

Found Out and Opting Out: The Consequences of Online Criminal Records for Families

By
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Online criminal histories document and publicize even minor brushes with the law and represent people who may not even be guilty of any crime. This has dramatically changed the relationship that millions of Americans have with the criminal justice system and may affect their social and private lives. Drawing on interviews and fieldwork with people attempting to expunge and legally seal their criminal records, I explore how online versions of these records impact family relationships. Many who appear on mug shot and criminal history websites are arrestees who are never formally charged or convicted of a crime. The indiscriminate posting of all types of justice contact on websites may impact those who, for the most part, desist from crime and are core contributors to their family and community. I find that many of those who are affected by the stigma of online records did not know that records existed until they “popped up” unexpectedly, and that this experience leads them to self-select out of family duties that contribute to child well-being.

Keywords: Internet; criminal records; punishment

They seen me on this thing called “Mugshots.” And I actually seen myself, and it’s pretty embarrassing. I got probably like five Facebook messages. They were like, “Dude, you’re on Mugshots.” I went and looked it up and seen myself. I was really pretty sure it has to do with like, online access, people exposing other people. Criminals. . . . I would like to volunteer at my daughter’s school but I am not allowed to because of the background check. They give you a list of what you’re not supposed to have on your background. So I’m like, “Well I can’t do that.” And it’s kinda hard telling that to your daughter, “I can’t volunteer today.” She knows I’m working a lot so I just let her think that’s why. I haven’t talked to other parents. I kinda keep my background to myself, because I don’t want people to know or to get into a conversation like, “Oh, what happened?”

—Jaci, expungement-seeker

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Online and informal criminal histories dramatically change the character of criminal justice contact for millions of Americans by documenting and labeling, even the most minor brushes with the law. As Jaci's story reveals, digitization of public records means that troves of governmental data, including individual-level data (such as addresses, birthdates, and arrest histories) are routinely available to anyone with a computer. Jaci was seeking expungement for several low-level drug convictions from more than a decade ago. The booking photo she referenced in our interview came after an arrest three years prior for a domestic altercation involving a former boyfriend. While those charges were later dropped, her booking photos from these recently dismissed charges continued to haunt her. Jaci's case illustrates the seeming digital permanence of both long-ago conviction records and more recent arrests that never lead to charges or convictions.

The Internet has drastically changed the definition of a "criminal record" by transforming a single record into a multitude of data sources (Jacobs 2015). Online records now include Facebook pages that list recent arrestees, jailhouse rosters reposted on blogs, and booking photos on a Google image search return. The effects of online criminal histories are indiscriminate and all-encompassing, affecting those with extensive involvement in the criminal justice system as well as expanding the pool of the punished to include those who are never convicted of any crime.

In the analysis to follow, I show how online records of criminal justice contact impede routine aspects of family life and caregiving. My contribution to this volume asks whether and how the digital transformation of criminal history data stigmatizes and labels those with even the most minor criminal records. I place this in the context of parenting and caregiving, showing how these online criminal records, no matter their verity, lead parents to purposefully avoid the risk of being Googled and "found out."

Background

Child well-being and caregiving with a criminal history

There is general consensus that parental involvement and networks of social support contribute to children's well-being (Hauser, Brown, and Prosser 1997; Bowlby 1988; Fomby and Cherlin 2007; Chu, Saucier, and Hafner 2010). Research also documents the (mostly) detrimental effects of incarceration on family caregiving and romantic relationships (Hirsch et al. 2002; Lopoo and Western 2005; Western 2006; Holzer, Raphael, and Stoll 2007; Comfort 2008; Apel et al. 2010; Massoglia, Remster, and King 2011; Turney and Wildeman 2013; Apel, this volume; L. Andersen, this volume). Paternal incarceration also increases children's mental health and behavioral problems (Wakefield and Wildeman 2011, 2014; Wildeman 2010). Even low-level contact with the justice system (and its resulting documentation online) influences family relationships in similar ways, even though the "offenses" might be only arrests or misdemeanors.

Though these types of contact might result in several days in jail, these experiences psychologically and emotionally affect the everyday lives of family members (see Comfort, this volume).

There is growing evidence that even lesser contact with the justice system produces effects that are increasingly similar to those of felony convictions (Roberts 2011), even though charges for nonfelonious crimes—as much as half, in some localities—are dismissed (Kohler-Hausmann 2013). Yet less is known about the effects of minor or limited criminal justice contact on caregiving and child well-being. Additionally, research has not adequately captured the differential effects associated with varying levels of severity or frequency of contact with the justice system (see Wakefield, Lee, Wildeman, this volume).

Evidence does, however, consistently show that contact with the law is often accompanied by a host of outcomes that very likely have trickle-down effects on children, such as inhibiting parental educational attainment, restricting employment opportunities, negatively impacting financial well-being, limiting residential mobility, and preventing prosocial behaviors such as volunteering and voting (Sampson and Laub 1993, 1997; Bernburg and Krohn 2003; Pager 2007; Lageson and Uggen 2013; Uggen et al. 2014; Winnick and Bodkin 2008; Thatcher 2008; Carey 2004). Justice system contact also shapes relationships with family members, employment sites, and social institutions (A. Goffman 2014), which can lead to “system avoidance” of medical, financial, labor market, and educational institutions (Brayne 2014). Because participation in these institutions has clear implications for child well-being, this analysis extends these empirical observations into the realm of family relationships and parental involvement, while simultaneously expanding the definition of criminal record to include all forms of justice system contact that might be documented online.

What are online criminal records?

The dramatic expansion of the criminal justice system over the past several decades has led to a massive increase in the sheer number of criminal histories. This increase in records dovetailed with a push for more governmental transparency as the Internet opened the gateway to better access and transferability of data. Private companies soon capitalized on this newly available data, purchasing criminal records in bulk from local justice agencies and creating a vast online marketplace for background check services and mug shot repositories (Hochberg 2014; Jacobs 2015).

Because criminal records are so easy to obtain, employers, landlords, and other important decision-makers have begun to use them in a variety of settings as a way to assess morality and character (Carey 2004; Thatcher 2008; Jacobs 2015). These records are instantaneously created upon arrest and the capture of a booking photo, so the release of these data effectively skips over the presumption of innocence by applying the criminal label well before charging or conviction. Online repositories house vast amounts of data and cut across race, class, and gender but in messy and disorganized ways. The result is some uncertainty

over what types of contact with the justice system will appear online, as well as when or where these records appear.

As a case makes its way through the criminal justice system, online records are not correspondingly updated. Unlike other types of reporting agencies, such as credit reports, criminal background checks rereport raw governmental data without federal oversight, regulation, or mandated updates, resulting in erroneous and un-updated criminal records (Bushway et al. 2007; National Consumer Law Center 2012; National Employment Law Project 2013; Jacobs 2015). The most common issues involve mismatched identities, reporting of expunged or sealed records, failure to update case dispositions, or readers erroneously interpreting the seriousness or details of a criminal justice report (National Consumer Law Center 2012; Lageson, Vuolo, and Uggen 2015). This is problematic for those who are actively trying to seal or expunge their criminal history, especially given the high rate of error in online databases—estimated to be as high as 80 percent (Center for Community Alternatives 2015). Though these records carry serious consequences, they are sometimes the result of a simple data entry error (Jacobs 2015).

Given this context, I draw on fieldwork and interviews to analyze how expungees learn about and react to extralegal online records, including those that remain online even after a successful expungement of a formal record. These interviews document how crime websites constitute a new form of punishment and social control, even for those who are innocent or never convicted of a crime. By indiscriminately attaching stigma, criminal record websites lead parents to purposefully avoid situations that might induce an Internet search for their name, thus limiting their parental involvement in social and civic institutions and keeping them locked into less than desirable employment, housing, and relationships—all of which directly impact their children.

Methodology

Research site

Fieldwork at expungement clinics and interviews with petitioners about their online criminal histories helps to unravel the myriad effects of criminal records on parents' involvement with their children's schools, civic organizations, workplaces, and churches.¹ Interviewees self-select into this study by virtue of their eligibility for expungement (low-level, nonviolent charges and convictions) and their desire to hide their record from public consumption (often after an embarrassing discovery by a colleague, friend, or family member, or due to explicit barriers to activities, employment, or housing). This research cannot speak to the vast number of Americans who do not actively search for their own online records, as well as those who do not seek legal remedy for incorrect, dismissed, or low-level conviction records—which means the problem is likely much larger in scope than is captured here.

Expungement is a process whereby a judge seals or destroys a criminal history, as allowed by the state, so that the subject of the record is no longer required to disclose this information and the record should no longer appear in routine background checks. By engaging in this process, however, expungement-seekers quickly learn that the Internet catalogs all brushes with the law, including dismissed offenses, a night in jail, or stays of adjudication that should disappear after a period of law-abiding behavior (Myrick 2013; Bjerck 2005; Natapoff 2012). This means many records remain available even after the legal remedy of expungement.

While fieldwork included multiple approaches,² this analysis focuses on interviews with twenty-seven expungement seekers. The expungement clinics offered a 50-minute information session and one-on-one consultations with attorneys, where lawyers referred clients to a free legal program if eligible, made referrals to other attorneys, or led pro se defendants (those representing themselves) to resources. During this informational session, I introduced attendees to the study in a brief presentation. Expungement-seekers were approached for interviews as they waited for their turn to speak with the volunteer attorneys.

The interview pool included ten white respondents, fourteen African American respondents, one mixed race respondent, one Native American respondent, and one Middle-Eastern respondent. The pool comprised seventeen men and ten women. The age distribution ranged widely, including respondents in their late twenties to their upper sixties. The interviewees had almost exclusively low-level criminal histories and were not on probation or parole (due to the eligibility criteria of the clinic).

The expungement clinics are busy sites, held at community centers. Friends, partners, or children often accompanied petitioners. Our interviews took place at a private table (identical to the one-on-one spaces used by attorneys) and ranged from 20 to nearly 60 minutes. Interviews were recorded, transcribed in full, and analyzed using AtlasTi.³ Overall, these interviews document the experience of encountering one's own criminal record online, even amid legal remedies, and the myriad effects that result from its existence within the realm of parenting and relationships.

Findings

Avoidance of family activities

Our interviews revealed that the humiliation from one's social network discovering their criminal record and the uncertainty as to what an online record contains encourages nonparticipation in a variety of activities, including family life. These effects reach beyond the psychological. Online criminal records impact participants' ability to get (and keep, in Tom's case, described below) quality employment, maintain stable homes in the rental market, and be involved with social institutions. Many interviewees worried about the lasting impact of their

online records for their children and opted out of direct contact with schools to avoid being “found out” by other parents and school administrators, such as Jaci’s case above. This was especially prevalent given the nature of the research site and the self-selection of expungement-seekers—clients who attempted to participate in an activity that supported their children were sometimes barred due to someone uncovering a criminal history.

Tom shares a similar experience with Jaci. Tom is a self-identified “middle-class” white father in his fifties. He recently began a new job as head of a nursing home maintenance department, a significant promotion from his previous employment. Two weeks into his position, he was called into Human Resources and “[was] told to go home. For a bad decision in my life, nineteen years ago.”

Tom’s record came up in two separate ways, only one of which would be potentially remedied by an expungement. First was the informal search. This was a surprisingly common experience in the interviews—bored at work, a group of coworkers would Google search one another and return unfortunate results for those who had records. This was how Tom inadvertently informed his coworkers of a gross misdemeanor from the early 1990s. He told me, “We just Googled everybody’s names, for fun. You know, what’s like everybody’s story at work? We were killing time. I Googled my name and found some crap, and it wasn’t cool . . . there was a [booking] photo and it says the crime above it.”

Even though Tom has a gross misdemeanor conviction from nearly 20 years ago, he completed his probation 15 years ago and passed the preliminary background check at his new place of employment. However, the nursing home conducted a second background check once he began working and after he’d already quit his other job. Because the offense was a 5th degree criminal sexual conduct offense (the least severe of criminal sexual offenses, encompassing acts considered “lewd”), and the nursing home is licensed by the State Department of Human Services, Tom was immediately fired. As he described it, “This is the first time I have lost a job due to a background check deal. . . . I was fired right before Christmas. . . . [Before this job] I was applying for bigger positions working my way up, left something, took something and then got smashed in the face.”

For Tom, his online record extends beyond job loss to a fear of a cascade of potential harms. Tom is extremely worried about his technology-adept teenage children. His two daughters do not know about the offense, which happened before they were born. He was especially worried his daughters would search for him online and learn about his misdemeanor. He was concerned about, “How easy it is just to be public, you know.” Finally, Tom told me he had been avoiding his daughter’s school and extracurricular activities since he learned his record was public. For example, he planned to skip his daughter’s upcoming hockey tournament in Winnipeg out of fear of having his record checked at the Canadian border, even though he believed prior to this that it was so far in the past that it would not prevent him from visiting Canada. As he put it, “How do I know if this is going to hinder me from going to that? Maybe I just send mom to this one? I just probably won’t go.”

Tom’s story provides some important context. First, criminal justice data, even from decades ago, are widespread and indiscriminately disseminated. Tom’s story also shows how the Internet reapplies a label and stigma that he had moved on

from after completing probation in the 1990s. Tom's reports of avoiding activities are similar to other forms of institutional avoidance; for instance, recent qualitative research has demonstrated how the rise in criminal justice surveillance leads those who feel watched to evade institutions (A. Goffman 2014). Quantitative efforts to test this pattern have shown that those with justice system contact engage in "systems avoidance" by avoiding surveilling institutions that keep formal records, such as hospitals and financial institutions (Brayne 2014). My study extends these findings into the realm of the informal in two ways: First, by focusing on the extralegal, disorganized, and widespread reporting of justice contact online, and second, by showing how the uncertainty associated with digital criminal histories impacts difficult-to-measure daily activities, such as parental involvement.

"Flying under the radar" and avoidance of upward mobility

Many interviewees described specific strategies to avoid an Internet search and the associated consequences of their newly discovered record. The surprising "stickiness" of these low-level arrest records (Uggen and Blahnik 2015) reinforces stratification to particular employment sectors and types of housing and neighborhoods, out of fear that being searched for online will reveal the record or dismissed offense. This economic stratification, in turn, has detrimental effects on children (McLeod and Nonnemaker 2000; McLeod and Kaiser 2004).

Daryl, an African American father, encapsulates this sentiment: "So, it tells me that as long as I don't try for high level jobs, that I should be ok. I should fly under the radar." Sandra, a white mother in her forties, was able to obtain housing with her low-level drug record, "But it's not in a great neighborhood, not great landlord." Tammy, who is currently unemployed, has actively not searched for employment because she fears a potential employer will use a private background check company that will report dismissed charges. She fears once these reports become property of one private background check company, they will be resold to other online enterprises. As she describes it:

I applied for two jobs over Christmas and then they said they were gonna do a criminal background check, and that means they hire a company to look up your record. Then they find it and then it's permanently in databases even if you get it expunged later. . . . it will go around the Internet. It could go anywhere.

Tammy withdrew both applications before any background checks were conducted and remained unemployed at the time of our interview. Daryl's and Tammy's experiences point to the complexity of low-level online records. As the interviews show, the fear of background checks keeps expungement-seekers locked into their current housing and employment, which have clear consequences for their children. Though websites indiscriminately report offenses (targeting an extremely broad segment of the population), the effects of these records are likely borne differently by different groups, as online records have the potential to increase stratification for groups already struggling with employment and housing mobility.

“Sticky” labels and stigma

Unofficial record searches introduce a host of complicated consequences. These records differ from official government criminal records by the virtue of their uncertainty—parents are never certain whether their record will appear in routine searches and are similarly unsure if they should preemptively volunteer this information to others. Beyond the forms of nonparticipation in family, civic, and community activities documented here, these records also exert stigma and emotional burden. Melinda was recently denied employment and shared that her criminal background report included a section on “social media” and “online search results” that revealed a booking photo from a privately run website. She was shocked to see this as part of an official criminal history report utilized by a public school district, where she recently applied to work in the cafeteria. She became emotional in our interview, showing me the copy of her criminal history printout and telling me, “Oh My God! When I got denied there I was crying. . . . There are only two things [offenses] that I have. And I want them off. I really do want to get them off. I am nervous.”

William, who is expunging a mistaken mark on his record resulting from a mismatched identity (a man with the same exact name but a different birthdate), did not hide his frustration. While he had a single offense from the early 1980s, the incorrectly reported new offense hindered his ability to obtain housing:

It's too much . . . You know, you ain't do nothing in thirty-something years and then all of a sudden you want to get an apartment and you can't. You're just stuck the way you are at. That's just terrible. It's a bad feeling. It's like I've been on a stand still.

Because these records are unregulated, sold, and reposted on the Internet, many felt it was a fruitless endeavor to fix or remove them, especially when compared with the relative ease of ignoring them and employing avoidance strategies instead. For instance, when Maddy first discovered her booking photo online, she said she was shocked. I asked her if the offense information was correct and she shook her head: “I'm not sure. I just seen [the photo] and was like, ‘ugh’ and just shut it off and took off.” Coping with online records was simply another undertaking many expungement-seekers could not add to their list of legal tasks and practical needs. Compounded with the difficulties of removing online records, expungement itself is a time-consuming process. Expungement clinic attendees often brought their children to the clinic due to a lack of childcare. As Trent, who was accompanied by his family at the clinic, described it:

I've got my kids and I'm just working. I work in the evening, two-thirty to eleven-thirty. So it's hard for me to take this on. I have a baby, so all morning I am babysitting. I don't have a whole lot of time. So time just goes on. I heard about this clinic, so I said, let me just start here.

Interviews revealed how most of the participants were unaware that their dismissed records existed online until they were revealed in a surprising fashion—nearly a third of respondents used the phrase “popped up.” For instance, Daryl,

an African American father in his forties, said, “I have looked myself up out of curiosity—my name anyway—and try to see what pops up. And it’s not a pretty sight.” Tammy summed it up: “That’s what I am scared of. If this was twenty years ago, I wouldn’t probably care, but this creates a permanent record and it does destroy people.”

The number of websites that reveal this information is vast: interviewees reported their booking photos, arrests, and nights in jail showing up on Facebook, Twitter, neighborhood newspapers, blogs, city and county governmental websites, national booking photo online clearinghouses, and major local newspaper websites. Donna, an African American mother and grandmother in her sixties, repeatedly stumbled upon her record (a welfare fraud case from the early 1990s) when doing routine Internet searches of her name. For instance, after conducting a Google search, a new browser window opened with links to background check companies. In her words:

I put my name in and it [my criminal history] came up instead. It just popped up . . . I put my name in and it went to a criminal search. It was just ridiculous because I said, you can’t just go on the Internet, do what you’re trying to do, and instead it’s taking you everywhere else. . . . Like on Publishers Clearinghouse, it said to search for my name in the Winner’s Circle. And instead of going to the Winner’s Circle it took me to my criminal history. It’s like trickery. I don’t know. It’s trickery.

Expungement-seekers were frustrated and in a state of flux regarding how to get private websites to take down their booking photos, dismissals, and arrests. The vast majority of interviewees simply did not contact the websites directly, and soon found that even the legal remedy of expungement fails to correct their digital trail.

The futility of expungement for online records

This research provides multiple lines of evidence that the online marketplace for criminal histories undermines legal attempts to seal these records. The attorneys at the clinic helped clients to frame their argument around family responsibilities and advised petitioners to present themselves as model parents and workers. For example, they told clients in the informational portion of the clinic to “prove their record is holding them back” from employment by “proving to the judge that even entry-level jobs aren’t calling you back—jobs that anyone can get.” Family commitments were central because having caregiver status added additional gravity to the petitioner’s claims that their record was truly impacting their and their children’s lives.

In the courtroom, specific circumstances varied, but caregiving and participation in family and community activities were central themes. One case put before the judge included a petitioner and his spouse who sought to adopt a child but have faced rejection from several adoption agencies due to the record. Another petitioner told the judge she could not volunteer as a coach for her children’s sports team because of the record. This individual was a church leader with five children and also wanted to run for city council, but was afraid the record would

prevent that. A different petitioner told the judge she was an “upstanding member of a Catholic parish and volunteers regularly.” However, a fellow church member learned from a local police website about the petitioner’s criminal record, and the petitioner was banned from attending Sunday services. The petitioner told the judge her attorney tried to explain to church leadership that the record was vacated and dismissed, but she “ha[d] still basically been excommunicated.”

The logic and language of expungement hearings in the courtroom illuminates the paradoxical landscape petitioners face. Cases brought to a judge are highly variable, but many described specific stakes in prosocial family, work, and community activities that were compromised by a low-level record. If the judge ultimately ruled in the plaintiff’s favor, the petitioner now had a legally sealed record. This action, however, had no consequence for the criminal records already disseminated online. Ironically, the very qualities that make a good candidate for expungement are the same qualities that are compromised by a digital criminal record.

Discussion

Jaci’s, Tom’s, and the other expungement-seekers’ experiences illustrate the difficult landscape of digital criminal records. Technology has expanded accessibility to records, and while this shift brings important opportunities to law enforcement and investigations, it simultaneously increases the opportunity for erroneous, incorrect, nonupdated, and nonconviction records to show up in online searches (Jacobs 2015). Compounded with this proliferation of records is a growing public desire to use criminal histories in areas of life not historically connected to criminal justice, such as schools, volunteer organizations, and in places historically devoted to supporting family and child well-being. Several implications follow.

Family-based forms of institutional avoidance

Recent research has shown that, beyond economic effects, criminal justice system contact also shapes relationships with family members, work, and social institutions (A. Goffman 2014; Brayne 2014). This form of contact ultimately leads to “system avoidance” of medical, financial, labor market, and educational institutions. Participation in these institutions have clear implications for child well-being.

Overall, this research shows how online criminal histories can intrude on social ties, families, and the workplace, and demonstrates how even the lowest-level crimes have profound effects for the labeled individual, limiting his/her ability to fully perform caregiving duties, obtain better housing and employment, and participate in prosocial and civic activities. As technology transforms our relationship with data, online criminal records operate as yet another “hidden” consequence for the families of individuals with even minor criminal justice system contact.

Punishment, desistance, and recidivism

Online records raise questions of when punishment should, or truly does, end. The permanent and easily found record from long ago flies in the face of constitutional guarantees to due process and the presumption of innocence, particularly when websites post nonconviction records. These websites also change what we know about desistance from crime and recidivism, particularly the effects of labeling and stigma (E. Goffman 1963). Finally, online records are prompting researchers to ask new questions about how to measure the “effects” of these informal records, such as in the context of parenting and caregiving.

These unofficial histories have tangible effects for housing and employment but also enter the realm of personal relationships, social networks, family commitments, and civic engagement (Uggen and Stewart 2015). Often reporting minor and dismissed offenses, these records create lasting consequences that reach far beyond contact with the criminal justice system and impact those who are working to develop strong social bonds; they also undermine empirical research on what is most effective for reintegration with family and community after justice system involvement (Maruna 2001, 2012).

These records are especially daunting due to the uncertainty around what they contain. When these records “pop up” unexpectedly or are passed through social media outlets, parents avoid contact with other social actors who inhabit those spaces where they have the most at stake: the schools their children attend, the churches they belong to, the workplace that employs them. This inhibits participation in the very activities that are law-abiding. The fear of being “found out” now includes offenses that never led to charges or convictions, and the haunting effect of criminal histories now expands to include arrests and stops.

Websites also offer a profoundly public and visual depiction of the criminal label, which complicates efforts to understand the internal and external mechanisms behind the decision to desist from future offenses (Giordano, Cernkovich, and Rudolph 2002; Maruna 2001, 2012). Research demonstrates that many former offenders work to signal their desistance (McNeill 2006; Bushway and Apel 2012), but the sheer existence of these websites undermines individual, agentic efforts to move on from a criminal history. Paradoxically, this sticky criminal label is applied even to those offenses that the justice system dismissed (Uggen and Blahnik 2015). Given the broad and indiscriminate nature of these online repositories, parents with even the most limited forms of contact with the justice system suffer the consequences.

Understanding the limits of current reform

Former U.S. Pardons Attorney Margaret Colgate Love wrote in 2003, “The expungement concept ignores the technological realities of the information age; a process whose benefits depend on secrecy will surely be frustrated by the trend toward broader public posting and private dissemination of criminal history information” (p. 1726). The data presented here echo this fundamental flaw. The proliferation of online records points to the limits of criminal justice reform,

particularly because of the mix of public and private databases, a lack of federal oversight to govern criminal records, and a growing public desire for open access to governmental information.

Amid research that identified the effects of felony records (i.e., Pager 2007), and the policy changes followed in many jurisdictions (for instance, “Ban the Box” on employment applications), we still lack concrete policies to address the millions of parents who face online dated, incorrect arrest or nonconviction records. Even amid policies meant to leverage family connections to reduce recidivism, the unfettered distribution of even minor arrest records might undermine efforts to reduce crime and contribute to stronger families.

There may also exist an uneven distribution of the effects of online records. Routinely checking and maintaining one’s online identity is a class-based strategy (Madden and Smith 2010). Websites that charge “takedown fees” for removing a record or booking photo, or companies that offer services to clear one’s digital trail are often costly (Segal 2013). These efforts are also often futile: records are quickly copied, pasted, and reposted to innumerable other websites and private background check databases.

Yet there are several areas ripe for reform. We should question the sale of criminal records to private vendors (particularly arrest records). Reform could also happen at the level of federal oversight through licensing background check companies, akin to policies that govern credit reporting agencies. There should also be an avenue to file for remedy of an incorrectly reported offense, perhaps through a central clearinghouse of criminal justice data. The United States might also consider the 2010 European Court of Justice ruling on the “right to be forgotten” online. Since this landmark decision, EU citizens may now request search engines remove links with dated or nonconviction criminal history information when the information is deemed inaccurate, inadequate, irrelevant, or excessive. While the original source of the criminal offense stays intact online (for instance, in a publicly accessible government database), the rapid availability through a routine Google search is now tempered.

Expanding the definition and effects of a “criminal record”

Obtaining criminal records previously required a trip to a courthouse or law enforcement agency to obtain a paper file. Now, we have millions of online records at our fingertips that cover a vast volume of information. In the online context, the label “criminal” takes on the entire universe of criminal justice contact, as opposed to referring only to those who have been convicted of a crime. Thus, we need to expand our definition of “record” to include the different forms of documentation that result from any interaction with the justice system. For many, these records come as a surprise, sometimes decades after an original offense. As these interviews reveal, the stigmatizing label, the prevalence of error, and the psychological uncertainty around what might appear online has devastating effects on parents and leads to a retreat from family and community institutions.

Notes

1. Expungement clinics offer a unique research site because attendees are only eligible for judicial sealing of their records if they have a specific low-level offense or dismissal on their record. In Minnesota, these records include all juvenile records, cases resolved in the defendant's favor (acquittals and dismissals), cases resulting in diversion or stay of adjudication (one year after completion of sentence if crime free), a misdemeanor conviction (two years after completion of sentence if crime free for petty misdemeanors and misdemeanors, four years for gross misdemeanor), or a low-level, nonviolent felony conviction five years after sentence, if crime free (Minn. Stat. § 609A.01). To receive free legal services, clients must fit all state-mandated expungement criteria, have an income less than 125 percent of the federal poverty guideline, and be off probation and parole.

2. Qualitative fieldwork was conducted over the course of 1.5 years. These empirical data constitute field observations of twice-monthly expungement clinics, court observation of public expungement hearings in Hennepin County, in-depth interviews with expungement-seekers ($N = 27$), repeated field interviews with five criminal defense attorneys ($N = 26$), and content analysis of documents (materials provided to expungement-seekers at the clinic, documents provided on expungement websites, and proposed and existing expungement legislation developed by the attorneys and their colleagues).

3. Interview instruments and coding schemes are available upon request from the author.

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Statutes Cited

Minn. Stat. § 609A.01 EXPUNGEMENT OF CRIMINAL RECORDS.