



**KEEPING CRIMINAL ENCOUNTERS CONFIDENTIAL:  
PREVENTING COLLATERAL CONSEQUENCES  
FOR YOUNG ADULTS**

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## I. INTRODUCTION

Generally, states consider an individual an adult on his or her eighteenth birthday.<sup>1</sup> This seemingly innocuous birthday signifies a transition from the protections afforded to minors in the juvenile justice system to the harsh criminal justice system.<sup>2</sup> As a result, very often, young adults who break the law fail to consider the starkly different treatment they will encounter in the criminal justice system.<sup>3</sup> Nonetheless, the repercussions of their encounter with the criminal justice system are everlasting.<sup>4</sup>

Young adults, like juveniles, may be unable to consider the impact of what they will in hindsight consider to be very stupid mistakes. And young adults, like juveniles, may be able to learn from their mistakes and rehabilitate themselves. Because of this, it is vital that the criminal proceedings and records of young adults be kept confidential to enable them to fully rehabilitate and re-integrate into society.

For purposes of this discussion, juveniles are individuals under the age of eighteen<sup>5</sup> and young adults are individuals between the age of eighteen and twenty-five.<sup>6</sup> The juvenile justice system is the “area of criminal law applicable to persons not old enough to be held responsible for criminal acts.”<sup>7</sup>

The juvenile justice system affords juveniles numerous protections that are unavailable to adults in the criminal justice system.<sup>8</sup> This discussion will examine three different types of confidentiality protections: 1) statutory provisions that generally prevent disclosure of juvenile records; 2) expungement provisions; and 3) sealing provisions. Expungement is “a court-ordered process in which the legal record of an arrest or a criminal conviction is . . . erased in the eyes of the law.”<sup>9</sup>

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1. *Juvenile Justice*, CORNELL L. SCH.: LEGAL INFO. INST., [https://www.law.cornell.edu/wex/juvenile\\_justice](https://www.law.cornell.edu/wex/juvenile_justice) (last visited Feb. 24, 2021).

2. See N.J. STAT. ANN. § 2A:4A-22 (a)–(b) (West 2012).

3. See Katie Hamblen, *Juvenile vs. Adult Criminal System*, LEGALMATCH, <https://www.legalmatch.com/law-library/article/juvenile-vs-adult-criminal-system.html> (last updated Jan. 15, 2020).

4. Sharon M. Dietrich, *Clean Slate Brings Automated and Expanded Criminal Record Sealing to Pennsylvania*, 90 PA. BAR ASS'N Q. 39, 41 (2019).

5. See *Juvenile Justice*, *supra* note 1.

6. Kevin Lapp, *Young Adults & Criminal Jurisdiction*, 56 AM. CRIM. L. REV. 357, 359 (2019) (“[J]urisdictions have created Young Adult Courts, probation units, and detention facilities that provide services tailored to the distinct developmental needs of those ages eighteen to twenty-five.”).

7. *Juvenile Justice*, *supra* note 1.

8. See Hamblen, *supra* note 3.

9. *Expungement Basics*, FINDLAW, <https://criminal.findlaw.com/expungement/expungement-basics.html> (last visited Feb. 28, 2021).

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Sealing is similar but makes the record accessible only by “a limited number of court or law enforcement personnel.”<sup>10</sup>

There are two primary reasons for these protections. One reason is that juveniles lack culpability for their actions.<sup>11</sup> The other reason is that the collateral consequences resulting from criminal records severely inhibit a juvenile’s re-integration into society despite his or her potential for rehabilitation.<sup>12</sup>

Young adults experience similar diminished culpability and collateral consequences as juveniles, and therefore should also be protected by the confidentiality protections afforded to minors in the juvenile justice system.

## II. WHY AND HOW THE LAW DOES NOT PROTECT YOUNG ADULTS

### A. *Background and History of the Juvenile Justice System*

Juvenile courts were first established in 1899 with the aims of rehabilitation and the minimization of stigma, rather than the punitive approach taken in the criminal justice system.<sup>13</sup> These purposes arose from a recognition that juvenile offenders were different from adults.<sup>14</sup>

Progressive era reformists who drove the creation of juvenile courts believed that children could not be held morally accountable for their actions.<sup>15</sup> They recognized that children were being significantly affected by the social challenges of urbanization resulting in symptomology of delinquent behavior.<sup>16</sup> At the same time, new medical and scientific understandings legitimated concepts of adolescence by indicating that individuals up to their mid-twenties did not reach full maturation.<sup>17</sup>

Consequently, Progressive Era Reformists considered the punitive aims of the criminal justice system to be ill-suited to children whom they considered to be more capable of being rehabilitated than adults.<sup>18</sup> Thus,

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10. Anne Teigen, *Automatically Sealing or Expunging Juvenile Records*, NCSL (July 2016), <https://www.ncsl.org/research/civil-and-criminal-justice/automatically-sealing-or-expunging-juvenile-records.aspx>.

11. See Jennifer Albaugh & Haley Wamstad, *Striking A Fair Balance: Extended Juvenile Jurisdiction in North Dakota*, 88 N.D. L. REV. 139, 142 (2012).

12. See Joy Radice, *The Juvenile Record Myth*, 106 GEO. L.J. 365, 386–88 (2018).

13. NAT’L RSCH. COUNCIL & INST. OF MED., *JUVENILE CRIME, JUVENILE JUSTICE* 157 (Joan McCord et al. eds., 2001).

14. Albaugh & Wamstad, *supra* note 11.

15. *Id.*

16. See Chauncey E. Brummer, *Extended Juvenile Jurisdiction: The Best of Both Worlds?*, 54 ARK. L. REV. 777, 781–82 (2002).

17. See Lapp, *supra* note 6, at 361.

18. See Albaugh & Wamstad, *supra* note 11, at 143.

in order to rehabilitate each juvenile who entered the juvenile justice system, all juvenile proceedings were made confidential.<sup>19</sup>

### *B. Overview of the Confidentiality Protections*

#### 1. Overview of General Juvenile Confidentiality Provisions

The confidentiality protections afforded to minors in the juvenile justice system typically come in the form of statutory provisions that prevent the release of juvenile records.<sup>20</sup> The scope of these provisions varies widely from state to state.<sup>21</sup> As of 2014, only nine states had general statutory provisions that completely concealed juvenile record information from the public regardless of the seriousness of the offense.<sup>22</sup> Other states either gave complete public access to juvenile records or provided general concealment of juvenile records with numerous exceptions.<sup>23</sup>

General confidentiality provisions are not foolproof, however. While most juvenile adjudications do not become public criminal records, confidentiality provisions may not prevent all disclosures of juvenile records.<sup>24</sup> Often times after an arrest, courts and the police share juvenile delinquency records with law enforcement task forces, the juvenile's school, social service agencies, and the like.<sup>25</sup> Most confidentiality provisions do not prevent the disclosure of information by these entities with which information has been shared.<sup>26</sup>

New Jersey is one of many states with a confidentiality provision that allows access by certain parties.<sup>27</sup> In New Jersey, courts and law enforcement agencies keep any records regarding the juvenile confidential from the public.<sup>28</sup> Although confidential to the public, these records can be accessed upon request by law enforcement, the

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19. RIYA SAHA SHAH ET AL., JUV. L. CTR., JUVENILE RECORDS: A NATIONAL REVIEW OF STATE LAWS ON CONFIDENTIALITY, SEALING AND EXPUNGEMENT 8 (2014), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf>.

20. *See id.* at 9.

21. *Id.* at 13.

22. *Id.* at 13 n.30 (noting that the nine states include California, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Rhode Island, and Vermont).

23. *See id.* at 14–15.

24. *See Radice, supra* note 12, at 374 (footnote omitted) (“In most states, delinquency records are not completely confidential. Rather, they allow the public and press to access some portion of the record or proceedings, especially for more serious felony charges.”).

25. *Id.* at 375.

26. *See id.*

27. *See, e.g.*, N.J. STAT. ANN. § 2A:4A-60 (West 2020).

28. *See* § 2A-4A-60(a).

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parent/guardian or attorney of the juvenile, any potential party in a subsequent civil action, and any institution with custody of the juvenile.<sup>29</sup>

## 2. Overview of Sealing and Expungement Protections for Juveniles

In addition to the statutory provisions that prevent release of juvenile records, states offer sealing and expungement provisions as confidentiality protections to both juveniles and adults.<sup>30</sup> While the collateral consequences of criminal records are long-lasting, the risk of recidivism, depending on the offense, is between three to seven years, making it wholly unjustified to maintain records that paralyze and punish prior offenders beyond that time.<sup>31</sup> Sealing and expungement provisions offer a remedy to this dilemma by destroying or sealing any criminal records related to a petitioner's offense.<sup>32</sup>

Like confidentiality provisions, sealing and expungement provisions vary widely across the different states.<sup>33</sup> Sealing a record prevents access by many parties, who would otherwise attempt and gain access to the juvenile record.<sup>34</sup> Which parties can access a sealed juvenile record depends on the state.<sup>35</sup> Typically, however, sealing does not prevent access to the juvenile record for law enforcement or research purposes.<sup>36</sup>

Expungement provisions across different states vary in the manner in which the juvenile records are erased.<sup>37</sup> Some states require the physical destruction of the record as well as the erasure of the electronic record, whereas other states treat the record as if it never existed despite that it physically exists.<sup>38</sup>

If individuals want their records expunged, they usually have to petition for expungement.<sup>39</sup> However, many states are also beginning to adopt automatic expungement acts.<sup>40</sup> Automatic expungement acts allow courts and law enforcement agencies to expunge an individual's record

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29. *Id.*

30. *See* SHAH ET AL., *supra* note 19, at 23–24.

31. *See* Dietrich, *supra* note 4.

32. *See id.* at 42.

33. *See generally* SHAH ET AL., *supra* note 19, at 23–45.

34. *See id.* at 23.

35. *See id.*

36. *See id.*

37. *See id.* at 24–26.

38. *Id.*

39. Shae Irving, *Expunging or Sealing a Juvenile Court Record*, CRIM.DEF.LAW., <https://www.criminaldefenselawyer.com/resources/expunging-or-sealing-a-juvenile-court-record.htm> (last visited Feb. 23, 2021).

40. *See* Teigen, *supra* note 10.

without the individual petitioning for expungement.<sup>41</sup> Some states automatically expunge juvenile records when the juvenile turns eighteen.<sup>42</sup> Other states automatically expunge records after a statutory waiting period provided that the crime/record is eligible for expungement and the petitioner in good moral standing.<sup>43</sup>

Expungement generally is a much stronger protection than sealing a record. Expungement has the legal effect of being able to deny that a criminal encounter ever happened and prohibits divulgence, preventing furtherance of the stigma associated with a criminal record and allowing the offender a psychological fresh start.<sup>44</sup>

New Jersey offers petition-based expungement to offenders with eligible convictions.<sup>45</sup> Numerous factors, such as the time and nature of the offense and the good standing of the offender, determine when the offender can petition for expungement.<sup>46</sup>

New Jersey recently vetoed a bill, S3205, which was intended to provide automatic expungement for disorderly persons offenses and petty disorderly persons offenses five years after the offense.<sup>47</sup> Disorderly persons offenses include “simple assault, possession of less than 50 grams of marijuana, possession or use of drug paraphernalia, harassment, petty theft, disorderly conduct, obstruction, and public intoxication,”<sup>48</sup> and are exactly the sort of offenses young adults are likely to find themselves taking part in as a product of their age and the stage of their life.<sup>49</sup> Much of this conduct can be found at college parties across the country.<sup>50</sup> While this conduct should not be condoned, young adults should not be punished for the rest of their lives for it.

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41. Anna Kessler, Comment, *Excavating Expungement Law: A Comprehensive Approach*, 87 TEMP. L. REV. 403, 437 (2015).

42. Irving, *supra* note 39.

43. See *Expungement*, ROSENBERG | PERRY & ASSOCS. LLC, <https://www.danielrosenberg.com/practice-areas/criminal-defense/expungement/> (last visited Feb. 23, 2021).

44. Allan Marain, *Expungement and Sealing of Juvenile Records*, 296 N.J. LAW. 37, 37–38 (2015).

45. See generally N.J. STAT. ANN. § 2C:52-2 (West 2020).

46. See *id.*; *Expungement*, *supra* note 43.

47. *NJ S3205*, BILL TRACK 50, <https://www.billtrack50.com/BillDetail/995479> (last visited Feb. 13, 2021).

48. Katherine O'Brien, *Disorderly Persons Offense on Background Check in NJ?*, LAW OFF. KATHERINE O'BRIEN: LEGAL BLOG (July 6, 2017), <https://katherineobrienlaw.com/legal-blog/disorderly-persons-offense-on-background-check-nj/>.

49. See *id.*

50. Noelle Walker, *Party Culture: The Dark Side of College Partying*, GEORGE-ANNE MEDIA GRP. (Aug. 26, 2019), <https://thegeorgeanne.com/1862/reflector/reflector-features/party-culture-the-dark-side-of-college-partying/>.

## III. WHY THE LAW SHOULD PROTECT YOUNG ADULTS

A. *Diminished Culpability*

As previously mentioned, one of the primary purposes for the creation of juvenile jurisdiction and the implementation of confidentiality protections was the idea that adolescents lacked culpability exhibited by adults.<sup>51</sup>

The Supreme Court has repeatedly acknowledged that the culpability of individuals is a significant factor in the determination of an individual's punishments.<sup>52</sup> In *Roper v. Simmons*,<sup>53</sup> in which the Court eliminated the death penalty for juvenile defendants, the Court identified three primary distinctions between juveniles and adults that serve as sources of their diminished culpability: (1) juveniles "lack . . . maturity and [have] an underdeveloped sense of responsibility," (2) "juveniles are more vulnerable or susceptible to negative influences and outside pressures," and (3) "juvenile character is more transitory and less well-formed than adult character."<sup>54</sup> These criteria can undoubtedly be found in young adults.<sup>55</sup>

## 1. Lack of Maturity

Stanley Hall, who is credited with discovering and legitimatizing adolescence, suggested that "adolescence lasted from age fourteen to twenty-four."<sup>56</sup> Current research supports Hall's suggestion.<sup>57</sup> Cognitive research has found that brains in "young adults . . . are cognitively more similar to juveniles than adults,"<sup>58</sup> and that the part of the brain responsible for decision-making, planning, and impulse control does not fully develop until around age twenty-five.<sup>59</sup> A study conducted by Laurence Steinberg, a developmental psychology professor at Temple University, examined 935 individuals to test psychosocial, cognitive, and

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51. Albaugh & Wamstad, *supra* note 11, at 142; Lapp, *supra* note 6, at 357–58.

52. Judith G. McMullen, *Invisible Stripes: The Problem of Youth Criminal Records*, 27 S. CAL. REV. L. & SOC. JUST. 1, 16 (2018).

53. 543 U.S. 551 (2005).

54. McMullen, *supra* note 52, at 15–16 (quoting *Roper*, 543 U.S. at 569–70).

55. See Lapp, *supra* note 6, at 361.

56. *Id.*

57. *Id.* at 363–71.

58. *Id.* at 364.

59. *Id.*

emotional maturity across different ages also reaches this result.<sup>60</sup> His study found that there were significant differences in maturity “between the 18- to 21-year-olds and those 26 and older.”<sup>61</sup> These studies all indicate that adolescents and young adults are not as mature as adults.

## 2. Vulnerability to Negative Influences

The second characteristic the *Roper* Court identified that justified additional protection for juveniles is that juveniles are more susceptible to outside influences.<sup>62</sup> Although young adults appear overtly more resistant to peer pressure, they are inconspicuously affected by it in a manner similar to juveniles.<sup>63</sup> In a study conducted on one hundred participants, results suggested that in the presence of peers, young adults make immature decisions similar to that of fourteen and fifteen year-old adolescents.<sup>64</sup> This is why young adults may participate in more risky rewarding behaviors, like crime, in the presence of peers rather than worrying about the long-term effects of those behaviors.<sup>65</sup>

In addition, young adults are vulnerable to the influences of groupthink.<sup>66</sup> Groupthink, also known as mob/herd mentality, is when individuals change or suppress their own beliefs and behaviors and adopt the beliefs and behaviors of their social group.<sup>67</sup> A prototypical example of mob mentality occurs at major sporting events when fans riot, flip cars, and light fires in response to a victory.

Groupthink can result from an inclination to feel socially included or having weak friendship or familial ties.<sup>68</sup> This leads individuals to conform with the group more because they want to be accepted.<sup>69</sup> Groupthink is also more likely when an individual is tired, stressed, or

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60. *While Adolescents May Reason As Well As Adults, Their Emotional Maturity Lags, Says New Research*, AM. PSYCH. ASS'N, <https://www.apa.org/news/press/releases/2009/10/teen-maturity> (last visited Feb. 13, 2021).

61. *Id.*

62. McMullen, *supra* note 52, at 15.

63. *Susceptibility to Peer Influences (Psychosocial Development)*, NJDC, <https://njdc.info/susceptibility-to-peer-influences-psychosocial-development/> (last visited Feb. 13, 2021).

64. *Id.*

65. *Id.*

66. Rebecca Lee, *The Acceptance of Group Mentality*, PSYCHCENT. (Sept. 6, 2017), <https://psychcentral.com/blog/the-acceptance-of-group-mentality/>.

67. Kendra Cherry, *What is Groupthink?*, VERYWELL MIND, <https://www.verywellmind.com/what-is-groupthink-2795213> (last updated Nov. 12, 2020); *How to Identify, Understand & Avoid Herd Mentality*, CONSULTING.COM, <https://www.consulting.com/herd-mentality> (last visited Mar. 8, 2020) (on file with author) [hereinafter CONSULTING.COM].

68. CONSULTING.COM, *supra* note 67.

69. *Id.*



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distracted because it requires significantly less mental energy to comply with the decision of the group than it is to think carefully about a decision.<sup>70</sup> Lastly, groupthink is more likely to occur when an individual is indifferent to the result, or questions his or her own opinions.<sup>71</sup>

Keeping in mind the circumstances that young adults typically experience (moving out of their parents' home, starting college, finding a new job, starting new relationships),<sup>72</sup> it is easy to see how they may find themselves in settings where they desire a feeling of acceptance or social inclusion, or express stress, exhaustion, and distraction. This leaves them susceptible to the sort of groupthink that can lead to criminal behavior.

Finally, young adults are also susceptible to the influences of social media. Young adults aged eighteen to thirty-four spend approximately 3.8 hours on social media daily.<sup>73</sup> This is the most time spent on social media of any age group.<sup>74</sup> While social media provides many beneficial impacts, it also has many negative impacts.<sup>75</sup> Psychologist Jean Twenge has conducted research indicating that the more time teens and young adults spend on social media, the higher their risk of depressive symptomology.<sup>76</sup> Individuals experiencing depression may turn to alcohol and substance abuse to relieve their depression, which may ultimately lead them into criminal trouble.<sup>77</sup>

The Committee on Adolescent Health Care of the American College of Obstetricians and Gynecologists advises obstetricians and gynecologists to consider the social media use of young adults and

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70. *Id.*

71. *Id.*

72. See Jeffrey Jensen Arnett, *Emerging Adulthood*, NOBA, <https://nobaproject.com/modules/emerging-adulthood#content> (last visited Feb. 27, 2021).

73. Alyssa L. Eisenberg, Comment, *Keep Your Facebook Friends Close and Your Process Server Closer: The Expansion of Social Media Service of Process to Cases Involving Domestic Defendants*, 51 SAN DIEGO L. REV. 779, 811 (2014).

74. *Id.*

75. See COMM. ON ADOLESCENT HEALTH CARE, THE AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS, COMMITTEE OPINION NO. 653: CONCERNS REGARDING SOCIAL MEDIA AND HEALTH ISSUES IN ADOLESCENTS AND YOUNG ADULTS (2016), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2016/02/concerns-regarding-social-media-and-health-issues-in-adolescents-and-young-adults.pdf> [hereinafter OB & GYNS].

76. Patti Neighmond, *Increased Hours Online Correlate With An Uptick In Teen Depression, Suicidal Thoughts*, NPR (Nov. 14, 2017, 4:13 PM), <https://www.npr.org/sections/health-shots/2017/11/14/563767149/increased-hours-online-correlate-with-an-uptick-in-teen-depression-suicidal-thou>.

77. See Kathleen Smith, *Substance Abuse and Depression*, PSYCOM, <https://www.psycom.net/depression-substance-abuse> (last visited Feb. 27, 2021).

adolescents for high-risk behaviors such as sexting and internet dating.<sup>78</sup> The committee highlights that sexting photos of minors can result in child pornography violations.<sup>79</sup>

Also, online dating, which can include dating on social media and other applications, makes it incredibly easy for individuals to conceal their age. As a result, young adults on the online dating scene may encounter situations that lead to criminal issues like statutory rape charges.<sup>80</sup> As an age group that uses social media more than any other, young adults influenced by social media are subject to a significant risk of high-risk behavior, psychological illness, and deceptions for which they lack culpability.

### 3. More Transitory and Less Well-Formed

The final distinction the *Roper* Court made between juveniles and adults was that juvenile character is “more transitory and less well-formed.”<sup>81</sup> Modern psychologists consider that young adults experience their own developmental stage of psychology that lies somewhere between that of adolescents and adults.<sup>82</sup> Psychologist, Jeffrey Jensen Arnett, calls this stage “Emerging Adulthood” and indicates that the stage is comprised of five distinctive features: identity exploration, instability, being self-focused, feeling in-between, and many possibilities.<sup>83</sup>

In his book, *Emerging Adulthood*,<sup>84</sup> Arnett explains that while it was once thought that the stage at which individuals explored their identity was adolescence (before age eighteen), today this occurs mostly in the stage of emerging adulthood.<sup>85</sup> This identity exploration also explains why emerging adulthood is a stage of instability.<sup>86</sup> Young adults move out of their parents’ home into college dorms or apartments, enter into and leave relationships, change career paths, and experience additional instability in their work, love, and education.<sup>87</sup>

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78. See OB & GYNS, *supra* note 75.

79. *Id.* at 3.

80. See Robin Barton, *Statutory Rape: When a Lie Can Ruin a Life*, CRIME REP. (July 23, 2015), <https://thecrimereport.org/2015/07/23/2015-07-statutory-rape-when-a-lie-can-ruin-a-life/>.

81. McMullen, *supra* note 52, at 15–16.

82. See Arnett, *supra* note 72.

83. *Id.*

84. JEFFREY J. ARNETT, *EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES* (1st ed. 2004).

85. See *id.*; Arnett, *supra* note 72.

86. Arnett, *supra* note 72.

87. *Id.*

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While this sort of instability is not exactly equivalent to the social challenges of urbanization faced by juveniles in the wake of the Industrial Revolution, it is nonetheless a stage of significant individual and social change that young adults now face on their own and all the same delinquent behavior may occur as symptomology of these changes.

Even the Court has recognized that the line of demarcation for juvenile and criminal jurisdiction is set without reference to the realities of human psychology and culpability. In *Roper*, Justice Kennedy asserted that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18.”<sup>88</sup>

This combination of underdeveloped cognitive functioning, susceptibility to outside pressure, and significant instability of character leads one to believe that young adults, like juveniles, lack the culpability to warrant being held wholly accountable for their criminal encounters.

### *B. Collateral Consequences*

The other primary reason that confidentiality protections were created in the juvenile justice system was because significant collateral consequences impeded the goal of rehabilitation sought by the justice system and inhibited re-integration into society.

Lack of confidentiality can injure a juvenile by creating a significant barrier to education and employment opportunities.<sup>89</sup> The majority of colleges collect criminal justice information and some deny admission on the basis of juvenile offenses.<sup>90</sup> Over forty percent of employers surveyed for a study indicated that they would likely not hire an applicant with a criminal record.<sup>91</sup>

As in the case of juveniles, criminal records also have significant collateral consequences for young adults.<sup>92</sup> Criminal records are an obstacle for employment by preventing young adults “from working in . . . long-term health care, child care, educational services, and transportation,” and preventing them from getting occupational licenses.<sup>93</sup> Without confidentiality in their proceedings, young adults are likely to be turned away from career building opportunities, like college

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88. *Roper v. Simmons*, 543 U.S. 551, 574 (2005).

89. See Lapp, *supra* note 6, at 380.

90. RIYA SAHA SHAH & JEAN STROUT, JUV. L. CTR., FUTURE INTERRUPTED: THE COLLATERAL DAMAGE CAUSED BY PROLIFERATION OF JUVENILE RECORDS 10 (2016), [https://jlc.org/sites/default/files/publication\\_pdfs/Future%20Interrupted%20-%20final%20for%20web\\_0.pdf](https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20-%20final%20for%20web_0.pdf).

91. *Id.* at 11.

92. See Dietrich, *supra* note 4, at 40.

93. *Id.*; see SHAH & STROUT, *supra* note 90, at 11.

and their first jobs, and public benefits or housing as a result of their criminal records.<sup>94</sup>

In addition to the impacts commonly felt by all young adults, young adult high schoolers experience particularized collateral consequences.<sup>95</sup> One significant consequence is that criminal encounters for students enrolled in high school can result in being suspended or expelled regardless of whether their offense took place on school grounds.<sup>96</sup> New Jersey is one of several states which also permit expulsion or suspension based on criminal behavior regardless of where it takes place.<sup>97</sup> Expulsion or suspension as a result of arrest can pose significant barriers to educational attainment.<sup>98</sup>

### C. Arguments Against Extending Extra Protections to Young Adults

Arguments against extending the confidentiality protections of juveniles to young adults are similar to those against raising the age of criminal jurisdiction. Some of the most frequent arguments against raising the age of criminal jurisdiction include society's interests in personal accountability and societal protection.<sup>99</sup> Society has an interest in wrongdoers being punished for their actions as a method of taking responsibility.<sup>100</sup> Opponents to extending confidentiality protections to young adults may argue that doing so denies society this interest because society would not bear witness to the retribution of the young adult who has committed the criminal harm.<sup>101</sup> This is not entirely true, however, because the young adult, if convicted, would still be punished by the courts, which would fulfill society's desire for retribution.

In addition, depending on the confidentiality protection that is extended—e.g., expungement/sealing versus general confidentiality provision—a young adult may still experience personal accountability just like any other adult, until the confidentiality protection takes effect. For example, in a jurisdiction where young adults are offered automatic

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94. See Dietrich, *supra* note 4, at 40–41; SHAH & STROUT, *supra* note 90, at 11.

95. See Radice, *supra* note 12, at 386.

96. See *id.*

97. See *id.*

98. See David S. Kirk & Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 86 SOCIO. EDUC. 36, 39 (2013).

99. See Kara E. Nelson, *The Release of Juvenile Records Under Wisconsin's Juvenile Justice Code: A New System of False Promises*, 81 MARQ. L. REV. 1101, 1104 (1998).

100. See Andrew Oldenquist, *An Explanation of Retribution*, 85 J. PHIL. 464, 464–65 (1988).

101. Cf. Nelson, *supra* note 99, at 1145 (“Opponents contend that confidentiality allows juveniles to escape the consequences of their actions; given the current juvenile crime problem, this is no longer a popular idea.”).

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expungement, conditioned on the fact that they are in good moral standing, young adults would still be held personally accountable for their actions until the statutory waiting period has passed and they can expunge their record.<sup>102</sup>

Opponents of extending confidentiality protections to young adults may also be concerned with an interest in societal protection.<sup>103</sup> This is an extremely valid concern and one of the primary purposes for the justice system.<sup>104</sup> The concept behind this argument is that by failing to punish those who commit criminal harm, the rest of society is placed at risk of being subject to the offender's next act of criminal harm.<sup>105</sup> For example, by failing to incarcerate a juvenile sex offender, the government allows a juvenile the opportunity to injure another member of society, i.e., commit the crime again. Thus, the isolation of the one offender serves as the protection of the many vulnerable members of society.

While this may be the case in some circumstances, the bulk of criminal encounters involving young adults are disorderly persons offenses which pose a smaller risk to society than felonies.<sup>106</sup>

#### IV. HOW THE LAW CAN BE MODIFIED TO PROTECT YOUNG ADULTS

Given their similar diminished culpability and their vulnerability to collateral consequences which would impede their re-integration into society, young adults should be extended confidentiality protections similar to those of juveniles.

##### A. *Proposed Solution One: Extending Confidentiality Protections to Young Adults*

First, the government could extend to young adults the general confidentiality provisions offered to juveniles which restrict public access to their criminal records.

In this regard, New Jersey should consider following New York's youthful offender procedures as a model. New York sets its age of juvenile jurisdiction at sixteen.<sup>107</sup> That is, individuals aged sixteen and older are

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102. See SHAH ET AL., *supra* note 19, at 36–38.

103. Nelson, *supra* note 99, at 1142.

104. *Id.*

105. *Cf. id.* (“[I]f confidentiality is no longer justified, then society should demand disclosure because confidentiality prevents society from discovering the identities of those juveniles who jeopardize public safety.”).

106. See O'Brien, *supra* note 48.

107. Vincent Lau, *New York State Revisits the Age of Juvenile Jurisdiction*, VERA: THINK JUST. BLOG (Sept. 26, 2011), <https://www.vera.org/blog/new-york-state-revisits-the-age-of-juvenile-jurisdiction>.

automatically charged as adults and participate in the criminal justice system as opposed to the juvenile justice system.<sup>108</sup> Despite this, New York's youthful offender procedures extend special confidentiality protections such as sealed accusatory instruments, private arraignment and proceedings, and confidential court records to sixteen through nineteen-year-olds.<sup>109</sup>

One of the strengths of this statute is that youthful offender status does not qualify as a conviction.<sup>110</sup> Therefore, youthful offenders can deny being convicted of a crime on applications, such as employment, education, and benefits applications, that may ask about criminal convictions.

If New Jersey were to implement this model, it should provide similar confidentiality protections to young adults. By extending these protections to all young adults, New Jersey would be faithful to the underlying principles behind juvenile jurisdiction and confidentiality protections because it would extend to all those who are less morally culpable and prevent collateral consequences from impeding re-integration into society.

#### *B. Proposed Solution Two: Automatically Expunging Young Adult Criminal Records*

Another potential solution that could offer more protection to young adults is an automatic expungement provision. This could be in the form of automatic expungement at age twenty-five, like in some states where juvenile records are automatically expunged at eighteen, or automatic expungement after a statutory waiting period.

In this regard, New Jersey should consider following the models of Louisiana and Pennsylvania. Louisiana adopted procedures allowing for automatic expungement of juvenile offenses that did not result in adjudication.<sup>111</sup> Notable features of these new procedures included judicial notification of eligibility, availability of fill-in-the-blank motion forms, and acceptability of more affordable and convenient means of

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108. See Jeffrey Johnson, *New York Juvenile Crimes: A Quick Look At How The System Works*, FREEADVICE, [https://criminal-law.freeadvice.com/criminal-law/juvenile\\_law/new-york-juvenile-crimes-how-system-works.htm](https://criminal-law.freeadvice.com/criminal-law/juvenile_law/new-york-juvenile-crimes-how-system-works.htm) (last updated Mar. 5, 2020).

109. See N.Y. CRIM. PROC. LAW § 720.10 (McKinney 2020).

110. See *id.* § 720.35.

111. See Hector A. Linares III, *Expungement Reform Helps Those with Juvenile Records*, 66 LA. BAR J. 100, 101–02 (Aug./Sept. 2018) (“Under the new expungement procedures, the juvenile court can expunge and seal records at any time if they are related to matters that did not result in an adjudication.”).

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service.<sup>112</sup> Pennsylvania has also recently enacted a Clean Slate Act that automatically expunges records for most nonviolent misdemeanors.<sup>113</sup>

The benefit to expungement provisions such as those provided by Louisiana and Pennsylvania is that young adult offenders will be able to deny conviction once their statutory waiting period has passed.<sup>114</sup> In addition, expungement addresses collateral consequences across several different problem areas such as employment and housing, and not just one particularized problem area.<sup>115</sup>

If implemented in New Jersey, automatic expungement after a statutory waiting period would likely be the best course of action. Given that young adults are older and presumably slightly more mature than juveniles, this method would balance society's interest in personal accountability and societal protection, because young adults would be held accountable up until the statutory waiting period has passed. However, because risk of recidivism is only between three to seven years, the statutory waiting period should not be any longer than seven years.<sup>116</sup>

Legislators drafting an expungement provision should follow Pennsylvania's model for monthly inquiry and automatic sealing of records by the AOPC and State Police.<sup>117</sup> Legislators should follow Louisiana's model for notification of eligibility for sealing.<sup>118</sup>

By offering automatic expungement to young adults after a reasonable statutory waiting period, this solution could erase the slate of young adults with criminal encounters resulting from the foolish mistakes of people their age.

## V. CONCLUSION

In conclusion, the juvenile justice system and its confidentiality protections were established based on the principle that juveniles had diminished culpability as a product of their age and that criminal encounters resulted in collateral consequences that impeded their re-integration into society.

The Court in *Roper* indicated that juveniles are distinct from adults because they have diminished culpability based on less maturity, susceptibility to outside influences, and transitory character. Indeed, young adult brains are more similar to that of juveniles than that of

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112. *See id.*

113. *See* Dietrich, *supra* note 4, at 46, 48.

114. *See id.* at 50.

115. *See id.* at 49–50.

116. *See id.* at 41.

117. *See id.* at 47.

118. *See* Linares, *supra* note 111, at 102.

adults, young adults are similarly influenced by the presence of their peers and prone to groupthink, and young adults experience their own developmental stage which is comprised of much of the identity exploration and instability formerly associated with adolescence.

Juveniles were also considered distinct from adults because collateral consequences of criminal records impede their re-integration into society. Collateral consequences similarly impede a young adult's re-integration into society. Criminal records pose an obstacle to young adults achieving higher education, employment, public benefits, and more, just like they do for juveniles.

All of the foregoing evidence points to the conclusion that young adults exhibit diminished culpability and collateral consequences similar to that of juveniles, which warrants extending confidentiality protections to them as well.

If New Jersey were to implement confidentiality protections for young adults, it could extend juvenile confidentiality provisions to young adults or automatically expunge records for young adults after a statutory period. Automatic expungement after a statutory period would likely be the most protective because the records would be completely destroyed. This would have the optimal effect of wiping a young adult's "slate" clean after a statutory waiting period, while balancing society's interest in personal accountability and societal protection.