

ADOPTED

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

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

103A

41 enforcement agencies documenting the juvenile’s journey through the juvenile
42 justicesystem. Although juvenile court, probation, and law enforcement records may
43 have different levels of accessibility, for purposes of expungement, when a court orders
44 expungement of a juvenile record, all law enforcement, juvenile probation, and juvenile
45 court records relating to the juvenile’s delinquency court involvement must be expunged.

46

47 **Section IV. Confidentiality of Juvenile Delinquency Records Maintained by Juvenile** 48 **Court and Juvenile Probation**

49 (a) The following records, reports, and information acquired or generated in juvenile courts
50 or juvenile probation concerning juveniles shall be confidential and shall not be open to
51 inspection nor released to any person, department, agency, or entity except as provided
52 elsewhere in this section:

53

54 1) Juvenile legal files (including formal documents such as petitions, notices,
55 motions, legal memoranda, orders, and decrees).

56 2) Law enforcement records, including but not limited to:

57 i. Fingerprints.

58 ii. DNA samples.

59 3) State juvenile/criminal justice information system records.

60 4) Juvenile sex offender registration and notification records.

61 5) Social records, including but not limited to:

62 i. Records of juvenile probation officers.

63 ii. Records of the Department of Human Resources [or its equivalent].

64 iii. Records of the Department of Children and Youth Services [or its
65 equivalent].

66 iv. Medical records.

67 v. Psychiatric or psychological records, including records of screening and
68 assessment instruments administered to the juvenile.

69 vi. Reports of preliminary inquiries and predisposition studies.

70 vii. Supervision records.

71 viii. Birth certificates.

72 ix. Individualized service plans.

73 x. Education records, including, but not limited to, Individualized Education
74 Plans (IEPs) as those terms are defined in the Family Educational Rights
75 and Privacy Act of 1974 .

76 xi. Detention records.

77 xii. Demographic information that identifies a juvenile or the family of a
78 juvenile.

79 (b) The records, reports, and information described in subsection (a) shall be filed separately
80 from other files and records of the court. The juvenile legal files described in subsection

81 (1) of subsection (a) shall be maintained in a separate file from all other juvenile records,
82 reports, and information.

83
84 (c) Subject to applicable federal law, the records, reports, and information described in
85 subsection (a) shall not be open to public inspection and shall be open to inspection and
86 copying only by the following under these specified circumstances:

- 87
- 88 1) The juvenile court having the juvenile before it in any judicial proceeding.
- 89 2) Juvenile probation officers or other court professional staff ordered by the
90 juvenile court to serve the juvenile.
- 91 3) Representatives of a public or private agency or department having custody or
92 control of the juvenile pursuant to a court's order.
- 93 4) The juvenile and his or her attorney, including an attorney or guardian *ad litem*
94 who is representing the juvenile in another matter.
- 95 5) The parent (except when parental rights have been terminated), the legal guardian,
96 and the legal custodian of the juvenile.
- 97 6) The prosecutor authorized to prosecute criminal or juvenile cases under state law.
- 98 7) A court in which the juvenile is convicted of a criminal offense for the purpose of
99 imposing sentence upon or supervising the juvenile, or by officials of penal
100 institutions and other penal facilities to which the juvenile is committed, or by a
101 parole board in considering the juvenile's parole or discharge or in exercising
102 supervision over the juvenile.
- 103 8) Any person or agency for research purposes, assuming that person or agency is
104 employed by the state or is under contract with the state and is authorized by
105 [STATE AGENCY] to conduct such research; and the person or agency
106 conducting the research ensures that all documents containing identifying
107 information are maintained in secure locations and that access to such documents
108 by unauthorized persons is prohibited; that no identifying information is included
109 in documents generated from the research conducted; and that all identifying
110 information is deleted from documents used in the research when the research is
111 completed.
- 112 9) A person, department, agency, or entity identified in a juvenile court order issued
113 pursuant to subsection (d) or (e).
- 114 10) A person, department, agency, or entity identified in subsection (f).
- 115

116 (d) Subject to applicable federal law, upon a written petition and a finding that a release of
117 information will serve to protect the public health or safety, the juvenile court may order
118 release of the juvenile's name and designated portions of the records, reports, and
119 information described in subsections (a)(1) and (a)(2) to a person, department, entity or
120 agency charged under law to protect the public health or safety. The court may include in
121 its order restrictions on the use and re-disclosure of the released information.

103A

- 122 (e) Subject to applicable federal law, upon a written petition and a finding of legitimate
123 interest, and in accordance with the conditions below, the juvenile court may order
124 release of the juvenile's name and designated portions of the records, reports, and
125 information described in subsections (a)(1) and (a)(2) to another person, department,
126 entity, or agency.
- 127 1) The juvenile court shall provide notice to the juvenile and his or her attorney of
128 the petition and an opportunity to object.
 - 129 2) The juvenile court shall hold a hearing on the petition if requested by the
130 petitioner or the juvenile.
 - 131 3) The petition filed with the juvenile court and served on the juvenile and his or her
132 attorney shall state the following:
 - 133 i. The reason the person, department, entity, or agency is requesting the
134 information;
 - 135 ii. The use to be made of the information, including any intended re-
136 disclosure; and
 - 137 iii. The names of those persons within the department, entity, or agency who
138 will have access to the information.
 - 139 4) In ruling on the petition, the juvenile court shall consider the privacy interests of
140 the juvenile and potential risk of harm to the juvenile, whether a compelling
141 reason exists for release of the information, and whether the release is necessary
142 for the protection of a legitimate interest.
 - 143 5) The juvenile court may impose restrictions on the use and re-disclosure of the
144 released information.
- 145 (f) Subject to applicable federal and state laws, the juvenile court shall provide access to or
146 release designated portions of the records, reports, and information described in
147 subsections (a)(1) to the person, department, agency, or entity listed below as follows:
- 148 1) The juvenile court shall provide access to the state department of motor vehicles
149 to information related to traffic offenses that is specifically required by statute to
150 be given to the department for purposes of regulating automobile licensing.
 - 151 2) The juvenile court shall provide access to summary information in the juvenile's
152 record as to the nature of the complaint, a summary of the formal proceedings,
153 and the result of the proceedings to a law enforcement agency for the purpose of
154 executing an arrest warrant or other compulsory process, or for a current
155 investigation.
 - 156 3) The juvenile court shall notify the law enforcement agency that arrested the
157 juvenile or that initiated the filing of the complaint or petition of the final
158 disposition of the case.
- 159 (g) Each person, other than the juvenile who is the subject of a juvenile record, his or her
160 parents, and his or her attorney, to whom a juvenile record or information from a juvenile
161 record is to be disclosed pursuant to this section, is required to execute a nondisclosure

162 agreement in which the person certifies that he or she is familiar with the applicable
 163 disclosure provisions and promises not to disclose any information to an unauthorized
 164 person.

165 (h) The juvenile court shall create a procedure by which the juvenile and his or her attorney
 166 can challenge the correctness of the juvenile's record, and provide notice to the juvenile
 167 and his or her attorney as to that procedure.

168 (i) Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION
 169 OF THIS INFORMATION IS A [X] DEGREE MISDEMEANOR PUNISHABLE BY A
 170 FINE UP TO [\$XXXX].

171 (j) Any person found to be in violation of this section is guilty of a misdemeanor in the [X]
 172 degree or subject to a fine of [\$XXXX]. This subsection shall not apply to the person
 173 who is the subject of the record.

174

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

177 (a) Except as provided elsewhere in this section, all law enforcement records, reports or
 178 information, including but not limited to fingerprints and DNA evidence, generated or
 179 acquired by law enforcement agencies relating to the arrest, detention, apprehension, and
 180 disposition of any juvenile under the jurisdiction of the juvenile court shall be maintained
 181 separate from the records and files of other persons. Such records and files shall not be
 182 open to public inspection nor their contents disclosed to the public by any person.

183 (b) Notwithstanding the foregoing, inspection of such law enforcement records, reports, or
 184 information by the following is not prohibited:

- 185 1) The juvenile court having the juvenile before it in any judicial proceeding.
- 186 2) Juvenile probation officers or other court professional staff ordered by the juvenile
 187 court to serve the juvenile.
- 188 3) The juvenile and his or her attorney, including an attorney or guardian *ad litem* who
 189 is representing the juvenile in another matter.
- 190 4) The parent (except when parental rights have been terminated), the legal guardian,
 191 and the legal custodian of the juvenile.
- 192 5) The prosecutor authorized to prosecute criminal or juvenile cases under state law.
- 193 6) Representatives of a public or private agency or department having custody or
 194 control of the juvenile pursuant to a court's order.
- 195 7) Any person or agency for research purposes, assuming that person or agency is
 196 employed by the state or is under contract with the state and is authorized by
 197 [STATE AGENCY] services to conduct such research; and the person or agency
 198 conducting the research ensures that all documents containing identifying
 199 information are maintained in secure locations and that access to such documents
 200 by unauthorized persons is prohibited; that no identifying information is included in

103A

- 201 documents generated from the research conducted; and that all identifying
202 information is deleted from documents used in the research when the research is
203 completed.
- 204 7) To persons such as law enforcement officials to whom it is necessary to disclose
205 information for the limited purpose of investigating a crime, apprehending a
206 juvenile, or determining whether to detain a juvenile. The information released
207 should include the disposition or current status of the case. The recipient must
208 execute a nondisclosure agreement that states that the recipient shall only disclose
209 the information to law enforcement personnel, probation officers, judges and
210 prosecutors who are currently concerned with the juvenile.
- 211 8) A person, department, agency, or entity identified in a juvenile court order issued
212 pursuant to subsection (c) or (d).
- 213 (c) Subject to applicable federal law, upon a written petition and a finding that a release of
214 information will serve to protect the public health or safety, the juvenile court may order
215 release of the juvenile's name and designated portions of the records, reports, and
216 information described in subsection (a) to a person, department, entity or agency charged
217 under law to protect the public health or safety. The court may include in its order
218 restrictions on the use and re-disclosure of the released information.
- 219 (d) Subject to applicable federal law, upon a written petition and a finding of legitimate
220 interest, and in accordance with the conditions below, the juvenile court may order release
221 of the juvenile's name and designated portions of the records, reports, and information
222 described in subsection (a) to another person, department, entity, or agency.
- 223 1) The juvenile court shall provide notice to the juvenile and his or her attorney of the
224 petition and an opportunity to object.
- 225 2) The juvenile court shall hold a hearing on the petition if requested by the petitioner
226 or the juvenile.
- 227 3) The petition filed with the juvenile court and served on the juvenile and his or her
228 attorney shall state the following:
- 229 i. The reason the person, department, entity, or agency is requesting the
230 information;
- 231 ii. The use to be made of the information, including any intended re-disclosure;
232 and
- 233 iii. The names of those persons within the department, entity, or agency who
234 will have access to the information.
- 235 4) In ruling on the petition, the juvenile court shall consider the privacy interests of the
236 juvenile and potential risk of harm to the juvenile, whether a compelling reason
237 exists for release of the information, and whether the release is necessary for the
238 protection of a legitimate interest.
- 239 5) The juvenile court may impose restrictions on the use and re-disclosure of the
240 released information.

- 241 (e) Law enforcement agencies shall keep a record of all persons, departments, entities or
242 agencies to whom information in the law enforcement records has been released, the dates
243 of the request, the reasons for the request, and the disposition of the request.
- 244 (f) The law enforcement agency shall create a procedure by which the juvenile and his or her
245 attorney can challenge the correctness of the juvenile's record.
- 246 (g) Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION
247 OF THIS INFORMATION IS A [X] DEGREE MISDEMEANOR PUNISHABLE BY A
248 FINE UP TO [\$XXXX].
- 249 (h) Any person found to be in violation of this section is guilty of a misdemeanor in the [X]
250 degree or subject to a fine of [\$XXXX]. This subsection shall not apply to the person who
251 is the subject of the record.
252

253 **Section VI. Expungement**

- 254 (a) Automatic Expungement.
- 255 1) Records, reports and information maintained by juvenile court, juvenile probation
256 and law enforcement agencies that relate to cases in which there was no
257 adjudication of delinquency shall be expunged immediately following the court's
258 discharge of the case. This includes dismissed cases in which the time for the
259 government to appeal the dismissal has ended, diverted cases in which the
260 juvenile has successfully completed diversion, cases in which the juvenile was
261 ruled not involved, cases in which charges were not substantiated, and cases in
262 which the law enforcement agency did not refer the juvenile to court. This
263 requires no application or action on the part of the juvenile. If the chief law
264 enforcement officer of the agency, or his or her designee, certifies in writing that
265 certain information is needed for a pending investigation involving the
266 commission of a felony, that information, and information identifying the
267 juvenile, may be retained in an intelligence file until the investigation is
268 terminated or for one additional year, whichever is sooner.
- 269 2) Except for those offenses listed in subsection (b)(2), in cases in which there was
270 an adjudication of delinquency the juvenile court shall automatically order the
271 expungement of the juvenile records two (2) years after the juvenile's case was
272 closed if no delinquency or criminal proceeding is pending and the person has had
273 no subsequent delinquency adjudication or criminal conviction. This requires no
274 application or action on the part of the person. Upon receipt of the court order, all
275 agencies shall immediately destroy the records except that if the chief law
276 enforcement officer of the agency, or his or her designee, certifies in writing that
277 certain information is needed for a pending investigation involving the
278 commission of a felony, that information, and information identifying the

103A

279 juvenile, may be retained in an intelligence file until the investigation is
280 terminated or for one additional year, whichever is sooner.

281

282 (b) Expungement Upon Application.

283 1) At any time after a person's juvenile case has been closed, he or she may petition
284 the court for expungement of his or her juvenile record. The prosecutor shall be
285 notified and given the opportunity to present evidence at a hearing in which the
286 juvenile court will rule on the expungement after considering the following:

287 i. the best interests of the person;

288 ii. the age of the person during his or her contact with the juvenile court or
289 law enforcement agency;

290 iii. the nature of the offense;

291 iv. the disposition of the case;

292 v. the manner in which the person participated in any court ordered
293 rehabilitative programming or supervised services;

294 vi. the time during which the person has been without contact with the
295 juvenile court or with any law enforcement agency;

296 vii. whether the person has any subsequent criminal involvement; and

297 viii. the adverse consequences the person will suffer as a result of retention of
298 his or her record.

299 2) Persons who were adjudicated delinquent for acts that would have constituted first
300 degree murder, aggravated rape, or [first degree XXXX] if committed by an adult
301 may petition the juvenile court for the expungement of the juvenile record five (5)
302 years after the court's discharge of the case. The prosecutor shall be notified and
303 given the opportunity to present evidence at a hearing in which the juvenile court
304 will rule on the expungement after considering the factors listed in subsection
305 (b)(1).

306 (c) Prior to expungement, the juvenile court shall provide a copy of the records to be
307 destroyed to the juvenile about whom the records pertain.

308 (d) Fee for expungement. There shall be no cost for filing a petition requesting expungement
309 of a juvenile record, for the court to issue an order of expungement, or for agencies
310 subject to the order to physically expunge the records.

311 (e) Verification of Expungement. If the court grants the expungement petition, the court shall
312 order all agencies named in the juvenile's court and probation files, including each law
313 enforcement agency, other state agencies who may have records of the juvenile's
314 adjudication, public or private correctional, detention, and treatment facilities and each

315 individual who provided treatment or rehabilitation services for the juvenile under an
 316 order of the court, to send that person's juvenile records to the court. The court shall then
 317 destroy the paper and electronic records and mail an Affidavit of Expungement to the
 318 person. Additionally, each law enforcement agency shall also affirm in an Affidavit of
 319 Expungement to the court that it destroyed all paper and electronic copies of the
 320 expunged records, except that if the chief law enforcement officer certifies in writing that
 321 certain information is needed for a pending investigation involving the commission of a
 322 felony, that information, and information identifying the juvenile, may be retained in an
 323 intelligence file until the investigation is terminated or for one additional year, whichever
 324 is sooner.

325 (f) Subsection (e) does not apply any person or agency that previously-received records for
 326 research purposes that are subsequently expunged, assuming that person or agency is
 327 employed by the state or is under contract with the state and is authorized by [STATE
 328 AGENCY] services to conduct such research; and the person or agency conducting the
 329 research ensures that all documents containing identifying information are maintained in
 330 secure locations and that access to such documents by unauthorized persons is prohibited;
 331 that no identifying information is included in documents generated from the research
 332 conducted; and that all identifying information is deleted from documents used in the
 333 research when the research is completed.

334 (g) Sanction for disclosure of expunged record. The disclosure of an expunged record in
 335 violation of this section shall be unlawful. A person who discloses an expunged record in
 336 violation of this section is guilty of a misdemeanor in the [X] degree or a fine of [\$XXX].
 337 This subsection shall not apply to the person whose record was expunged.

338

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

340 (a) Notification by Juvenile's Attorney. It shall be the duty of the juvenile's attorney to
 341 inform the juvenile of the consequences of being adjudicated delinquent, the definition of
 342 expungement, and the timeline for expungement that is automatic and that which is
 343 available upon application.

344

345 (b) Notification by Court.

346 a. At the time of dismissal or disposition of the case, the judge shall inform the
 347 juvenile of his or her expungement rights. The court shall provide an
 348 expungement information packet to the juvenile, written in plain language, that
 349 contains the following:

- 350 i. information about the rights and procedures described in Section VI;
 351 ii. instructions to the juvenile that once the case is expunged, it shall be
 352 treated as if it never occurred and the juvenile shall not be required to
 353 disclose that he or she had a juvenile record;

103A

- 354 iii. a sample petition for expungement;
355 iv. a list of resources for expungement assistance.
- 356 b. The failure of the judge to inform the juvenile of the right to petition for
357 expungement as provided by law does not create a substantive right, nor is does
358 that failure constitute grounds for a reversal of an adjudication of delinquency, a
359 new trial, or an appeal.
360
- 361 (c) Notification by Clerk of Court. The clerk of the juvenile court shall send a “Notification
362 of a Possible Right to Expungement” to the juvenile at the address last received by the
363 clerk of the juvenile court on the date that the juvenile’s case is discharged from court
364 supervision. Notification may be by electronic means if available. This message will
365 include the same information provided by the court at the time of dismissal or disposition
366 of the case as described in subsection (b).
367
- 368 (d) Notification upon Expungement. Once a juvenile’s records have been expunged by the
369 court, the clerk of the juvenile court shall send by United States Postal Service to the
370 juvenile at the address last received by the clerk of the juvenile court a statement
371 verifying that the records have been expunged.
372

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

- 374
- 375 (a) Once a person’s juvenile record is expunged, the person shall not be required to disclose
376 that he or she had a juvenile record and properly may reply that no record exists upon
377 inquiry.
- 378 (b) The juvenile court, juvenile probation office, law enforcement offices and any agencies
379 that provided treatment and/or rehabilitation services shall reply, and all persons shall
380 reply, to an inquiry that no juvenile record exists with respect to that person.
- 381 (c) With respect to the matter in which the record was expunged, the person who is the
382 subject of the record and the person’s parent shall not be held thereafter under any
383 provision of any laws to be guilty of perjury or otherwise giving a false statement by
384 reason of the person’s failure to recite or acknowledge such record or response to any
385 inquiry made of the person or the person’s parent for any purpose, except that if the
386 person is to testify as a witness in a criminal or juvenile delinquency case, the person may
387 be ordered to testify about the expunged case.

REPORT

I. Introduction

Juvenile courts were founded on the belief that children should be treated differently than adults, because most will outgrow their youthful behavior and their offenses are largely nonviolent.¹ One of the core principles of the juvenile justice system is rehabilitation -- helping troubled youth get back on track so they can become productive, responsible members of the community. Records of juvenile offenses are to be kept confidential in order to give youth a meaningful chance at rehabilitation.² But today, records of juvenile court involvement can follow an individual into adulthood, thus creating barriers to success. Since the 1990s, a growing number of states have eliminated earlier practices designed to protect confidentiality such as limiting access to juvenile records.³ This is an alarming development given that juvenile arrest and court records can be just as damaging to an individual as records of adult criminal justice system involvement.⁴

As THE NEW YORK TIMES editorial board recently pointed out, “because some juvenile court records remain open to the public when they should have been sealed or expunged, these young people can be denied jobs, housing and even admission to college.”⁵ Making juvenile records publically available does very little to advance public safety while narrowing the path to success that the juvenile justice system was designed to provide. The American Bar Association has long maintained that the confidentiality of juvenile delinquency records is “a worthwhile goal to pursue in order to limit the risk that labels and stigma may undercut the purposes of juvenile court intervention and cause children to be denied opportunities for which they would otherwise be eligible.”⁶

¹ *Second Chances for Teen Offenders*, THE NEW YORK TIMES, Nov. 16, 2014.

² Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Reform Initiatives in the States: 1994-1996*, at 36 (1997), available at <https://www.ncjrs.gov/pdffiles/reform.pdf>; see also *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring) (“It is a hallmark of our juvenile justice system in the United States that virtually from its inception at the end of the last century its proceedings have been conducted outside of the public’s full gaze and the youths brought before our juvenile courts have been shielded from publicity.”).

³ See Katherine H. Federle and Paul Skendelas, *Thinking Like a Child: Legal Implications of Recent Developments in Brain Research for Juvenile Offenders* in *LAW, MIND AND BRAIN* (Michael Freeman and Oliver R. Goodenough, eds., 2009).

⁴ See generally Robert Shepherd, *Collateral Consequences of Juvenile Proceedings: Part II*, 15 *Crim. Just.* 41 (Fall 2000), available at <http://www.abanet.org>.

⁵ *Id.* The editorial goes on to note that “[t]he fact that most juvenile offenders never presented a threat to public safety and have no further contact with the law after they become adults argues strongly for sealing or expunging records so that young offenders are not permanently impaired by their youthful transgressions.” *Id.*

⁶ Institute of Judicial Administration and American Bar Association (1980). *Juvenile Justice Standards. Standards Relating to Juvenile Records and Information Systems* at p. 115, Commentary to 15.1.

103A

Increased public awareness, spurred by recent initiatives and reports (*see generally Part III infra*), makes this an opportune moment for the ABA to provide critical guidance to state lawmakers. The proposed Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records builds on the ABA's long-standing policy, as discussed in Part II *infra*, that directs states to enact statutes to protect youth from the adverse consequences of juvenile delinquency records. As described in more detail in Part III *infra*, a recent comprehensive survey reveals a wide variation among state confidentiality and expungement laws; many states have not embedded the key principles in ABA policy in their statutes. Thus, the proposed Model Act seeks to provide states with language codifying ABA policy so that youth throughout the country have the best opportunity to succeed.

II. American Bar Association Policy on Juvenile Delinquency Records

As described in this section, the ABA has a long history of protecting the confidentiality of juvenile delinquency records and advocating for their swift expungement after youth have successfully been discharged from the justice system.

A. Institute of Judicial Administration-American Bar Association Juvenile Justice Standards

In 1979 and 1980, the American Bar Association adopted as policy twenty (20) volumes of Juvenile Justice Standards that were developed by the Institute of Judicial Administration-American Bar Association Joint Commission on Juvenile Justice Standards. Juvenile records are addressed in the volume entitled *Standards Relating to Juvenile Records and Information Systems* (hereinafter "IJA-ABA JR-IS").⁷ These standards direct each state to enact laws that, *inter alia*,

- protect juveniles from the adverse consequences of disclosure of juvenile records;
- establish safeguards to protect against the misuse, misinterpretation, and improper dissemination of juvenile records;
- limit the collection and retention of juvenile records so that unnecessary and improper information is not collected or retained;
- restrict the information and juvenile records that may be disseminated to and used by third persons;
- afford juveniles and their parents with maximum access to juvenile records pertaining to them; and
- provide for the timely destruction of juvenile records.⁸

⁷Under the IJA-ABA JR-IS standards, the term "juvenile records" covers juvenile delinquency court records, which include the "case file" (formal documents such as the complaint or petition, summonses, warrants, motions, legal memoranda, judicial orders or decrees), "summary records" (the equivalent of the docket maintained by most juvenile courts), and "probation records" (which include social histories). IJA-ABA JR-IS 13.1, 13.3, 14.1-14.3. The term also includes "law enforcement records." IJA-ABA JR-IS Section IV. Standards for Police Records. The Model Act definitions track the definitions in the standards. *See Model Act Sections III(e), IV(a) and V(a)*.

⁸ IJA-ABA JR-IS 11.2.

The objective of the proposed Model Act is to operationalize the above objectives. The Model Act language is largely based on the IJA-ABA JR-IS standards.

Pursuant to IJA-ABA standards, the Model Act mandates that courts, probation offices and law enforcement agencies keep juvenile court and law enforcement records confidential. *See generally Model Act Sections IV and V.* Such records are not open to public inspection, and only enumerated individuals and agencies are allowed to access the records.⁹ Individuals and agencies with access include the juvenile and his/her attorney;¹⁰ the juvenile's parents;¹¹ the juvenile court and probation officers;¹² the prosecutor;¹³ an agency having custody or control of the juvenile;¹⁴ a criminal court before whom a proceeding involving the juvenile is pending;¹⁵ and researchers.¹⁶ Law enforcement records additionally may be released to persons, such as other law enforcement officials, to whom it is necessary to disclose information for such purposes of investigating a crime, apprehending a juvenile, or determining whether to detain a juvenile.¹⁷ As per the IJA-ABA JR-IS standards, the Model Act further directs juvenile courts and law enforcement agencies to create processes by which juveniles and their attorneys can challenge the accuracy of records, and provide notice about the available procedure.¹⁸

Pursuant to the IJA-ABA JR-IS standards, the Model Act also provides for the “expungement” of juvenile records.¹⁹ *See generally Model Act Sections VI, VII and VIII.* Juvenile court records, including probation records, must be automatically destroyed in all cases that were terminated prior to an adjudication of delinquency immediately after the discharge of the case.²⁰ This includes records that relate to dismissed cases, diverted cases, cases in which the juvenile was ruled not involved, cases in which charges were not substantiated, and cases that law enforcement officials did not refer to the courts.

⁹ IJA-ABA JR-IS 15.1, 15.2, 15.3, 15.4, 20.1, 20.2, 20.3

¹⁰ IJA-ABA JR-IS 4.3, 5.2, 9.1(A), 15.2(A)(1), 15.4(B), and 20.2.

¹¹ IJA-ABA JR-IS 9.1(A), 15.2(A)(1), 15.4(B), and 20.2.

¹² IJA-ABA JR-IS 15.2(A)(4) and (B), 15.3(C), 15.4(C) and 20.3(A)(2).

¹³ IJA-ABA JR-IS 15.2(A)(2), 15.4(C) and 20.3(A)(2).

¹⁴ IJA-ABA JR-IS 15.3(A)(2), 15.4(C) and (E), and 20.3(A)(3).

¹⁵ IJA-ABA JR-IS 15.2(A)(4) and 15.4(C). Disclosure is limited to juvenile court records. *Id.*

¹⁶ IJA-ABA JR-IS 15.2(A)(5), 15.5, and 20.3(A)(5) (all citing to 5.6).

¹⁷ IJA-ABA JR-IS 20.3(A), (A)(1) and B.

¹⁸ IJA-ABA JR-IS 2.6, 16.1, and 21.1.

¹⁹ IJA-ABA JR-IS 17.1 (noting that it should be the policy of juvenile courts to destroy all unnecessary information contained in records that identify the juvenile who is the subject of a juvenile record so that a juvenile is protected from the possible adverse consequences that may result from disclosure of his or her record to third persons). Note that the terms “expunge” and “expungement” mean to physically destroy the records, and are distinct from the terms “seal” and “sealing”, which mean to close the record from public viewing so that it cannot be examined by any individual except by court order. Commentary to IJA-ABA JR-IS 17.1 (distinguishing between expungement and sealing).

²⁰ IJA-ABA JR-IS 17.2.

103A

Moreover, in cases that resulted in adjudication, juvenile records of misdemeanors and selected felonies are to be automatically destroyed two years after court discharge of the case as long as there is no other delinquency or criminal proceeding pending and the individual was not adjudicated delinquent or convicted of another offense.²¹ The youth is not required to take any action because destruction is automatic. Juvenile courts are to provide a copy of any records to be destroyed to the juvenile who is the subject of the records prior to expungement.²² Similarly, law enforcement agencies must automatically destroy all records of arrested or detained youth who are not referred to juvenile court, and must destroy any other records upon receipt of a court order.²³

The Model Act also includes language from the IJA-ABA JR-IS standards on the effect of expunged records. See *Model Act Section VIII*. Specifically, once records of a case are expunged, the individual will not be required to disclose that he or she had a juvenile records and the court, probation and law enforcement shall reply that no record exists in response to inquiries.²⁴ Finally, consistent with the standards, the Model Act also provides that an individual or entity who violates any of the confidentiality or expungement provisions may be subject to criminal penalties.²⁵

There are four (4) provisions in the Model Act that are not found in the IJA-ABA JR-IS standards as follows:

First, the standards are silent on a court's ability to issue an order granting third party access to juvenile records. By contrast, a recent comprehensive survey of state laws demonstrates that almost every state statute includes a provision allowing courts to order the release of juvenile records. See *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records*, available at www.jlc.org/juvenile records. Very few of these statutes establish criteria for the courts to consider before issuing such an order. Given that state laws already grant this authority to courts, the proposed Model Act includes criteria for courts to review before issuing such an order. See Model Act sections IV(d) and (e), and V(c) and (d). Specifically, the Model Act provides that courts may grant a petition requesting access to juvenile records upon a finding that such disclosure is necessary to protect the public health or safety. The Model Act further provides that courts may order release of information in a juvenile record upon a finding of "legitimate interest"; the Act specifies the criteria the court must consider in determining a "legitimate interest" and provides the youth and his/her counsel with

²¹ IJA-ABA JR-IS 17.3. Upon expungement, the court shall inform all agencies in possession of the juvenile's records and direct such agencies to destroy the records. *Id.* At 17.5.

²² IJA-ABA JR-IS 17.6(A).

²³ IJA-ABA JR-IS 22.1 (law enforcement records). However, 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. *Id.*

²⁴ ²⁴ IJA-ABA JR-IS 17.7.

²⁵ IJA-ABA JR-IS 2.4 (making it a misdemeanor for any person to willfully obtain or attempt to obtain a record or information from the record, willfully provide access, disclose or communicate information from a juvenile record, or willfully destroy or falsify information in or to be included in a record)

notice and an opportunity to be heard before the court may issue the order.

Second, IJA-ABA JR-IS standards provide that law enforcement agencies may release juvenile records to law enforcement in other jurisdictions only if the juvenile was adjudicated delinquent or convicted of a crime or unless there is an outstanding arrest warrant for the juvenile.²⁶ The Model Act does not include the limiting clause following the words “only if”, to allow law enforcement agencies to share information about pending charges for investigation purposes.

Third, the IJA-ABA JR-IS standards only provide for automatic expungement of juvenile records in cases of misdemeanors, not felonies.²⁷ The standards are silent on expungement by application of juvenile records for offenses that would be felonies if committed by an adult. However, a number of states allow for the expungement of juvenile records for felony offenses, either by including felonies on their automatic expungement list or permitting individuals to petition the court for expungement of felony offenses or both. *See, e.g.,* Indiana,²⁸ Mississippi,²⁹ Missouri³⁰, North Dakota,³¹ Oklahoma,³² Oregon,³³ and Washington.³⁴ There also appears to be bi-partisan support at the federal level for moving in this direction: the REDEEM Act introduced by Sens. Paul and Booker calls for automatic expungement of non-violent felony offenses such as drug offense. *See discussion in Part III infra.* For these reasons, the Model Act gives states the option to include selected felonies on the automatic expungement list, and to allow for individuals to petition the court for expungement of selected felonies.

Fourth, the IJA-ABA JR-IS standards contain no explicit provisions directing courts and other juvenile justice agencies to provide youth with notice about their expungement rights and eligibility. Currently at least seven (7) states require detailed notification of the steps required to

²⁶ IJA-ABA JR-IS 20.3(A), (A)(1) and B.

²⁷ IJA-ABA JR-IS 17.3.

²⁸ Ind. Code §§ 31-39-8-2, -3, -4, -6; Ind. Code § 31-39-5-7; Ind. Code § 35-38-5-2 (providing for application for expungement of juvenile records of any offense).

²⁹ Miss. Code §§ 43-21-159, 43-21-265 (juvenile court may expunge record of any offense under its jurisdiction upon application of the individual).

³⁰ Mo. Rev. Stat. § 211.151(3); *see also* Mo. Rev. Stat. § 610.122-125; Mo. Rev. Stat. § 311.326; Mo. Rev. Stat. § 311.325; Mo. Rev. Stat. § 211.321 (providing procedure for expungement by application for juvenile records of any offense, with additional criteria for the expungement of records of underage drinking).

³¹ N.D. Cent. Code § 27-20-54 (providing for automatic expungement of juvenile case files and court records except for certain sex offenses which must be retained for fifty years and made available to any state’s attorney for purposes of investigation or proceedings.)

³² Okla. Stat. tit. 22 § 18; Okla. Stat. tit. 10A, §§ 2-6-102(F)-(G); Okla. Stat. tit. 10A, § 2-6-109 (no felonies are excluded from eligibility for expungement upon application by the individual to the court).

³³ Or. Rev. Stat. § 262 (describing process by which individual can petition the court for expungement).

³⁴ Wash. Rev. Code § 13.50.050(12)(v) (expungement available for records of all offenses except for rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible Compulsion).

103A

seal or expunge a juvenile record,³⁵ and eight (8) states require notification of the eligibility requirements to obtain sealing or expungement.³⁶ Under the IJA-ABA JR-IS standards, juvenile courts are to provide a copy of any records to be destroyed to the juvenile who is the subject of the records prior to expungement.³⁷ Therefore, although the existing standards do not explicitly call for notification of expungement rights, the proposed Model Act language is consistent with the spirit of the standards.

B. American Bar Association Resolution Limiting the Collateral Consequences of Juvenile Arrests, Adjudications, and Convictions³⁸

In 2010, the American Bar Association adopted a policy³⁹ addressing the collateral consequences facing individuals adjudicated delinquent. The resolution is as follows:

RESOLVED, That the American Bar Association urges federal, state, territorial and local governments to increase the opportunities of youth involved with the juvenile or criminal justice systems and to prevent the continuing discrimination against those who have been involved with these systems in the past by limiting the collateral consequences of juvenile arrests, adjudications, and convictions.

FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and local governments to adopt and enforce laws and policies which:

Prohibit employers, colleges, universities, vocational and technical schools, financial aid offices licensing authorities and similar agencies from inquiring about or considering an arrest of a juvenile that did not lead to a finding of guilt, an adjudication or a conviction, or basing the denial of educational or vocational opportunities to applicants on such arrest;

³⁵ California (Cal. Welf. & Inst. Code § 781(g)(1)); Illinois (705 Ill. Comp. Stat. 405/5-615, -915(2.5) to (2.6)); Nebraska (Neb. Rev. Stat. § 43-2,108.02); Nevada (Nev. Rev. Stat. § 62H.100-.170, .260); New Mexico (N.M. Stat. § 32A-2-26 (F)); Oregon (Or. Rev. Stat. § 419A.260(2)); Texas (Tex. Fam. Code §§ 54.04(h)(2), 58.003, 58.306, 58.208-209(a)(B); Tex. Code Crim. Proc. art. 45.0216).

³⁶ California (Cal. Welf. & Inst. Code § 781(g)(1)); Illinois (705 Ill. Comp. Stat. § 405/5-915(2.5), (2.6)); Kansas (Kan. Stat. § 38-2312(h)); Nevada (Nev. Rev. Stat. § 62H.100-.170, .260; Nev. Rev. Stat. § 62H.130, .140, .150, .170); New Mexico (N.M. Stat. § 32A-2-26 (F)); New York (N.Y. Fam. Ct. Act, § 375.1); Texas (Tex. Fam. Code §§ 54.04(h)(2), 58.003, 58.206, 598.208, 58.209(a), (B); Tex. Code Crim. Proc. art. 45.0216, 45.0216(e); Washington (Wash. Rev. Code § 13.50.050(17)(ii), (20).

³⁷ IJA-ABA JR-IS 17.6(A).

³⁸ The IJA-ABA JR-IS standards also provide that “[p]ublic and private employers, licensing authorities, credit companies, insurance companies, banks, and educational institutions should be prohibited from inquiring, directly or indirectly, and from seeking any information relating to whether a person has been arrested as a juvenile, charged with committing a delinquent act, adjudicated delinquent, or sentenced to a juvenile institution...” IJA-ABA JR-IS 18.1. The only exception is that a state agency or department responsible for juvenile justice may be authorized to inquire and seek such information pertaining to persons being considered for positions requiring ex-offenders. *Id.*

³⁹ Resolution 102A, adopted by House of Delegates on February 8-9, 2010.

Prohibit employers and educational institutions from considering any records pertaining to an arrest, adjudication or conviction of an applicant that occurred while the applicant was a juvenile if such records have been sealed or expunged by the court.

Prohibit colleges, universities, financial aid offices, other educational institutions and employers and employment licensing authorities:(1) from considering juvenile adjudications or criminal convictions unless engaging in the conduct underlying the adjudication or conviction would provide a substantial basis for denial of a benefit or opportunity even if the person had not been adjudicated or convicted, and (2) if the underlying conduct does provide such a basis:(a) from considering a juvenile adjudication, if three years have passed following the applicant's discharge from custody or supervision without being adjudicated or convicted of a subsequent offense; and (b) from considering a criminal conviction, if five years have passed following the applicant's release from custody or supervision without being convicted of a subsequent offense.

FURTHER RESOLVED, that the American Bar Association urges federal, state, territorial and local governments to adopt and enforce policies encouraging employers, colleges, universities, financial aid offices, licensing authorities and other agencies to give consideration to a juvenile's successful completion of a community re-entry program or the terms of their probation.

FURTHER RESOLVED, that the American Bar Association urges federal, state territorial and local governments to adopt and enforce policies encouraging employers, colleges, universities, financial aid offices, licensing authorities and other agencies to include on applications clear definitions of legal terms such as arrest, adjudication, and conviction.⁴⁰

The policy resolution grew out of the recognition that:

[L]aws, 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." 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

⁴⁰ *Id.*

103A

only exist when the incident is directly relevant to the position sought or a concern of a school.⁴¹

C. Mission Statement of the American Bar Association’s Convocation on Poverty Related Legal Issues

In June 2014, the Board of Governors approved a mission statement submitted by the Convocation on Poverty Related Legal Issues, which calls on the ABA to advance four (4) objectives including the decriminalization of poverty. The mission statement provides in pertinent part that:

[t]he discriminatory enforcement of laws drives too many into our courts and prisons. Criminal records create barriers to obtaining employment, housing, and other life essentials. The ABA believes that all citizens charged with crimes should have access to representation. The ABA also supports policies and programs that divert individuals from justice system involvement by providing alternatives to adjudication, and laws that promote the justified expungement of arrest and court records. To that end, the ABA will enact a Model Act on the Confidentiality and Expungement of Juvenile Delinquency Records, so that young people will have the greatest chance to overcome poverty and succeed in adulthood.⁴²

III. Recent Reports and Initiatives on Juvenile Records

A number of reports and initiatives also call for greater protection and expungement of juvenile records as a means to eliminate barriers to success for youth who have come into contact with the justice system. These reports and initiatives have increased public awareness of this issue, making it an ideal time for the ABA to offer model statutory language on confidentiality and expungement to state lawmakers.

National Summit on Collateral Consequences

On February 27, 2015, the ABA Criminal Justice Section in collaboration with the National Institute of Justice Presented the first National Summit on Collateral Consequences⁴³. The Summit was a by-invitation only event that brought together law enforcement, as well as members of the bar who work in judicial, prosecutorial, policy, and academic capacities. Panels at the Summit focused on the problems that collateral consequences pose for individuals trying to

⁴¹ Report to the House of Delegates. Am. Bar Ass’n, Criminal Justice Section, Committee on Homelessness and Poverty, Standing Committee on Legal Aid and Indigent Defense, at 14 (2010) *available at* http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102a.authcheckdam.pdf.

⁴² Mission Statement of the American Bar Association (ABA)’s Convocation on Poverty Related Issues, adopted the ABA Board of Governors at its June 2014 meeting (emphasis added).

⁴³ See http://www.americanbar.org/groups/criminal_justice/events_cle/cc_summit_2015.html

make successful re-entry into their communities following their involvement in the justice system. Participants also discussed how to structure laws, policies and practices that maintain public safety while also optimizing the opportunities for success for ex-offenders.

The My Brother's Keeper Initiative

The My Brother's Keeper Task Force Report to the President⁴⁴ urges public and private employers to "ban the box"⁴⁵ and calls on legal services organizations to help young people expunge their records. Specifically, the report recommends the following:

RECOMMENDATION 11.4: Launch an initiative to eliminate unnecessary barriers to giving justice-involved youth a second chance.

11.4.1 Large employers, including the Federal government, should study the impacts of requiring disclosure of juvenile or criminal records on job applications and consider "banning the box." Federal, state, local, and private actors should support public campaigns focused on eliminating forms of discrimination and bias based on past arrest or conviction records.

11.4.2 Legal and other services focused on addressing successful reentry are acutely needed to address accuracy and expunge criminal records, reinstate licenses and reduce excessive fines. Relevant agencies should work with civil legal services providers, including the Legal Services Corporation, state and local attorneys general, and the private bar to expand awareness of the need and access to these services.

The REDEEM Act

Building on the growing momentum and bipartisan coalitions rallying behind broad-based criminal justice reform, on March 9, 2015 U.S. Sens. Rand Paul (R-Ky) and Cory Booker (D-N.J.), re-introduced S. 675, the REDEEM (Record Expungement Designed to Enhance Employment) Act. One of the bill's objectives is to give youth convicted of non-violent crimes a second chance to become more self-reliant and less likely to commit future crimes. The bill specifically provides for automatic expungement of records for kids who commit non-violent crimes before they turn 15 and automatic sealing of records for those who commit non-violent crimes after they turn 15 years old.⁴⁶ As Sen. Paul has stated, "The War on Drugs has had a disproportional effect on minorities and our inner cities. Our current system is broken and has trapped tens of thousands of young men and women in a cycle of poverty and incarceration. It is my hope that the REDEEM Act will help many of these young people escape this trap by reforming our criminal justice system, expunging records after time served, and preventing non-violent crimes from becoming a permanent blot on one's record."

⁴⁴ *My Brother's Keeper Task Force Report to the President*, October 2014 at p. 53.

⁴⁵ The [Ban the Box Campaign](#) asks employers to remove questions regarding conviction histories from their employment applications and to adopt hiring practices that give applicants a fair chance.

⁴⁶ See summary of REDEEM Act at http://www.paul.senate.gov/?p=press_release&id=1306.

103A

Ban the Box

Acknowledging the barriers a juvenile or criminal record creates to employment, cities and counties in 25 states have implemented “ban-the-box” initiatives prohibiting employers from asking about an adjudication or conviction prior to the candidate demonstrating his or her qualifications for the job.⁴⁷ And the Equal Employment Opportunity Coalition (EEOC) has issued guidance on the limited use of records in assessing candidates and several states have followed suit by enacting laws that prevent employers from considering juvenile records.⁴⁸

Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records

In November 2014, Juvenile Law Center published a scorecard that is the first comprehensive evaluation of how juvenile records are handled across the 50 states and the District of Columbia.⁴⁹ In measuring each state’s overall treatment of records, Juvenile Law Center rated performance in two key policy areas: (1) confidentiality of records during and after juvenile court proceedings, and; (2) the availability of and process for sealing or expungement.⁵⁰ For each of the two policy areas, Juvenile Law Center identified core principles to ensure the protection of juvenile records as follows:⁵¹

- Youths’ law enforcement and court records are not widely available and are 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

⁴⁷ *Ban the Box Resource Guide*, National Employment Law Project, available at <http://www.nelp.org/page/-/SCLP/Ban-the-Box.Current.pdf?nocdn=1>

⁴⁸ Riya Saba Shah and Lauren Fine. *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement* at 10 n. 21. (Juvenile Law Center, 2014).

⁴⁹ Juvenile Law Center. *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records* (2014), available at www.jlc.org/juvenilerecords

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 4.

Juvenile Law Center then compared each state’s performance with these core principles for juvenile record protection to obtain the state’s overall score.⁵² States were rated on a scale of one (1) to five (5) stars based on their performance with respect to these core principles:

- No state earned an overall rating of 5 stars
- Fewer than 16% of the states received 4 stars
- 55% of the states received 3 stars
- 25% of the states received only 2 stars⁵³

The scorecard shows that “the vast majority of states fail to adequately protect youth from the harmful effects of their juvenile records” and states must take steps to ensure “greater protection of juvenile record information [so] that youth can pursue educational opportunities, enter the workforce and become contributing members of their communities.”⁵⁴

The core principles for the Juvenile Law Center scorecard align with many of the IJA-ABA JR-IS standards that are the basis for the proposed Model Act. Thus, the Juvenile Law Center scorecard demonstrates that few states have implemented the IJA-ABA JR-IS standards that are the basis for the Model Act. The Model Act will provide much needed guidance to legislators to enact juvenile records laws that further the unfulfilled objectives of American Bar Association policy for the last 25 years.

IV. Conclusion

Since 2005, the United States Supreme Court has issued four major opinions reaffirming the principle that youth are developmentally different than adults in ways that matter when they become involved with the justice system.⁵⁵ In particular, these cases recognize what any parent of a teenager will tell you: adolescents lack maturity and have an underdeveloped sense of responsibility; they are vulnerable to negative influences and outside pressures; their characters are transient and developing; they have limited ability to control their immediate circumstances and environments; and for all these reasons, they are less culpable than adults.⁵⁶ The proposed Model Act aligns with these fundamental principles and thus give young people the optimal chance for success.

⁵² *Id.* at 3.

⁵³ *Id.* at 3.

⁵⁴ *Id.* at 10.

⁵⁵ The four cases are: *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding that imposing the death penalty on individuals who committed murders as juveniles violated the Eighth Amendment’s prohibition against cruel and unusual punishment); *Graham v. Florida*, 130 S. Ct. 2011, 2034 (2010) (holding that it is unconstitutional to impose life without parole sentences on juveniles convicted of non-homicide offenses); *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2394, 2403 (2011) (holding that a child’s age must be taken into account for the purposes of the *Miranda* custody test); and *Miller v. Alabama*, 132 S.Ct. 2455 (2012) (holding that mandatory life without parole sentence for juveniles is unconstitutional). See also National Academy of Sciences, *Reforming Juvenile Justice: A Developmental Approach* (2013).

⁵⁶ *Roper*, 543 U.S. at 569–71; *Miller*, 132 S.Ct. at 2464-65.

103A

Respectfully submitted,

Nancy Scott Degan, Chair
Section of Litigation
August 2015

GENERAL INFORMATION FORM

Submitting Entity: Section of Litigation
 Submitted By: Nancy Scott Degan, Chair

1. Summary of Resolution.

The Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records builds on the ABA's long-standing policy to protect youth from the adverse consequences of juvenile delinquency records. Records of juvenile justice involvement can follow an individual into adulthood, thus creating barriers to education, jobs, and housing. The Model Act provides statutory language for states to adopt to break down these barriers. Specifically, the Model Act mandates that courts, probation offices and law enforcement agencies keep juvenile court and law enforcement records confidential. Such records are not open to public inspection, and only enumerated individuals and agencies are allowed to access the records. The Model Act further provides for the expungement of juvenile records. Certain records are to be automatically expunged; courts may order the expungement of other records upon application by the juvenile.

2. Approval by Submitting Entity.

Approved on April 30, 2015 by the Section of Litigation Council.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

In 1979 and 1980, the American Bar Association adopted as policy twenty (20) volumes of Juvenile Justice Standards that were developed by the Institute of Judicial Administration-American Bar Association Joint Commission on Juvenile Justice Standards. Juvenile records are addressed in the volume entitled *Standards Relating to Juvenile Records and Information Systems* (hereinafter "IJA-ABA JR-IS").⁵⁷ These standards direct each state to enact laws that protect youth from the adverse consequences of juvenile records. The Model Act operationalizes the IJA-ABA JR-IS standards by providing states with statutory language to enact.

⁵⁷ Institute of Judicial Administration and American Bar Association (1980). *Juvenile Justice Standards. Standards Relating to Juvenile Records and Information Systems.*

103A

In 2010, the American Bar Association adopted a policy⁵⁸ addressing the collateral consequences facing individuals adjudicated delinquent. Specifically, the resolution urges federal, state, territorial and local governments to increase the opportunities of youth involved with the juvenile or criminal justice systems and to prevent the continuing discrimination against those who have been involved with these systems in the past by limiting the collateral consequences of juvenile arrests, adjudications, and convictions.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

This is not a late report.

6. Status of Legislation. (If applicable)

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Section plans to publish the policy widely, post it on its website, and seek coverage in its publications.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals.

The Criminal Justice Section, the Commission on Homelessness and Poverty, and the Commission on Youth at Risk have voted to co-sponsor.

Additionally, the resolution has been referred to the following entities:

ABA Center on Children and the Law
ABA Forum on Communications
Individual Rights & Responsibilities
Judicial Division
NLADA
SCLAID
Young Lawyers Division

⁵⁸ Resolution 102A, adopted by House of Delegates on February 8-9, 2010.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Lourdes M. Rosado, Esq.
Associate Director
Juvenile Law Center
1315 Walnut Street, 4th floor
Philadelphia, PA 19107
215-625-0551 (office)
215-625-2808 (office fax)
215-805-0249 (mobile)
Email: lrosado@jlc.org

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Lawrence J. Fox
Delegate, Section of Litigation
Drinker Biddle & Reath, LLP
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EXECUTIVE SUMMARY

1. Summary of the Resolution

The Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records builds on the ABA's long-standing policy to protect youth from the adverse consequences of juvenile delinquency records. Specifically, the Model Act mandates that courts, probation offices and law enforcement agencies keep juvenile court and law enforcement records confidential. Such records are not open to public inspection, and only enumerated individuals and agencies are allowed to access the records. The Model Act further provides for the expungement of juvenile records. Certain records are to be automatically expunged; courts may order the expungement of other records upon application by the juvenile.

2. Summary of the Issue that the Resolution addresses

The juvenile court system was founded on the principle that youth are worthy and capable of rehabilitation. But today, records of juvenile justice involvement can follow an individual into adulthood, thus creating barriers to success. Young people across the U.S. are often denied access to employment, education and financial aid, and housing because of their juvenile delinquency records. A recent comprehensive survey reveals a wide variation among state confidentiality and expungement laws; many states have not embedded the key principles in ABA policy regarding confidentiality and expungement into their statutes. Thus, there is a need to provide model statutory language that will increase the confidentiality and ultimate expungement of juvenile records.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Model Act operationalizes longstanding ABA policy by providing states with specific statutory language to enact. Specifically, the Model Act provides that courts, probation offices and law enforcement agencies keep juvenile court and law enforcement records confidential. Such records are not open to public inspection, and only enumerated individuals and agencies are allowed to access the records. The Model Act further provides for the expungement of juvenile records. Certain records are to be automatically expunged; courts may order the expungement of other records upon application by the juvenile. States' enactment of the Model Act will reduce barriers to success for youth who have been successfully discharged from the juvenile justice system.

4. **Summary of Minority Views**

None of which we are aware.