employer or admissions committee. Laws, rules, regulations and policies that require disclosure of juvenile adjudications can lead to numerous individuals being denied opportunities as an adult based upon a mistake(s) made when they were a child. The ABA recognizes the language used by the United States Supreme Court in *Roper v. Evans*, 543 U.S. 551 that children are different than adults because of: “A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”<sup>38</sup> Therefore, the ABA is recommending that the collateral consequences of committing a crime as a youth be severely reduced by reducing barriers to education and vocational opportunities because of a juvenile incident. Furthermore there should be limited exceptions that only exist when the incident is directly relevant to the position sought or a concern of a school.

### **B. Issue Recommendation Addresses.**

The recommendation addresses juvenile collateral consequences.

### **C. How Proposed Policy Will Address the Issue.**

The proposed policy will provide legislators, employers, educators and others with guidelines on what should not be considered regarding juvenile justice records.

### **D. Minority Views or Opposition.**

There are minority views on both sides of the issue, some feel that the policy does not go far enough in that all collateral consequences stemming from a juvenile situation should be abolished. While others believe that there are some incidences where juvenile contact with the criminal justices system should be considered. This resolution represents the compromise between those two sides.

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<sup>36</sup> Juvenile Justice Standards, Standards relating to Disposition (1979); ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualifications of Convicted Persons No. 3, (2004).

<sup>37</sup> Juvenile Justice Standards, Standards relating to Disposition, Standard 1.2.I (1979).

<sup>38</sup> *Roper v. Evans*, 543 U.S. 551, 569 (2005).