



To seal or not to seal: WA's battle over juvenile records

The state's policy of not sealing - and then selling - juvenile criminal records sentences young offenders to a lifetime of punishment.

By Eric Scigliano

January 27, 2014.

Editor's Note: This is Part One of a 2-part series that explores Washington State's policy on sealing (or unsealing) juvenile records.

When he was 14 years old, Daniel Brenner did something stupid and criminal and paid his debt to society. Or so he thought.

Brenner, now a soft-spoken, baby-faced 22-year-old with a wisp of beard, served three months in juvenile detention at the state's Echo Glen School, an experience he, like many other young offenders, says turned him around. Upon release he went to live for a while in the Philippines, his mother's homeland. When he returned he got his high school GED and tried to get a job. No luck: Employers saw his criminal record and brushed him aside.

Brenner had run into a problem that bedevils most young offenders, and many state officials too. Despite three years of legislative efforts to seal juvenile arrest and conviction records (with a fourth try on deck in the current session), Washington remains one in a minority of states that releases juvenile records to the public. It has until recently been one of only three that sell these records in bulk to credit bureaus, data brokers, landlords, employers, colleges and other enterprises which use or market background checks.

The effects of this policy go far beyond unemployment. Colleges and scholarship-granting agencies routinely do background checks and disqualify applicants for criminal histories. Absent more authoritative data, the most comprehensive examination yet on the impacts of Washington's release of juvenile records appears to be a master's thesis by UW grad student Tony Calero, which found that only one of the state's public universities, Central Washington, "appears to refrain from collecting this information." Jim Theofelis, the director of the Mockingbird Society for homeless youth and former mental health director at King County Youth Detention, recalls the case of a teen who'd received a college scholarship. The school checked, discovered she'd been charged in a family domestic dispute, and withdrew the scholarship.

"Finding housing was worse than getting a job," recalls Sue Steinman, whose son, like Daniel Brenner, was haunted by his juvenile record. Steinman teaches middle-school math at Thurston County Juvenile Detention. Her son, she says, managed to land "a couple part-time jobs he got through friends who knew he'd turned his life around, but getting housing was impossible." Despairing of ever finding a house or a steady job in his home state, Steinman's son left for Hawai'i, where "nobody cared" about his record. He got good work, but struggled with depression, and died suddenly at Christmastime. She hadn't seen him in two years.

Landlords' use of juvenile criminal records as a tool for screening is "a huge barrier to eliminating homelessness," says Jim Theofelis, particularly when so many records are the result of "minor infractions at a real early age." The prevailing rule in domestic violence calls — that police will arrest *someone* — feeds that data stream. When Theofelis worked at King County Juvenile Detention, "it was a classic pattern. Kids would come in after what were really squabbles with parents, with felony charges — even though most of the time the parents looked much better [after the brawl] than the kids."

"It's not just private landlords," says Terry Pottmeyer, CEO of Kirkland-based Friends of Youth, which houses Eastside homeless adolescents. "Even some groups serving the homeless screen out those with juvenile records." Her agency among them. "We do inquire," admits Pottmeyer. "We have to guard the safety of our residents. We try to set the barrier as low as possible. The challenge is, you wouldn't even know what's in the record of someone coming from Texas or California or Wisconsin," or the other states that seal juvenile records. Washington law puts the Washington-bred at a disadvantage compared to those who immigrate from other states.

Washington does offer a way out of this perpetual pariah-ship for all but the most serious juvenile violent and sex crimes. At least, it does on paper. Former juvenile offenders can apply to get their records sealed after they've kept their noses clean for a specified period — five years for serious felonies, two for lesser crimes — after being released from detention.

But the sealing process is arduous and, for those who use private attorneys, costly. Applicants must gather their histories (many counties charge for providing them); notify authorities in every local jurisdiction where they have a record; apply for each record they want to seal; pay any restitution owed; undergo a court hearing; and deliver motions, notices and certified copies of any final order to seal their records to at least four different state agencies.

Thanks to these barriers, fewer than one-tenth of eligible juvenile records actually get sealed — far fewer in the cases of minority offenders who are already arrested and convicted in disproportionate numbers. UW's Calero crunched 234,237 juvenile court records and found that just two percent of Native American cases and 5.8 percent of African American cases were sealed. That's compared to 7.9 percent of white offenders and 9.7 percent of Asian American.

The record-sealing process compounds wider patterns of discrimination in the criminal justice system. Furthermore, it may distort the subsequent choices made by landlords, employers and schools in a way that disfavors those young people who were never actually convicted of any crimes. Calero found that youth who were never convicted were "significantly less likely" to get their records sealed than those who were.

This discrepancy may occur because young people who are convicted of crimes tend to be more aware that their records are out there. Whatever the reason, landlords and employers, contrary to their likely intent, will screen out a larger share of kids who were never convicted, and screen in a larger share of those who were.

Given her job at a juvenile detention center, Sue Steinman was probably better equipped than most parents to negotiate the process of getting her son's records sealed. But they still found it daunting, and couldn't afford a lawyer. Easier to move to more-forgiving Hawai'i.

Daniel Brenner fared better; his family hired a lawyer and paid his restitution. At 19, after five years on the lists, he was informed that his records had been sealed. He notified Experian, NexisLexis and the other reporting agencies. "I started applying for every job everywhere, from McDonald's to call centers," he recalls. "I got hired by a call center and passed the initial background check. Then, after I'd started working, they did a check with a

different service [LexisNexis] and my record showed up. I'd said 'No' where the questionnaire asked whether I had any convictions, the way I was supposed to be able to do. They didn't like that and they let me go."

Brenner had discovered an essential truth of the digital age: Just because records are off the books doesn't mean they're gone. Once information is out there, it's out there, from the embarrassing photo your ex-boyfriend posted last week to your 35-year-old rap sheet for shoplifting the new *Blondie* album. Some data brokers are less diligent than others about purging sealed records. The *Salt Lake City Tribune* traced 30 sealed juvenile justice records and found that five were still being disseminated — again, by LexisNexis.

These firms commonly don't discriminate between juvenile and adult records, nor do they separate out non-conviction records — infractions and criminal charges that are dismissed, dropped or never filed. The federal Fair Credit Reporting Act requires consumer reporting agencies — a broadly defined category — to purge non-conviction records after seven years. But Bellevue-based Intelius shamelessly claims in the fine-print of its Terms of Service Agreement that it is not a consumer reporting agency, hence not subject to the law. And it would be shocked — shocked! — to discover that its customers use the data they buy to screen applicants for jobs, credit or insurance.

The Federal Trade Commission has begun cracking down. In 2012 it fined one firm, Spokeo, \$800,000 for running that dodge, and for failing to insure the accuracy of its reports and other abuses. But that's just a drop in the bucket when you consider the estimated 600 data brokers out there serving a booming market.

It's no good explaining that your record is supposed to be clean either, says Brenner. "Employers don't understand the sealing process." Nor, it seems, does almost anyone else. Many people, including offenders themselves and some law enforcement personnel, don't even realize that juvenile records are public. "Almost everyone who comes in says someone — judges, lawyers, probation counselors — told them their records wouldn't show up in their history," says Kim Ambrose, the director of UW's Race and Justice Clinic, which helps young offenders in King County get their records sealed. That advice would conveniently help persuade kids to make everyone else's life easier and plead guilty.

When I asked a Washington State Patrol spokesman about the state's sale of juvenile and other criminal records, he insisted that "at 18, the records are all wiped clean." Last year WSP released 1,244,340 records and collected \$4.9 million for them. That doesn't include what the state Administrative Office of Courts earns selling subscriptions to its records (\$1,800 a year for full access, \$100 for a pay-as-you-go service).



Hard data is hard to find for the other cost of the transaction — the scale of its impact on young people's lives. "Almost all the homeless youth service providers will say this is the number one issue for why kids can't get housing or jobs," says Casey Trupin (left), coordinating attorney at Columbia Legal Services' Children and Youth Project. Perhaps it explains why, even though Washington's general unemployment rate was only the 22nd-highest in the nation last

year, we had a higher share of unemployed 16-to-19-year-olds than all but five states. In the 20-to-24-year-old category, our unemployment rate ranked higher than the rates in all but 11 states.

The impacts can extend beyond the young person. "In Washington, D.C., whole families are evicted all the time from public housing because of one youth's conviction," says Tim Curry, managing attorney at the D.C.-based National Juvenile Justice Center. The Seattle

Housing Authority screens applicants' records and rejects those with convictions until they've been clean the same number of years required before any juvenile can apply to seal his or her records: That's two years for drug possession, five for robbery or intent to sell drugs. Families may be forced to kick their kids out just to get housing.

Because of his juvenile record, Daniel Brenner was not allowed to serve as guardian for his disabled mother. "When I was 17 my mother had a stroke in Korea, where she was in the military," he explains. "I was staying with her. I'm the only family member she has, but they wouldn't place me with her as her guardian because of my record. So right now she's in a nursing home." As we spoke, he was on his way to visit his mom for her birthday.

Three years after getting his files sealed, Brenner still hasn't gotten a job or his own apartment. Instead he's attending community college, studying to become a graphic designer. "In graphic design you can pretty much do your own business and freelance," he explains; so far, clients don't tend to order background checks on freelancers. He stays with a fellow Echo Glen alum named Starcia Ague, who he says helped him turn his attitude around when they were both incarcerated there. (Ague won Crosscut's 2013 Courage Award for Public Service.)

Ague herself is a poster-child success story, perhaps the state's most prominent advocate for restoring confidentiality to juvenile records. She earned her GED and, eventually, a bachelor's degree in criminal justice from Washington State University. She looked for work and housing in Pullman but struck out on both counts. She recalls sending out 35 applications and getting two call-backs and one interview, at which she was offered a telemarketing job. Where the application asked if she'd been convicted of a crime, she'd written, "Will explain at interview." Now "they asked me to explain, and then withdrew the offer."

Ague, however, caught a lucky break. At Echo Glen she met a psychiatry professor named Eric Trupin (Casey Trupin's father), who directs the Public Behavioral Health and Justice Policy program at the UW School of Medicine. Trupin was impressed — "It was clear she was bent on her own rehabilitation," he recalls — and gave her his card. After she got her degree he hired her as a research assistant at UW, where she developed a Youth Voices project, "helping youth at various institutions speak for themselves." She now works for the state Juvenile Rehabilitation Administration.

Hiring Ague "was a challenge," says Trupin, "even at the U, which has a progressive policy on this issue." She had to secure something extremely rare, a gubernatorial pardon for a juvenile crime, to get past the HR rules. Even now Ague has to watch her records to make sure that her pardon sticks in practice.

Eric Trupin sighs at the contradiction of disseminating juvenile records "in a state where we emphasize rehabilitation and in fact have one of the most effective rehabilitation programs in the country. This is a constitutional issue and a human issue."

That issue has been roiling since 1977 when Washington State made juvenile court records public. It is now reaching a boil.

Last November, with the support of the Superior Court Judges' Association, the state Judicial Information System Committee, a panel of judges and other legal officials that regulates the dissemination of court records, voted to stop the bulk sale of juvenile records and to remove them from the state judicial system's online index. Employers and others can still obtain the juvenile records of particular individuals on the state website and at local courthouses. Last Thursday two state senators, crossover Democrat Tim Sheldon and Republican Pam Roach, introduced a bill that would overturn this measure, guaranteeing that juvenile records will remain available in bulk and in any online index of statewide court records.

Meanwhile, a small army of ex-offenders, state officials, attorneys, mental-health professionals, some police and prosecutors and one very determined Seattle legislator has

been working for years to roll back the release of juvenile criminal records even farther. For three years they've pushed a bill to make records in all but the most serious juvenile crimes confidential. Last year that bill passed the House unanimously but failed to clear its final Senate committee hurdle.

This year's iteration gets a hearing on Wednesday. Over the years its author, Rep. Ruth Kagi, a Lake Forest Park Democrat and staunch youth advocate, has added more crimes to the list of those exempt from confidentiality bill and added provisions she believes will ensure that the press and other watchdogs can still monitor the juvenile justice system and keep courts accountable.

Washington State's landlords and newspapers, Kagi's main opponents, don't think so.

Coming up: The battle over juvenile records heats up in Olympia. Why an unlikely alliance of business and media calls sealing juvenile records unwise and unconstitutional. What prompted Washington to start releasing them in the first place. And what we've learned since then about adolescent development.

Eric Scigliano's reporting on social and environmental issues for The Weekly (later Seattle Weekly) won Livingston, Kennedy, American Association for the Advancement of Science, and other honors. He has also written for Harper's, New Scientist, and many other publications. One of his books, Michelangelo's Mountain, was a finalist for the Washington Book Award. His other books include Puget Sound; Love, War, and Circuses (aka Seeing the Elephant); and, with Curtis E. Ebbesmeyer, Flotsametrics. Scigliano also works as a science writer at Washington Sea Grant, a marine science and environmental program based at the University of Washington. He can be reached at eric.scigliano@crosscut.com.

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Printed on January 27, 2014