

Juvenile Expunction

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"Janelle's" Story





Collateral Consequences of a Juvenile Record in Oregon

A juvenile
adjudication is treated
like an adult criminal
conviction

- May impact access to higher education
- Limits employment opportunities
- Limits ability to obtain occupational licenses
- May impact access to housing
- Can prohibit a person from carrying a firearm, limiting employment opportunities
- May preclude military enlistment
- May affect immigration status
- May result in sentencing enhancements



What is wrong
with the current
law?

In 2014, the Juvenile Law Center's national evaluation of juvenile **expunction** statutes **scored Oregon below the national average** on factors including the following:

- Access to automatic expungement
- Timing of expungement
- Availability of expungement based on the offense

Report Cards are available here:

<http://povertylaw.org/clearinghouse/articles/juvenile>

<https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/scorecard.pdf>



Why Change the Expunction Statute?

Scientific studies show that youth are prone to impulsive, risk-taking behaviors because their brains are not fully developed. For similar reasons, science shows that youth significantly benefit from rehabilitative and often “outgrow” their problematic behaviors.

~McArthur Foundation Research Network on Adolescent Development and Juvenile Justice; Coalition for Juvenile Justice

Collateral Consequences:

- Forestall youths’ development into productive citizens
- Cost taxpayers money
- Make communities less safe

“Making juvenile records publically available does very little to advance public safety while narrowing the path to success that the juvenile justice system was designed to provide.” ~ ABA, 2015



Where should
we start?

In 2015, the ABA Commission on Youth Risk wrote a model code on expunction and confidentiality, that was formally adopted by the ABA in 2015.

The ABA Model Act:

- Has been vetted by the ABA
- Reflects national best practices
- Provides the framework necessary to remedy the short-comings of Oregon's statute

<https://www.americanbar.org/content/dam/aba/images/abanews/2015annualresolutions/103a.pdf>

"This Act is intended to protect juvenile and adult citizens against the damage stemming from their juvenile delinquency records, and the unauthorized use or disclosure of confidential records and any potential stigma that would result from their disclosure."



How does
Oregon's current
statute work?

No automatic
expunction.

- No Juvenile records are automatically expunged.
- Expunction of records **MUST** be ordered if the person was **never found** to be under juvenile court Jurisdiction, but:
 - A person or the juvenile department **MUST APPLY** for expunction or the court must move for an expunction **after age 18**
 - The District Attorney must be notified of the application. If the District Attorney objects to the motion the court **MUST** hold a contested hearing.



How does
Oregon's current
statute work?

Mandatory
expunction with
5 year waiting
period for
eligible offenses.

- Expunction **MUST** be ordered if the offense is eligible and:
 - It is 5 years after juvenile court involvement
 - There have been no new felonies or A misdemeanors
 - There is no pending law enforcement investigation
 - There is no current criminal or juvenile court involvement
- BUT, the person or the juvenile department **MUST APPLY** for expunction or the court must so move.



ABA Model Act: Automatic expunction of some records.

- When a youth was **never found within the court's jurisdiction**, the ABA Model Act provides for immediate automatic expunction at the termination of the case.
- For **lower-level offense** adjudications, the ABA Model Act provides for automatic expunction two years after termination of the case if there have been no further charges.



How does
Oregon's current
statute work?

No opportunity
for expunction
for many
offenses.

- For eligible offenses, the court *MAY* order an expunction if the mandatory expunction criteria are not met but the judge finds that expunction would be in *the best interest of the person and the public*
- Many offenses, including attempted offenses, are never expungable, regardless of proven rehabilitation



ABA Model Act: Opportunity for expunction if rehabilitated.

- Within statutory parameters, and with the ability for the DA's office to object, judges have the discretion to consider granting an application for expungement of any offense, under the ABA Model Act.



What should we do?

Oregon should amend its law to reflect national best practices and:

- Allow for automatic expunction (e.g., expunction without an application or motion) under specific limited circumstances
- Eliminate or reduce the current statutory waiting periods for mandatory expunction.
- Allow for a judge to grant expunction for any offense after a hearing (when certain conditions are met).
- Better align current law with the *ABA Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records*.