

Strategies

Deconstructing the Architecture of Discrimination in Juvenile Justice

James Bell is Founder and Executive Director of the W. Haywood Burns Institute, a San Francisco non profit organization that promotes racial equity in juvenile justice. Bell is a national leader in creating and implementing approaches to minimizing disproportionate minority contact.

Q: Why did you create the Burns Institute?

A: I was a civil rights lawyer at the Youth Law Center in San Francisco doing what was basically prison litigation for kids. I sued facilities around the country to make sure that they were adhering to the constitution and providing constitutional requirements for the humane

housing of young people. It was through that work that I noticed there were more and more kids of color in these facilities than there should be. One of the things I wanted to do was specifically find out why, rather than saying, 'oh that's just the way it is,' or 'they do the crime so they do the time.' I began to formulate this idea of looking at the system, and looking at every decision-making point in that juvenile justice system and seeing where it was that kids of color got Velcroed in, and white kids got Tefloned out. I just never bought into the idea that white kids did not commit crimes. There had to be some place, if you looked objectively, that kids of color were being more sucked in and white kids were not. That's what began to get me involved in this work.

Q: Describe how youth of color were treated before juvenile courts were created.

A: Well, we've just written our first publication called *Adoration of the Question*, which, for the first time, details what was happening to kids



of color from the earliest days of this nation's founding. What we know is that many of these facilities were segregated. The notion was that investing in black families was a waste of money, so there were no treatment services put in place for them. Down south, of course there was slavery, so we know what was happening there, but in those places where there were freed black people, black youth were not given the benefits of juvenile facilities, and they were put in work camps with adults. Native Americans, of course, were placed in boarding schools so that they could be 'civilized' and they were removed from their reservations and other tribal places. Each ethnicity had its own treatment.

Q: How do you account for the disproportionately high rates of youth of color in the juvenile justice system?

A: I believe there is a gigantic centrifugal force that sends kids of color who are mostly poor into the juvenile justice system, because the

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A MESSAGE FROM THE PRESIDENT & CEO

Greetings, and welcome to the Summer 09' issue of *Strategies*, the journal of ideas from the Chicago Urban

League's Policy & Research Department.

Research is the foundation on which all our work stands; policy is how we put that research to action. *Strategies* lies at their intersection, where theory and practice come together. Four times a year our policy staff asks scholars, educators, political experts and other top-flight thinkers to weigh in on new and interesting ideas and programs affecting Chicago's African-American community.

This issue is devoted to understanding the crisis of disproportionate minority contact in the juvenile justice system and its effects on people of color. Disproportionate minority contact threatens the economic health of our city and state: youth of color make up two-thirds of youth in juvenile detention and commitment facilities even though they only represent one-third of the adolescent population, according to a recent *Models for Change* study on DMC in Illinois.

In this issue we have assembled a cross-section of scholars and activists to understand the roots of the crisis. This issue also promulgates policy ideas to help Illinois move forward. Authors of this issue include James Bell, Founder and Executive Director of the W. Haywood Burns Institute, Miguel A. Lewis, DMC Coordinator of the Cook County Juvenile Court, Erica Hughes, Lindsay Bostwick, and Mark Myrent, researchers at the Illinois Criminal Justice Information Authority, and Brittany I. Bohn, policy fellow at the Civitas ChildLaw Center at Loyola University Chicago School of Law.

We must take steps to reverse the causes and effects of DMC. The steps we take now can ensure a better future for our children and our communities. So let's get moving.

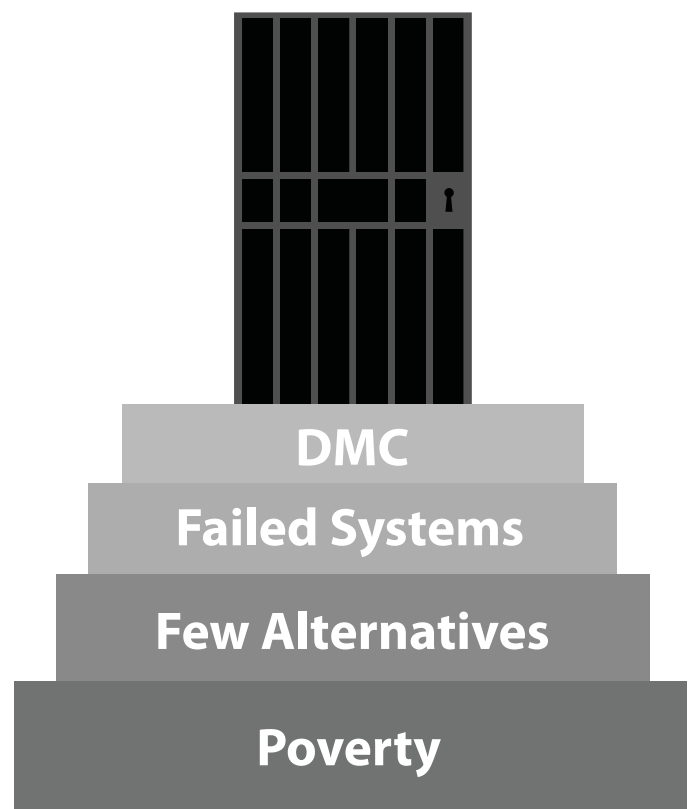
Cheryl R. Jackson
President & CEO
Chicago Urban League

other child systems have failed. The mental health system is failing; the physical health system is failing; the No Child Left Behind Act; Zero Tolerance in the schools; federal housing policies; they have all failed minority poor youth.

I believe there are all of these drivers and that we as a society believe that when these other services fail, it's ok to lock kids up to get intervention, and kids of color bear the brunt of that. One very significant point that infuriates me; if you're a kid who is traumatized by violence or something that you witness in your neighborhood, and you don't get out to see a physician or shrink, that trauma is going to manifest itself in some way. It will manifest itself in terms of antisocial behaviors that will land you into detention, when really what you need is some therapy, or somebody not to label you, or somebody to give you a timeout from the stresses that you have. These are things that people with means have, but they don't get put in the criminal justice system. And so, in my opinion, what accounts for the disparities is that kids of color are locked up to get services, and it's a bargain that society is more than willing to accept.

Q: To what extent do juvenile justice practices and policies contribute to disproportionality?

A: We live in a society where unfortunately incarceration is a primary instrument of social control for poor



Black youth detention relative rate indices, 2007

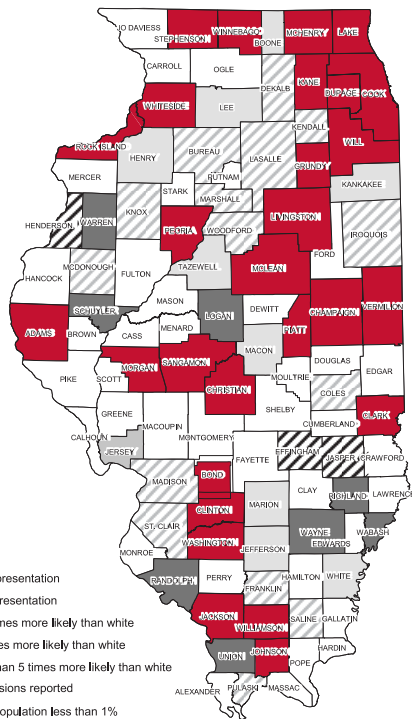
minority children. What happens is the system incarcerates youth to “fix them” and a lot of policies go in that direction. If you send your child to a private school for \$28,000 a year, when he/she gets in a shoving match with another child in the hallway, you do not anticipate that your child will end up in juvenile hall, because what you’re paying \$28,000 a year for is tolerance. Meaning ‘ok kids, stop it.’ If you send your child to a public school, and he/she gets into a shoving match with another student, your child is committing “assault”, and the system sends him/her to juvenile hall as a result. So there are a lot of policies that lend themselves to using incarceration as a way to intervene in the lives of kids, and poor and minority youth bear the brunt of those policies.

Q: What are some of the challenges you face in cultivating alliances between the various juvenile justice stakeholders?

A: One challenge is getting adults to cooperate, and to see that doing business differently is worth their time and effort. It’s so easy to conduct business as usual, and unfortunately, if you are a good administrator, you may not be rewarded for doing a good job. When the budget cuts come, the administrator that does a horrible job gets their budget cut just like the administrator that does a great job. So unless you have a moral center of integrity, there’s really no benefit to engaging in running a system that’s humane and uses incarceration as a last resort. So the real barriers are getting people to engage in this work because they see that it has a benefit to the young people served. There’s no incentive really to do anything good, except for your own sense of integrity. So the hardest thing is to instill stakeholders with a sense of possibility and get them to do what it takes to make those possibilities happen.

Q. How would you compare juvenile justice in other countries to the U.S.?

A: There’s something about our country’s jurisprudential DNA that has incarceration as our primary instrument of social control. We’re addicted to it. If you think of any social ill, our first impulse is to criminalize it. Take drinking; if you’re drunk, it’s a



Sources: Juvenile Monitoring Information System and U.S. Census Bureau.

crime. Any social thing. Prostitution: it’s a crime. Other countries are further ahead of us in juvenile justice because they don’t have that impulse. It’s easier for other countries to embrace restorative models of intervention. We, as a country, have to overcome that initial “lock them up” instinct. “We’ll deal with that, but first we have to lock them up. We’ll get to the restitution, but I want my pound of flesh.” In other countries, either they’ve overcome that, or they didn’t start there. When you construct a system that has incarceration as the last resort, you begin to see much more humane and effective approaches. In other countries, detention and jail are really the last resort. So there are all kinds of things they set up as alternatives to incarceration. Melbourne, Australia is a metropolitan area of about 5 million people; they have 30 kids in detention. Now compare that to the numbers in Cook County.

Q: So you’re saying that a system geared toward incarceration for some reinforces and perpetuates the inequity it claims to fix?

A: I can’t overemphasize this notion of incarceration as a primary instrument to try to get youth to behave differently. This is something that I’ve never been able to get the civil rights community to understand; the impact that incarceration has on a fourteen year old who’s poor. If you come from resources and means, the system is going to try to keep you out. There are unwritten rules about who the system is appropriate for, and who it’s inappropriate for. If you think about when people heard on the news that former President George W. Bush’s daughter, Jenna Bush, was busted for underage drinking, no one ever thought that she could possibly go to juvenile hall. However, if a poor minority kid was busted at that same bar for underage drinking, it would be assumed he/she would be going to juvenile hall. So in other countries that embrace restorative justice, everybody is a Jenna Bush. So the question we need to come to terms with is: how do we, as a country, get the conceptual frame we have for Jenna Bush, to be the conceptual frame we have for all those nameless and faceless people of color that come before the system?

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Q. What are the factors that prevent juvenile justice stakeholders from tackling these problems you identify?

A: If human beings don't want to do something, we can always figure out a way to not do it that makes sense. In fairness to these stakeholders, it's not that they don't want to do it for bad reasons, but they feel like they really can't impact the problems of race, crime, punishment, ethnicity, and youth, without solving the larger problems of poverty, racism, distribution of wealth, etc. A lot of it comes from the fact that they think these problems are so insurmountable that there's not much they can do. Many people would do something if they knew what to do. So what they need is guidance, and a sense that they can do something without having to solve all of those larger problems. So the distractions come about when people don't want to do anything or want to do something but they don't quite know what to do.

Q: At the Burns Institute, what are some of the tools that you equip organizations with to reduce disproportionate minority contact?

A: We identify through our data analysis where kids of color are. We look at the decision points to see where kids of color are sucked in, and then we help fashion a result. We have developed surveys for staff to find out why they believe there are disparities and what they can do about it, if anything. We've developed data templates. We've developed training. It's our belief that you need community folks at the table that know these communities when you start to deal with racial and ethnic disparities. We've developed materials to bring these communities up to speed, so they can talk the language of the system's people and come to the table as equal partners that can really participate in these conversations.

Q. What themes have proven useful to combat this DMC issue?

A: Intentionality. Focus. Gathering data to identify where the problems are. Instituting a policy or practice change to address the problem and then monitoring it to see if you made a difference.

Focus on Cook County: Children and Mental Health

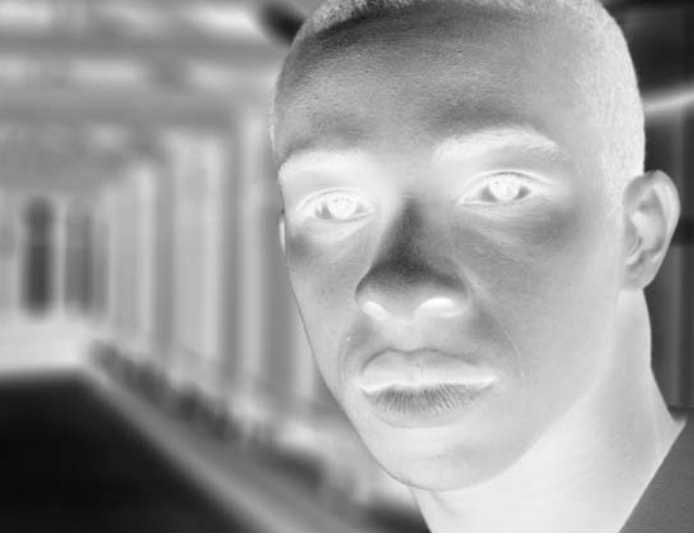
By Miquel A. Lewis, Psy.D

The disproportionate involvement of African-American and Latino children in juvenile justice has been attributed to many factors - institutional racism, socioeconomics, even parenting practices. The literature on prevalence rates does not indicate mental health needs to be a primary factor. In fact, Grisso (2008) reported that although 30% of youth in a sample study with persistent mental health problems were persistently delinquent, only 15% of persistently delinquent youth had persistent mental health problems. Nevertheless, early attention to youth mental health needs is necessary for reducing disproportionate minority contact, protecting the community and reducing repeat offending.

There are approximately 58 million people under the age of 18 in the U.S. In 2007, law enforcement agencies arrested more than 2 million of them, approximately 3% of the population. Youth substance abuse is estimated at better than 40% among delinquent youth, but only 15% among non-delinquent youth. Estimates suggest that over 10% of youth in juvenile justice systems manifest symptoms of clinical depression.

According to the Surgeon General's report on mental health -- anxiety, disruptive disorders, and mood disorders are the most prevalent mental illnesses in the adolescent population. In Cook County, mental health statistics in the juvenile justice system mirror national data. To better understand the needs of the children, Cook County focused attention on early screening of mental health and substance abuse.

Objective assessment instruments offer the promise of enhanced delivery of appropriate services to return minors to the community with reduced risk of re-offending. The Cook County Probation Department began using the Massachusetts Youth Screening Instrument II (MAYSI-2) in 2007. The MAYSI-2 is a screening tool designed to assist juvenile justice administrators in identifying the mental health and/or



How to Mitigate DMC in Illinois: Start with Better Data

By Erica Hughes, Lindsey Bostwick and Mark Myrent

substance abuse treatment needs among youth 12 to 17 years old. Using pencil and paper, youth respond by circling *yes* or *no* answers to a series of simple questions designed to reveal signs of alcohol or drug use, anger, depression, suicidal thoughts, traumatic experiences, anxiety, and other thought disturbances. MAYSI-2 has been effective in assisting the Court in identifying the emotional and behavioral needs of children, whether they are found guilty or not.

The Court has committed to reducing the overrepresentation of children of color in juvenile justice settings. To uphold this obligation, a goal of the Court is to make resources available that will be of most benefit in reducing a child's risk of re-offending. Although mental health is not the number one factor driving involvement of minority children in the Juvenile Justice system, it is the collective responsibility of mental health practitioners to advocate for juvenile justice policies that do not marginalize a particular group of people. Safeguards such as Racial Impact Statements can be incorporated into new legislation so that policy-makers approach the passing of new laws with forethought of the potential disparate impact on communities of color.

The Court is a public service agency. We embrace opportunities to serve the community with the benefit of your involvement. Disparate treatment of children of color is one of the most elusive challenges of our time. So, please lend your support, knowledge, and experience to identify and implement resolutions. We are a community of caring, commitment, and compassion.

For more information about the collaborative programs and initiatives of the Circuit Court of Cook County's Juvenile Probation and Court Services Department, please visit www.cookcountycourt.org.

Lewis is a DMC coordinator and Director of Special Projects for the Cook County Juvenile Court of Illinois.

Disproportionate Minority Contact is an increasingly important area of criminal justice that rests on a finding that across the United States a far higher percentage of minority youth are arrested, held, or processed in the juvenile justice system than their representation in the general population. For example, in 1999, minority youth under 18 years old comprised 34 percent of all youth in the U.S., 62 percent of youth in secure detention, and 66 percent of youth in secure correctional facilities. Moreover, in 2003, black youth comprised 16 percent of all youth, 37 percent of youth detained, and 58 percent of youth admitted to adult prisons. The rate of minority overrepresentation in juvenile justice systems across the country has contributed to greater scrutiny of juvenile justice system decision-making and examination of how other factors correlated with race, such as poverty, contribute to the over-representation of minorities in the juvenile justice system.

In order to help address this disproportionality, the federal Juvenile Justice and Delinquency Prevention (JJDP) Act requires each state participating in formula grant programs administered by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP) to assess the extent of over-representation of minority youth in confinement.

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Minorities are far more likely than whites to wind up in the adult criminal system.

African American youth make up 19% of Illinois' 10-16-year-olds, but represent more than 50% of those in detention.

Models for Change is a national initiative funded by the John D. and Catherine T. MacArthur Foundation to accelerate reform of juvenile justice systems across the country.

In 1992, Congress expanded this mandate and required states with an over-representation of minorities in the juvenile justice system to develop and implement plans to reduce it. The OJJDP Act of 2002 broadened the initiative from disproportionate minority confinement to disproportionate minority contact to cover minority youth at all decision points in the juvenile justice system, not just the point where youth are sentenced to incarceration.

In addition to being required by the federal government, identifying disproportionality through the collection of accurate race and ethnicity data is necessary because the data would:

1. Help stakeholders understand whom the system is serving;
2. More accurately identify what decisions are made throughout the juvenile justice process and, in turn, ensure great fairness and objectivity;
3. Help determine what services and resources are needed to address the issue of disproportionality;
4. Help monitor and examine system response to minority youth.

As a recipient of OJJDP grant funds, Illinois must address disproportionate minority contact within the juvenile justice system. Illinois is at a disadvantage to implement plans to reduce DMC, as it is difficult to even gauge the extent of the problem. Very little data on race and ethnicity are collected at the various stages of the juvenile justice system. When collected, they are not always collected uniformly. In fact, the only stages where any data are available by race and ethnicity are detention admission and Illinois Department of Juvenile Justice (DJJ) admission. Data by age, race, and gender are not available for: (1) referrals to court; (2) adjudications; (3) dispositions; (4) probation; and (5) transfers to criminal court.

Arrest data by age, race, and gender are available, but not through the Illinois-Uniform Crime Reporting (I-UCR) Program. Arrest data submitted to this program, the main source of arrest data in Illinois, are collected aggregately by the Illinois State Police. Therefore, no identifying characteristic data are available. One alternative to I-UCR arrest data is the Criminal History Record Information (CHRI), derived from the Illinois State Police's (ISP) Computerized Criminal History (CCH) system. This system uses fingerprint-based arrest cards which, once entered in the system, can be analyzed to determine the age, race, and gender of those arrested.

While these data can fill a void on the demographic characteristics of arrests, there are limitations to using

them to measure disproportionality in arrests. Ethnicity is not captured in the CHRI data, only race. The only categories collected are Black, White, American Indian, Asian, and 'unknown'. Therefore, there is no way to determine the number of Latino youth arrested in a given period.

Additionally, the CHRI data is not inclusive of all arrests. Local jurisdictions determine whether or not to submit arrests for misdemeanors to the CCH system, leading to a lack of consistency in reporting. These inconsistencies create the inability to accurately determine the number of youth arrested in Illinois.

Another issue is the lack of uniform collection of race and ethnicity data across all agencies in the juvenile justice system. Significant inconsistencies exist in the terminology and categories used to record race and ethnicity by these agencies. In addition, the data are collected in inconsistent ways. It is unknown, for example, how many practitioners rely on self-identification and how many identify the race and ethnicity of their clients themselves. Such inconsistencies cause considerable confusion when trying to determine the nature and extent to which different racial and ethnic groups are represented in the juvenile justice system. They also create obstacles to developing effective policies and practices. Furthermore, data are collected by each stage of the juvenile justice system independently of the others. Therefore, data are compartmentalized and it is near impossible to track a youth through the system.

Ideally, researchers should be able to track youth across the different decision points in the juvenile justice system. This would mean tracking youth from arrest through disposition and accounting for demographic characteristics such as age, race, ethnicity, and gender. Following all youth through the system and analyzing the decision-making process at each stage will give researchers, practitioners, and policymakers a better understanding of the nature and extent of disproportionality.

While tracking is not possible at this time, the following recommendations may get us closer to understanding and addressing the issue of disproportionate minority contact with the juvenile justice system.

1. Establish a statewide, multi-agency process for collecting, submitting, and analyzing race and ethnicity data;
2. Train staff on questioning techniques for obtaining race and ethnicity data from clients;
3. Allow race and ethnicity to be self-reported by clients;

- Determine how data on persons identified as “multi-racial” are collected.

In order to gauge the nature and extent of over-representation in the Illinois juvenile justice system, data needs to be more accurate and reliable. If we can accomplish this, we would be better able to determine not only who is in the system, but what their needs are and how to better control the system. In turn, we should be able to address the issue of disproportionality in a targeted effort to assist those most in need.

Bostwick and Hughes are research analysts at the Illinois Criminal Justice Information Authority. Mark Myrent is Associate Director of Research at the Illinois Criminal Justice Authority.

Expunging Juvenile Records: What You Don't Know Can, and Will Hurt You

By Brittany I. Bohn, J.D.

David is a friendly, intelligent 19-year-old. Speaking with David, you would never expect that such an ambitious young man would have difficulty finding a job. You would also never expect to learn that David has a juvenile arrest record. When David was 13 years old and in the 8th grade, he was arrested for allegedly pushing his teacher. He was pulled from the middle of class, handcuffed and taken away, despite his teacher's protests not to arrest him. He was brought to a police station, fingerprinted and held for several hours before his mother could pick him up.

Although he was arrested, David was never charged with any crime or juvenile offense. He never even saw the inside of a courtroom. Instead, he was given a Station Adjustment, an alternative means of addressing delinquent behavior that avoids the risks of court involvement. Instead of having to go to court and face criminal sanctions, he was ordered to perform community service and write a letter of apology to his teacher.

It is unfortunate that African American youth are six times more likely to be arrested than white youth. Law

enforcement agencies are more likely to initiate contact with youth of color and in doing so, treat them more harshly. This disproportionate representation of youth of color in contact with law enforcement is a troubling trend by itself. What is equally, if not more troubling is that law enforcement records resulting from even minor contacts create a paper trail that can create barriers to employment, education, public benefits and other opportunities long after the incident itself.

Confidentiality has been a primary characteristic of juvenile courts since 1899. The purpose is to allow the juvenile court to hold youth accountable, while protecting them from the stigma of a criminal record. However, with the increased sharing of criminal information between city, county, state and federal authorities and the general spread of information via the Internet (even when sharing such information is illegal), it is becoming nearly impossible for youth to enter adulthood with a “clean slate.”

What David did not know is that when a youth is arrested, a juvenile law enforcement record is created, even if the youth is not referred to juvenile court. If the youth is sent to juvenile court, then he or she will also have a juvenile court record. While juvenile law enforcement and court records are generally kept confidential in Illinois, police, court officials, the Civil Service Commission, schools and the military can access juvenile records under certain circumstances.

In addition, juvenile records can sometimes be accessed by private individuals and companies. When a youth is arrested, the local police often send their record (including fingerprints) to the Illinois State Police. Once the record goes to the State Police, it can be sent to the Federal Bureau of Investigation. Once the juvenile arrest record reaches the F.B.I., Illinois' laws protecting the confidentiality of juvenile records no longer apply. The record can then be accessed by private criminal records database companies that provide criminal background information to employers.

When David got to high school, he wanted to get a job right away to help out his parents. He started applying to jobs at big box retailers, grocery stores and fast food restaurants. Despite having good grades, he never received any interviews. David started to worry that his arrest record was keeping him from getting a job.

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One of his high school teachers told him not to worry because his juvenile record was confidential and it would be automatically erased when he turned 18; however, David's teacher was wrong.

In Illinois, expungement laws offer youth the opportunity to have their records

treated as though they never existed. However, expunging juvenile records is a costly, time-consuming and complicated process that must be completed without the right to an attorney. The process is often more difficult and costly for juveniles than for adults. The burden is on the youth to petition the court to have both law enforcement and court records expunged. Because of the burdensome process and often, a mistaken belief that juvenile records will not be harmful, young people rarely petition to have their records expunged. In 2005 only 95 petitions for juvenile records expungement were filed in Cook County.

Because David had never been to court, he didn't realize he had to get his record expunged. By the time he finished high school he was still unemployed and starting to get desperate. He no longer qualified for his parents' insurance and needed a job with health benefits. He signed up for special job training and continued to apply for jobs with no success. He applied for a job at a security company, "aced" his interview and was going through training when he was told that the company could not employ him. The company said that a "red flag" had come up in his background check: a juvenile arrest record. Immediately, David started looking into what he could do, but expunging his record was more difficult than he thought it would be.

David could not afford to hire an attorney to help him expunge his record. He could not afford the filing fees, totaling over \$150. He was also disappointed to learn

it would take roughly 45 days from the time he petitioned the court to get his record expunged, and there was no guarantee that a judge would grant the expungement.

There is an effective, no-cost solution to the difficulties faced by David and thousands of youth that has been implemented in several states. Automatic expungement provides for the expungement of juvenile records by law enforcement or court officials on a minor's 17th birthday, or other date, if the youth meets eligibility requirements. Automatic expungement allows youth with minor law enforcement contact to bypass the difficult petitioning process and enter adulthood with a "clean slate." If automatic expungement had been in place in Illinois, the local police would have automatically expunged David's record and he would not have experienced employment discrimination.

Parents and youth can get information about how to expunge their records, including the necessary forms, from the Illinois Office of the State Appellate Defender's website at <http://www.state.il.us/DEFENDER/juvexp.html>. Residents of Cook County can get free or low cost assistance help from an attorney at the Juvenile Expungement Help Desk. The Help Desk is staffed by the Legal Assistance Foundation of Metropolitan Chicago, with the pro bono support and partnership of DLA Piper LLP (US), in collaboration with the Office of the Clerk of the Circuit Court of Cook County and the Office of the Honorable Curtis Heaston, Presiding Judge of the Juvenile Justice Division. This service is located in the Cook County Juvenile Court Building.

What can you do to help youth like David? Help make young people aware of the potentially harmful future effect juvenile records can have and encourage youth to expunge their juvenile records as soon as possible. In order to clear up the common misconceptions held by youth like David, tell them, their parents, churches and community organizations about the importance of juvenile records expungement and ask them to help spread the word.

Bohn is a policy fellow at the Civitas ChildLaw Center at Loyola University Chicago School of Law.