1975

Juvenile Court and Arrest Records

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JUVENILE COURT AND ARREST RECORDS

By **Adrienne Volenick***

I. INTRODUCTION

Since its inception in Illinois in 1899, the underlying philosophy of the juvenile justice system has always been that children should be protected from the rigors of criminal prosecution and at the same time be provided with the care and guidance needed to secure their rehabilitation and reorientation into society. Because juvenile offenders are young and impressionable, they are thought to be capable of learning to behave in a socially acceptable manner given the proper supervision and surroundings.

Drafters of juvenile statutes have recognized that however benevolent a juvenile system may be in design, and however successful it may actually be in design, and however successful it may actually be in instilling the proper attitudes and values in a child, society as a whole considers a graduate of the system the equivalent of an ex-convict. The average citizen sees no difference between the act of assault with a deadly weapon committed by an adult and that same act committed by a child. Likewise a commitment to a training school or other juvenile facility is viewed as the equivalent of imprisonment, an outlook also shared by confined children who see their tenure in an institution as "doing time." Furthermore, commitment to a juvenile institution is viewed in the same harsh light whether imposed for an act that would be a crime if committed by an adult or for a status offense such as habitual truancy. Because these attitudes are so prevalent, it is obvious that a child who has been processed through the juvenile system may suffer the same social and economic ostracism faced by an ex-convict.

There are many instances where a person will face discrimination because of his contact with the juvenile court system. Job opportunities may be limited because application forms often require the applicant to state whether or not he has ever been arrested or taken into custody. Even where no conviction has resulted, the fact of arrest may be sufficient grounds for rejection. For example, a survey taken nearly ten years ago revealed that approximately 75% of sampled employment agencies in New York City, as a matter of regular procedure, did not refer for employment any applicant with a record, whether or not arrest was followed by conviction.[1]

Educational opportunities may also be impaired when application forms require information about previous arrests or prior court action. Even if this information is not the basis for automatic rejection, it seems clear that it is, at a minimum, considered. Because of the nature of the information and the public's general suspicion of any contact with police, undoubtedly the consideration is usually to the applicant's detriment.

Recognizing the near impossibility of changing societal views toward juvenile offenders, many legislators have attempted instead to combat the harmful effects of a delinquency adjudication by providing for concealment of juvenile records, on the grounds that such concealment will aid the child's reintegration into society.

II. THE USE OF JUVENILE RECORDS IN OTHER PROCEDURES

As one means of minimizing the adverse effects of a juvenile adjudication, many state statutes provide that no adjudication, disposition, or evidence from a juvenile proceeding is admissible against a child in any criminal or other action, except in subsequent juvenile proceedings involving the same child or as an aid to sentencing in a later criminal proceeding against the same person.[2] In the past, a statute of this sort was considered an adequate basis for preventing the introduction of a witness' juvenile record to impeach him.[3] However, since the decision in *Davis v. Alaska*,[4] it is evident that under certain circumstances a juvenile record will be admissible for purposes of impeachment. In *Davis*, the Supreme Court reversed a conviction because the defendant

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1. *See*, The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967).
2. *See, e.g.*, National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act*, Section 33 (1968), hereinafter referred to a "UJCA."
3. *See, e.g.*, Deja v. State, 168 N.W.2d 856 (Wis. 1969), and Rivas v. State, 501 S.W.2d 918 (Tex. Crim. App. 1973).
4. 415 U.S. 308 (1974).

was restricted from questioning the key witness, a juvenile, about his status as a probationer. The witness was on probation because he had been found delinquent on two charges of burglary. Because he was testifying in a case involving theft, the court felt that it was possible that the child had cooperated with the police in identifying the defendant so that he himself would not fall under suspicion. The court held that cross-examination concerning the juvenile's status was imperative to test his credibility. The trial court's restriction of the cross-examination effectively denied the defendant's rights of confrontation and cross-examination—rights so important that they outweighed any adverse effects resulting from forcing the child to testify as to his juvenile record.

In *In re A.S.*,[5], an adult was granted access to a portion of a juvenile transcript in order to show prior inconsistent statements by a juvenile witness and so impeach his credibility. Although this holding was also based upon the accused's right to confrontation, an important factor in the court's decision was the fact that the juvenile witness had initiated the complaint, making the truthfulness and accuracy of his statements crucial to the state's case.

Despite the *Davis* decision, it is unlikely that courts will allow juvenile records to be utilized indiscriminately for purposes of impeachment. The case does not hold that past adjudications of delinquency are always admissible. It merely suggests that in considering admissibility, the court should carefully weigh the state's policy of protecting the juvenile against the accused's right to confrontation.

Following *Davis*, a New Jersey court in *State v. Brown*,[6] refused to compel the state to disclose the juvenile delinquency records of the alleged victims of an assault. It did, however, order that the state reveal whether the victims currently had juvenile petitions pending against them or whether any of them were presently on probation.

Many pre-*Davis* cases appear to have reached conclusions fully consistent with it and so remain accurate representations of the current law. For example, in *Malone v. State*,[7] a murder conviction was reversed because the trial judge had allowed the state to inquire, on cross-examination, about previous charges brought against the accused in juvenile court. In this context the court held that exposure of a juvenile record could only be used to discredit the accused by marking him as one with a criminal record, despite the non-criminal nature of juvenile proceedings.

Where the credibility of the defendant was an important issue on a charge of receiving stolen property (*i.e.*, did he know the motorcycle in question was stolen?), the court found that cross-examination regarding prior arrests that had not resulted in conviction was prejudicial.[8]

In *Fortsan v. State*,[9] juvenile officers testified that a defendant had a bad reputation for being peaceful and law abiding. This was held admissible under the evidentiary rules admitting testimony as to reputation.

It is generally accepted that a juvenile record may be introduced in later criminal proceedings against a person as part of a pre-sentence report. It is then considered relevant as an aid to the judge in making an informed, intelligent disposition of the case.[10]

Waiver or transfer to criminal court is sometimes thought to authorize the receiving court to open juvenile files and records for inspection by persons having a legitimate interest therein, such as the prosecutor and defense counsel.[11] Usually, however, use is still limited to perusal by the judge in determination of sentence.[12]

Consideration of a juvenile record has been found admissible in a hearing on an application for bail, because such a proceeding concerns the amount of control necessary to secure the accused's appearance and the possibility that his release would pose a threat to public safety. Therefore, the court needs information on the defendant's background in order to make an intelligent decision about his release.[13]

III. ACCESS TO JUVENILE COURT RECORDS

Juvenile court records generally consist of the juvenile petition, summons, notice, findings, orders, decrees, judgment and motions. In addition, social reports prepared by court personnel dealing with the child's background may be included. Nearly every state statutorily limits access to these records to the juvenile or his representatives, court personnel or an agency having custody of the child.[14] At the same time, however, the juvenile judge is often authorized to release this information to an interested third party. This kind of provision is further evidence of legislative recognition of the need to protect children from the harmful effects of having their record made public. However, by giving the judge discretion to release this information to "outsiders," legislators have provided a loophole to leak information to prospective employers, educational institutions or the military, and so adversely affect the child. Nearly all states adhere to the fiction that this kind of statute will protect a child. Only Iowa specifically provides that the legal record of the juvenile court be a public one. Iowa does, however, exclude the reports of juvenile court probation officers, social workers, doctors, psychologists, and juvenile homes from public scrutiny unless the court sanctions their release.[15]

As long as anyone other than the child or his representative has access to court records—as long as a judge may authorize inspection without the permission of the child—these records will haunt him, labeling him a criminal and adversely affecting his future both economically and socially, regardless of the noble intentions of legislators to the contrary.

A more effective means of protecting juvenile records

5. 327 A.2d 260 (Juv. & Dom. Rel. N.J. 1974).
6. 334 A.2d 932 (Sup. Ct. N.J. 1975).
7. 200 N.E. 473 (Ohio 1936).
8. People v. Wasson, 188 N.W.2d 55 (Mich. App. 1971).
9. 474 S.W.2d 235 (Tex. Crim. App. 1971).
10. *See* Massey v. State, 256 A.2d 270 (Del. 1969); Neely v. Quatsoe, 317 F.Supp. 40 (E.D. Wisc. 1970); Taylor v. Howard, 304 A.2d 891 (R.I. 1973); and People v. LaPine, 209 N.W.2d 726 (Mich. App. 1973). *But cf.* People v. McFarlin, 199 N.W.2d 684 (Mich. App. 1972), and Laven v. State, 515 P.2d 578 (Okla. Crim. App. 1973), in which the courts relied on statutory interpretation to conclude that juvenile records were not to be considered in the sentencing procedure.
11. State ex rel. Arbeiter v. Reagan, 427 S.W.2d 371 (Mo. 1968).
12. *See, e.g.*, Thomas v. State, 468 P.2d 1314 (Nev. 1972).
13. Brunetti v. Scotti, 353 N.Y.S.2d 630 (S. Ct. 1974).
14. *See, e.g.*, UJCA, Section 54, and Department of Health, Education, and Welfare, *Model Acts for Family Courts and State-Local Children's Programs*, Section 45 (1975), hereinafter referred to as "Model Act."
15. IOWA CODE §232.54-232.55.

from inquisitive eyes is incorporated into the statutes of many states where either "sealing," "expungement," or "destruction" of records is authorized. Under these provisions, a child or his representative or even the court on its own motion can initiate proceedings to expunge the juvenile's record. In most instances expungement is granted only after a specified period of time has elapsed since the termination of the jurisdiction of the juvenile court.[16] In other jurisdictions a child may be eligible for expungement of his record when he reaches a certain age.[17]

Nearly all states provide that expungement by the juvenile court is discretionary. In Colorado records may be sealed only if the child is not currently under investigation in connection with the commission of a felony or a misdemeanor involving moral turpitude, and if he has not been convicted of either since the termination of the jurisdiction of the juvenile court. Often expungement statutes require that juveniles be rehabilitated to the satisfaction of the court. For example, in Indiana the juvenile judge must determine that the subject of a petition to destroy records "is reformed and has been on good behavior for a period of at least two years" before issuing an order to destroy.

Very few states provide for the automatic expungement of a record without any action by the child and without setting any conditions.[18] Expungement statutes would appear to offer some measure of relief to a child who has been adjudicated a delinquent but may be inadequate to fully protect him from suffering some adverse consequences. If, for example, the statute does not also authorize the court to seal police records, will the public have access to them as so render nugatory the beneficial effects of sealing court records?

IV. ACCESS TO ARREST RECORDS

Arrest records pose many problems in the juvenile area, and only a few solutions have thus far been implemented that have shown any indication of being even minimally effective. In many jurisdictions arrest records of juveniles must be kept separate from the arrest records of the general populace.[19]

Statutes in approximately half of the states place limitations on the police in their accumulation and preservation of fingerprints and photographs of a juvenile taken into custody.[20] In several states the consent of the juvenile judge is required before a child under a certain age may be photographed or fingerprinted.[21] In other areas, dissemination is limited. For example, Montana law prohibits the filing of any juvenile photographs or fingerprints with the F.B.I., the Montana identification bureau or any agency other than the one of origin, except for comparison purposes in the original investigation. These materials must be destroyed after completion of the proceedings unless the court orders their retention for a specific period on good cause shown.[22]

In Ohio the consent of the judge is required prior to fingerprinting or photographing unless the act allegedly committed is a felony and there is probable cause to believe the child was involved in it. Destruction of such materials is mandatory if a complaint is not filed, is dismissed after filing, or when the child reaches twenty-one and has had no criminal additions to his record after his eighteenth birthday.

Several statutes provide for the sealing or destruction of arrest records when court files are ordered sealed.[23] The importance of destroying these records should not be underestimated, since they may exist even where a child is apprehended and subsequently released without court action, or where he is detained and subsequently acquitted of all complicity in the crime.

In New York, in recent years, authority has split over the issue as to whether the Family Court, which is authorized to seal its own records, may do the same with police records. An early case, *Statman v. Kelley,*[24] found no statutory authorization for ordering the expungement of arrest records. In *Statman* students were arrested for the misdemeanor of trespassing and subsequently released after the charges were dropped. The court went so far as to conclude that orderly government required that these records be kept.[25] The opposite conclusion was reached in *In re Smith,*[26] where the court ordered expungement of all indicia of court and police records dealing with the dismissed charges of unlawful assembly and riot. Noting that, in the eyes of many, arrest carries a presumption of guilt, the court concluded that because the petition was withdrawn due to a complete lack of evidence, expungement was crucial. The court found implicit authority to deal with police records in §784 of the Family Court Act, which allowed the court to authorize the inspection of juvenile police records. In *Henry v. Looney,*[27] a child was accused of attempted burglary and then released after a satisfactory explanation was given. The court ordered his police record sealed because its maintenance would provide no benefit to society but did represent great potential harm to the child. The same reasoning in support of expungement was used in *In re J.,*[28] where a juvenile petition was dismissed for failure by the state to present a prima facie case.

> The records may prevent, hinder or delay the consideration of the arrested person for employment,

16. In Utah a one-year waiting period is required, UTAH CODE ANN. §55-10-117; South Dakota requires two years, S.D. CODE §26-8-57.1; Nevada, three years, NEV. REV. STAT. §62.275; and California, five years, CAL. WELF. & INST. CODE §826.
17. In Missouri a child who reaches 17 may petition the court to seal his record. MO. STATS. ANN. §211.321. In Alaska the court must order that a juvenile record be sealed when a child turns 18. ALASKA STAT. §47.10.090. And in Washington, destruction may be effected after a person's twenty-first birthday. WASH. REV. CODE §13.04.250.
18. *But see* ALASKA STAT. §47.10.090(a), which provides for the automatic sealing of a juvenile record within 30 days of a child's eighteenth birthday or, if jurisdiction is retained past eighteen, within 30 days of the date on which the court relinquishes jurisdiction over him. *See also* MONT. REV. CODE §10.1232.
19. *See, e.g.,* UJCA, Section 55.
20. *Id.*
21. *See, e.g.,* KAN. STAT. ANN. 38-815(a).
22. MONT. REV. CODE §10-1218(2)(c).
23. *See, e.g.,* UJCA, Section 57.
24. 262 N.Y.S.2d 799 (Sup. Ct. 1965).
25. *See also* S. v. City of New York, 300 N.E.2d 426 (N.Y. 1973), where the court recognized that it had the inherent power needed to seal its own records but held that it lacked the authority to do the same with police records. *See also,* In re A.P., No. D3245/73 (N.Y. Fam. Ct., August 23, 1974) (Clearinghouse No. 13,487A (3pp.).)
26. 310 N.Y.S.2d 617 (Fam. Ct. 1970).
27. 317 N.Y.S.2d 848 (Sup. Ct. 1971).
28. 353 N.Y.S.2d 695 (Fam. Ct. 1974).

referral by employment agencies, acceptance into colleges and apprenticeship programs, public housing, the armed forces and obtaining a license. These records may also be used to determine whether to make a subsequent arrest, to deny release prior to trial or an appeal and to determine sentence.[29]

Although not a juvenile case, *Doe v. County of Westchester*[30] presents an interesting technique for preventing dissemination of information. There the petitioner was adjudicated a youthful offender and sentenced to a prison term. He applied for an order modifying his sentence on the ground that he wished to join the Army and was told by the court that this would be done if he were inducted. The court held that by statute a police agency, including the sheriff's office, is barred from making available to any public agency, including the Army, official files relating to the case of a youthful offender. The court also concluded that this restriction was in compliance with 18 U.S.C. §1001, which provides that anyone within the jurisdiction of a department or agency of the United States who knowingly falsifies or conceals a material fact or makes false statements can be fined or imprisoned. In addition to enjoining the sheriff from making any disclosure to the Army with respect to the petitioner's arrest and adjudication record, it also ordered that his name be deleted from public records.

A similar action might be useful in the juvenile context to prevent the dissemination of records. If a local statute contains a provision similar to Section 55 of the UJCA or Section 46 of the Model Act, which limit access to law enforcement records, then an attorney may want to ask for a mandamus to compel law enforcement officers to comply with the provisions prohibiting the dissemination of such information to the military, a prospective employer or the representative of an educational institution's permanent office. The major problem with this kind of action is that, to be effective, it must predate release of the record. A child must anticipate the possibility that his record will be divulged and be prepared to bring action to prevent it. All too often he will not be aware either that this information is not available to the public in general, or that he need not reveal it when asked by someone about his past record. For instance, in *T.N.G. v. Superior Court of the City and County of San Francisco,*[31] the court upheld a statutory five-year waiting period before an order sealing arrest records could be obtained. However, the court also held that the incident, in which children were taken into custody but released without further action, could not be described as an arrest, and therefore any child involved could answer "no" to any question as to his arrest record on an application for employment or admission to an institution of higher education.

A recent decision in Washington, *Monroe v. Tielsch,*[32] came out against expungement of both court and arrest records. There, four juveniles ranging in age from ten to sixteen sought expungement of their arrest records and their court files, social and legal. Each had been charged with committing indecent liberties and one had also been charged with shoplifting, possession of a dangerous weapon, and burglary. At the hearing on the indecent liberties charge the alleged victim, with the acquiescence of her father, declined to testify and charges were dismissed. The subsequent petition to expunge was aimed at all the records involved, but expungement was denied for several reasons. The court was of the opinion that other sections of the statute provided sufficient protection against the adverse effects of unauthorized dissemination of arrest records by prohibiting release to prospective employers or nonrehabilitative education institutions. Complete expungement of records was held to be contrary to the philosophy of the juvenile court because it would serve to hide the child's background. Without this knowledge the court could not implement a course of action suited to correct and aid the juvenile. The court also concluded that law enforcement agencies have a legitimate interest in maintaining arrest records. Concurring in part and dissenting in part, one judge felt that the records of arrest should be expunged. His reasoning was based on the right to privacy, as well as on the fact that an arrest record alone is of no probative value, since it indicates neither guilt nor innocence. He did indicate, however, that official court records should be retained.

A New Jersey court reached a conclusion similar to *Monroe* when it found that arrest records were necessary for the proper and effective functioning of a police department and were part of the overall police facilities for criminal investigation, analysis, evaluation and prevention.[33]

The California courts have taken a similar approach when petitioned to have arrest information sealed. In *T.N.G. v. Superior Court,*[34] the court stressed that the police were not authorized to release arrest or detention information to third persons, but that those records were necessary to rehabilitate properly juveniles who become involved with the juvenile system on subsequent occasions. Note that in Washington, New Jersey and California, these juveniles would again be eligible to request expungement of their court records, at least following the expiration of a certain period of time. But all of these decisions discourage attempts to conceal contacts with the juvenile courts.

V. ARGUMENTS FOR EXPUNGEMENT OF AN ARREST RECORD

According the the court in *Wilson v. Webster,*[35] a hearing to determine whether arrest records should be expunged must be held. In *Wilson* students were arrested under highly questionable circumstances in accordance with emergency regulations promulgated to cope with riot conditions existing in the area. The plaintiffs sought an injunction to restrain further lawless conduct by authorities and an order to cancel the arrest records for all class members acquitted of criminal charges or for whom charges had been dismissed without

29. *Id.* at 697. *See also,* In re Anonymous, No. D1143173 (N.Y. Fam. Ct., Aug. 19, 1974) (Clearinghouse No. 13,488A (3pp.)), and In re Anonymous, No. D-3112/71 (N.Y. Fam. Ct., March 20, 1974) (Clearinghouse No. 12,575E,F (8pp.)), where police records were also ordered expunged.
30. 358 N.Y.S.2d 471 (Sup. Ct. 1974).
31. 484 P.2d 981 (Cal. 1971).
32. 525 P.2d 250 (Wash. 1974).
33. Dugan v. Police Dep't City of Camden, 271 A.2d 727 (App. Div. N.J. 1970).
34. 484 P.2d 981 (Cal. 1971).
35. 467 F.2d 1282 (9th Cir. 1972).

prosecution. The district court refused preliminary relief and dismissed the action. Agreeing with the decision to refuse preliminary relief, but feeling that the claim relating to arrest record cancellation should not have been dismissed, the Ninth Circuit held that the plaintiffs should have been allowed an "opportunity to show, if they were able, that those records should be expunged, for their continued existence may seriously and unjustifiably serve to impair fundamental rights of the persons to whom they relate."[36]

Once in court to present a petition for expungement of records, either court or arrest, several supporting arguments can be made. Expungement has often been ordered where the plaintiffs have successfully challenged the legality of the arrest itself. Thus, in *United States v. McLeod,*[37] the court granted the requested expungement of records of adult blacks arrested in an effort by authorities to discourage voter registration. In *Hughes v. Rizzo,*[38] the court ordered the expungement of the arrest records of hippies picked up in mass arrests clearly made without probable cause.

The court took the same stand in *Wheeler v. Goodman.*[39] There, twelve minors alleged harassment by local police that culminated in a raid of an apartment. The occupants were arrested, taken to the police station and fingerprinted and photographed. In court they were released for lack of probable cause to indicate the commission of any crime. Discussing the plaintiffs' request for expungement of their arrest records, the court stated the general rule that "an equity court should not order expunction unless extreme circumstances exist, for example, where records do not serve to protect society or where their future misuse is likely."[40] The court found that the facts this case presented were an example of "extreme circumstances," since the records in question, while theoretically existing to facilitate criminal investigation, could perform no such function because the plaintiffs had committed no crimes. Therefore, criminal investigation would not be served by retention, and the plaintiffs could suffer unreasonable harm. The court stressed that expungement is not always the proper remedy when a person is acquitted or released without prosecution, but was proper in this case.

In *Menard v. Mitchell,*[41] a person was picked up by the police and held for two days without a hearing on the legality of his detention and then released when police found no basis for charging him with a crime. Subsequently he learned that the F.B.I. had obtained his fingerprints as well as other information about him. The court stated:

> [I]t is hard to see how an arrest not based on probable cause, followed by complete exoneration of the person arrested could be used to support any adverse inferences whatsoever regarding him. [I]f appellant can show that his arrest was not based on probable cause it is difficult to find constitutional justification for its memorialization in the F.B.I.'s criminal files.[42]

On remand, the district court declined to order expungement of the F.B.I. records but did limit their distribution.[43] However, in a subsequent appeal the circuit court ordered that the F.B.I. expunge the incident from its criminal identification files. The court found the authority to do so inherent in its powers and not dependent on express statutory provisions.[44]

A challenge to the retention of records where arrest has led to either dismissal or acquittal may be based upon a violation of the right to privacy. In the last century this right has become an established principle of American civil jurisprudence recognized as basic to the Bill of Rights. In *Griswold v. Connecticut,*[45] the intimacies of the marriage relationship were held to be protected by the right to privacy. In *Stanley v. Georgia,*[46] the right to possession of obscene materials in one's own home was established. *Eisenstadt v. Baird*[47] extended the *Griswold* rule to unmarried individuals, and in *Roe v. Wade,*[48] the Supreme Court found the right of a woman to terminate an unwanted pregnancy covered by her right to privacy. Several courts have thus ordered the expungement of an arrest record when the harm to the individual's right of privacy because of adverse unwarranted consequences outweighs the public interest in retaining these records.[49]

It can also be argued that the retention of arrest records of juveniles who have been either acquitted or have had charges against them dismissed violates the due process clause of the fourteenth amendment. The stigma that attaches to a child because of his arrest adversely affects his reputation and so subjects him to a deprivation of property without a hearing.[50] Where records of a child's arrest are disseminated to educators or employers, he is exposed to the loss of fundamental rights and opportunities.[51]

Where a person has suffered because of the existence of a record dealing with charges for which he has not been found delinquent, he arguably has been subjected to cruel and unusual punishment since punishment must be reasonably related to the crime for which it is imposed and must be meted out equitably. It should not be imposed merely because of status.[52] The unintended consequences that may

36. *Id.* at 1283-1284.
37. 385 F.2d 734 (5th Cir. 1967).
38. 282 F. Supp. 881 (E.D. Pa. 1968).
39. 306 F.Supp. 58 (W.D.N.C. 1969), *vacated on other grounds,* 401 U.S. 987 (1971).
40. *Id.* at 65.
41. 430 F.2d 486 (D.C. Cir. 1970).
42. *Id.* at 491-492.
43. 328 F.Supp. 718 (D.D.C. 1971).
44. Menard v. Saxbe, 498 F.2d 1017 (D.C. Cir. 1974). *See also,* Gomez v. Wilson, 323 F.Supp. 87 (D.C. 1971); Bilick v. Dudley, 356 F.Supp. 945 (S.D.N.Y. 1973), as well as U.S. v. Kalish, 271 F.Supp. 968 (D. Puerto Rico 1967), where the court held that an acquittal or discharge without conviction negated any benefit to society that the retention of arrest records might bring, but that mistaken arrest in and of itself was not sufficient grounds for expungement.
45. 381 U.S. 479 (1965).
46. 394 U.S. 557 (1969).
47. 405 U.S. 438 (1972).
48. 410 U.S. 113 (1973).
49. *See, e.g.,* U.S. v. Kalish, 271 F.Supp. 968 (D. Puerto Rico 1967); Eddy v. Moore, 487 P.2d 211 (Wash. App. 1971); and Davidson v. Dill, 503 P.2d 157 (Colo. 1972). Although these are all cases dealing with adults, the retention of the arrest record of a juvenile presents the same potential harm. *See* Doe v. Scott, No. 74-0231-GBH (N.D. Cal.), plaintiffs' memorandum (Clearinghouse No. 12,071C (38pp.)) for an excellent discussion of the right of privacy in connection with the expungement of juvenile arrest records.
50. *See, e.g.,* Wisconsin v. Constantineau, 400 U.S. 433 (1971).
51. For an expanded discussion of this point, *see* Doe v. Scott, Clearinghouse No. 12,071C (38pp.), and In re Doe, Clearinghouse No. 6178A (34pp.).
52. Robinson v. California, 370 U.S. 660 (1962).

flow from the retention of an arrest record where a child must be presumed legally innocent can be a harsh punishment, limiting his future opportunities.[53] In *Doe v. Scott,* plaintiffs also argued that the retention of arrest records of those convicted with those of the innocent violated the equal protection clause, because a stigma of criminality attaches to both groups equally. Unless the state can show a compelling state interest to justify this practice, it should be struck down.

VI. CONCLUSION

The stated policy of nearly every state is to protect the confidentiality of a child's juvenile record. However, juvenile records appear to be available to anyone who seeks access to them. This is due in part to the loose language typically found in juvenile statutes.

Provisions for sealing or expungement of records usually apply only to court records—not those of arrest or those in the possession of social agencies. In addition, nearly all statutes require a person to apply for the expungement of his own record but permit this only after a lengthy waiting period. Further, the judge has great discretion in deciding whether to grant or deny the application.

If the benevolent, rehabilitative purposes of the juvenile court are actually to be served, then expungement of all records, court and arrest, should be automatic. There should be no unwieldly process that the child must initiate in order to get results. Rather, the court, police, and social agencies should be required to expunge all records when juvenile court jurisdiction is terminated.

In addition, the statutes should authorize the expungement of arrest records that do not result in the filing of a petition or which result in the acquittal of the child. Since no state statute currently provides for such a procedure, persons interested in drafting new proposals along these lines should see Michigan House Bill 4704, Section 44 (1975),[54] drafted by a committee including Legal Services lawyers assisted by the National Juvenile Law Center.

53. *See* Doe v. Scott, Clearinghouse No. 12,071C (38pp.).

54. Clearinghouse No. 13,227 (35pp.).

NATIONAL HEALTH LAW PROGRAM

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The Closing and Divestiture of Public Hospitals: Public Responsibility for Health Care of Indigents

As the national economic picture worsens, the number of persons suffering substantial income loss to the point of indigency is increasing. For most of these newly poor, and indeed for the many other previously poor, Medicaid standards of indigency are too low to enable them to qualify for benefits. Even in those states with Medically Needy programs, there are increasing numbers of people who are closed out of the private sector of medical care for financial and other reasons, including transportation problems, shortage of physicians willing to accept Medicaid patients for racist, classist, cultural or financial reasons, language barriers, *etc.* The traditional havens of last resort for those seeking medical care but unable to pay for it have been the public hospitals.

In California, state law specifies that responsibility for care of indigents lies with the counties (WELF. AND INST. CODE §17000). Historically, counties have chosen to meet that obligation by establishing county hospitals, which, despite many shortcomings, comprised the only health care delivery system with continuous access for the poor. As of early 1975, 16 of California's network of 49 county hospitals have been closed or have transferred their management from the county to other bodies, and 5 more are on the verge of closure. Other counties have instituted stricter billing and collection procedures, all of which adversely affect access of indigents to health care.

Many factors account for this divestiture of hospital operation by county government. As the state sought to cut back its share of direct Medi-Cal (Medicaid in California) payments to county hospitals, forcing the counties to assume a greater share of hospital costs, the state also decreased reimbursement levels under Medi-Cal. Coupled with another law (SB 90) forbidding county governments from raising the property taxes to offset increased costs, operational losses from the county hospitals were running into the hundreds of thousands of dollars.

The greatest inflation in hospital cost was due in large part to the infusion of public dollars into the private, uncontrolled health industry through Medicare and Medicaid. The generous allocation of Hill-Burton construction funds to private hospitals greatly increased the bed supply and offered competition to the county hospitals for those patients with Medi-Cal coverage or other paying capabilities, while "dumping" on the public facilities the sickest, poorest and otherwise least desirable patients. Hospital utilization has been decreasing, due primarily to shorter average lengths of stay. These lower occupancy rates in the private hospitals have also increased the competition for Medi-Cal and other paying patients.

County governments have increasingly fallen under pressure from the private hospitals and local medical societies to save private facilities at the expense of the public ones, using the arguments that private care is better for the patients, and that government should not be in competition with the private sector, but should merely fill in the gaps left by private care. In California, the historical basis for this attitude can be traced to a 1933 court decision enjoining Kern General Hospital, the county institution, from accepting paying patients, the court holding that local governments cannot "engage in private business or enterprise" (*Goodall v. Brite,* 11 Cal. App. 2d 540, at 544). Although the 1965 California Medicaid legislation did empower and encourage county institutions to