

## Collateral Damage in Idaho: A Proposal to Strengthen the Effect of the Juvenile Corrections Act

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**COLLATERAL DAMAGE IN IDAHO: A PROPOSAL TO  
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JENNY V. GALLEGOS

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# COLLATERAL DAMAGE IN IDAHO: A PROPOSAL TO STRENGTHEN THE EFFECT OF THE JUVENILE CORRECTIONS ACT

JENNY V. GALLEGOS\*

## ABSTRACT

*Why is a juvenile offense called a felony if it “would be a felony if committed by an adult”? Why is the Idaho Juvenile Corrections Act found in Idaho Code Title 20 which deals with jails? How do you request an expungement of your diversion case? The statute tells you that you can request it, but how? Without personal experience with the juvenile justice system, it would be difficult to wrap your mind around the expectations and standards for juvenile offenders in Idaho. Most people just don’t know. As a matter of fact, even those involved in the juvenile justice system often don’t know. This paper explores the intricacies in the laws as they currently stand and recommends several changes to strengthen the law. Despite recent changes to the law, hundreds of juvenile records remain open against the best interest of our youth and the future of our state. The expungement statute was enacted at a time when file rooms housed a community’s criminal mischiefs, but it must now catch up to the speed of dissemination and protect the records of our rehabilitated youth. The changes proposed clarify the law, provide juvenile offenders with clear procedures, and reflect the intention of the Juvenile Corrections Act which is restorative justice—to hold juveniles accountable, protect the community from further crime, and develop a juvenile’s skills so that he or she may be a contributing member of our community. If you remember nothing else, remember that expungement in Idaho means that records are sealed from public view—they are never destroyed, and expungement poses no risk to public safety.*

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\* J.D. candidate, University of Idaho College of Law, 2019. This article is dedicated to Judge William Harrigfeld for his dedication to the protection of juvenile records and for his unconditional support. The author also wishes to thank Judge Jack Varin and Lindsay Anderson for their contributions and expertise that made this article possible.

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## I. INTRODUCTION

Imagine that you live in Texas, just outside of Houston, and the boy next door, let's call him Andy, who is only fourteen years old, pockets a hunting knife at a store. The store security holds him until police arrive; the police take him to "juvie." Andy is charged with theft. He's brought into court with his hands shackled. His mother sits in the row behind him as the judge reads Andy his rights. Ultimately, Andy is placed on probation and must complete community service and make restitution. All the while, his case is not open to the public. Andy completes his probation without any incident, and the court dismisses his case. Andy is told expungement of his juvenile criminal record is a possibility, and that he will be notified when expungement is completed. Andy goes on to graduate high school. He is not ready for college and decides to instead apply for jobs. Later on, he may continue his education or enroll in the military. Andy will never need to worry about acknowledging a past criminal record on a job or college application. In Texas, Andy's juvenile indiscretion is erased.

What if Andy lived in Idaho? Well, Andy's life would be different. Although Andy stole a knife when he was fourteen years old and completed probation without any issue, in Idaho, he would have to wait at least until he turned eighteen to seek expungement. And he would need to be aware of the possibility of expungement—unlike Texas, Idaho does not automatically expunge juvenile criminal records. In Idaho, Andy would have to apply for expungement. If Andy was charged with a crime prior to July 2017, his juvenile criminal records would be available for public viewing online. Imagine that Andy has no idea that expungement is an option and does not submit a petition to expunge his record. Andy will still graduate high school. But, if he applies for a job that requires him to disclose his criminal record, he will be forced to acknowledge his juvenile sentence. If Andy lives in Idaho, his

chances of obtaining employment look grimmer than they do in Texas while his juvenile criminal record haunts him.

Should Andy's future be less bright just because his juvenile offense occurs in Idaho? This paper argues that it should not and proposes concrete ways to update and improve Idaho's juvenile expungement laws.

Like our fictional Idaho Andy, "[m]any youth and parents are completely unaware that they need to proactively seal or expunge their records until they run into a roadblock as adults."<sup>1</sup> In Idaho, juvenile offenders must wait one to five years after the termination of their case or when they turn eighteen, whichever occurs later, to gain a fresh start.<sup>2</sup> That is, they cannot seek immediate expungement once their case terminates. Moreover, in the interim, their juvenile records might remain public if the matter was filed before July 2017.<sup>3</sup> A juvenile offender may have to wait until his twenty-sixth birthday before he can have his record expunged. The inability to clear a juvenile record sooner, especially through the initial adult years, has dramatic effects on offenders' employment prospects.

Until July 2017, records for all juvenile offenders who were charged with an offense that they allegedly committed after their fourteenth birthday were open for public inspection.<sup>4</sup> During the 2017 legislative session, the Idaho legislature amended the statute to allow records to remain open only in proceedings against a juvenile offender over the age of fourteen facing what would be considered a felony charge.<sup>5</sup> In addition, by keeping juvenile records public until expungement happens, sensitive records such as arrest records, school records, medical examination reports, and probation reports—all of which may include social history and family history—and prior placements or other court involvement such as foster placement or family law matters, are available to anyone who knows where to look.

The stigma associated with a criminal record interferes with the ability to obtain employment, housing, education, financial aid, public benefits, to serve in the military, and access other resources.<sup>6</sup> However, expungement prohibits access to a juvenile offender's file in most cases.<sup>7</sup> Expungement means that a petitioner's case

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1. *New Study Reveals Majority of U.S. States Fail to Protect Juvenile Records*, JUV. L. CTR. (Nov. 13, 2014), <http://jlc.org/blog/new-study-reveals-majority-us-states-fail-protect-juvenile-records>.

2. IDAHO CODE §§ 20-525A(1)–(2) (2017).

3. IDAHO CODE § 20-525 (2017). Previously, the statute allowed for records to remain open when the court and the prosecutor cannot agree that extraordinary circumstances exist for records of a juvenile offender fourteen years of age or older who is petitioned or charged with an offense which would be a felony if committed by an adult. The statute was changed in 2017 so that records remain confidential because it is in the best interest of the juvenile offender.

4. IDAHO CT. ADMIN. R. 32(g)(9) (2017).

5. *Id.*

6. RIYA SAHA SHAH & LAUREN A. FINE, FAILED POLICIES, FORFEITED FUTURES: A NATIONWIDE SCORECARD ON JUVENILE RECORDS, JUV. L. CTR. 2 (2014), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/scorecard.pdf>. For the Idaho Administrative Code rule regarding the definition of conviction, see IDAHO ADMIN. CODE r. 16.05.06.010 (04) (2018) (listing convictions of a criminal offense when an adjudication has been entered, there has been a finding of guilt, or a plea of guilty or *nolo contendere*, or when the individual has entered into a program or arrangement where judgment of conviction has been withheld).

7. See IDAHO CODE § 20-525A(5) (2017).

will “be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter.”<sup>8</sup> For example, authorization and self-declaration forms provided by the State of Idaho that require a contractor to disclose any criminal conviction may violate the juvenile expungement statute.<sup>9</sup> Or, it may violate the statute if a State department requires disclosure “even if the conviction was sealed, expunged, or the judgment withheld.”<sup>10</sup>

Similarly, thirty states and over one hundred-fifty municipalities have enacted laws to remove questions about criminal history from employment applications from state employers;<sup>11</sup> eleven states have also expanded the requirement to private employers.<sup>12</sup> Additionally, the District of Columbia and thirty-one municipalities have extended their fair-chance hiring policies to government contractors.<sup>13</sup> This movement has been duly named “Ban the Box.”<sup>14</sup>

The Idaho Department of Labor suggests following the “Sin—Suffer—Repent” model for job seekers concerned with disclosing their criminal history.<sup>15</sup> Whether felonies in particular that have been expunged should be disclosed, the Idaho Department of Labor states, “it depends. Again, it’s better to be honest up front than [sic] be surprised. Read and answer the question honestly and completely.”<sup>16</sup> During the 2018 Legislative Session, Senator Cherie Buckner-Webb sponsored a Ban the Box bill to prohibit an employer from considering a job applicant’s participation “in a diversion program or any convictions that have been sealed, dismissed, or expunged.”<sup>17</sup> The bill died in committee on its second day.<sup>18</sup> Although limiting ques-

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8. *Id.*

9. *Jensen v. State*, 72 P.3d 897, 902–03 (Idaho 2003).

10. *Id.* at 903.

11. Beth Avery & Phil Hernandez, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies* (Feb. 8, 2018), <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/> (“Arizona (2017), California (2017, 2013, 2010), Colorado (2012), Connecticut (2016, 2010), Delaware (2014), Georgia (2015), Hawaii (1998), Illinois (2014, 2013), Indiana (2017), Kansas (2018), Kentucky (2017), Louisiana (2016), Maryland (2013), Massachusetts (2010), Minnesota (2013, 2009), Missouri (2016), Nebraska (2014), Nevada (2017), New Jersey (2014), New Mexico (2010), New York (2015), Ohio (2015), Oklahoma (2016), Oregon (2015), Pennsylvania (2017), Rhode Island (2013), Tennessee (2016), Utah (2017), Vermont (2016, 2015), Virginia (2015), and Wisconsin (2016).”).

12. Avery & Hernandez, *supra* note 11 (“California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington.”).

13. *Id.* (additionally, of the listed municipalities that include fair-chance hiring policies to government contractors, seventeen have “extended their fair-hiring laws to private employers within their jurisdictions.”).

14. *About: The Ban the Box Campaign*, BAN THE BOX CAMPAIGN, <http://bantheboxcampaign.org/about/#.WSARz0ZKjIU> (last visited Apr. 9, 2019) (“The Ban the Box campaign was established in 2014 by All of Us or None, a national civil rights movement of formerly-incarcerated people”).

15. *A Resource Guide for Ex-Offenders: Criminal History and Employment Questions Frequently Asked*, IDAHO DEP’T LAB. 11 (2009), [https://www.id.uscourts.gov/Content\\_Fetcher/index.cfm/Criminal\\_History\\_FAQ\\_322.pdf?Content\\_ID=322](https://www.id.uscourts.gov/Content_Fetcher/index.cfm/Criminal_History_FAQ_322.pdf?Content_ID=322) (the Sin—Suffer—Repent model is described as stating the facts of the charges, listing the consequences, and providing positive outcomes and elaborating on what the offender learned).

16. *Id.*

17. S. 1307, 64th Leg., 2d Sess. (Idaho 2018).

18. *Id.*

tions about criminal history from employment applications is a step in the right direction, expungement further allows an applicant a defense for not disclosing the record at any point in the employment process.<sup>19</sup>

A previous criminal juvenile sentence should be without consequence because it is rendered a nullity.<sup>20</sup> If expungement is obtained, when anyone—a potential employer, mortgage lender, military recruitment officer—asks about an individual’s criminal history, a juvenile may be legally permitted to deny past criminal history.<sup>21</sup> Criminal records are inspected for FBI background checks, state police background checks, consumer reporting agencies, private database companies, military service, education background checks, and employment background checks.<sup>22</sup> Furthermore, 60–70% of employers surveyed stated they would not knowingly hire someone with a criminal conviction.<sup>23</sup> This corresponds with the likelihood for being called back for an interview when the applicant has a criminal record; the likelihood of a call back decreases 50–65%.<sup>24</sup>

Beyond employment prospects and inquiries, expungement laws impose much more upon our community. However, jurisdictions differ in the extent of opportunity expungement provides, the extent criminal records may be expunged, and the effect of expungement upon any inquiries.

Only five states—Indiana, Maryland, Missouri, Oregon, and Wisconsin—have both complete sealing and expungement available for juvenile records. In twenty states sealing or expungement is available for any type of offense, with no exceptions. Twenty-four states require . . . youth to initiate the sealing or expungement process by filing a petition.<sup>25</sup>

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19. See IDAHO CODE § 20-525A(5) (2017).

20. IDAHO CODE § 20-525A(5) (2017) (In Idaho, expungement allows a court to “order all records in the custody of the controlling court and all such records in the law enforcement investigatory reports and fingerprint records, in the custody of any other agency or official sealed; and shall further order all references to said adjudication, diversion, or informal adjustment removed from all indices and from all other records available to the public.”).

21. *Id.*

22. Letter from Richard Blumenthal, Att’y Gen. State of Conn. to Martin K. Libbin, Deputy Dir., Legal Servs. (Nov. 20, 2009); see also Mitchell Simon, *Limiting the Use of Expunged Offenses in Bar and Law School Admission Processes: A Case for Not Creating Unnecessary Problems*, 28 NOTRE DAME J.L. ETHICS & PUB. POL’Y 79, 100 (2014) (stating data aggregators compile and disseminate information about arrests and convictions to companies interested in conducting background checks); Margaret Colgate Love et al., *Collateral Consequences of Juvenile Adjudications—Effect on Military Enlistment* § 2:74 (2016) (discussing military consequences of a juvenile adjudication, including access to sealed or expunged juvenile records).

23. DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 34 (Univ. of Chicago Press, 2007).

24. Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 955 (2003).

25. RIYA SAHA SHAH & LAUREN A. FINE, JUVENILE LAW CENTER, FAILED POLICIES, FORFEITED FUTURES: A NATIONWIDE SCORECARD ON JUVENILE RECORDS 9 Juv. L. Ctr. (2014), <https://juvenilerecords.jlc.org/juvenile-records/documents/publications/scorecard.pdf>.

Additionally, “fifteen states provide that either the youth or another party” such as the prosecutor or court “can file on the youth’s behalf.”<sup>26</sup> “Only five states automatically expunge juvenile records.”<sup>27</sup> Expungement is difficult to obtain.<sup>28</sup>

In a 2014 report, the Juvenile Law Center “measured each state’s overall treatment of records based on its performance in two policy areas: confidentiality of records during and after juvenile court proceedings, and the availability or ease of sealing or expungement.”<sup>29</sup> In evaluating current policies, the Juvenile Law Center established ten core principles that states should follow to secure juvenile record protection, including: (1) ensuring “that records are not widely available or online;” (2) sealing records to the general public before they are expunged; (3) automatically sealing and expunging records; (4) ensuring expungement includes “physical destruction and electronic deletion;” (5) providing for expungement eligibility to “begin[] once a case is closed;” (6) allowing all offenses to be eligible for expungement; (7) designating “at least one entity to inform youth about expungement availability and process;” (8) providing youth-friendly forms; (9) providing expungement free of cost; and (10) enforcing sanctions for violations.<sup>30</sup>

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26. *Id.*

27. *Id.*

28. Gary Gately, *MacArthur Foundation Urges Major Changes in Juvenile Justice System*, JUV. JUST. INFO. EXCHANGE (Jan. 5, 2015), <http://jjie.org/2015/01/05/macarthur-foundation-urges-major-changes-in-juvenile-justice-system/>.

29. *New Study Reveals Majority of U.S. States Fail to Protect Juvenile Records*, JUV. L. CTR. (Nov. 13, 2014), <http://jlc.org/blog/new-study-reveals-majority-us-states-fail-protect-juvenile-records>.

30. *Id.*



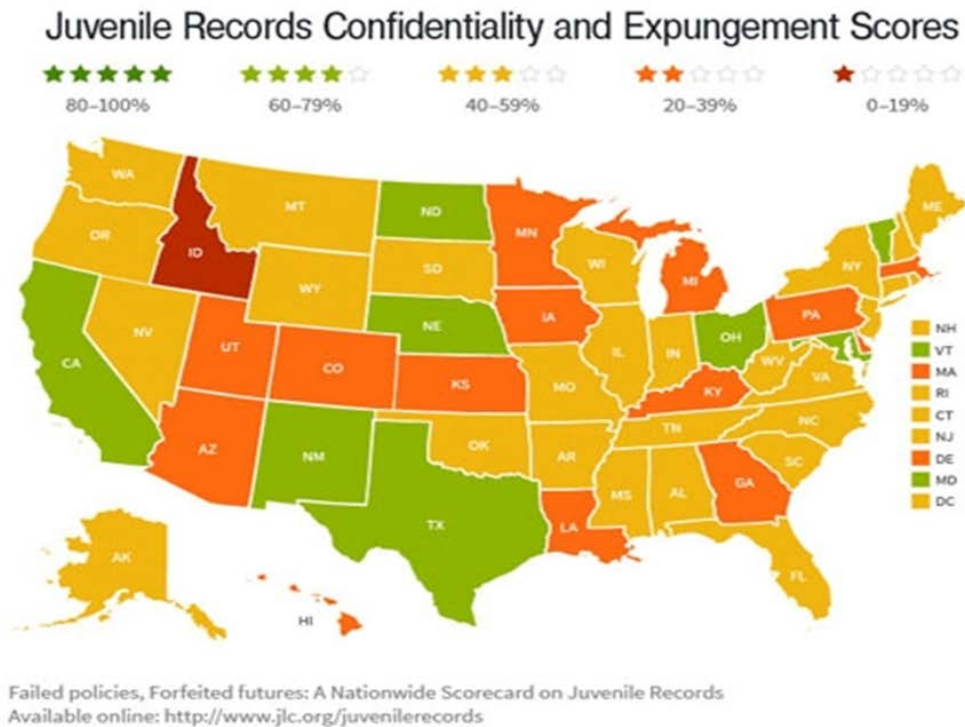


Figure 1. Juvenile Law Center Scorecard Map<sup>31</sup>

Idaho ranked last with respect to its handling of juvenile records, including how it maintains the confidentiality of records “during and after juvenile court proceedings” and “the availability of and process of sealing or expungement.”<sup>32</sup> Idaho is the only state to receive a score of one star, or 0–19%, with respect to its juvenile record confidentiality and expungement laws.<sup>33</sup> Nearby states—Washington, Oregon, Montana, Wyoming, and Nevada—received a score of 40–59%, while Utah scored 20–39%.<sup>34</sup> Although no state earned an overall five star rating, 71% of states received three to four stars.<sup>35</sup> With respect to how it treats juvenile records, Idaho needs the most improvement across the nation. The State of Idaho should reconsider the expungement process and remove the time juvenile offenders must wait to have their records expunged from five years to immediately upon supervision completion and provide notification of the expungement process and eligibility.

31. *Id.*

32. *Id.*

33. SHAH & FINE, *supra* note 25, at 4.

34. *Id.* at 5.

35. *Id.* at 3.

This would afford greater opportunity for Idaho's youth and reinforce the goals underlying the Idaho Juvenile Corrections Act. Juvenile offenders will be able to learn from their experiences, be held accountable, and move forward, with an opportunity to become contributing members of society with gainful employment.

Following this Introduction, Part II of this paper discusses the history of juvenile justice.<sup>36</sup> Part III discusses the history of juvenile justice in Idaho.<sup>37</sup> Part IV discusses expungement—what it is, how other states provide expungement, and statistics on the expungement in Idaho's largest county.<sup>38</sup> The paper concludes by offering policy recommendations to strengthen the Idaho Juvenile Corrections Act and its goal to achieve a balanced approach.

## II. BACKGROUND

The United States did not treat children differently than adults in criminal court until the 19th century.<sup>39</sup> Until then, children faced the possibility of being sentenced to death.<sup>40</sup> Although juvenile offenders can no longer be sentenced to death, some are still sentenced to years of imprisonment exceeding their potential lifespans.<sup>41</sup> Some sentencings do not come with the form of an imprisonment. Some are sentenced, even as juveniles, with a lifelong record that follows them with every step they take. Idaho, amongst all the states, treats juvenile records as a never-ending sentence by allowing for thousands of records to remain open.<sup>42</sup>

### A. Juvenile Justice 1899–2004

In 1899, Illinois became the first state to recognize that juvenile offenders should be treated differently than adults in court.<sup>43</sup> It established a juvenile court for youth under the age of sixteen.<sup>44</sup> Twenty-five years later, most states implemented a juvenile court system;<sup>45</sup> Idaho did so in 1905.<sup>46</sup> The purpose of juvenile

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36. See *infra* Part II.

37. See *infra* Part III.

38. See *infra* Part IV.

39. COMM. ON L. & JUST., NAT'L RES. COUNCIL, JUVENILE CRIME JUVENILE JUSTICE 157 (Joan McCord et al. eds., 2001).

40. *Id.*

41. Josh Rovner, *Juvenile Life Without Parole: An Overview*, SENTENCING PROJECT (Oct. 13, 2017), <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>.

42. SHAH & FINE, *supra* note 25, at 4.

43. COMM. ON L. & JUST., *supra* note 36.

44. *Id.*

45. *The History of Juvenile Justice*, A.B.A. DIVISION FOR PUB. EDUC. 5, <https://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf>. (last visited Apr. 9, 2019).

46. Alex Riggins, *Idaho's Juvenile Justice Had a Rocky Start*, MAGICVALLEY.COM (Sep. 25, 2016), [http://magicvalley.com/news/local/crime-and-courts/idaho-s-juvenile-justice-had-rocky-start/article\\_78ea4b11-6242-5018-8d53-07f0f5da88ca.html](http://magicvalley.com/news/local/crime-and-courts/idaho-s-juvenile-justice-had-rocky-start/article_78ea4b11-6242-5018-8d53-07f0f5da88ca.html).

courts has been and continues to be rehabilitation, not punishment.<sup>47</sup> Thus, juvenile cases are civil and not criminal actions.<sup>48</sup>

Although delinquency proceedings were always treated as civil actions, prior to the 1960s, juveniles had few constitutional rights. Treatment of juvenile offenders was conducted in informal hearings, often before judges whom lacked legal training.<sup>49</sup> A series of cases decided by the United States Supreme Court profoundly changed the way juveniles were treated.<sup>50</sup> In particular, in *In re Gault*, the Court established a juvenile's rights to counsel, notice of the charges, confront and cross-examine witnesses, to be free from self-incrimination, to review a transcript of the proceedings, and appellate review.<sup>51</sup> Due to the variations in court terms, Figure 2 below is offered to demonstrate common vocabulary in the juvenile system as opposed to the adult system.

JUVENILE	DESCRIPTION	ADULT/CRIMINAL EQUIVALENT
Adjudication	Formal court judgment	Sentence
Commitment	Confinement/custody in correctional facility	Imprisonment
Delinquent Act/Offense	An act that would be considered a crime if committed by an adult	Crime
Detention Center	Secure confinement facility in which juvenile offenders do not have a right to bail	Jail
Disposition	Final order of the court	Order
Diversion	An alternative program designed to avoid involvement in the court system	(none)
Expunge	(1) to physically destroy records	Expunge <sup>52</sup>

47. *McKeiver v. Pennsylvania*, 403 U.S. 528, 552 (1971).

48. See *The History of Juvenile Justice*, *supra* note 45, at 5; see also IDAHO CODE § 20-505(2) (2018) (“[W]here the act or omission occurs in the state of Idaho and is a violation of any federal, state, local or municipal law or ordinance which would be a crime if committed by an adult.”).

49. NAT. RES. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 33 (Richard J. Bonnie et al. eds., 2013).

50. See *In re Gault*, 387 U.S. 1 (1967); *McKeiver*, 403 U.S. at 528.

51. *In re Gault*, 387 U.S. at 1.

52. True expungement for criminal offenses is not possible in the State of Idaho. See *State v. Turpen*, 216 P.3d 627, 628 (Idaho 2009) (holding that in considering the possibility of expungement, the court was not contemplating the destruction of physical records); see also IDAHO CT. ADMIN. R. 32(i) (permitting the court to order sealing of court records). In two circumstances is expungement for a person involved in criminal charges possible. A statutory provision of expungement exists for “[a]ny person who was [1] arrested or served a criminal summons and who subsequently was not charged by indictment or information within one (1) year of the arrest or summons and [2] any person who was acquitted of all offenses arising from an arrest or criminal summons.” IDAHO CODE § 67-3004(10) (2017). The Idaho State Police provides an expungement application on its website in which it notes, “Dismissal of your criminal charges does not necessarily mean you were acquitted. An acquittal is a finding by a court or jury that you are “not guilty”

	from an official index or public record or (2) to seal records from public access	
Felony	An act that if committed by an adult would be considered a crime; punishable by up to one hundred-eighty (180) days in detention	Felony which is punishable by more than one year of incarceration
Formal Adjudication	A court finding that the offender committed the acts alleged but does not allow for a dismissal of the case	Guilty
Informal Adjustment	A court finding that the offender committed the acts alleged but provides for the case to be dismissed upon successful completion of court-ordered terms	Withheld judgment
Misdemeanor	An act that if committed by an adult would be considered a crime; punishable by up to ninety (90) days in detention	Misdemeanor
Status Offense	An act that is unlawful by the status of the individual being under the age of majority, i.e. runaway, beyond control, curfew	(none)

Figure 2. Juvenile Court Terms

Despite the increased constitutional protections, the tough-on-crime approach that swept the criminal justice system unduly affected the juvenile courts, especially in the 1990s, when juvenile crime was considered an epidemic.<sup>53</sup> A report to the United States Attorney General in 1996 cited a 172% increase in homicides committed by fourteen to seventeen year-olds.<sup>54</sup> The rates increased from 7 per 100,000 in 1985 to 19.1 per 100,000 in 1994.<sup>55</sup> From the mid-1980s through the mid-1990s, youth gangs emerged in a growing number of cities in the United States not only in large cities, but also in smaller cities and towns.<sup>56</sup> It was estimated that the number of “teen killers” would increase from 4,000 per year in 1994 to nearly

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of the crime(s) charged. If your criminal case was dismissed without an acquittal, you are not eligible to have your criminal history records expunged.” *Expungement Application*, IDAHO ST. POLICE, <https://www.isp.idaho.gov/BCI/inc/documents/ExpungmentApplicationNew.pdf/>.

53. IRA SCHWARTZ, *JUVENILE JUSTICE & CRIME POLICY: TOWARD A NATIONAL AGENDA* (1992).

54. JAMES ALAN FOX, *TRENDS IN JUVENILE VIOLENCE 2* (1996), <https://www.bjs.gov/content/pub/pdf/tjvfox2.pdf>.

55. UNIV. PA., *UNDERSTANDING THE “WHYS” BEHIND JUVENILE CRIME TRENDS 20* (2012), <https://www.ncjrs.gov/pdffiles1/ojdp/grants/248954.pdf>; FOX, *supra* note 54, at 2.

56. NAT’L RES. COUNCIL AND INST. MED., *JUV. CRIME, JUVENILE JUSTICE 93–94* (Joan McCord et al. eds., 2001), <https://www.nap.edu/read/9747/chapter/5#93>.

5,000 per year in 2005 solely due to demographic changes.<sup>57</sup> However, this rate decreased to 4.3 per 100,000 in 2004.<sup>58</sup>

From 1989 to 1994, the arrest rate among teenagers increased 46.3% for violent crimes including murder, rape, robbery, and aggravated assault.<sup>59</sup> Nevertheless, the concern for the approximately 39 million children under the age of ten in 1996 was essentially settled as juvenile arrest rates dramatically dropped by approximately 50% and remained stable until 2004.<sup>60</sup> The purpose and strive for the tough-on-crime approach regarding juvenile matters resulted in an overcorrection. “The largest irony of the 1990s, from a diversionary standpoint, is that the juvenile courts were under constant assault not because they had failed in their youth-serving mission, but because they had succeeded in protecting their clientele from the new orthodoxy in crime control.”<sup>61</sup>

#### B. Idaho’s Juvenile Justice History

The Idaho Youth Rehabilitation Act gave the Department of Health & Welfare jurisdiction over juvenile matters from 1963 until 1989.<sup>62</sup> In 1974, even one felony conviction was sufficient to trigger commitment to the Idaho Department of Health and Welfare and placement at the Youth Services Center, previously known as the Idaho Industrial Training School in St. Anthony, Idaho.<sup>63</sup> Even habitual status offenders were sent to this facility.<sup>64</sup>

Idaho was no stranger to the propaganda surrounding the threat of juvenile crime when it was in the national spotlight. The Idaho Youth Rehabilitation Act was treated as an inadequate solution to the anticipated increase in juvenile crime predicted to occur in the 1990s as reported in the House Judiciary, Rules and Administration Committee minutes for January 27, 1995:

Senator Darrington said this issue on Juvenile Justice has been studied in depth for the past year. The process to resolve the juvenile problem was

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57. FOX, *supra* note 54, at 3.

58. UNIV. PA., *supra* note 55, at 20.

59. FOX, *supra* note 54, at 2.

60. *Id.* at 1; UNIV. PA., *supra* note 55, at 22.

61. FRANKLIN E. ZIMRING, *AMERICAN JUVENILE JUSTICE* 47 (2005); *see also* UNIV. PA., *supra* note 55, at 45–50 (the “get tough” or tough-on-crime approach in the 1980s was a result of an increase in crime that affected juveniles disproportionately).

62. Alex Riggins, *Idaho’s Juvenile Justice Had a Rocky Start*, MAGICVALLEY.COM (Sept. 25, 2016), [http://magicvalley.com/news/local/crime-and-courts/idaho-s-juvenile-justice-had-rocky-start/article\\_78ea4b11-6242-5018-8d53-07f0f5da88ca.html](http://magicvalley.com/news/local/crime-and-courts/idaho-s-juvenile-justice-had-rocky-start/article_78ea4b11-6242-5018-8d53-07f0f5da88ca.html).

63. Barb Dauner, *The Way We Were (1974-1994)*, ADA CTY. JUV. CT. SERVS., [https://adacounty.id.gov/juvenilecourt/juvenile-probation-services/philosophy-history/#the\\_way\\_we\\_were](https://adacounty.id.gov/juvenilecourt/juvenile-probation-services/philosophy-history/#the_way_we_were) (last visited Apr. 14, 2019).

64. *Id.* Habitual Status Offenders is statutorily defined as, “[a]ny juvenile who has been adjudicated for commission of two (2) status offenses within twelve (12) months may be charged, petitioned and adjudicated as an habitual status offender for the third status offense committed within that twelve (12) month period.” IDAHO CODE § 20-521 (2017).

set in motion prior to the death of Officer Feldner.<sup>65</sup> However, his death brought increased awareness of the issue. He continued by saying juvenile crimes and juvenile justice have been a major concern for a long time. As hearings were held around the state, it became apparent that juveniles are committing more serious crimes at younger ages. Many juveniles are not taking the current system seriously.<sup>66</sup>

Further, the Report to the Legislature in January 1995 stated:

The statistics bear out the necessity for the creation of a focused department. The index of Idaho juvenile arrests for the years 1983-1993 indicates an all-time high in 1993 for the following crimes; Rape, motor vehicle theft, other assaults, fraud, weapon law violation, sex offenses, drug offenses, and other offenses. *Granted the juvenile crime is not out of control, but why should Idaho sit idly by, as other states have done, and react to the problem.* A well thought out philosophy will provide for a balanced approach.<sup>67</sup>

That year, Idaho became one of twelve states to pass juvenile justice reform laws.<sup>68</sup> The Juvenile Corrections Act established the Department of Juvenile Corrections (the Department or DJC) and adopted a *balanced approached* philosophy in addressing juvenile offending to include community protection, accountability, and competency development.<sup>69</sup> The table below demonstrates the flow of the Idaho juvenile justice process.

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65. Officer Felder, a Payette police officer, was shot while checking on a car occupied by two 14-year-olds and a 15-year-old that was backed into a parking space at New Plymouth High School. Associated Press, *Officer Killed as He Checks Car in Idaho*, DESERET NEWS (Jan. 21, 1994), <https://www.deseret-news.com/article/332493/officer-killed-as-he-checks-car-in-daho.html/>. Fourteen-year old James Robert Lee Moore shot Officer Feldner in the face with a small caliber handgun. *Id.*

66. *Hearing on H.B. 98 Before the H. Comm. on the Judiciary, Rules & Administration*, 1995 Leg., 1st Sess. (Idaho 1995).

67. *Hearing on H.B. 98 Before the S. Comm. on the Judiciary & Rules*, 1995 Leg., 1st Sess. (Idaho 1995) (emphasis added).

68. Alex Riggins, *Idaho's Juvenile Justice Had a Rocky Start*, MAGICVALLEY.COM (Sept. 25, 2016), [http://magicvalley.com/news/local/crime-and-courts/idaho-s-juvenile-justice-had-rocky-start/article\\_78ea4b11-6242-5018-8d53-07f0f5da88ca.html](http://magicvalley.com/news/local/crime-and-courts/idaho-s-juvenile-justice-had-rocky-start/article_78ea4b11-6242-5018-8d53-07f0f5da88ca.html).

69. See IDAHO CODE § 20-501 (2017).

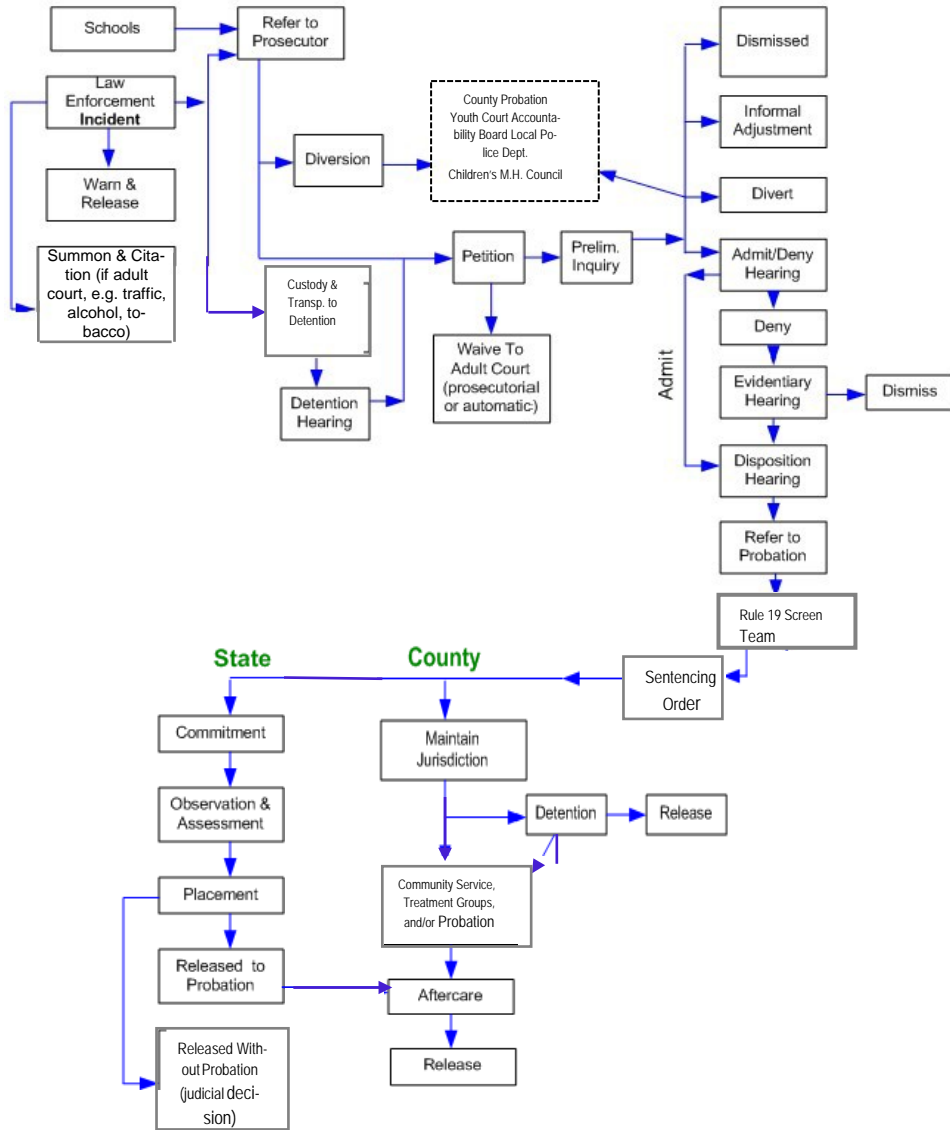


Figure 3. Flowchart of the juvenile justice process.<sup>70</sup>

70. IDAHO JUV. JUST. COMM'N, 3-YEAR PLAN 2015-2017 (2015), <http://164.165.67.91/wp-content/uploads/2017/05/3-Year-Plan-2015-18-w-bookmarks.pdf>. This flow chart provides the general court process under Idaho's juvenile justice system. However, each county's system flow chart may vary.

Today, Idaho is composed of forty-four counties, and has an estimated population of 1.7 million.<sup>71</sup> There are approximately 440,000 juveniles in Idaho,<sup>72</sup> twelve juvenile detention<sup>73</sup> facilities located throughout the state,<sup>74</sup> and three juvenile correctional facilities.<sup>75</sup> The Shoshone-Bannock tribe also operates a juvenile detention facility.<sup>76</sup> Among the six federally recognized tribes with land in Idaho, four have juvenile codes.<sup>77</sup>

From 1994 until his retirement in 2007, Judge Jack Varin served as a juvenile judge serving five south-central Idaho counties.<sup>78</sup> He continued to serve as a senior judge with the Administrative Office of the Supreme Court and many statewide committees and commissions.<sup>79</sup> A zealous advocate for juvenile matters, Judge Varin was awarded the John Shuler Award by the Idaho Juvenile Justice Association for Outstanding Contribution in Juvenile Corrections.<sup>80</sup> During the 2014<sup>81</sup> and 2015 legislative sessions, Judge Varin worked as a consultant for the Robert Wood Johnson Foundation to improve Idaho's juvenile justice law.<sup>82</sup> A meeting was held with a group of Idaho juvenile practitioners where the juvenile expungement process was identified as an area that needed improvement.<sup>83</sup> In partnership with a professional lobbyist of the Robert Wood Johnson Foundation, Judge Varin proposed recommendations included the following:

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71. *QuickFacts: Idaho*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/id> (last visited Apr. 14, 2019).

72. *See id.*

73. IDAHO JUV. JUST. COMM'N, *supra* note 70. *See generally Glossary: D, JUV. L. CTR.*, <https://jlc.org/glossary/glossary-e> (last visited Apr. 14, 2019) ("Temporary custody of a juvenile before trial in a secure confinement facility. Detention is imposed after a judge determines that a youth must remain in custody prior to a delinquency proceeding for his/her own protection or the protection of society, or to ensure his/her appearance at the hearing. Detention for youth is different from jail for adults, both because juveniles do not have a right to bail and because youth in detention generally receive education and treatment services.").

74. IDAHO JUV. JUST. COMM'N, *supra* note 70.

75. *State Facilities*, IDAHO DEP'T JUV. CORRS., <http://www.idjc.idaho.gov/state-facilities-2> (last visited Apr. 14, 2019). Idaho Department of Juvenile Corrections operates three correctional facilities in Nampa, Lewiston, and St. Anthony. *Id.*

76. IDAHO JUV. JUST. COMM'N, *supra* note 70.

77. *Id.*; *see also* IDAHO LEG. OFF. PERFORMANCE EVALUATIONS, STATE JURISDICTION IN INDIAN COUNTRY 60 (2017), <https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r1702.pdf> (stating current jurisdiction over criminal matters involving Indian juveniles as jurisdiction under the tribe, Idaho, and limited federal government).

78. *Jack Varin*, IDAHO SUICIDE PREVENTION COAL. (Aug. 25, 2017), <https://www.idahosp.org/board/2018/3/2/jack-varin>.

79. *Id.*

80. *Id.*

81. Judge Varin is listed in the Feb. 14, 2014 Senate Judiciary & Rules Committee agenda for Routing Slip 22842. *Hearing on Routing Slip 22842 Before S. Comm. on Judiciary & Rules*, 2014 Leg., 1st Sess. Agenda (Idaho 2014). Judge Varin was also listed on the Feb. 26, 2014 Senate Judiciary & Rules Committee agenda for Senate Bill 1353. *Hearing on S.B. 1353 Before S. Comm. on Judiciary & Rules*, 2014 Leg., 1st Sess. Agenda (Idaho 2014); *see infra* note 111.

82. E-mail from Judge Jack Varin (ret.) to author (Mar. 5, 2018, 14:59 pm MST) (on file with author).

83. *Id.*



(1) Juveniles would be advised of the opportunity and the eligibility requirements to have their cases expunged at a disposition (sentencing) hearing.

(2) Juveniles whose cases are dismissed without adjudication, grant of an informal adjustment or who after arrest are not proceeded against would have their cases expunged automatically without further petition or hearing.

(3) Juvenile offenders who are found within the purview of the juvenile corrections act for committing a misdemeanor offense or found to have committed a status offense and who either complete court ordered requirements or who are afforded a diversion or informal adjustment and complete those requirements will have their cases set automatically for an expungement hearing 1 year following their involvement with the juvenile system.

(4) The list of felony crimes for which expungement will not be allowed would be changed. The proposed new list of crimes is the same as for crimes that result in an automatic waiver into the adult system as provided by current law except for the violations of I.C. § 37-2723(a)(1)(A) regarding distribution of drugs near schools.<sup>84</sup>

In 2015, Judge Varin proposed changing the language of the statute from “expungement” to “sealing.”<sup>85</sup> The Senate Judiciary & Rules Committee heard the proposal only once, and the proposition failed to move forward.<sup>86</sup> Judge Varin fully retired thereafter.<sup>87</sup>

But Idaho has not ceased to hear from juvenile court judges invested in strengthening the current system. In 2016, Judge Mark Ingram, magistrate judge in Idaho’s Fifth Judicial District, provided the Senate Judiciary and Rules Committee a presentation regarding juvenile courts.<sup>88</sup> At the following meeting, then Director Sharon Harrigfeld of the Idaho Department of Juvenile Corrections discussed at-

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84. *Id.*

85. *Hearing on Routing Slip 23676 Before S. Comm. on Judiciary & Rules, 2015 Leg., 1st Sess. (Idaho 2015)*, [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2015/standingcommittees/150304\\_sj&r\\_0130PM-Agenda.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2015/standingcommittees/150304_sj&r_0130PM-Agenda.pdf).

86. *Id.*

87. E-mail from Judge Jack Varin (ret.) to author (Mar. 5, 2018, 14:59 pm MST) (on file with author).

88. *Hearing Before S. Comm. on Judiciary & Rules, 2016 Leg., 1st Sess. (Idaho 2016)*, [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160118\\_sj&r\\_0130PM-Minutes.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160118_sj&r_0130PM-Minutes.pdf) (“Judge Mark Ingram . . . observed that most youth perpetrate mischief that in prior generations was dealt with by parents; today these acts are considered unlawful and are dealt with by law enforcement and the courts. Most youth grow out of this behavior, but 8 to 10 percent do not. Through the cooperation of probation, corrections, child protection, the Department of Health and Welfare, and other child-centered agencies, the courts can consider the whole makeup of these youth and the environment in which they reside. Judge Ingram stated that the courts are continuing to gather data to determine which methods are working to meet the needs of the youth.”).

length a wide range of topics related to juvenile justice in Idaho including treatment developments, staff retention, and achievement of Department goals.<sup>89</sup> Director Harrigfeld presented the following week regarding rules and standards for secure detention centers, rules for residential treatment providers, rules for staff secure providers, and rules for reintegration providers—all matters affecting juvenile offenders.<sup>90</sup>

On February 1, 2016, Director Harrigfeld presented again, this time proposing a change to Idaho Code § 20-511 to more clearly define when an informal adjustment can occur and when it can be dismissed.<sup>91</sup> The statute required that the juvenile admit to the charge(s) and “the granting of the informal adjustment had to occur at the admission or denial hearing.”<sup>92</sup> Director Harrigfeld stated the procedure was impractical and not common practice.<sup>93</sup> To remedy the difficulties this presented, Director Harrigfeld proposed allowing “admission as well as granting of the informal adjustment to occur at *any* stage of the proceeding, which is in keeping with common practice.”<sup>94</sup> This also provided a relief for “juveniles of the duty to file an application for dismissal with the court.”<sup>95</sup> These recommendations became law on March 16, 2016.<sup>96</sup>

In January 2017, Judge Bryan Murray, magistrate judge in Idaho’s Sixth Judicial District, presented the history of juvenile justice before the Idaho Senate Judiciary and Rules Committee.<sup>97</sup> At the meeting, Judge Murray stated that “youth with alcohol tickets were being assessed and assigned to diversion programs that fit each individual’s needs.”<sup>98</sup> Further, he stated it was “beneficial in the fact that juveniles and young adults will not have ongoing criminal records.”<sup>99</sup> Where alcohol tickets

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89. *Hearing Before S. Comm. on Judiciary & Rules*, 2016 Leg., 1st Sess. (Idaho 2016), [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160120\\_sj&r\\_0130PM-Minutes.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160120_sj&r_0130PM-Minutes.pdf).

90. *Hearing Before S. Comm. on Judiciary & Rules*, 2016 Leg., 1st Sess. (Idaho 2016), [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160129\\_sj&r\\_0130PM-Agenda.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160129_sj&r_0130PM-Agenda.pdf).

91. *Diversion or Informal Disposition of Petition: Hearing Before S. Comm. on Judiciary & Rules*, 2016 Leg., 1st Sess. (Idaho 2016), [https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160201\\_sj&r\\_0130PM-Minutes.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160201_sj&r_0130PM-Minutes.pdf).

92. *Diversion or Informal Disposition of Petition, Attachment 1: Hearing Before S. Comm. on Judiciary & Rules*, 2016 Leg., 1st Sess. (Idaho 2016), [https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160201\\_sj&r\\_0130PM\\_Attachment\\_1.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160201_sj&r_0130PM_Attachment_1.pdf) [hereinafter *Diversion*].

93. *Id.*

94. *Id.* (emphasis added).

95. *Diversion*, *supra* note 92. The bill moved forward in committee as Senate Bill 1235 and was ultimately signed into law by Governor Butch Otter on March 16, 2016 with an effective date of July 1, 2016. See *Hearing Before S. Comm. on Judiciary & Rules*, 2016 Leg., 1st Sess. (Idaho 2016), [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160217\\_sj&r\\_0130PM-Minutes.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/standingcommittees/160217_sj&r_0130PM-Minutes.pdf).

96. *Informal Disposition of Petition Requirements*, S. 1235, 2016 Leg., 1st Sess. (Idaho 2016), <https://legislature.idaho.gov/sessioninfo/2016/legislation/S1235/>.

97. *Hearing Before S. Comm. on Judiciary & Rules*, 2017 Leg., 1st Sess. (Idaho 2017), [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/standingcommittees/170130\\_sj&r\\_0130PM-Minutes.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/standingcommittees/170130_sj&r_0130PM-Minutes.pdf).

98. *Id.*

99. *Id.*

are not under the jurisdiction of the Juvenile Corrections Act and therefore not eligible for expungement if convicted, a diversion program for youth with alcohol tickets provides an opportunity to avoid a criminal record. At least in Idaho's Sixth Judicial District it does.<sup>100</sup>

Director Harrigfeld presented before the Idaho Senate Judiciary and Rules Committee again on January 8, 2018 regarding the rules of standards for juvenile detention centers.<sup>101</sup> On January 26, 2018, Director Harrigfeld presented three draft legislations.<sup>102</sup> All three drafts failed to make it out of the committee.<sup>103</sup> On February 5, 2018, Director Harrigfeld conducted the Department of Juvenile Correction's annual presentation to the Senate committee.<sup>104</sup> On February 14, 2018, Director Harrigfeld was before the committee for two senate bills: S1240 Relating to Juvenile Corrections Regarding Notification Given Upon Release of Juvenile Offenders and S1242 Relating to Juvenile Corrections Regarding Revision to Escaped Juvenile Offender.<sup>105</sup> The last time the Idaho legislature—particularly the Senate Judiciary & Rules Committee—has heard a proposal or presentation about juvenile expungement was on March 4, 2015.<sup>106</sup>

All these efforts reflect the true needs of juveniles in our community. The Juvenile Corrections Act set out to respond to juvenile needs when it was enacted as well. Unfortunately, there was no way the legislature could have predicted the statistics could have been so wrong and the need for a clear expungement procedure to be so high.

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100. *Id.*

101. *Hearing Before the S. Comm. on Judiciary & Rules*, 2017 Leg., 1st Sess. (Idaho 2017), [https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/standingcommittees/170118\\_sj&r\\_0130PM-Minutes.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/standingcommittees/170118_sj&r_0130PM-Minutes.pdf).

102. *Hearing Before the S. Comm. on Judiciary & Rules*, 2018 Leg., 1st Sess. (Idaho 2018), [https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180126\\_sj&r\\_0130PM-Minutes.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180126_sj&r_0130PM-Minutes.pdf). (RS 25619 Relating to Escapee Juvenile Offenders Amending Idaho Code § 20-532A; RS 25620 Relating to Juvenile Corrections Amending Idaho Code §20-520 Removing Provision for Review of Certain Reports and Clarifying Juvenile Detention Placement; RS 25689 Relating to Juvenile Corrections Act Amending Idaho Code §20-520 Regarding Notice to Parties of Juvenile Offender Release.)

103. The legislation proposed ended as routing slips, evidenced by a lack of activity in further committee minutes or updated bill status.

104. *Hearing Before the S. Comm. on Judiciary & Rules*, 2018 Leg., 1st Sess. Agenda (Idaho 2018), [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180205\\_sj&r\\_0130PM-Agenda.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180205_sj&r_0130PM-Agenda.pdf).

105. *Hearing Before the S. Comm. on Judiciary & Rules*, 2018 Leg., 1st Sess. Agenda (Idaho 2018), [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180214\\_sj&r\\_0130PM-Agenda.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180214_sj&r_0130PM-Agenda.pdf).

106. *Hearing Before the S. Comm. On Judiciary & Rules*, 2015 Leg., 1<sup>st</sup> Sess. Amended Agenda #2 (Idaho 2017), [https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2015/standingcommittees/150304\\_sj&r\\_0130PM-Agenda.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2015/standingcommittees/150304_sj&r_0130PM-Agenda.pdf).

Similar to national statistics, Idaho's rate of juvenile arrests has "plummeted over the past twenty years, from 24,526 in 1996,"<sup>107</sup> to 7,935 in 2016.<sup>108</sup> Furthermore, 26.7% of juveniles arrested were not referred to juvenile court or other authorities.<sup>109</sup> That is, the juvenile would be arrested and detained by law enforcement but released to parents or released with a warning.<sup>110</sup>

In the 2018 fiscal year, the Idaho Department of Juvenile Corrections was allocated a budget of \$52,776,400.<sup>111</sup> During the 2016 fiscal year, the Department served 1,337 juveniles in their communities, while in 2017, 444 were served in the Department's facilities at an average daily count of 279.<sup>112</sup> The Idaho Department of Juvenile Corrections' Strategic Plan 2018–2022 states their second goal and objective is to "[e]nsure community protection through competency development of juveniles returning to the community."<sup>113</sup> As a reflection of this effort, the recidivism rate of juveniles served by the Department's community-based services is 4%.<sup>114</sup>

If recidivism is so low, then surely the system must work. Juvenile offenders involved in the DJC's community-based services very rarely go on to commit more crime.<sup>115</sup> If the system works and juvenile offenders do not commit more crime, then the need to keep their records public is minute. Unlike accountability and community protection, competency development for an individual is a goal that must always be pursued. We cannot punish juvenile offenders for a lifetime, but as a community we can support them through adulthood by expunging their records when expungement is due, thus removing the constraints.

### III. EXPUNGEMENT

Expungement was created as a remedy to the effects of "youthful misconduct."<sup>116</sup> It gave the juvenile offender "a fresh start, a blank slate, and a chance at redemption."<sup>117</sup> Idaho's state statute provides those very opportunities by granting the courts authority to expunge juvenile records.<sup>118</sup> A petitioner may be granted

107. Alex M. Riggins, *Why the Secrecy? Idaho's Juvenile Justice Balances Rehabilitation with Accountability, Community Safety*, MAGICVALLEY.COM (Sept. 25, 2016), [https://magicvalley.com/news/local/crime-and-courts/why-the-secrecy-idaho-s-juvenile-justice-balances-rehabilitation-with/article\\_c086ab9c-db26-56a5-b60f-cee49ba421c5.html](https://magicvalley.com/news/local/crime-and-courts/why-the-secrecy-idaho-s-juvenile-justice-balances-rehabilitation-with/article_c086ab9c-db26-56a5-b60f-cee49ba421c5.html).

108. *Crime in Idaho*, UNIF. CRIME REPORTING SEC., BUREAU CRIMINAL IDENTIFICATION, IDAHO ST. POLICE 63 (2016), <https://nibrs.isp.idaho.gov/CrimeInIdaho/Publication/Archived/CrimeInIdaho2016/Complete.pdf>.

109. *Id.*

110. *Id.*

111. Sharon Harrigfeld, *Legislative Update 2018 Edition*, IDAHO DEP'T JUV. CORR., <http://www.idjc.idaho.gov/wp-content/uploads/2018/04/FY18-Legislative-Update.pdf> (last visited Apr. 14, 2019).

112. *Id.*

113. IDAHO DEP'T JUV. CORR., *IDJC STRATEGIC PLAN 11*, [https://dfm.idaho.gov/publications/bb/strategicplans/publicsafety/stratplan\\_juvenile.pdf](https://dfm.idaho.gov/publications/bb/strategicplans/publicsafety/stratplan_juvenile.pdf) (last visited Apr. 14, 2019).

114. 3-YEAR PLAN 2015–2017, *supra* note 70.

115. *Id.*

116. Margaret Colgate Love, *Starting Over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URB. L.J. 1705, 1708–09 (2003).

117. Mitchell Simon, *Limiting the Use of Expunged Offenses in Bar and Law School Admission Processes: A Case for Not Creating Unnecessary Problems*, 28 NOTRE DAME J.L. ETHICS & PUB. POL'Y 79, 100 (2014).

118. See IDAHO CODE § 20-525A (2017).

expungement of their record if the petitioner complies with and proves compliance with all statutory requirements.<sup>119</sup>

It is necessary to provide an expedited expungement process in Idaho because of the adverse effects of the availability of juvenile records. From the time the Juvenile Corrections Act was passed in 1995 until July 1, 2017, juvenile records for all offenses committed after a juvenile's fourteenth birthday were a matter of public record, sealed only upon court order and for good cause.<sup>120</sup> Most cases decided within those twenty-two years remain a matter of public record despite the change in the law.<sup>121</sup> Today, juvenile records are still open for juveniles over the age of fourteen who are charged with a felony.<sup>122</sup> Otherwise, juvenile cases are automatically sealed for all juveniles, only to be made public by court order.<sup>123</sup>

By providing an expedited expungement process, records that remain open can be removed from public view along with the records that now are automatically sealed. The difference between a juvenile offender who was adjudicated of a juvenile offense before July 2017 and another who was adjudicated of a juvenile offense after July 2017 is the benefit of sealing that the latter enjoys without any involvement in the sealing process. However, even the post-July 2017 offender would benefit from expungement as sealing a case does not require the police department and other stakeholders to seal their files.<sup>124</sup>

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119. *Id.*

120. *See infra* note 123.

121. *Id.*

122. IDAHO CODE § 20-525(1) (2017) ("In proceedings under this act the following juvenile courtroom proceedings and records shall be open to the public: all proceedings against a juvenile offender of the age of fourteen (14) years or older and who is petitioned or charged with an offense which would be a felony if committed by an adult including the court docket, petitions, complaints, information, arraignments, trials, sentencing, probation violation hearings and dispositions, motions and other papers filed in any case in any district; transcripts of testimony taken by the court; and findings, verdicts, judgments, orders, decrees and other papers filed in proceedings before the court of any district.").

123. IDAHO CODE § 20-525 (2017); *see also* IDAHO ADMIN. CODE R. 32(g)(9)(B)(1)-(2) (2017) ("Juvenile court records as herein after provided: (B) In Juvenile Corrections Act cases filed before July 1, 2017, all court records of Juvenile Corrections Act proceedings on a petition filed under I.C. § 20-510 pending an admit/deny hearing held pursuant to Rule 6, I.J.R. to permit the parties to request that the court consider, or permit the court to consider on its own motion, closing the records and files. Thereafter the court records shall be open unless the court enters an order exempting them from disclosure. At the admit/deny hearing the court shall determine whether the court records shall remain exempt from disclosure as provided [in the following] . . . 1. Court records of Juvenile Corrections Act proceedings brought against a juvenile under the age of fourteen (14), or brought against a juvenile fourteen (14) years or older who is charged with an act that would not be a felony if committed by an adult, shall be exempt from disclosure if the court determines by a written order in each case that the records should be closed to the public. 2. Court records of Juvenile Corrections Act proceedings brought against a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult, shall be exempt from disclosure if the court determines upon a written order made in each case that extraordinary circumstances exist which justify that the records should be confidential. If the juvenile is not found to have committed an act which would be a felony if committed by an adult or the charge is reduced to allege an act which would not constitute a felony if committed by an adult, all existing and future case records and documents shall be exempt from disclosure if the court determines by written order in each case that the court records should be closed to the public.").

124. IDAHO CT. ADMIN. R. 32(g)(9) (2017).

### A. Defining Expungement

Expungement means different things in different states.<sup>125</sup> It may mean the erasure, eradication, and obliteration of names from public records so that the person who committed a crime is not identifiable.<sup>126</sup> It can also mean the physical destruction of records.<sup>127</sup>

There are at least three types of expungement statutes: (1) prohibition statutes, (2) mere destruction/sealing statutes, and (3) defense to perjury statutes.<sup>128</sup> Prohibition statutes are “broader, more protective[;] . . . the underlying offense is deemed never to have *legally* occurred and the offender may, therefore, deny the existence of the underlying offense seemingly without any regard for the context of the inquirer.”<sup>129</sup> Mere destruction/sealing statutes “neither arm the juvenile defender with a defense to perjury nor prohibit interested parties from inquiring into expunged offenses; rather, they authorize the Court to have the record either destroyed or sealed—nothing more.”<sup>130</sup> Perjury statutes “permit a juvenile or adult offender to deny the existence of an expunged offense.”<sup>131</sup> Idaho’s statute is a defense to a perjury statute.

In states like Idaho and Utah, expungement is simply a sealing—the public cannot view or copy the records and the records are not destroyed.<sup>132</sup> The records are stored and made available to a competent court upon request.<sup>133</sup> In Idaho, expungement also provides a defense to perjury because the petitioner can treat the information expunged as if it never occurred and may reply accordingly to any inquiry into the matter.<sup>134</sup> This is true most of the time.<sup>135</sup>

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125. Allan E. Korpela, Annotation, *Expungement of Juvenile Court Records*, 71 A.L.R. 3d 753 (2018).

126. *Id.*

127. *Id.*

128. See Mitchell Simon, *Limiting the Use of Expunged Offenses in bar and Law School Admission Processes: A Case for Not Creating Unnecessary Problems*, 28 NOTRE DAME J.L. ETHICS & PUB. POL’Y 79, 100 (2014).

129. *Id.* at 93.

130. *Id.* at 99.

131. *Id.* at 92.

132. IDAHO CODE § 20-525A (2017).

133. “A court that has the power and authority to do a particular act; one recognized by law as possessing the right to adjudicate a controversy.” *Court of Competent Jurisdiction*, BLACK’S LAW DICTIONARY (10th ed. 2014); see IDAHO CODE § 20-525(6) (2017); UTAH CODE ANN. § 78A-6-1105 (West 2018).

134. For Idaho’s treatment of expunged records, see IDAHO CODE § 20-525A (2017).

135. For employment in Idaho, the Supreme Court held that authorization and self-declaration forms provided by the State that required a contractor to disclose any criminal conviction, “even if the conviction was sealed, expunged or the judgment withheld,” in order to obtain renewal of contractor’s license to perform home-health services to Medicaid recipients, was unlawful, as the form violated the statute providing that any conviction contained in a juvenile file “shall be deemed never to have occurred and petitioner may properly reply accordingly upon any inquiry into the matter.” *Jensen v. State*, 72 P.3d 897, 903 (Idaho 2003). However, even the Idaho State Bar requires applicants to declare any juvenile “incidents” further stating, “You must include criminal and/or juvenile matters that have been expunged.” IDAHO STATE BAR, APPLICATION FOR EXAMINATION AND ADMISSION TO THE IDAHO STATE BAR 11 (2018), [https://isb.idaho.gov/wp-content/uploads/web\\_be\\_application.pdf](https://isb.idaho.gov/wp-content/uploads/web_be_application.pdf). See also *Matter of McDougall*, 127 A.D. 3d 8 (N.Y. App. Div. 2015) (Lack of disclosure in bar application regarding sealed juvenile records was grounds for public reprimand of New York attorney). For further discussion on the conflicts of law involving the effect of expungement, use of expunged records in bar application, see Mitchell Simon, *Limiting the Use of Expunged Offenses*

What makes Idaho's statute less than a prohibition statute (albeit more than a mere destruction/sealing statute) is its lack of bite. In 2003, the Idaho Supreme Court held that a state employment form violated Idaho Code § 20-525A in requiring an applicant to disclose an expunged conviction and stating that failure to disclose such a conviction could serve as the basis for denial or dismissal.<sup>136</sup>

[T]he State form violated I.C. § 20-525A. However, such a violation does not constitute an invasion of privacy. Requiring [the applicant] to disclose certain legally protected information in order to obtain a license does not constitute an "intrusion" by the State. The State did not actively breach [the applicant's] private sphere or somehow actively uncover hidden facts; rather, it asked [the applicant] to disclose such facts herself.<sup>137</sup>

While the court held that the violation was not an intrusion of privacy, it also stated that it was a statutory violation. However, intrusion of privacy was the wrong claim in that case. What would be the right claim?

There may not be one. The statute does not bar a third party from asking for this information. The statute does not require that a third party have a statutorily or judicially prescribed right to inquire; it only protects the juvenile offender from perjury for failing to disclose information about expunged records.

Moreover, the statute does not impose a penalty upon any person or entity for violating the statute by inquiring into a person's expunged criminal history.<sup>138</sup> Without a claim to make and without a penalty to be imposed, a person with an expunged record merely must hope not to be asked. For the person without an expunged record, there is no hope. He must always disclose.

#### B. What Other States Do

In Utah, records may be expunged one year after the juvenile courts ends supervision of a juvenile offender.<sup>139</sup> If the juvenile was committed to a youth correctional facility, records may be expunged one year after the juvenile is released from the custody of a juvenile correctional facility without any further conditions.<sup>140</sup> These requirements may be waived "if the court finds, and states on the record, the reason why the waiver is appropriate."<sup>141</sup> Unlike in Idaho, Utah requires the petitioner to deliver certified copies of the expungement order to agencies with records

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*in bar and Law School Admission Processes: A Case for Not Creating Unnecessary Problems*, 28 NOTRE DAME J.L. ETHICS & PUB. POL'Y 79 (2014).

136. *Jensen v. State*, 72 P.3d 897, 903 (Idaho 2003).

137. *Id.* at 903-04.

138. Although Idaho would not be the first to impose a penalty. Prior to 2013, New Hampshire proscribed a misdemeanor upon anyone inquiring into a person's expunged offenses. N.H. REV. STAT. ANN. § 651:5 (X) (f) (West 2013).

139. UTAH CODE ANN. § 78A-6-1105(1)(a)(ii) (West 2018).

140. *Id.*

141. UTAH CODE ANN. § 78A-6-1105(1)(b) (West 2018) (Although, there is no comment in the statute regarding the reasons why waiver may be appropriate, the statute grants judicial discretion).

by himself.<sup>142</sup> However, similar to Idaho, an agency that receives the expungement order must seal or otherwise restrict public access to the relevant records in its possession or expunge all references to the petitioner's name in the records.<sup>143</sup> The petitioner must get certified copies when the order is entered and *before* the case is sealed.<sup>144</sup> After the case is sealed, the petitioner may only get a copy of the order by petitioning the court.<sup>145</sup>

In Illinois, expungement is possible after two years since all juvenile court proceedings have elapsed and commitment to the Department of Juvenile Justice (DJJ) has been terminated.<sup>146</sup> The Illinois statute calls to “physically destroy the records and to obliterate the minor’s name and juvenile court records from any official index, public record, or electronic database.”<sup>147</sup> “No evidence of the juvenile court records may be retained[.]”<sup>148</sup> “An expunged juvenile record may not be considered by any private or public entity in employment matters, certification, licensing, revocation of certification or licensure, or registration.”<sup>149</sup> “Applications for employment must contain specific language that states that the applicant is not obligated to disclose expunged juvenile records of adjudication, conviction, or arrest. Employers may not ask if an applicant has had a juvenile record expunged.”<sup>150</sup> This is such a significant provision that the Illinois Department of Labor has a notice to employers of this restriction posted on their website since January 1, 2005.<sup>151</sup> However, records may still be considered by law enforcement agencies, the Department of Corrections, military branches, State's Attorneys and other prosecutors with regards to employment, even if the records have been expunged.<sup>152</sup>

### C. Records Eligible for Expungement

When expungement is due, which records are eligible for expungement? All of them.<sup>153</sup> This includes fingerprint cards, DNA samples obtained, mugshots taken by law enforcement, reports provided to the court, mental health evaluations, and any document or report held by the court.<sup>154</sup> Prior to expungement, all records may

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142. UTAH CODE ANN. § 78-6-1105(3) (West 2018).

143. *Id.*

144. *See* UTAH CODE ANN. § 78-6-1105(4) (West 2018).

145. *Id.*

146. 705 ILL. COMP. STAT. ANN. 405/5-915(2)(b) (West 2018).

147. 705 ILL. COMP. STAT. ANN. 405/5-915 (West 2018).

148. *Id.*

149. 705 ILL. COMP. STAT. ANN. 405/5-915(8)(a) (West 2018).

150. *Id.*

151. *Id.*

152. EXPUNGEMENT UNIT, ILL. OFF. STATE APPELLATE DEF., GUIDE TO EXPUNGE OR SEAL YOUR ILLINOIS JUVENILE RECORD 3 (Jan. 22, 2014), <https://www2.illinois.gov/osad/expungement/documents/juvenile%20exp%20guide/juvenileexpungementguide.pdf>.

153. IDAHO CODE § 20-525A(5) (2017). (“[I]t shall order all records in the petitioner’s case in the custody of the court and all such records, including law enforcement investigatory reports and fingerprint records, in the custody of any other agency or official sealed; and shall further order all references to said adjudication, diversion or informal adjustment removed from all indices and from all other records available to the public”).

154. *Id.*



be used to assist the court in creating terms to address the philosophy of the *balanced approach* including accountability, community protection, and competency development.<sup>155</sup> Reports held by the court include “the results of an inquiry into the home environment, past history, competency development, prevention or out of home placement services provided, and the social, physical and mental condition of the juvenile offender.”<sup>156</sup> In cases involving sexual deviant charges, polygraphs and psychosexual evaluations may also be involved and records formed.<sup>157</sup> DNA profiles in a DNA database maintained by Idaho State Police may also be expunged.<sup>158</sup> But remember, expungement in Idaho means that records are sealed from public view—they are never destroyed, and expungement poses no risk to public safety.<sup>159</sup>

When an expungement is granted all court records, as well as investigatory reports and fingerprint records held by other government agency or official, any other records available to the public regarding a particular juvenile offender are to be sealed.<sup>160</sup> For example, although the court may have a copy of a report, the agency responsible for creating the report must also seal the report from public view. Further, prior to expungement, the records may also be available by a public records request to the media, employers, schools, victims, treatment providers, and others.<sup>161</sup>

#### D. Exceptions to Expungement in Idaho

Idaho offers expungement only for juveniles and only for offenses under the Juvenile Corrections Act (JCA).<sup>162</sup> The JCA does not apply to: 1) violators of alcohol and tobacco laws;<sup>163</sup> 2) violators who are transferred for criminal prosecution as an adult; or 3) violators of traffic, watercraft, fish and game, failure to obey a misdemeanor citation and criminal contempt laws.<sup>164</sup> However, the statute allows for “a juvenile violator under the age of eighteen (18) years at the time of the violation may, at the discretion of the court, be treated under provisions of [the JCA]”.<sup>165</sup>

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155. IDAHO CODE § 20-520 (2017).

156. *Id.*

157. *See* IDAHO CODE § 18-8316 (2017).

158. IDAHO CODE § 19-5513 (2017).

159. IDAHO CODE § 20-525A(5) (2017).

160. *Id.*

161. IDAHO CT. ADMIN. R. 32(g)(9) (“The Court may release juvenile records if the court finds . . . that the public’s interest in the right to know outweighs the adverse effect of the release of the records on the juvenile’s rehabilitation and competency development.”).

162. IDAHO CODE § 20-525A (2017); *see* IDAHO JUV. R. 28 (2007). The Juvenile Corrections Act was passed in 1995; it established a juvenile justice system designed to treat juvenile offenders differently from adults. IDAHO CODE § 20-501 (2017).

163. Currently pending oral argument before the Idaho Supreme Court is a case out of Bannock County in which a juvenile was order to probation, undergo a substance abuse evaluation and follow the recommendations, and complete twenty hours of community service for a tobacco citation, an infraction. *State v. Doe (In the Interest of Nathan Burt)*, appeal docketed, No. 45997 (Idaho).

164. IDAHO CODE § 20-505 (2017).

165. *Id.*

Therefore, the district court may transfer a case involving an alcohol charge, for example, to juvenile court.<sup>166</sup> If the case is heard and maintained in juvenile court, then the juvenile offender may have a later opportunity for expungement.<sup>167</sup>

Alternatively, if a case is transferred from the juvenile court originally under the jurisdiction of the JCA, the court may order that the juvenile be held for adult criminal proceedings.<sup>168</sup> Because the juvenile offender will be tried as an adult, the juvenile offender no longer has the option of expunging his or her record related to the case transferred.<sup>169</sup>

### E. Eligibility

There is a variation from state-to-state as to how expungement is administered, and the criteria that must be met for expungement to be granted. The Idaho Supreme Court held that the JCA statute allowing for expungement of juvenile records only for charges adjudicated under the JCA had a rational basis such that it did not violate equal protection.<sup>170</sup> The court must find that the juvenile is within purview of the JCA, which is essentially anyone who commits an unlawful act as a minor in the state.<sup>171</sup> After jurisdiction is established, the court must hold a disposition hearing as prescribed under Idaho Code § 20-520.<sup>172</sup> Due process requires the court to consider all relevant evidence before exercising its independent discretion in sentencing.<sup>173</sup> The court then enters a written decree imposing one or more of the provisions authorized by Idaho Code § 20-520.<sup>174</sup> Two provisions include informal adjustment disposition, which includes diversion, and formal adjudication.

#### i. Diversion

The prosecutor may also opt to recommend a juvenile offender to a diversion program, an intervention strategy designed as an alternative to formal processing in the court system.<sup>175</sup> Although there is no uniform structure for diversion programs in Idaho, under the JCA the prosecuting attorney may refer a case directly to

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166. See *id.*

167. See IDAHO CODE § 20-525A (2017).

168. IDAHO CODE § 20-508 (2017).

169. See IDAHO CODE § 20-525A (2017).

170. *State v. Doe*, 305 P.3d 543, 548 (Idaho Ct. App. 2013). The Court further held that the claim did not involve a fundamental right, a suspect class, or gender or illegitimacy; that any discriminatory character was not apparent on the face of the statute, and the statute's classification directly related to its declared purpose. *Id.*

171. See IDAHO CODE § 20-505 (2017).

172. See IDAHO CODE § 20-520 (2017).

173. *In re Armondo A.*, 3 Cal. App. 4th 1185 (Cal. App. 1992); see also, IDAHO JUV. R. 17(b) (2007).

174. IDAHO JUV. R. 17(c) (2007).

175. IDAHO CODE § 20-511 (2017). See generally, *Commonly-Used Terms*, JUV. L. CTR., <http://jlc.org/news-room/media-resources/glossary-D>. (last visited Sept. 17, 2018) ("A system of procedures and programs designed to channel certain youth away from the formal juvenile court process. States and localities have created various ways for first-time offenders, non-violent offenders, and youth whose delinquent behavior stems from mental health or substance abuse needs to receive appropriate treatment and services from community-based programs. Diversion programs hold youth accountable for their actions without burdening them with a juvenile record and the stigma of a delinquency label.").

the county probation officer or a community-based diversion program if court action is not required.<sup>176</sup> Under Idaho Code 20-511, diversion is also an informal adjustment, which allows the court to divert the juvenile as well.<sup>177</sup>

The nature of diversion is that successful cases are never referred to the court but technically the case is under court jurisdiction as listed in Idaho Code § 20-505.<sup>178</sup> Under the expungement provision of the Idaho Juvenile Corrections Act, a person who utilized the diversion process may petition the court for the expungement of his record.<sup>179</sup> One complication arises in petitioning the court for a case that never before came to the court as cases are generally heard and identified by their case number. Potentially, the court may use the police report number to identify the case or choose any other method.<sup>180</sup> An official court expungement order would be necessary to provide to law enforcement or other agencies to seal their records.<sup>181</sup> However, it is unlikely this procedure is often sought in diversion cases because notification is not statutorily required to inform a juvenile who participates in the diversion process that his case is eligible for expungement.<sup>182</sup>

Expungement would benefit juveniles who successfully complete diversion by sealing “all records in the petitioner’s case in the custody of the court and all such records, including law enforcement investigatory reports and fingerprint records, in the custody of any other agency or official;” and all references to participation in diversion removed from all indices and from all other records available to the public.<sup>183</sup> Not knowing about the use of expungement in diversion cases means that juveniles who go through an informal adjustment, or even a formal adjudication, receive greater benefits regarding their records than someone with a minor crime who completes diversion as an alternative. However, another argument against seeking expungement is the paper trail that requesting an expungement would create. Arguably, the court must enter an order on the record, the order may be filed, and thus, a juvenile case that otherwise may not have had a physical paper trail, now has one. However, without a court order, records such as police reports remain open to the public.<sup>184</sup>

In 2013, the Annie E. Casey Foundation published a report based on US Census Bureau data that lacked the data of a number of Idaho facilities that did not participate in the survey in 1997 and 1999.<sup>185</sup> The report concluded that Idaho had the

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176. IDAHO CODE § 20-511 (2017).

177. IDAHO CODE § 20-505 (2017); IDAHO CODE § 20-511 (2017). *See also* OFFICE OF PERFORMANCE EVALUATIONS IDAHO LEGIS., CONFINEMENT OF JUVENILE OFFENDERS, FOLLOW-UP REP. TO REP. 14-01 (2017).

178. IDAHO CODE § 20-505 (2017).

179. IDAHO CODE § 20-525A (3) (2017).

180. Judge William Harrigfeld, who served as a magistrate judge Idaho’s Fourth Judicial District for ten years, suggested the police document record number used to track police reports be used to create a case file to identify the case and expunge the record.

181. *See* IDAHO CODE § 20-519 (2017).

182. *See* IDAHO CODE § 20-511 (2017); *see also* IDAHO CODE § 20-525A (2017).

183. IDAHO CODE § 20-525A (2017).

184. IDAHO CODE § 17-124 (2009).

185. OFFICE OF PERFORMANCE EVALUATIONS IDAHO LEGIS., CONFINEMENT OF JUVENILE OFFENDERS, HIGHLIGHTS OF REP. 14-01 (2014).

largest increase of juvenile confinement in the nation from 1997 to 2010.<sup>186</sup> In response, Office of Performance Evaluations for the Idaho Legislature published a report in February 2014.<sup>187</sup>

One of the key findings, in addition to finding that the average daily count of juvenile offenders in confinement had decreased contrary to the report by the Annie E. Casey Foundation, was that diversion practices were inconsistent and differed in design and eligibility across Idaho counties.<sup>188</sup> The recommendation regarding diversion was provided to various stakeholders including “(1) entities directly involved with juveniles in the system, such as the Department of Juvenile Corrections, the courts, probation officers, and prosecutors, (2) policymakers, and (3) entities that may have affected juveniles’ involvement in the system, such as the Department of Health and Welfare and the Department of Education.”<sup>189</sup>

The 2014 report published by the Office of Performance Evaluation offered one “consideration” for policymakers which stated, “prioritize which types of cases should be eligible for diversion to ensure those factors are taken into account when deciding whether to divert a case.”<sup>190</sup>

In 2015, the Department of Juvenile Corrections initiated the Capstone Project to develop consistent diversion processes to include improving the handling of juvenile’s diversion records.<sup>191</sup> The Department surveyed probation administrators and juvenile prosecutors about their practices.<sup>192</sup> Not only were nearly 60% of respondents failing to establish written guidelines for diversion eligibility, more than 70% of the respondents reported not using a screening tool.<sup>193</sup> The most astonishing finding should be emphasized. The report states, “[a]lmost all respondents (97 percent) reported that juveniles who had been diverted postpetition had their charges dismissed. However, more than 70 percent of respondents indicated that *records were not expunged*, and more than 80 percent reported that diversion files were *kept*.”<sup>194</sup>

Following this survey, the Department prioritized two recommendations “(1) provide additional information about which types of cases were diverted out of the system, and (2) prioritize which types of cases should be eligible for diversion.”<sup>195</sup> In 2016, the Capstone team reported that “each county had unique needs and that a statewide uniform diversion process could be problematic for individual jurisdictions.”<sup>196</sup> Instead of implementing a specific, articulated process or tool encourag-

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186. *Id.*

187. *Id.*

188. *Id.*

189. OFFICE OF PERFORMANCE EVALUATIONS IDAHO LEGIS., CONFINEMENT OF JUVENILE OFFENDERS, FOLLOW-UP REP. TO REP. 14-01 (2016).

190. OFFICE OF PERFORMANCE EVALUATIONS IDAHO LEGIS., CONFINEMENT OF JUVENILE OFFENDERS, HIGHLIGHTS OF REP. 14-01 (2014).

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* (emphasis added).

195. OFFICE OF PERFORMANCE EVALUATIONS IDAHO LEGIS., CONFINEMENT OF JUVENILE OFFENDERS, FOLLOW-UP REP. TO REP. 14-01 (2016).

196. *Id.*

ing consistency, “the team provided training to stakeholders on evidence-based diversion practices.”<sup>197</sup> There is no further reporting of how many counties the training reached or how the training led to improvement of the handling of diversion records. The 2017 report stated that “[t]he Idaho Supreme Court is developing a juvenile case flow management plan that includes evidence-based best practices for diversion of youth.”<sup>198</sup> Nothing follows the 2017 follow-up report published in March 2017.

Idaho continues to lack consistency regarding eligibility and design of diversion programs. There is no additional information about the types of cases that are diverted. There is a significant lack of criteria for screening diversion cases.

Additional recommendations to improve the handling of juvenile records is an issue that extends far beyond the trenches of seeking to expunge diversion records. The Department of Juvenile Corrections should return to their recommendations to obtain further information about the types of cases that are diverted at the very least. The recommendation to prioritize which cases should be diverted could understandably be problematic for individual jurisdictions. Further information about the “unique needs” that prohibit consistency for eligibility should be further explored.

A request was made for the purposes of this article to the Department of Juvenile Corrections regarding diversion records in its database, Idaho Juvenile Offender System. This request could not be fulfilled because counties inconsistently track diversion cases to include using different case management tracking tools. It was not possible to evaluate diversion cases that were eligible for expungement due to this grave inconsistency. But what we do know is that 70% of the survey respondents reported that the records—for juvenile offenders whose cases were diverted and the petitions then dismissed— were not expunged. If cases are diverted to avoid the paper trail for a diversion participant but the record remains, what is the point?

## ii. Informal Adjustment

An informal adjustment may include “[r]eprimand of the juvenile offender; [i]nformal supervision with the probation department; [c]ommunity service work; restitution to the victim; [or] [p]articipation in a community-based diversion program.”<sup>199</sup> The nature of the offense is not determinative for informal adjustment to be granted.<sup>200</sup> Furthermore, informal adjustments may be ordered at any stage of the proceedings after admission.<sup>201</sup> A disposition as an informal adjustment allows a juvenile’s case to be dismissed when the juvenile completes all court-ordered

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197. *Id.*

198. OFFICE OF PERFORMANCE EVALUATIONS IDAHO LEGIS., CONFINEMENT OF JUVENILE OFFENDERS, FOLLOW-UP REP. TO REP. 14-01 (2017).

199. IDAHO CODE § 20-511 (2017).

200. IDAHO JUV. R. 11 (2007).

201. *Id.*

terms.<sup>202</sup> The length of time on an informal adjustment supervision is primarily limited to not exceed the juvenile offender's twenty-first birthday.<sup>203</sup> This allows the court to extend a probation period until the court no longer has jurisdiction. The court may dismiss an informal adjustment, thus terminating a case, if it finds "that there is no longer a cause for continuing the period of informal adjustment; and [i]t is compatible with public interest."<sup>204</sup> When the jurisdiction is terminated under an informal adjustment, expungement may be considered one year after the termination of the court case or when the juvenile turns eighteen years of age, whichever occurs later.<sup>205</sup>

For example, a juvenile may be placed on informal adjustment probation at the age of ten and have his probation extended for probation violations or remain on probation for incurring new charges (committed before his eighteenth birthday). Through these events, he might remain under the jurisdiction of the court until his twenty-first birthday. One year later, the juvenile offender would be able to petition the court for expungement at the age of twenty-two for his juvenile records of charges that he incurred at age ten.

### iii. Formal Adjudication

On the other hand, a formal adjudication allows for probation supervision not to exceed three years from the date of the order.<sup>206</sup> Therefore, if a juvenile is placed on formal adjudication, probation cannot be extended for the same crime nor can it exceed three years. In this case, a juvenile's case may be eligible for expungement five years after the court ends its jurisdiction over a case.<sup>207</sup> For example, under a formal adjudication, if a juvenile was placed on formal adjudication at age thirteen and remained on probation for three years, the juvenile may be eligible to petition for expungement at age twenty-one. However, if the juvenile remained under the court's jurisdiction until his twenty-first birthday, he would be ineligible to apply for expungement until he turned twenty-six years of age.

### iv. Commitment to the Department of Juvenile Corrections

However, juvenile offenders committed to the Department of Juvenile Corrections must also wait five years from the date of termination of the continuing

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202. IDAHO CODE § 20-511 (2017). The change to this statute, clarifying that a case can be dismissed upon successful completion of an informal adjustment, was presented to the Senate by retired Judge John Varin on March 13, 2014. H. JUDICIARY, RULES, AND ADMIN. MINUTES, [https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2014/standingcommittees/140313\\_hjud\\_other\\_meet\\_time-Minutes.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2014/standingcommittees/140313_hjud_other_meet_time-Minutes.pdf). Its introduction and first time read occurred on February 17, 2014. *See also id.* It passed in the Senate on March 4, 2014 with a 35-0-0 vote and passed in the House on March 18, 2014 with a 70-0-0 vote to be signed into law by Governor Butch Otter on April 4, 2014 and become effective July 1, 2014. *Id.*

203. IDAHO CODE § 20-507 (2017).

204. IDAHO CODE § 20-511(2)(b)-(c) (2017).

205. IDAHO CODE § 20-525A (2017).

206. IDAHO CODE § 20-520 (2017). An exception occurs if the offense is of a sexual nature, in which case the jurisdiction may be in place until the juvenile offender's twenty-first birthday. *Id.*

207. *See* IDAHO CODE § 20-519 (2017).

jurisdiction of the court, or after reaching the age of eighteen, whichever occurs later.<sup>208</sup> This may occur despite the commitment not including a felony offense.<sup>209</sup>

In 2016, while 44% of juveniles coming into DJC facilities were special education students,<sup>210</sup> upon release 42% of juvenile offenders had earned a GED, 24% earned high school diplomas, 42% earned workforce certificates, and 17% earned college credits.<sup>211</sup> Yet, they must wait five years until they are released from DJC or they complete probation before they can request expungement.

#### F. Procedures

The JCA's intent is different than that of regular criminal proceedings, regardless of whether they involve juveniles or adults.<sup>212</sup> The Idaho Supreme Court held it was logical to provide juvenile offenders an opportunity to expunge their records after fulfilling the express rehabilitative goals of the JCA.<sup>213</sup> Further it was logical to decline to extend such an opportunity to offenders outside the purview of the JCA, who were not necessarily subject to the same types of supervision and rehabilitative programming.<sup>214</sup>

When a court considers expungement, it may consider a number of factors including the age of the petitioner, the age at the time of the offense, the nature of the offense, the individual's subsequent criminal activity, and a balancing of the external factors, including the interest in having the record expunged and the public interest in maintaining the record.

In Idaho, the court may grant an expungement if: (1) the petitioner has not been convicted of any crimes that may not be expunged under Idaho Code § 20-525A(4); (2) has not been convicted of a felony; (3) has not been convicted of a "misdemeanor wherein violence toward another person was attempted or committed since the termination of the court's jurisdiction;" and (4) has not been convicted of a misdemeanor wherein violence toward another person was attempted or committed since "release from the juvenile correctional center, and that no proceeding involving such a felony or misdemeanor is pending or is being instituted against him."<sup>215</sup> The court must also find that the petitioner has been held accountable, is

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208. IDAHO CODE § 20-525A (2017).

209. IDAHO JUV. R. 19 (2007). "[I]f the juvenile's prior history or charged offense(s) contain underlying facts: (1) of violence that either did or could reasonably have resulted in serious bodily injury or death to others; (2) of a sexual nature; (3) demonstrating a wanton and reckless disregard for the property rights of others such that release constitutes a substantial risk to the community; and/or (4) demonstrating a pattern of misdemeanor or felony criminal behavior, escalating in its impact on public safety or the juvenile's safety or well-being overtime." *Id.*

210. S. JUDICIARY & RULES COMM., 2017 Leg., 1st Sess. (Id. 2017), [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/standingcommittees/170118\\_sj&r\\_0130PM-Minutes.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/standingcommittees/170118_sj&r_0130PM-Minutes.pdf).

211. S. JUDICIARY & RULES COMM., 2017 Leg., 1st Sess. (Id. 2017), [http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/standingcommittees/170118\\_sj&r\\_0130PM-Minutes.pdf](http://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/standingcommittees/170118_sj&r_0130PM-Minutes.pdf).

212. IDAHO JUV. R. 19 (2007).

213. *State v. Doe*, 305 P.3d 543 (2013).

214. *Id.*

215. IDAHO CODE § 20-525A (2017).

developing life skills, and that the expungement will not compromise public safety.<sup>216</sup>

The Idaho Juvenile Rule 28 provides the following procedure:

(a) A petition . . . shall contain the name of the juvenile seeking expungement, name all agencies and their addresses with records the petitioner seeks to have expunged, and make evident the petitioner is in compliance with the provisions of I.C. 20-525A. The petition shall be filed in the county where a disposition was entered under oath and verified by the petitioner. A petition shall be filed in each case in which the petitioner seeks to have records expunged. If the petition is being filed pursuant to I.C. 20-525A(3) and no file exists, a new juvenile proceeding shall be opened upon the filing of the petition to expunge.

(b) Upon the filing of a petition to expunge the clerk shall set a hearing date and give notice to the petitioner, the prosecutor, any entity or person as requested by the petitioner, the prosecutor or as directed by the court. The prosecutor shall comply with the provisions of I.C. 19-5306. The hearing shall be set not less than 14 days from the filing of the notice of hearing. Cases involving the same petitioner may be joined for hearing.

(c) At the hearing or pursuant to stipulation the court shall consider any relevant evidence and make findings. Written findings of fact are not necessary. Upon a determination that the requirements of I.C. 20-525A have been met the court shall enter an order expunging the appropriate records.

(d) The clerk shall attach to the order a certificate of service to the agencies noted in the petition including the Department of Juvenile Corrections. The case will then be sealed and filed in a separate expunged record file and the case entered in the expungement index.

(e) There shall be no disclosure of any record in an expunged case file except as provided in Idaho Court Administrative Rule 32.<sup>217</sup>

Electronic record information is provided on the Idaho Supreme Court Data Repository<sup>218</sup> or the iCourt Portal.<sup>219</sup> Although removed after expungement has been granted, juvenile court records remain easily accessible to the public until an

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216. *Id.*

217. IDAHO JUV. R. 28 (2007).

218. The Idaho Supreme Court Data Repository provides electronic record information from 1995 and forward. See [www.idcourts.us](http://www.idcourts.us).

219. The Idaho Supreme Court Data Repository is an electronic online judicial record system. The transition to a new online system called iCourt began with Twin Falls County on June 22, 2015 and was successfully completed on October 9, 2018. See [www.icourt.idaho.gov/portaloverview](http://www.icourt.idaho.gov/portaloverview). However, there are few cases dealing directly with expungement of juvenile records despite the wide public access to juvenile records, even in Idaho. "The reason for the paucity of cases may be that most states apparently expressly prohibit public access to records of the juvenile court, with the result that interested parties may consider that such protection is sufficient, or that such protection is all that they may receive." Allan E. Komela, Annotation, *Expungement of Juvenile Records*, 71 A.L.R. 3d 753 (2018).



order for expungement has been entered. The order to expunge records only applies to government agencies.<sup>220</sup> News and other media sources have not been required to remove any published stories. Victims or others who have obtained records are not required to destroy copies of records either.<sup>221</sup>

Furthermore, conviction of any one of nineteen offenses listed under Idaho Code 20-525A strictly bars the opportunity for expungement, regardless of age.<sup>222</sup> In 2016, there were twenty-three juvenile arrests for arson (including one juvenile under ten years old and five juveniles between eleven and twelve years old),<sup>223</sup> who

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220. IDAHO CODE § 20-525A (2017) (“[A]ll records in the petitioner’s case in the custody of the court and all such records, including law enforcement investigatory reports and fingerprint records, in the custody of any other agency or official sealed; and shall further order all references to said adjudication, diversion or informal adjustment removed from all indices and from all other records available to the public.”).

221. See generally IDAHO COURT ADMIN. R. 32(g)(9) (2007).

222. IDAHO CODE § 20-525A (2017).

- (a) Administering poison with intent to kill (18-4014, Idaho Code);
- (b) Aggravated battery (18-907, Idaho Code);
- (c) Armed robbery (chapter 65, title 18, Idaho Code);
- (d) Arson (chapter 8, title 18, Idaho Code);
- (e) Assault with intent to commit a serious felony (18-909, Idaho Code);
- (f) Assault with intent to murder (18-4015, Idaho Code);
- (g) Assault or battery upon certain personnel, felony (18-915, Idaho Code);
- (h) Forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);
- (i) Infamous crime against nature, committed by force or violence (18-6605, Idaho Code);
- (j) Injury to child, felony (18-1501, Idaho Code);
- (k) Kidnapping (18-4501, Idaho Code);
- (l) Murder of any degree (18-4001 and 18-4003, Idaho Code);
- (m) Rape, excluding statutory rape (18-6101, Idaho Code);
- (n) Ritualized abuse of a child (18-1506A, Idaho Code);
- (o) Sexual exploitation of a child (18-1507, Idaho Code);
- (p) Unlawful use of destructive device or bomb (18-3320, Idaho Code);
- (q) Voluntary manslaughter (18-4006 1., Idaho Code);
- (r) A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;
- (s) A violation of the provisions of section 37-2732B, Idaho Code, related to drug trafficking or manufacturing of illegal drugs.

*Id.*

223. IDAHO STATE POLICE, CRIME IN IDAHO 2016 (2016), <https://nibrs.isp.idaho.gov/CrimeInIdaho/Publication/Archived/CrimeInIdaho2016/Complete.pdf>.

will never have their court records expunged if the arrests resulted in convictions.<sup>224</sup> Without having been charged in court, these juveniles will never have their police reports expunged either because a court order is necessary to do so.<sup>225</sup> Another barrier to timely expungement occurs when the court changes the type of sentencing.

Changes to a decree can only be made from an informal adjustment to a formal adjudication.<sup>226</sup> A formal adjudication can never be amended to an informal adjustment despite good behavior or successful completion of court-ordered terms.<sup>227</sup> Informal adjustments and formal sentencings are mutually exclusive pathways for resolving juvenile petitions.<sup>228</sup> “Both expungement provisions relate back to the time of the magistrate court’s determination, not some subsequent event.”<sup>229</sup> Once the judgement becomes final by expiration of the forty-two days allotted for appeal<sup>230</sup> or affirmance of the judgment on appeal, the trial court’s jurisdiction to amend or set aside a judgment expires.<sup>231</sup> “Once formally sentenced, and a decree entered, the Idaho Appellate Rules govern subsequent action, not the JCA or the Idaho Juvenile Rules.”<sup>232</sup>

#### i. Assistance and The Need for Information

Outside of state support, there has been support for juvenile expungement by Idaho Legal Aid Services, supported by a grant provided by the Steele-Reese Foundation in 2017.<sup>233</sup> The grant provided support to create interactive forms for juvenile expungement petitions.<sup>234</sup> Idaho Legal Aid Services has also included assisting with expungements as a case priority, meaning that the organization can represent the client if the client is below 125% of the federal poverty level.<sup>235</sup> In April 2017, Idaho Legal Aid Services in conjunction with Idaho Women’s Lawyers provided a one-day free clinic in which attorneys assisted “young adults, ages 16-25, [in determining] if they [were] eligible for juvenile expungement and if they [were], [in helping] them complete the petition necessary to start the expungement process.”<sup>236</sup> Clinics were hosted by Idaho Legal Aid Services at the Boise Public Library every

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224. See IDAHO CODE § 20-525A (2017).

225. *Id.*

226. *State v. Doe*, 288 P.3d 805 (Idaho 2012).

227. *Id.*

228. *Id.* at 808.

229. *Id.* at 809.

230. IDAHO APP. R. 14 (2018).

231. *State v. Jakoski*, 79 P.3d 711, 714 (Idaho 2003).

232. *Doe*, 288 P.3d at 808.

233. *Clear Your Juvenile Record*, IDAHO LEGAL AID SERVS., INC., <https://www.idaholegalaid.org/sites/idaholegalaid.org/files/Expungement-Poster.pdf> (last accessed Sep. 17, 2018).

234. E-mail from Sunrise Ayers, Attorney, Idaho Legal Aid Servs., Inc. to author (Feb. 26, 2018 12:58 pm MT) (on file with author).

235. *Id.*

236. *CLE & Expungement Clinic*, IDAHO WOMEN’S LAWS. (last accessed Sept. 17, 2018), <https://idahowomenlawyers.wildapricot.org/widget/event-2488119>.

second Thursday in 2017.<sup>237</sup> These clinics addressed juvenile criminal records in addition to student suspension, expulsion, and school disciplinary issues; and Individual Education Programs.<sup>238</sup> Idaho Legal Aid Services has also provided forms to assist in requesting expungement.<sup>239</sup> Otherwise, there is a lack of information on the process to request expungement. Many counties in Idaho do not have a website, and those that do often do not provide information about expungement—neither describing the process to obtain an expungement nor that the possibility exists.<sup>240</sup>

#### IV. STRENGTHENING IDAHO'S EXPUNGEMENT LAWS

##### A. The Hold Back

Expungement in Idaho means that juvenile records are only sealed from public view—they are never destroyed, and expungement poses no risk to public safety. What makes it so difficult for the records prior to July 2017 to be sealed? What makes it so difficult to enhance our protections of thousands of juvenile records the Idaho Legislature now agrees should be held from public view? Perhaps it is a lack of concrete evidence of collateral consequences. In conducting this research, several agencies were contacted to gather better statistics. For example, one statistic that would be particularly helpful would be the number of juvenile offenders currently eligible for expungement. An inference could be drawn that if a high number of eligible cases existed, then obtaining expungement is a difficult process. There may be a societal belief that juvenile records simply “go away” when a juvenile turns eighteen and the lack of requests are based on a lack of knowledge. On the other hand, an inference could be drawn that juvenile records have little to no effect, so much so that juvenile offenders do not invest their time in seeking expungement. However, as Judge Varin stated:

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237. *Youth Empowerment Clinic*, IDAHO LEGAL AID SERVS., INC. (last accessed Sept. 17, 2018), [http://211.idaho.gov/Portals/107/AssetLibrary/PDFs/Youth\\_Empowerment\\_Clinic.pdf?ver=2017-02-06-100201-683](http://211.idaho.gov/Portals/107/AssetLibrary/PDFs/Youth_Empowerment_Clinic.pdf?ver=2017-02-06-100201-683); see also *Calendar of Events May/June 2017*, BOISE PUBL. LIBR. (last accessed Sept. 17, 2018), <https://www.boisepubliclibrary.org/media/9700/17-0419%20Calendar%20MayJune.pdf>.

238. *Calendar of Events May/June 2017*, BOISE PUBL. LIBR. (last accessed Mar. 4, 2018), <https://www.boisepubliclibrary.org/media/9700/17-0419%20Calendar%20MayJune.pdf>.

239. See *infra* note 256; While the pamphlets and information provided by Idaho Legal Aid Services are the most helpful and widely available, it also states an inaccuracy. The Instructions for Petitioners states, “If your juvenile offense was a felony, you have to wait 5 years from the date of termination of the continuing jurisdiction of the court, or after you turn 18, whichever is later.” *Infra* Appendix A. In the case of felonies, the five-year wait is true only if the juvenile was formally adjudicated. IDAHO CODE 20-525A (2017). Felonies under an informal adjustment must only wait one year or after the juvenile turns eighteen, whichever is later. IDAHO CODE 20-511 (2017); IDAHO CODE 20-525A (2017).

240. While Ada County's Juvenile Court website lists expungement under “Common Definitions” and “Juvenile FAQ,” it inaccurately titles the FAQ as “Can a juvenile record be sealed (expunged)?” using the terms sealed and expunged interchangeably. *Juvenile FAQ*, ADACOUNTY.ID.GOV., <https://adacounty.id.gov/juvenilecourt/juvenile-faq/> (last visited Apr. 14, 2019). It further states that expungement “is only considered if it has been five years since the juvenile's case was terminated from Juvenile Court...” *Id.* While that may be true in some cases, it is not true for all cases and the majority of juvenile cases.

Historically, adjudications in juvenile court did not carry the same kinds of collateral penalties and consequences as adult criminal convictions. However, in recent years, juvenile court adjudications have come to result in extensive legal restrictions in areas including education, employment, immigration, driving privileges, contact with the adult criminal justice system, military service, and housing. This change was not intentional, but rather developed from a series of changes regarding the manner in which juvenile and adult records are made available to the public. Regardless of the intention behind the changes, juvenile records now have essentially the same impact as adult records.<sup>241</sup>

Judge Varin attempted to gather stories about how juveniles were negatively affected by the records being available on the Idaho Repository.<sup>242</sup> He stated, “Most juvenile offenders, I found, are hesitant to speak about their juvenile court experiences.”<sup>243</sup> What if we advocate for them? What if we, as professionals with experience in the field, tell their stories? Will the legislature hear us? How many voices will it take to understand that the system must be stronger to enhance restorative justice? Without stories and without statistics, the real consequences of our juvenile laws are difficult to envision and easy to ignore.

#### i. Methodology

The Juvenile Corrections Act requires a statewide tracking system, which is called the Idaho Juvenile Offender System (IJOS).<sup>244</sup> IJOS gathers information from many sources, then shares appropriate information with other IJOS customers.<sup>245</sup> Information is shared to and from IJOS with probation, prosecutors, Idaho Department of Juvenile Corrections, educators, contract providers, law enforcement, and detention centers.<sup>246</sup> Thanks to the hard work of Department of Juvenile Corrections IT Software Engineer, Lindsay Anderson, and Ada County Juvenile Court Services we have statistics that give us a much better vision of the effectiveness of our expungement process.

Because not all counties use IJOS, it was impossible to filter the database for statistics that would represent every county. Like diversion records, counties that use IJOS also vary in the information they record. However, upon Ms. Anderson’s recommendation and professional experience comparing data, Ada County had the greatest consistency and record keeping. It also had a significant number of juvenile records.

The reports included the number of individuals:

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241. E-mail from Judge Jack Varin (ret.) to author, *supra* note 82.

242. *Idaho Juvenile Justice Commission Meeting*, IDAHO DEP’T JUV. CORR., <https://164.165.67.91/wp-content/uploads/2015/07/6-12-14-minutes.pdf> (last accessed Sept. 17, 2018).

243. E-mail from Judge Jack Varin (ret.) to author, *supra* note 82.

244. *Juvenile Justice Terms*, IDAHO SUP. CT., [https://www.isc.idaho.gov/juvenile/pdfs/Common\\_Juvenile\\_Justice\\_Terms.pdf](https://www.isc.idaho.gov/juvenile/pdfs/Common_Juvenile_Justice_Terms.pdf). (last accessed Apr. 14, 2019).

245. *See Juvenile Justice Terms*, IDAHO SUP. CT., [https://www.isc.idaho.gov/juvenile/pdfs/Common\\_Juvenile\\_Justice\\_Terms.pdf](https://www.isc.idaho.gov/juvenile/pdfs/Common_Juvenile_Justice_Terms.pdf). (last accessed Apr. 14, 2019).

246. *Idaho State Judiciary E-News July 25, 2014*, ST. OF IDAHO: JUD. BRANCH at 2, <https://isc.idaho.gov/links/07-25-14.pdf> (last accessed Apr. 14, 2019).

(1) who are now over 18, whose cases have been closed for over one year and were not committed to the Department of Juvenile Corrections,

(2) who are now over 18, whose cases have been closed for over five years and were committed to the Department of Juvenile Corrections, and

(3) who are now over 18, whose cases have been closed for over five years and were not committed to the Department of Juvenile Corrections.

The data is only counting distinct IJOS numbers that have at least one petition that is eligible for expungement. That means, it does not matter how many petitions the petitioner has or how many charges were listed on each petition, each petitioner is only represented once.

#### ii. Limitations

What the system does not do and cannot do is process a query to filter through the files to find precisely which cases are eligible for expungement.<sup>247</sup> Another variable that is not tracked is adult offenses that would bar eligibility for expungement. Nor can the system weigh subjective variables such as whether the petitioner is pending a court case involving a felony or a misdemeanor involving violence, that the judge is satisfied that the petitioner has been held accountable, and that the judge believes the petitioner to be “developing life skills necessary to become a contributing member of the community.”<sup>248</sup>

The reports do not reflect whether a juvenile offender was formally adjudicated or placed on an informal adjustment because the query could not impose that limitation. Therefore, there is some margin of error in the first report in which the case has been closed for over one year if the juvenile offender was formally adjudicated. This would create an issue in the results because the records would not be eligible for expungement as formal adjudications require a five-year wait period after release or termination.<sup>249</sup> Therefore, the first report captures some cases that are not yet eligible for expungement.

Personally identifiable information was not disclosed by the record holder because it breaches confidentiality.<sup>250</sup> Therefore, no demographic factors could be used as variables to determine why some demographics obtained expungement while others did not. However, as listed below, the statistics are slim anyhow.

These reports do not identify how many juvenile offenders became eligible for expungement in Ada County by individual years. The query could not capture the statistics as if they were backdated. The reports also show the total number of juvenile offenders at a snapshot in time, limited to juvenile offenders ages eighteen to thirty as of March 19, 2019. The age limit was due to the thousands of incomplete records from 1995 that were transferred into IJOS when the Department of Juvenile Corrections was first created.

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247. The author notes this request to the IJOS Help Desk was made and was unable to be fulfilled.

248. IDAHO CODE § 20-525A(5) (2017).

249. IDAHO CODE § 20-525A (2017).

250. Most of the records are likely available on the online database. However, the petitioners' names were not provided; therefore, no other information is available.

Lastly, for the final report, IJOS does not track how many times an expungement request was denied because that information is not tracked in IJOS. If the county clerk removed the information themselves from IJOS, that statistic was not included in this report.<sup>251</sup>

### iii. Findings

The most clear and accurate report reflects that approximately 4,908 juvenile offenders are eligible for expungement. The report excluded the nineteen non-expungable crimes under Idaho Code 20-525A(4), limited the sample size to juvenile offenders between the ages eighteen to thirty as of March 19, 2019 and whose case was closed for more than five years. These variables over-included juvenile offenders whose cases were informal adjustments and only required a one year wait period.

A second report was completed similar to the first, but it over-included juvenile offenders whose cases were formally adjudicated. The second report limited the case closure timeframe to one year. While it excluded juvenile offenders who were not committed to the Department of Juvenile Corrections, whether they were formally adjudicated was not excluded. The results show that 6,301 juvenile offenders are eligible for expungement.

The last report analyzing eligibility shows there are 199 juvenile offenders who were committed to DJC who are eligible for expungement. These 199 offenders are over eighteen years of age, were committed to DJC, did not commit one of the nineteen non-expungable offenses, and whose case has been closed for over five years. The average age of juvenile offenders in this group is twenty-seven years of age.

One last report was made. This report analyzed the number of juvenile offenders who were granted expungement requests in Ada County from January through December 2017. The number of expungements granted was 25. Double-digits.

While this report does not evaluate all demographic variables, of the 25 juvenile offenders whose records were granted expungement 22 were white, 2 were black, and 1 was listed as unknown. Not one expungement was granted to a juvenile offender whose race/ethnicity was listed as Hispanic, American Indian, Asian, or Pacific Islander. Forty-four petitions were granted among the 25 petitioners. The average age at the time expungement was granted was 25. The average age at the time of the petition was 16. On average, nine years lapsed between a petition being filed and the petition being expunged.

### iv. Discussion

While the statistics cannot be generalized to the entire state, this is the best Idaho has done thus far to provide statistical information that can inform our legislature and our community about the success of the expungement opportunity.

In fiscal year 2018, the average age of a juvenile offender confined in the Department of Juvenile Corrections is 17.2 years of age.<sup>252</sup> While the average length of DJC custody is 18.7 months, the IJOS report reflects the average age of those in

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251. Due to a change in policy regarding data requests, this statistic could not be obtained at the time this article went to press.

252. Idaho Dep't of Juv. Corrections Legis. Update (2019).

this category eligible for expungement in Ada County is 27 years of age. Weighing the low average daily count in DJC custody and considering the portion of which are from Ada County against the average age of individuals committed to the Department versus those eligible up to age thirty, 199 juvenile offenders eligible for expungement is significant.

Despite the overinclusion in these reports and even though the query could not evaluate a record fully (such as subjective measures), Ada County still has *thousands* of juvenile offenders whose cases are entitled to review and *thousands* of juvenile records that are open to public view. When considering the twenty-five expungements granted in 2017, Ada County expunged the records of approximately 0.5% of the total eligible juvenile offenders.

#### B. Policy Recommendations

The first recommendations herein impose zero financial impact to the current system. These recommendations are three minor steps forward. First, the State should provide notification to juvenile offenders regarding the eligibility to request expungement. Second, the statute should state those represented by an attorney during adjudication, to represent themselves as pro-se petitioners for expungement. Third, the State should eliminate the wait time for juveniles all juvenile offenders. Expungement in Idaho means that records are sealed from public view—they are never destroyed. Expungement poses no risk to public safety. The system works.

Notification should include that the youth be informed at his sentencing hearing of the opportunity for expungement. A letter could be given to explain the process very much like the one created by Idaho Legal Aid Services, Inc.<sup>253</sup> Moreover, a hearing could be set for those who are eligible for expungement one year from the termination of their case, should the wait time not be eliminated.<sup>254</sup>

Notification should also include the jurisdictions' procedures for expungement of records. Although a juvenile may request expungement at eighteen years of age, courts may require that a request for expungement not occur sooner than the individual turns eighteen-and-a-half years old.<sup>255</sup> This is likely to ensure that new charges have not processed within the first several months of the juvenile turning eighteen and are pending filing.

Notification *when* a juvenile offender becomes eligible for expungement should be provided. Given that juvenile records are provided in a central tracking system, although not possible now, it may be possible that the system be programmed to provide a quarterly report of eligible cases. Those who may be eligible should be notified that they meet most requirements and should consult the court for application of expungement.

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253. See *infra* Appendix A.

254. See e-mail from Judge Jack Varin (ret.) to author, *supra* note 82.

255. See IDAHO CODE § 20-525A (2017).

Similarly, Idaho Legal Aid Services, Inc. with the support of the Steele-Reese Foundation has created a “Juvenile Expungement Interactive Forms Packet” that is available online.<sup>256</sup> Like many other interactive forms, Idaho Legal Aid, the Idaho Supreme Court, and the Idaho Commission on Aging have partnered to provide these forms.<sup>257</sup> “The interactive forms were developed for use by limited income people representing themselves in a civil court matter, but are free of charge to all.”<sup>258</sup> The work would be minimal for the State to inform juvenile offenders that these forms are available. To streamline the process and create a uniform process, it is recommended a procedure be established to inform youth of their eligibility for expungement.

Notification should include notice and verification when records have been expunged. There is no statutory requirement to notify juveniles who complete a diversion program that their records are removed from the central database, and of course, there is no notification that the juvenile offender can further request expungement for all other related records such as fingerprints and arrest records held by other agencies.

However, in addition to notification, the State must clarify in the statute that expungement may be pursued as a pro-se petition despite having an attorney at the time of adjudication. With proper instructions, most juvenile offenders may be able to apply for expungement without legal representation. By allowing juvenile offenders to represent themselves in an application for expungement, this would allow for further accessibility and less delay.

Lastly, the State should eliminate the wait time for all juvenile offenders. While other states permit expungement at the termination of a case—allowing for termination and expungement in the same hearing—other states require a year wait and even a two-year wait.<sup>259</sup> However, expungement in Idaho means that records are sealed from public view—they are never destroyed, and expungement poses no risk to public safety.

Public interest is often raised as the greatest concern when it comes to expungement. Particularly in Idaho, expungement of records does not equate to destruction of records. The records are maintained by both the courts as well as law enforcement and other agencies. By law, “a special index of the expungement proceedings and records shall be kept by the court ordering expungement, which index shall not be available to the public and shall be revealed only upon order of a court of competent jurisdiction.”<sup>260</sup> If the concern for public interest is that repeat offenders are not absolved of their crimes unduly, just remember, expungement

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256. *Juvenile Expungement Forms*, IDAHO LEGAL AID SERVS., INC., <https://www.idaholegalaid.org/node/2568/juvenile-expungement-forms> (last accessed Apr. 14, 2019).

257. *Self Help – Idaho Interactive Forms*, IDAHO LEGAL AID SERVS., INC., <https://www.idaholegalaid.org/node/2207/self-help-idaho-interactive-forms> (last accessed Apr. 14, 2019).

258. *Id.*

259. For example, in Alabama juvenile records can be sealed after two years since the termination of court supervision. When the juvenile offender turns twenty-three, he can request that all records be expunged (completely destroyed). *Alabama Juvenile Criminal Records Forms – Adjudicated*, PAPILLON FOUND., <http://www.papillonfoundation.org/criminal-record-resources/alabama/juvenile-forms-adjudicated/> (last visited Apr. 14, 2019).

260. IDAHO CODE § 20-525A (2017).



in Idaho means that records are sealed from public view—they are never destroyed, and expungement poses no risk to public safety.

Despite maintaining the records, juvenile offenders are unlikely to reoffend as adults.<sup>261</sup> Most importantly, most juvenile offenders pose no threat to public safety.<sup>262</sup> Also consider that the Juvenile Law Center’s 2014 survey reports that 95% of youth arrested countrywide are arrested for non-violent offenses.<sup>263</sup>

However, for the limited juvenile cases involving victims, victims are notified that a petition for expungement has been made and the date of the hearing in which the victim may testify.<sup>264</sup> Also, victims are entitled to receive the name, address, and telephone number of the juvenile offender involved; the name of the juvenile offender’s parents or guardians, and their addresses and telephone numbers; copies of the petition, the decree, and orders of restitutions; and any other information as provided in title 19, chapter 53 of the Idaho Code.<sup>265</sup> It further allows the court to consider the impact to victims in allowing the release of juvenile court records if the court finds, upon a motion made by the prosecuting attorney, interested party, or other interested persons, that the public’s interest in the right to know outweighs the adverse effect of the release of the records on the juvenile’s rehabilitation and competency development.<sup>266</sup>

## V. CONCLUSION

Limiting the ability to expunge a juvenile record due to time fails to meet the goals of the JCA. The JCA, unlike any other state statute that provides for such accessibility to juvenile records, must focus on the rehabilitation of the juvenile to determine an unwaivable restriction to expungement, and lacks a notification method to support juvenile offenders who have successfully assimilated to adulthood. The recommendations outlined here are within the goals and further the mission of the JCA. It protects the future of our youth and the safety of our citizens. Expungement in Idaho means that records are sealed from public view—they are never destroyed, and expungement poses no risk to public safety.

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261. RIYA SAHA SHAH & LAUREN A. FINE, *FAILED POLICIES, FORFEITED FUTURES: A NATIONWIDE SCORECARD ON JUVENILE RECORDS*, JUV. L. CTR. (2014), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/scorecard.pdf>.

262. *Id.*

263. *New Study Reveals Majority of U.S. States Fail to Protect Juvenile Records*, JUV. L. CTR. (Nov. 13, 2014), <http://jlc.org/blog/new-study-reveals-majority-us-states-fail-protect-juvenile-records>.

264. IDAHO CODE § 20-525A (2017).

265. IDAHO ADMIN. CODE r. 32(g)(9) (2017).

266. IDAHO ADMIN. CODE r. 32(g) (2017).

## APPENDIX A

**Idaho Legal Aid Services, Inc.**<sup>267</sup>**Instructions for Petitioners**

**Info you will need to complete this form:** 1) The case number for the case you want to have expunged; 2) What the exact juvenile criminal charge was (including the statute you were charged under) and whether it was a misdemeanor, status offense, or felony. 3) The county you were charged in. 4) The date that you were no longer under the oversight of the Juvenile Corrections Act (the date your sentence and conditions were all fully completed). 5) The names and addresses for the prosecutor, court, sheriff or police department involved in your case. 6) The date you were found guilty or the date your case was dismissed. 7) A list of life skills you have developed since the juvenile charge.

**\*\*If you do not have all of the information you need to complete this form, complete the following steps:** 1) Go to “iCourt” at <https://icourt.idaho.gov/>; click on the “Portal” hyperlink; click on the “Smart Search” hyperlink; 2) Go to the Idaho Supreme Court Data Repository at <https://www.idcourts.us/repository/start.do> and click on “Name Search”; 3) search for your cases. Sealed cases will not show up on the search results. To get sealed case information, contact the Juvenile Prosecutor’s Office or your Public Defender or other lawyer who handled your case.<sup>268</sup> 4) Once you have found all of the charges and case numbers linked to your name, you can then obtain copies of your juvenile case records from the county where your case was filed by making a Public Records Request, visit the county’s website to find information on how to make your public records request, or call the county, or visit the county juvenile clerk’s office\*\*

**Am I eligible to use this form?**

- You must have been under the age of 18 when you committed the act that led to the juvenile charge.
- You cannot have been convicted of a serious crime since the juvenile charge and cannot have pending criminal proceedings.
- If the juvenile charge was for one of the following crimes, it cannot be expunged: (a) Administering poison with intent to kill (18-4014, Idaho Code); (b) Aggravated battery (18-907, Idaho Code);

267. *Instructions for Juvenile Expungement, Juvenile Expungement Forms*, IDAHO LEGAL AID SERVS., INC., <https://www.idaholegalaid.org/node/2568/juvenile-expungement-forms> (last visited Apr. 14, 2019).

268. The author notes that information for diversion cases can be requested from the prosecutor’s office. If the case is removed from the state central database, expungement of a police report, fingerprints, and other records is still possible. Because diversion is a program in control of the prosecutor’s office, that office is the best source for information. If the prosecutor’s office does not have information related to your diversion case, information can be requested from the police department or sheriff’s office to determine whether any records exist in their agency to request expungement of those records if they were tied to a diversion case.

- (c) Armed robbery (chapter 65, title 18, Idaho Code);
- (d) Arson (chapter 8, title 18, Idaho Code);
- (e) Assault with intent to commit a serious felony (18-909, Idaho Code);
- (f) Assault with intent to murder (18-4015, Idaho Code);
- (g) Assault or battery upon certain personnel, felony (18-915, Idaho Code);
- (h) Forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);
- (i) Infamous crime against nature, committed by force or violence (18-6605, Idaho Code);
- (j) Injury to child, felony (18-1501, Idaho Code);
- (k) Kidnapping (18-4501, Idaho Code);
- (l) Murder of any degree (18-4001 and 18-4003, Idaho Code);
- (m) Rape, excluding statutory rape (18-6101, Idaho Code);
- (n) Ritualized abuse of a child (18-1506A, Idaho Code);
- (o) Sexual exploitation of a child (18-1507, Idaho Code);
- (p) Unlawful use of destructive device or bomb (18-3320, Idaho Code);
- (q) Voluntary manslaughter (18-4006 1., Idaho Code);
- (r) A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;
- (s) A violation of the provisions of section 37-2732B, Idaho Code, related to drug trafficking or manufacturing of illegal drugs.

#### **When Can I Use This Form?**

- If your juvenile offense was a **misdemeanor** or status offense and you were not committed to the Department of Juvenile Correction, you have to wait **1 year** from the date of termination of the continuing jurisdiction of the court, or after you turn 18, **whichever is later**.
- If your juvenile offense was a **felony**, you have to wait **5 years** from the date of termination of the continuing jurisdiction of the court, or after you turn 18, **whichever is later**.
- If you were committed to the Department of Juvenile Correction, you have to wait **5 years** from the date of termination of the continuing jurisdiction of the court, or after you turn 18, **whichever is later**.
- All fines and court costs must be paid in full before applying for expungement.

#### **Steps**

1. Complete the Petition and Order form.
2. Sign the Petition and Affidavit **in front of a notary**. (Can sign and notarize two versions of the Petition if unsure whether Prosecutor will agree to sign your Petition).
3. Take your completed forms to the Prosecutor's Office (in the County

where the offense was charged) to see if the Prosecutor will sign the Petition to indicate that the Prosecutor's Office does not object to the expungement.

4. If the Prosecutor's Office will not sign the paperwork, complete and use the Petition again using the alternate language for when you are unable to obtain the Prosecutor's signature.
5. Get 5-6 envelopes **with postage** and address one envelope to yourself and address the other 4-5 envelopes to the parties and addresses listed on your Order.
6. Make a copy of the Petition for your records. Make enough copies of the Order for each person listed to receive a copy.
7. Take the original Petition, all 5-6 copies of the Order, all 5-6 copies of the Notice of Hearing (if needed) and your envelopes with postage to the Juvenile Court clerk in the County where your juvenile case was handled.
8. Ask the Juvenile Court clerk whether a hearing will be required (may need to call the clerk in 1-2 weeks if she does not know at the time of filing). If a hearing will be held, then move to step 9. If no hearing will be held, then move to step 12.
9. Complete the Notice of Petition and Hearing interactive form. Print the form and make enough copies for each person listed under the proof of mailing (should be 5-6 copies). Get 5-6 envelopes **with postage** and address one envelope to yourself and address the other 4-5 envelopes to the parties and addresses listed on your Notice of Petition and Hearing.
10. Take all 5-6 copies of the Notice of Petition and Notice of Hearing, along with 5-6 envelopes with postage, and file them with the Court.
11. Once the Judge sets a hearing date on your Petition, a copy of the Notice of Hearing will be mailed to you in the envelope you provided. Make sure to attend the hearing at the date and time listed on that notice.
12. If the Judge approves your Petition, a copy of the Order will be mailed to you in the envelope you provided.