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No Clean Slates: Unpacking the Complications of Juvenile Expungements in the Wake of In Re Welfare of J.J.P.

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**NO CLEAN SLATES: UNPACKING THE
COMPLICATIONS OF JUVENILE EXPUNGEMENTS
IN THE WAKE OF *IN RE WELFARE OF J.J.P.***

Nic Puechner[†]

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*“Rather than serving in the U.S. Senate for almost 20 years, or having so many other wonderful life experiences, I could have served a longer sentence in prison for some of the stupid, reckless things I did as a teenager. I am grateful to have gotten a second chance—and I believe our society should make a sustained investment in offering second chances to our youth.”*¹

—Alan K. Simpson, U.S. Senator

I. INTRODUCTION

Any individual under the age of eighteen is considered a juvenile and is subject to the jurisdiction of the juvenile court.² Under this framework, a juvenile committing an offense is subject to an adjudication of delinquency rather than a criminal conviction.³ The juvenile court system⁴ adjudicates juveniles with an eye on rehabilitation, geared toward recognizing the “unique characteristics and needs of children.”⁵ The system is designed to

1. Alan K. Simpson, *A Sentence Too Cruel for Children*, WASH. POST, Oct. 23, 2009, at A25, available at LEXIS.

2. MINN. STAT. §§ 260B.101, subdiv. 1, 260B.007 (2012). An individual *may* be removed from juvenile court and certified as an adult for proceedings if that individual is at least fourteen years old and has committed an offense that would be a felony if committed by an adult. *Id.* § 260B.125, subdiv. 1. Juvenile is defined as “[a] person who has not reached the age (usu. 18) at which one should be treated as an adult by the criminal-justice system; MINOR.” BLACK’S LAW DICTIONARY 945 (9th ed. 2009).

3. *See* MINN. STAT. § 260B.001, subdiv. 2; *see also id.* § 260B.245, subdiv. 1(a) (“No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime . . .”).

4. Unlike adult criminal proceedings, juvenile courtrooms are generally sealed to the public. *Id.* § 260B.163, subdiv. 1(c). Additionally, unless an exception applies, juvenile records are sealed to the public as well. *Id.* § 260B.171, subdiv. 4(b). Finally, even if a juvenile’s record is accessible under an exception, if an expungement is granted, the very nature of one makes the record inaccessible to the public. Due to privacy concerns over a juvenile’s judicial proceedings, significant research in the area of juvenile expungements has been limited.

5. *Id.* § 260B.001, subdiv. 2; *see also* COUNCIL ON CRIME & JUSTICE, JUVENILE RECORDS IN MINNESOTA 4 (2014), available at <http://www.crimeandjustice.org/researchReports/Juvenile%20Records%20in%20Minnesota.pdf> (“In contrast to adult criminal court, juvenile court was fundamentally rehabilitative, adopting a *parens patriae* doctrine, in which the state intervened as a child’s guardian, protecting a child from her own wrongdoings and those of adults around her.” (citing Perry L. Moriearty, *Combating the Color-Coded Confinement of Kids: An Equal*

provide extensive judicial discretion over unlawful behavior that originates not so much from inherent criminality, but rather from a failed or underutilized social environment.⁶ Because of this, the courts function from the standpoint that there will at some point be a second chance for that juvenile. If nothing else, that juvenile has until the age of eighteen to stay out of the criminal court system. However, even if they have had no other brushes with the law, thousands of Minnesota youths are adversely affected by their juvenile adjudications.⁷ A juvenile's delinquency adjudication can have far-reaching ramifications that are felt long after an individual has left the jurisdiction of the juvenile court.

An adjudication can carry many collateral consequences,⁸ from the mere stigma⁹ of being a juvenile offender to cognizable hardships in obtaining housing, employment, and education.¹⁰ Although various efforts are being introduced to counter the effects of collateral consequences on the large class of individuals with past adjudications or convictions, these measures are a “tough

Protection Remedy, 32 N.Y.U. REV. L. & SOC. CHANGE 285, 286 (2008)).

6. See COUNCIL ON CRIME & JUSTICE, *supra* note 5, at 4.

7. See *id.* Adjudications affect youth at the time of the offense, but as they age out of the juvenile court system and attempt to seek employment, housing, or education, adjudications can continue to have a very real adverse effect by preventing them from entering those markets as adults.

8. See *id.* at 12 (“The term ‘collateral consequences’ is a catch-all used to describe the barriers that a person might experience due to a juvenile or criminal record.”).

9. Some sociologists posit the social theory that stigma alone can be the barrier that keeps an individual out of the “normalized” larger group. See ERVING GOFFMAN, STIGMA 139 (1963) (“The stigmatization of those with a bad moral record clearly can function as a means of formal social control; the stigmatization of those in certain racial, religious, and ethnic groups has apparently functioned as a means of removing these minorities from various avenues of competition”); see also *Prison and Beyond: A Stigma That Never Fades*, ECONOMIST (Aug. 8, 2002), <http://www.economist.com/node/1270755> (“This keenness to lock people up is matched by a complete lack of interest in them when they get out.”). Speaking of stigma, “A survey of employers in five large cities found that 65% would not knowingly hire an ex-convict,” adding that “[a]nother facet of the ‘tough on crime’ movement has been to exclude ex-convicts from certain kinds of employment.” *Id.*

10. See Jon Geffen & Stefanie Letze, *Chained to the Past: An Overview of Criminal Expungement Law in Minnesota—State v. Schultz*, 31 WM. MITCHELL L. REV. 1331, 1333 (2005). While Geffen & Letze mention only housing and employment, the decision in *J.J.P.* expands that framework to include obstacles in the area of education. *In re Welfare of J.J.P. (J.J.P. II)*, 831 N.W.2d 260, 270 (Minn. 2013).

sell” to legislators and judges when many jurisdictions have a “tough on crime” stance.¹¹ Nevertheless, past offenders have at least one legal remedy in the form of expungement to alleviate the collateral consequences of a past adjudication.

Expungements are a legislatively driven primary tool used by the judiciary to directly counter the effects of a past adjudication.¹² They are the court-ordered sealing of government-held criminal or delinquency records of an individual.¹³ Under Minnesota law, individuals who have committed juvenile offenses are entitled to petition for an expungement of any adjudication records held by the district court. If the petitioner’s request is granted upon a demonstrated showing of need,¹⁴ that individual is entitled to have that record erased as if the event never occurred.¹⁵ Theoretically, this should enable the petitioner to move forward in obtaining housing, education, and employment without the blemish of his or her past offense. However, as this note explains, under the recent Minnesota Supreme Court decision of *In re Welfare of J.J.P.*, petitioners may not see the practical solutions the court intended to grant through the expungement process.¹⁶

This case note begins with a short history of the juvenile justice system before examining the statutory framework and prior case law involving juvenile expungements.¹⁷ It will then focus on the details of the *J.J.P.* case, encapsulating both the Minnesota Court of

11. One such effort is Minnesota’s “Ban the Box” measure, allowing Minnesota’s portion of the millions of Americans with past convictions a second chance at an opportunity for employment. See *MDHR Offers Employers a Toolkit on Minnesota’s New ‘Ban the Box’ Law Signed by Governor Mark Dayton Today*, OFF. GOVERNOR BLOG (June 5, 2013, 12:08 PM), <http://mn.gov/governor/blog/the-office-of-the-governor-blog-entry-detail.jsp?id=102-62169>.

12. MINN. STAT. § 260B.198, subdiv. 6 (2012); *Expungement in Minnesota*, COUNCIL ON CRIME & JUST., <http://crimeandjustice.org/councilinfo.cfm?pID=100> (last visited Feb. 21, 2014).

13. See *Expungement in Minnesota*, *supra* note 12 (explaining that an expungement is not the “destruction of the records”).

14. The test is one of balancing whether an expungement of the adjudicating order would “yield a benefit to the petitioner that outweighs the detriment to the public in sealing the record and the burden on the court in issuing, enforcing, and monitoring the expungement order.” *J.J.P. II*, 831 N.W.2d at 270.

15. *Id.* at 267 (citing *Barlow v. Comm’r of Pub. Safety*, 365 N.W.2d 232 (Minn. 1985)).

16. See *id.*

17. See *infra* Part II.

Appeals and Minnesota Supreme Court decisions.¹⁸ This note will argue that while the Minnesota Supreme Court may have intended to provide solid footing for expungements in the wake of the decision, the court failed to provide many petitioners actual relief under Minnesota Statutes section 260B.198, subdivision 6.¹⁹ This note will then analyze the implications of the *J.J.P.* decision on petitioners and address the gaps left by the majority decision as it relates to relief sought by a petitioner in the areas of employment, housing, and education.²⁰ Finally, this note will provide suggestions for possible legislative reform to remedy the ineffectiveness of the current statute.²¹

II. HISTORY

A. *History of the Juvenile Justice System*

The philosophy separating the juvenile justice system from the criminal courts has a deep, historical origin.²² One of the early shifts occurred in the late seventeenth century, as an emphasis on the Christian example of moral living began to transform family dynamics and childrearing.²³ This emphasis on good childrearing gave way to a permissible intervention by officials into the privacy of the nuclear family.²⁴ In fact, the “[p]ublic interest in nurturing and protecting children became the focal point during the last three decades of the nineteenth century.”²⁵ This time period, known as the Progressive Era, saw the emergence of a wealthy, white upper class that was “fearful of social disorder and dismayed by the poverty, disease, and lawlessness of urban life.”²⁶ This gave rise to various organizations with prescribed police powers whose mission was clear: to save poor and neglected children, or ones who had

18. See *infra* Part III.

19. See *infra* Part IV.A.

20. See *infra* Part IV.A.2–3.

21. See *infra* Part IV.B.

22. See Wright S. Walling & Stacia Walling Driver, *100 Years of Juvenile Court in Minnesota—a Historical Overview and Perspective*, 32 WM. MITCHELL L. REV. 883, 885–89 (2006) (tracing the lineage of the juvenile justice system from the Middle Ages to present day).

23. *Id.* at 885.

24. *Id.* at 886–87.

25. *Id.* at 888.

26. *Id.* (citing ELIZABETH PLECK, *DOMESTIC TYRANNY* 70 (1987)).

been involved in delinquent acts.²⁷ Essentially, “[t]his world view prompted compulsory education laws, new schools and vocational institutions, restructured curricula, and restrictions on child labor. It also led to the establishment of the federal Children’s Bureau and . . . the creation of the first juvenile court in the United States.”²⁸

The first juvenile court was created in Chicago, Illinois, in 1899.²⁹ During its formative years, the court was intentionally separated from the criminal system because the creators believed that “criminal statutes, which for hundreds of years had essentially viewed children as adults by the age of seven, were a total failure in deterring the criminal behavior of children.”³⁰

The juvenile justice system was formed with an eye toward the power of *parens patriae*,³¹ which was an extremely deliberate departure from the criminal courts. The founders of the system envisioned the judge “[s]eated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him.”³² Because of this insistency that children were not merely “miniature adults,”³³ the courts developed this system separately to avoid the constitutional due process constraints required in adult court.³⁴

The first juvenile court statute in Minnesota was enacted in 1905, clearly reflecting the social movements occurring at the national level.³⁵ Throughout the early 1900s, Minnesota kept pace

27. *Id.*

28. *Id.* at 889.

29. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909). The juvenile justice system emerged out of the passage of the first juvenile court act in Illinois, which was formed through initiatives led by social reformers interested in such causes as prison reform, employment issues, women’s suffrage, and poverty law. See Walling & Driver, *supra* note 22, at 889–90.

30. Walling & Driver, *supra* note 22, at 890–91 (citing MONRAD G. PAULSEN & CHARLES H. WHITEBREAD, *JUVENILE LAW AND PROCEDURE* 1 (N. Corinne Smith ed., 1974)).

31. *Parens patriae* literally means “parent of his or her country” and as a doctrine refers to the state as a provider of protection to those unable to care for themselves. BLACK’S LAW DICTIONARY 1221 (9th ed. 2009).

32. Mack, *supra* note 29, at 120.

33. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2397 (2011).

34. Jennifer Park, *Balancing Rehabilitation and Punishment: A Legislative Solution for Unconstitutional Juvenile Waiver Policies*, 76 GEO. WASH. L. REV. 786, 791–92 (2008).

35. Walling & Driver, *supra* note 22, at 896. Minnesota was one of the most

with the national struggle between this *parens patriae* philosophy and the growing trend toward due process requirements for juvenile courts.³⁶ The Juvenile Court Act of 1917 forbade a juvenile adjudication to be considered a conviction of a crime,³⁷ and in 1922, the Minnesota Supreme Court decided that “determinations of delinquency did not require due process because it is the ‘right of the state to step in and save the child.’”³⁸ The philosophy surrounding the juvenile court system started to shift toward the middle of the twentieth century.

One of the earliest acknowledgements that there may be constitutional questions regarding juvenile adjudications came in 1957 with an article entitled *Fairness to the Juvenile Offender*, in which the author questioned what practical differences were present between the criminal and juvenile court systems if the outcomes were similar.³⁹ Moments like this reaffirmed the state’s long-standing commitment to treating juvenile offenses differently than criminal convictions—even with shifts of statutory language throughout the years away from a paternalistic core to more punitive in nature.⁴⁰

In the 1960s, advocates who feared that juvenile court proceedings placed children in a sort of purgatory—the possible loss of personal liberties without the presence of constitutional due process requirements—began to challenge the system.⁴¹ In a series of pivotal U.S. Supreme Court cases, due process requirements

progressive states in the early 1900s in regard to its juvenile justice system. *Id.* at 900.

36. *Id.* at 910–11.

37. Act effective Jan. 1, 1918, ch. 397, § 21, 1917 Minn. Laws 561, 570 (“The adjudication of a juvenile court that a child is delinquent shall in no case be deemed a conviction of crime . . .”).

38. John M. Stuart & Amy K.R. Zaske, *What Does a “Juvenile Adjudication” Mean in Minnesota? Some New Answers After a Century of Change in Juvenile Court*, 32 WM. MITCHELL L. REV. 919, 923 (2006) (quoting *Peterson v. McAuliffe*, 151 Minn. 467, 469, 187 N.W. 226, 226 (1922)).

39. See Monrad G. Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 550 (1957) (“If the result of an adjudication of delinquency is substantially the same as a verdict of guilty, the youngster has been cheated of his constitutional rights by false labeling. We cannot take away precious legal protection simply by changing names from ‘criminal prosecution’ to ‘delinquency proceedings.’”).

40. See Stuart & Zaske, *supra* note 38, at 927 (noting the 1980s shift in statutory language from importance on rehabilitation to that of public safety).

41. See Courtney P. Fain, *What’s in a Name? The Worrisome Interchange of Juvenile “Adjudications” with Criminal “Convictions,”* 49 B.C. L. REV. 495, 501 (2008).

were largely instilled into the juvenile justice system,⁴² but even today juveniles are not entitled to a jury trial unless they are transferred to adult court and tried there.⁴³ In *In re Gault*, the Court affirmed that “some due process guarantees could no longer be withheld from juveniles under the guise of offering juveniles rehabilitation instead of punishment,” and that extending these “due process requirements would not destroy the uniqueness of the juvenile court.”⁴⁴

Although the due process requirements that have been extended to juvenile courts cannot be displaced by state legislatures, the “jurisdiction and purpose of the court is at the mercy of legislative will and can be changed to address problematic social issues.”⁴⁵ Over the years, due to increased rates of youth violence, combined with a “tough on crime” stance, the courts have been trending toward a more punitive stance.

Between 1992 and 1997, state laws in forty-five states made it easier to transfer juveniles into the adult system, thirty-one states increased the sentencing options for juveniles, and forty-seven states removed juvenile court confidentiality protections, resulting in more public proceedings and greater access to juvenile records. Further, although in most states the juvenile court has original jurisdiction for all persons under the age of eighteen, in some states the juvenile court jurisdiction ends at ages fifteen or sixteen; juveniles in these states have not yet reached the age of majority but are categorically considered adults for the purpose of assessing criminal responsibility.⁴⁶

For instance, in recent years, courts across the country have increasingly held that juvenile adjudications can be used to impact sentencing during a subsequent adult conviction.⁴⁷ The trend

42. See *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *In re Gault*, 387 U.S. 1 (1967); *Kent v. United States*, 383 U.S. 541 (1966).

43. See *McKeiver*, 403 U.S. at 545 (“[T]rial by jury in the juvenile court’s adjudicative stage is not a constitutional requirement.”).

44. *Fain*, *supra* note 41, at 502 (citing *Gault*, 387 U.S. at 27–28).

45. *Id.* at 504.

46. *Id.* at 504–05.

47. See, e.g., *United States v. Crowell*, 493 F.3d 744, 750 (6th Cir. 2007); *United States v. Burge*, 407 F.3d 1183, 1190–91 (11th Cir. 2005); *United States v. Jones*, 332 F.3d 688, 696 (3d Cir. 2003); *United States v. Smalley*, 294 F.3d 1030, 1032–33 (8th Cir. 2002).

toward recognizing juvenile adjudications for the purposes of sentencing enhancements for adult convictions suggests that they are equivalent to adult convictions, at least in reference to the argument that the juvenile justice system is ever-increasingly more punitive than rehabilitative.

B. Juvenile Expungement Statute 260B.198

Juvenile expungement requests are governed by Minnesota Statutes section 260B.198, subdivision 6: “Except when legal custody is transferred under the provisions of subdivision 1, clause (4), the court may expunge the adjudication of delinquency at any time that it deems advisable.”⁴⁸

The earliest incarnation of the juvenile expungement statute was in 1959.⁴⁹ It read, “Except when legal custody is transferred under the provisions of subdivision 1, clause (d), the court may, within 90 days, expunge the adjudication of delinquency.”⁵⁰ In 1961, the legislature amended the statute to its modern phrasing.⁵¹ In the span of these two years, the legislature removed the restrictive ninety-day window and gave the district court judge the discretionary power to make case-by-case decisions regarding juvenile delinquents.⁵²

In the fifty-two years since, the legislature has not amended or expanded the statute.⁵³ The scarcity of cases interpreting the statute

48. MINN. STAT. § 260B.198, subdiv. 6 (2012). Subdivision 1, clause 4 states that an expungement is applicable unless there has been a “transfer [of] legal custody by commitment to the commissioner of corrections.” *Id.* § 260B.198, subdiv. 1.

49. *See* Act effective July 1, 1959, ch. 685, sec. 28, § 260.185, subdiv. 2, 1959 Minn. Laws 1275, 1293 (amended 1961).

50. *Id.*

51. *See* Act approved Apr. 20, 1961, ch. 576, sec. 13, § 260.185, subdiv. 2, 1961 Minn. Laws 1035, 1039.

52. *See id.* An alternate reading of the statutory shift is plausible. Since the phrase “within 90 days” was deleted, and “at any time it deems advisable” was simultaneously added, the phrase may be strictly construed to be a technicality regarding time. However, this has not been the interpretation. Instead, the widely understood interpretation has been concerned with the district court judge’s discretion.

53. Section 260.185 was repealed in 1999 and replaced with section 260B.198. *See* Act of May 11, 1999, ch. 139, art. 2, sec. 30, § 260B.198, subdiv. 5, 1999 Minn. Laws 567, 619 (codified as amended at MINN. STAT. § 260B.198 (2012)). Any revisions to the statute did not affect the subdivision

perhaps solidifies the fact that until *J.J.P.*, there had not been a need. This is the extent of any statutory direction for petitioners seeking an expungement of their juvenile records. In contrast, the adult statute is robust and offers petitioners guidance on content, service, process, and other general requirements.⁵⁴ In the past, this vagueness forced practitioners and pro se petitioners to rely on the adult statute.⁵⁵ As this note will discuss, without legislative intervention, anyone seeking an expungement of his or her juvenile record will need to continue to rely on the adult statute for many of these procedural elements.

C. Lack of Relevant Case History Before J.J.P.

The lack of relevant case history predating *J.J.P.* is striking. Most challenges have been filed under chapter 609A in regard to the court's inherent authority to expunge records.⁵⁶ A district court has inherent authority to expunge its own records, so the question has been whether judicial inherent authority may extend outside

concerning expungements and is therefore irrelevant in this discussion.

54. See MINN. STAT. ch. 609A. The statute authorizes the district court to seal the records and prohibit any disclosure of their existence. *Id.* § 609A.01. It governs adult criminal offenses and convictions by juveniles who were prosecuted as adults. *Id.* § 609A.02, subdiv. 2. Standing in stark contrast to the court's ruling in *J.J.P.* regarding section 260B.198, subdivision 6, criminal proceedings not resulting in a conviction are explicitly subject to consideration for an expungement. *Id.* § 609A.02, subdiv. 3. An expungement of an adult record is by no means easy; rather, it

is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of: (1) sealing the record; and (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.

Id. § 609A.03, subdiv. 5. The Minnesota Supreme Court decided a case affecting adult expungement requests under chapter 609A the same day as it decided *J.J.P. II*. See *State v. M.D.T.*, 831 N.W.2d 276 (Minn. 2013).

55. *J.J.P. II*, 831 N.W.2d 260, 269 (Minn. 2013) (noting that the "district court applied the standards that govern expungement of adult criminal records under chapter 609A").

56. For an explanation on the difference between statutory and inherent authority, see Expungement Working Group, *Continuation of Presentation from House Research and Senate Counsel*, at 5:00, MINN. HOUSE REPRESENTATIVES (Oct. 22, 2013) [hereinafter *Expungement Working Group Meeting #2*], available at <http://www.house.leg.state.mn.us/comm/workinggroups/expungaudio.asp> (statement of Kathleen Pontius, Senate Counsel at Minnesota Senate).

the judicial branch. The lack of precedent is due not only to the private nature of juvenile court proceedings,⁵⁷ but may also be because juvenile expungements have been underutilized due to the lack of guidance under both the statute and case law.⁵⁸ Most cases were routed as inherent authority cases, which provided limited relief because they addressed only judicial records.⁵⁹

III. THE *J.J.P.* DECISION

A. *Facts and Procedural History*

In 2002, at the age of seventeen, J.J.P. broke into the Town and Country Golf Course in St. Paul, Minnesota and attempted to steal food and beverage items from the snack bar.⁶⁰ Within two weeks, he was arrested for shoplifting a pair of shoes from a department store.⁶¹ The State charged J.J.P. with felony second-degree burglary and misdemeanor theft, and he admitted to both charges.⁶² In September of that year, the Hennepin County District Court adjudicated him delinquent on both counts.⁶³

In 2007, J.J.P. was working both as a licensed emergency medical technician and firefighter while studying to become a paramedic.⁶⁴ At that point, he filed a pro se petition requesting an expungement of any records held by the court.⁶⁵ He did not, however, specifically request expungement of any records held by the Department of Human Services (DHS), the agency responsible for performing background checks for various state licensing

57. See MINN. STAT. §§ 260B.163, subdiv. 1(c), 260B.171, subdiv. 4(b).

58. See Lindsay Davis, *Minnesota Criminal Expungement Law: Current Law, Updates, and Alternatives*, MSBA FAM. L. SEC., <http://www.mnbar.org/sections/family-law/2012-13%20Notices/9-8-12%20Lindsay%20Davis%20Power%20Point.pdf>.

59. See Jane F. Pribek, *Minnesota Courts Get Leeway to Expunge Juvenile Records*, MINN. LAW. (Jan. 27, 2012), 2012 WLNR 28751582, for an example of how an expungement of judicial records does not affect all applicable criminal records held by state agencies.

60. *J.J.P. I*, 811 N.W.2d 125, 127 (Minn. Ct. App. 2012), *aff'd in part, rev'd in part, J.J.P. II*, 831 N.W.2d 260.

61. *J.J.P. II*, 831 N.W.2d at 262.

62. *Id.*

63. *Id.*

64. *Id.* at 263.

65. *J.J.P. I*, 811 N.W.2d at 127.

needs.⁶⁶ Based on this first request, the court granted J.J.P.'s petition for expungement but limited the order to "[a]ll official records held by the Fourth Judicial District Court–Juvenile Division, other than the non-public record retained by the Bureau of Criminal Apprehension (BCA), including all records relating to arrest, indictment or complaint, trial, dismissal and discharge."⁶⁷

J.J.P. continued his studies to become a paramedic, and in 2010, the college requested that DHS conduct a background check to determine whether he was qualified for the position under state law.⁶⁸ Even though the district court had granted J.J.P.'s request for expungement of judicial records, the files held by BCA still existed and DHS therefore had access to them. Based upon this adjudication record, DHS "concluded that J.J.P. was barred from 'any position allowing direct contact with, or access to, persons receiving services from programs licensed by DHS and the Minnesota Department of Health.'"⁶⁹ J.J.P. was disqualified from being a paramedic based upon DHS's finding.⁷⁰

Later that same year, J.J.P. again filed a petition with the district court to expunge his executive branch records, "including those held by the BCA, DHS, and Minnesota Department of Health (MDH)."⁷¹ This time, J.J.P.'s petition was denied.⁷² The district court found that although Minnesota Statutes section 260B.198 authorized it to expunge executive branch records, J.J.P. had not demonstrated a sufficient need for expungement as defined under Minnesota Statutes chapter 609A.⁷³ J.J.P. appealed, focusing on the district court's use of inherent authority language regarding separation of powers to deny the expungement of his executive branch records.⁷⁴

66. See MINN. STAT. ch. 245C (2012); *J.J.P. I*, 811 N.W.2d at 127.

67. *J.J.P. II*, 831 N.W.2d at 262 (quoting the district court order).

68. *Id.*

69. *Id.* at 263 (quoting DHS background check results).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *J.J.P. I*, 811 N.W.2d 125, 127 (Minn. Ct. App. 2012), *aff'd in part, rev'd in part*, *J.J.P. II*, 831 N.W.2d 260. J.J.P. brought his initial petition pro se, but he enlisted the help of attorney Jon Geffen when he appealed.

B. *The Minnesota Court of Appeals Decision*

Grappling with a case of first impression,⁷⁵ the Minnesota Court of Appeals viewed *J.J.P.* as an overall challenge to whether a district court is authorized to expunge executive branch records under Minnesota Statutes section 260B.198, subdivision 6.⁷⁶ Up until this point, the statute's vague language that a court may "expunge [an] adjudication of delinquency at any time that it deems advisable"⁷⁷ forced the district courts to rely heavily on the adult statute to govern juvenile expungement requests. *J.J.P.* provided the perfect opportunity for the courts to wrestle with this issue.⁷⁸

In addressing the overarching issue of whether the district courts could expunge executive branch records, the court analyzed three separate issues: whether an expungement order granted under section 260B.198, subdivision 6 applies to records held by executive branch agencies such as BCA and DHS, whether there is a separation-of-powers conflict in doing so, and whether the court may rely on statute sections 609A.01-.03 in determining whether to grant the juvenile expungement.⁷⁹

In deciding the first question, the court looked to statutory construction and legislative intent.⁸⁰ By arguing a plain language interpretation of the statute—the legislature had not intended to restrict the meaning to limit expungements solely to judicial branch records—*J.J.P.* convinced the court that the broad language of the statute should expand the court's authority in expungements rather than restrict it.⁸¹

After deciding that the statute was unambiguous regarding any limitation or restriction that could keep the court in a case like *J.J.P.*'s from extending its expungement powers to executive branch records, the issue of statutory interpretation dissipated. Yet,

75. *Id.* at 126.

76. *Id.* at 128.

77. MINN. STAT. § 260B.198, subdiv. 6 (2012).

78. The factors of *J.J.P.*'s case were all favorable for this argument because *J.J.P.* committed a crime of nonviolence, it had been several years since the adjudication, he was on a professional career path, and he had no subsequent adjudications. *See J.J.P. I*, 811 N.W.2d at 127.

79. *Id.* at 128–30.

80. *See id.* at 128–29.

81. *See id.* at 128.

statutory interpretation would have supported the court's ultimate decision anyway⁸²:

[C]ourts presume that the legislature does not intend results that are "absurd, impossible of execution, or unreasonable." If we were to construe section 260B.198, subdivision 6, as inapplicable to records held by executive branch agencies, juvenile delinquents could receive less expungement relief than some juveniles who are certified for prosecution as adults and criminally convicted. But . . . the legislature has authorized remedies for juveniles who violate criminal laws that are not available to similarly situated adults or certified juveniles. In light of this demonstrated intent to treat juvenile delinquents more favorably than individuals who are convicted of crimes, it would be absurd to construe section 260B.198, subdivision 6, as providing less relief than chapter 609A.⁸³

The court concluded that delinquency records held by the executive branch agencies could be expunged under Minnesota Statutes section 260B.198, subdivision 6.⁸⁴

The court next looked at inherent and statutory authority to determine whether a separation-of-powers conflict existed.⁸⁵ The question was never whether the court had the authority to expunge its own records under the judiciary's inherent authority,⁸⁶ but instead whether the court was required to exercise deference and restraint outside of the judicial branch "where statutes require that some of the records be kept open to the public."⁸⁷

The court noted that inherent judicial authority over executive branch records should be used sparingly and with restraint "in light of the deference that courts . . . afford the other branches of

82. *See id.*

83. *Id.* at 129.

84. *Id.*

85. *Id.*

86. *See State v. M.L.A.*, 785 N.W.2d 763, 766 (Minn. Ct. App. 2010) (noting that the judiciary's inherent authority extends only to its "unique judicial functions").

87. *J.J.P. I*, 811 N.W.2d at 129 (citing *State v. S.L.H.*, 755 N.W.2d 271, 279 (Minn. 2008)). One executive branch agency keeping abreast of changes in the law is DHS. DHS's power to review criminal records is statutorily driven. *See MINN. STAT.* ch. 245C (2012). This thorough statute governs everything from who may be subject to a background study, when it might occur, what is required, the disqualifying offenses, and remedies after a denial. *Id.*

government,”⁸⁸ but there is no separation-of-powers conflict if the power to expunge is statutorily driven.⁸⁹ Under this analysis, the separation-of-powers conflict issue became much clearer.⁹⁰ The court concluded that unlike using its inherent authority, there is no separation-of-powers conflict when the judiciary expunges a record pursuant to statutory authority *in accordance with* the authority of the executive and legislative branches.⁹¹

Finally, the court addressed whether the district court’s reliance on Minnesota Statutes chapter 609A was proper in guiding the decision to grant a juvenile expungement.⁹² This chapter governs expungements of criminal convictions.⁹³ The State argued that this chapter was properly used to govern the request for a juvenile expungement because it “provides the grounds and procedures for expungement of criminal procedures under [several statutes], *or other applicable law*.”⁹⁴ The court narrowed in on the use of “criminal records” in the statute to determine that it was not intended to apply to juveniles unless the juvenile was tried as an adult.⁹⁵

The use of the phrase “criminal record” is significant because the legislature has determined that “[n]o adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, *nor shall this adjudication be deemed a conviction of crime*, except as otherwise provided in this section or section 260B.255.”⁹⁶

88. *J.J.P. I*, 811 N.W.2d at 129.

89. *Id.*

90. DHS itself recognizes the court’s authority to expunge executive branch records. *See* MINN. STAT. § 245C.08, subdiv. 1(b) (noting that as long as proper service has been received, DHS will comply with a court-ordered expungement); *see also In re H.A.L.*, 828 N.W.2d 476, 479 (Minn. Ct. App. 2013) (explaining that when proper service is effectuated, “it is then within the district court’s sound discretion to determine whether to order DHS to seal its records and effectuate a complete expungement”).

91. *J.J.P. I*, 811 N.W.2d at 130.

92. *See id.*

93. MINN. STAT. § 609A.01.

94. *J.J.P. I*, 811 N.W.2d at 130 (alteration in original).

95. *See id.* (“This chapter provides the grounds and procedures for expungement of criminal records” (quoting MINN. STAT. § 609A.01)).

96. *Id.* (alteration in original) (citing MINN. STAT. § 260B.245, subdiv. 1(a)).

This seems to be reaffirmed by the goal of the Minnesota Rules of Juvenile Delinquency Procedure, which state that the general purpose of the laws relating specifically to children is to “promote the public safety” by “developing individual responsibility for lawful behavior” while giving “children access to opportunities for personal and social growth.”⁹⁷ Several dispositional options for a juvenile court again reaffirm that the system was designed with a different intent than that of the adult criminal court.⁹⁸ For instance, the option of a stay of adjudication is statutorily available for juvenile offenders, whereas for adults in criminal cases it is not.⁹⁹ Regarding expungements, the statutes offer the juvenile courts more latitude for relief.¹⁰⁰

Ultimately, because the district court found that a juvenile adjudication is not the same thing as a criminal conviction resulting in a criminal record, applying adult criminal guidelines to a juvenile adjudication was improper.¹⁰¹ Instead, the court “must be guided by the principles that govern dispositional decision-making” in juvenile cases.¹⁰² The court of appeals shifted away from chapter 609A to a new standard: the dispositional guidelines found in Rule 15.05 of the Minnesota Rules of Juvenile Delinquency Procedure.¹⁰³

Driven by the policy-based, rehabilitative focus of the juvenile court system, the court reversed and remanded the case to the district court,¹⁰⁴ “concluding that the district court abused its

97. MINN. R. JUV. DELINQ. P. 1.02 (“The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior.”). Compare this with the purpose of the Criminal Rules: “These rules are intended to provide a just determination of criminal proceedings, and ensure a simple and fair procedure that eliminates unjustified expense and delay.” MINN. R. CRIM. P. 1.02.

98. See MINN. STAT. § 260B.198; *J.J.P. I*, 811 N.W.2d at 131.

99. See *J.J.P. I*, 811 N.W.2d at 131.

100. See *id.* (noting that the statutory authority for juvenile expungements is largely unrestricted, unlike that for adults).

101. *Id.* at 130–33.

102. *Id.* at 132.

103. *J.J.P. I*, 811 N.W.2d at 131; see MINN. R. JUV. DELINQ. P. 15.05; *J.J.P. II*, 831 N.W.2d 260, 263 (Minn. 2013). Under the Rules of Juvenile Delinquency Procedure, the courts must balance the best interests of the child against the risk to public safety. MINN. R. JUV. DELINQ. P. 15.05.

104. *J.J.P. I*, 811 N.W.2d at 133.

discretion in denying J.J.P.'s petition."¹⁰⁵ With that, the State appealed and the case moved on to the Minnesota Supreme Court.

C. *The Minnesota Supreme Court Decision*

The Minnesota Supreme Court ruled on whether the district court is authorized to expunge juvenile delinquency records from executive branch agency files.¹⁰⁶ In doing so, it provided new guidelines for determining when a petition for expungement should be granted.¹⁰⁷

1. *The J.J.P. Majority*

The court began its analysis by reviewing the statutory language of section 260B.198.¹⁰⁸ The State argued that the phrase "adjudication of delinquency" should be narrowly construed to restrict the judiciary's authority to court-held records, while J.J.P. argued that the phrase extends to all records "irrespective of their location."¹⁰⁹ The court reviewed both the statutory framework and the process of how records are disseminated from their point of origin in the judicial system to conclude that the phrase applies specifically and solely to the "court order that adjudicates the juvenile delinquent" and any reference to the adjudication in executive branch records.¹¹⁰

In order to decide whether J.J.P.'s executive branch records could properly be expunged under the statute, the court wisely traced the path of a court record through the system to the executive branch agencies.¹¹¹ With that understanding confirmed,

105. *J.J.P. II*, 831 N.W.2d at 263.

106. *See id.* at 262.

107. *See id.*

108. *See id.* at 263–64.

109. *Id.* at 263–66.

110. *Id.* (noting that the phrase "adjudication of delinquency" has an "acquired, special meaning . . . in the juvenile court system" and "plainly refers to a single event—an order—that adjudicates the juvenile delinquent").

111. The court recognized four delinquency records at issue in *J.J.P.*: law enforcement arrest and investigation records forwarded to BCA, records the district court forwarded to BCA, records BCA collected in its juvenile history record database, and records DHS obtained from BCA. *Id.* at 265. The court analyzed how each of these of these categories is governed and disseminated by the courts, providing much necessary illumination into the process. *See id.* at 263–66.

the court departed from the court of appeals' ruling. In the *J.J.P.* majority opinion, the court found "no legislative intent to broadly extend" the judiciary's ability to expunge executive branch files to *all* records and documents held by an agency.¹¹² Whereas the court of appeals focused on not construing the vague statutory language in a fashion that would lead to results that are "absurd, impossible of execution, or unreasonable,"¹¹³ the Minnesota Supreme Court focused instead on the inability to read too broadly into the statute for fear of "add[ing] language to the statute that does not exist."¹¹⁴ The supreme court focused on an issue more specific than that of the court of appeals: whether the district court has the ability to expunge more than the order of adjudication from executive branch files.¹¹⁵ The court concluded that section 260B.198, subdivision 6 "does not authorize the district court to expunge other records in executive branch files that precede the order adjudicating the juvenile delinquent,"¹¹⁶ even though it solidly recognized that there is ample statutory authority to generally expunge records from executive branch agencies without invoking a separation-of-powers conflict.¹¹⁷

The court next tackled the issue of whether the adult statutes in chapter 609A should guide the district court or whether another means would prove more beneficial in light of the rehabilitative aspect of the juvenile court system.¹¹⁸ The supreme court opined that the court of appeals incorrectly relied on Rule 15.05 of the Minnesota Rules of Juvenile Delinquency Procedure because an expungement is not an authorized disposition.¹¹⁹ Furthermore, the

112. *Id.* at 266.

113. *J.J.P. I*, 811 N.W.2d 125, 129 (Minn. Ct. App. 2012) (quoting MINN. STAT. § 645.17 (2012)), *aff'd in part, rev'd in part, J.J.P. II*, 831 N.W.2d 260.

114. *J.J.P. II*, 831 N.W.2d at 266.

115. *Compare J.J.P. II*, 831 N.W.2d at 266–67, *with J.J.P. I*, 811 N.W.2d at 128–29. The disparate analyses lead to the same question of legislative intent: how are the executive-branch records affected by an expungement?

116. *J.J.P. II*, 831 N.W.2d at 267.

117. *Id.* In addressing the potential for a separation-of-powers conflict, the court found that there is none. Specifically, it went further than the lower court in finding that there was statutory protection for both the court through section 260B.198 and for DHS through section 245C.08 and that they worked together to establish legislative intent in regard to expungements of executive-branch records. *Id.* at 268–69.

118. *See id.* at 269.

119. *Id.* at 270. This is a correct finding, as a petitioner is not eligible for an expungement at the dispositional stage. An expungement hearing is a separate

Rules are an inappropriate guide to govern expungements, since the petitioner has typically aged out of jurisdiction by the time he or she is seeking the expungement.¹²⁰ The court also recognized that it is inappropriate for chapter 609A to govern juvenile delinquency adjudications since they are not a “criminal conviction.”¹²¹ Therefore, the court was forced to design a new standard and concluded that the district courts should move forward operating under a new balancing test.¹²² This balancing test would give the district courts discretion when examining “whether [an] expungement of the order adjudicating the juvenile delinquent would yield a benefit to the petitioner that outweighs the detriment to the public in sealing the record and the burden on the court in issuing, enforcing, and monitoring the expungement order.”¹²³ Specifically, the court noted that the judge should consider and weigh the petitioner’s interest in three crucial areas: education, employment, and housing.¹²⁴ This has become a focus in post-*J.J.P.* expungement hearings. If a petitioner has not demonstrated need in one or more of these key areas, he or she may not have the request granted.

Related to the new balancing test is an important shift in the burden of proof required under the new guidelines, as opposed to the adult statute previously used to guide the juvenile courts. Whereas chapter 609A requires the petitioner to produce clear and convincing evidence that he or she is benefited commensurate with the disadvantages to the public, the new guidelines only require the petitioner to “bear[] the burden of proving by a preponderance of the evidence that the benefit . . . outweighs the detriment to the public and . . . burden on the court[s].”¹²⁵

With this, the court set a new standard for petitioners seeking expungement of their juvenile records. However, the majority’s

event and often requires the passage of time to demonstrate the necessary showing of need and rehabilitation.

120. *See id.*

121. *Id.* at 269–70.

122. *Id.* at 270.

123. *Id.*

124. *Id.*

125. *Id.* The legal burden of proof is clearly different in the two analyses (juvenile vs. adult). Under the same set of facts, it would be easier to expunge a juvenile case than its equivalent in adult court. However, the adult statute and case rulings provide no limitations on what can be expunged should the district court judge decide the petitioner has met the burden of proof.

decision does not provide clarity because it does not offer petitioners practical relief under the law when the district court grants an expungement request. Justice Paul H. Anderson narrowed in on the problems created by the majority's decision in his concurrence.

2. *The J.J.P. Concurrence*

Justice Anderson argued that the majority was too narrow in its holding to restrict the executive branch records solely to the order of adjudication.¹²⁶ He rested on a plain-meaning analysis of the statutory language, particularly the words “adjudication” and “expunge,” to conclude that the goal of an expungement could not be fulfilled if the record is not completely eradicated.¹²⁷

To strengthen his argument, he used the *Black's Law Dictionary's* definition of “adjudication” to illuminate that it involves a “process,” which he felt would certainly entail a broader scope than simply the order of adjudication.¹²⁸ He noted that the plain meaning of adjudication as noted in *Black's* would necessarily invoke more than just the “final act in the legal process—here, the order adjudicating delinquency.”¹²⁹

Interestingly, the majority argued against adding words to the statute in order to conform to a desired result,¹³⁰ but Justice Anderson argued just that in response.¹³¹ He said of the opinion, “For the majority's holding to make sense, it must . . . take the Legislature's wording—that courts ‘may expunge the adjudication of delinquency’—and change that to read ‘may expunge the *order adjudicating* delinquency’—thereby both substantively and substantially altering the plain language of the statute.”¹³²

Anderson attacked the majority's interpretation of the word “expunge” as defined both by *Black's Law Dictionary* and *Webster's Third New International Dictionary* to suggest that even if the court's narrow holding concerning adjudication was convincing, it would be counterproductive to the plain meaning of “expunge.”¹³³ Thus,

126. *See id.* at 271 (Anderson, J., concurring).

127. *Id.* at 271–72.

128. *Id.* at 271.

129. *Id.*

130. *See id.* at 266 (majority opinion).

131. *See id.* at 272 (Anderson, J., concurring).

132. *Id.* (quoting MINN. STAT. § 260B.198, subdiv. 6 (2012)).

133. *See id.* at 272–73.

going back to the statute, Justice Anderson concluded that the majority's holding cannot "give effect to the plain meaning of" an expungement within the larger statutory framework.¹³⁴ In essence, if a district court grants an expungement of executive branch records, the only way it works is to require all records to be "obliterated"¹³⁵ as if the event "never occurred."¹³⁶

At this point in the concurrence, Justice Anderson provided a helpful allegory.¹³⁷ He explained what happens when milk or infant formula stains an item of clothing, noting that even though the garment is washed, once it is stored and put away, the protein and iron in the milk breaks down over time to cause the stain to reappear after a long dormancy in storage.¹³⁸ He then asked whether any parent would consider that stain expunged under the common definitions of the word "expunge": obliterated, utterly removed from existence, made as if it never happened.¹³⁹ His answer was that the majority simply executed a surface scrub in defining the scope of an expungement, only to have the offense reappear because the "detritus of that stain remains clearly visible."¹⁴⁰

The entirety of Justice Anderson's concurrence is packaged in the idea that the majority's holding is unsustainable.¹⁴¹ Notably, while the majority directs the State to address its concerns to the legislature,¹⁴² Justice Anderson rests assured that the legislature's intent to begin with was that an expungement would cover the entire process of a juvenile's adjudication and not simply the order of adjudication.¹⁴³

134. *Id.* at 273.

135. *Id.* at 274.

136. *Id.* (quoting *Barlow v. Comm'r of Pub. Safety*, 365 N.W.2d 232, 233 (Minn. 1985)).

137. *See id.* at 274–75.

138. *Id.*

139. *Id.* at 275.

140. *Id.*

141. *See id.* Justice Anderson provided other examples of his disagreement with the majority's reading of the word "expunge," notably concerning the existing statutory schemes. *Id.*

142. *See id.* at 270 n.12 (majority opinion).

143. *Id.* at 275 (Anderson, J., concurring).

IV. ANALYSIS

The Minnesota Supreme Court's decision clearly changed the way expungements can be granted by the district courts. As stated, until the decision in *J.J.P.*, the courts funneled most, if not all, requests through chapter 609A.¹⁴⁴ Now, petitioners find themselves in a sort of "wild, wild west,"¹⁴⁵ where Justice Anderson's fears have already started to come to fruition.¹⁴⁶

Since the ruling, petitioners are finding that many questions are either left unanswered or simply created anew. For instance, what happens when a charge did not result in an adjudication? What can be done about the remaining records that were not erased? How is the petitioner to explain an adjudication to a potential employer who cannot see the adjudication, but can still see the arrest record? What are the effects on immigration? This list is far from exhaustive, yet it reinforces the need for legislative action.

With *J.J.P.*, petitioners "were hoping for clarity, but [they] don't have it."¹⁴⁷ In response, attorneys are preparing to bring more expungement challenges because so many petitioners remain affected through a lack of concrete relief.¹⁴⁸ What follows is an attempt to address a few of the more glaring questions left unanswered in the wake of *J.J.P.*

A. *The Impact of J.J.P. on Juvenile Expungement Law in Minnesota*

1. *A Stay of Adjudication Was Not Meant to Stay! The Irony of J.J.P.*

Perhaps the most significant impact on this area of law is the lack of relief for any petitioner who was charged yet not adjudicated. Because the majority in *J.J.P.* narrowly concluded that "the phrase 'adjudication of delinquency' in section 260B.198, subdivision 6 means the court order that adjudicates the juvenile

144. *Expungement Law CLE*, at 34:50, WM. MITCHELL COLL. L. (Aug. 14, 2013), <http://vimeo.com/72462138> (statement of Jon Geffen).

145. *Id.* at 51:51.

146. *Id.* at 50:16.

147. *See id.* at 54:00.

148. Telephone Interview with Jon Geffen, Att'y, Arneson & Geffen PLLC (Oct. 9, 2013) (discussing the fact that the legislature has looked into collateral consequences and expungements in the past without taking legislative action).

delinquent,”¹⁴⁹ the lack of effect on anything else is devastating.¹⁵⁰ Additional documents that support an adjudication are outside the scope of relief as prescribed by *J.J.P.* because they precede the “determination by the juvenile court to adjudicate the juvenile delinquent.”¹⁵¹ There are many instances in which a juvenile may not see an adjudication. The juvenile court system is rehabilitative in nature, created to offer juveniles a second chance at redemption before they are subject to the criminal court system. After *J.J.P.*, the juvenile whose case was either stayed or continued for dismissal—where the charges were filed yet never prosecuted or were otherwise returned in the petitioner’s favor—now finds herself with a long-term record without any remedy by the courts when it comes to executive branch records.

With a gaze toward the rehabilitative nature of the juvenile justice system, it would seem that the courts were not created to attach a “criminal” record to a juvenile delinquent, especially with an individual who was never adjudicated. “To get away from the notion that the child is to be dealt with as a criminal; to save it from the brand of criminality; the brand that sticks to it for life; . . . to protect it from the stigma,—this is the work [of the juvenile court].”¹⁵² To do otherwise is to undermine the legislative and judicial view that “what happens in juvenile court, stays in juvenile court.”¹⁵³ Additionally, it begs the question of why two distinct court systems are still in use if the collateral consequences of each are the same.

In ascertaining legislative intent, the courts should assume that the legislature did not “intend a result that is absurd, impossible of execution, or unreasonable.”¹⁵⁴ The court in *J.J.P.* focused on legislative intent in the separation-of-powers argument between the courts and DHS, but failed to extend it to any other argument regarding statutory construction. Because legislative enactments should be interpreted to assume the statutes should be “effective,” the court erred when it concluded that the scope of a district

149. *J.J.P. II*, 831 N.W.2d 260, 266 (Minn. 2013).

150. *Expungement Law CLE*, *supra* note 144, at 43:16 (statement of Jon Geffen).

151. *J.J.P. II*, 831 N.W.2d at 266.

152. Stuart & Zaske, *supra* note 38, at 922 (quoting Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 109 (1909)).

153. *Id.* at 922–23.

154. MINN. STAT. § 645.17 (2012).

court's statutory authority to expunge an executive branch record is limited to the order of adjudication.¹⁵⁵

As the court of appeals and Justice Anderson correctly noted, limiting the scope of an expungement to the order of adjudication runs counter to legislative intent. Furthermore, without consulting a professional,¹⁵⁶ a pro se petitioner with a record that contains a stay of adjudication will most likely have no idea that he or she is unable to find relief.¹⁵⁷ This reinforces the need for legislative action on the subject. With the recent formation of the state's Expungement Working Group and the call for legislative action by practitioners involved in juvenile expungements, legislative action

155. See *id.*; see also *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (“When construing a statute, we presume that the Legislature did not intend a result that is absurd or unreasonable.”); *Lewis-Miller v. Ross*, 710 N.W.2d 565, 569 (Minn. 2006) (“When interpreting legislative enactments, we must presume that the legislature intended its statutes to be ‘effective,’ and not ‘productive of absurd . . . or unreasonable’ results.”); *State ex rel. Beaulieu v. Indep. Sch. Dist. No. 624*, 533 N.W.2d 393, 396 (Minn. 1995) (“[T]here is a presumption that the legislature does not intend a result that is unreasonable.”); *First Nat’l Bank of Minneapolis v. Comm’r of Taxation*, 250 Minn. 122, 127, 84 N.W.2d 55, 59 (1957) (“[The Minnesota Supreme Court has] no right to . . . attribute to the legislature an intent to produce an absurd and unreasonable result.”).

156. There is strong evidence to suggest that many professionals lack the guidance to effectively practice in this area of law. The pro se expungement packet leads with a warning: “A petition for expungement is a complicated legal procedure.” JUVENILE COURT, FOURTH JUDICIAL DIST.–HENNEPIN CNTY., EXPUNGEMENT OF YOUR JUVENILE DELINQUENCY RECORD 1 (2010), available at http://www.mncourts.gov/Documents/4/Public/Forms/Juvenile_Expungement_Single_Case_Packet.pdf. Additionally, many practitioners’ websites are out of date. See *infra* note 157.

157. The packet available through the district court still contains a blank template for two kinds of proposed orders: one for a “stay of adjudication or adjudication” and one for “no adjudication.” There is no explanation that a petitioner may no longer seek relief for a stay of adjudication when it comes to executive-branch records. See JUVENILE COURT, FOURTH JUDICIAL DIST.–HENNEPIN CNTY., *supra* note 156, at 12–15. Additionally, a Google search for law firms that assist petitioners in obtaining expungements leads to website expungement guidance that is either outdated or too vague to understand that a non-adjudication cannot be expunged from executive-branch records under *J.J.P.* See, e.g., *Expunging or Sealing a Juvenile Court Record in Minnesota*, CRIM. DEF. LAW., <http://www.criminaldefenselawyer.com/resources/criminal-defense/expungement/juvenile-records-minnesota.htm> (last visited Jan. 14, 2014); *Minnesota Juvenile Conviction Expungement*, RECORDGONE, <http://www.recordgone.com/minnesota/juvenile-conviction-expungement> (last visited Jan. 14, 2014).

may indeed be imminent. However, it remains to be seen how far the legislature is willing to go in light of opposition from prosecutors, law enforcement, and state licensing agencies who have a valid interest in seeing more “tempered changes to [the] process.”¹⁵⁸ These parties have a valid interest in sustaining the “continuous tension between the need to rehabilitate and the need to punish.”¹⁵⁹ Judges seem caught in the wake of this decision as well, one stating to a petitioner, “I wish I could help you more, but I can’t.”¹⁶⁰ Jon Geffen, attorney for J.J.P., notes that “any substantial change in the statute will have to come from the legislature because ‘we have gone as far as we can with this issue in the courts.’”¹⁶¹ He also pushes for legislative action because the justices were “hamstrung by the language of the statute.”¹⁶²

2. *The Current Effect of an Expungement on Records Available to DHS*

The Minnesota Supreme Court offered a “narrow . . . imperfect remedy” for expungement of records held by executive branch agencies.¹⁶³ DHS is perhaps the agency in Minnesota most affected by the court’s ruling.¹⁶⁴ When prompted, DHS is statutorily mandated to look at anything on a petitioner’s record that has not been expunged.¹⁶⁵ As previously noted, the only portion of a petitioner’s record that may be expunged is the order of adjudication.¹⁶⁶

158. Patrick Thornton, *Group Formed to Examine Expungement Changes*, MINN. LAW., Oct. 14, 2013, at 20, 20, available at 2013 WLNR 25880659.

159. Luz A. Carrion, *Rethinking Expungement of Juvenile Records in Massachusetts: The Case of Commonwealth v. Gavin G.*, 38 NEW ENG. L. REV. 331, 364 (2004).

160. Thornton, *supra* note 158, at 20 (citing St. Paul attorney Lindsay Davis’s experience with judges).

161. *Id.*

162. *Id.*

163. *Expungement Law CLE*, *supra* note 144, at 53:00 (statement of Jon Geffen).

164. The supreme court limited its discussion to BCA and DHS records since those were the only records at issue in *J.J.P.* See *J.J.P. II*, 831 N.W.2d 260, 276 n.6 (Minn. 2013). However, the court’s ruling suggests that the district court’s reach is not limited to these agencies. *Id.* at 267 (“[T]he district court has the authority to expunge any reference to that order in executive branch files, including in records collected by the BCA or reviewed by DHS.” (emphasis added)).

165. See MINN. STAT. ch. 245C (2012).

166. A juvenile court record may contain any of the following: the charging petition, summons, notice, charge, court appearance dates, detention status,

Practitioners whose clients have had an adjudication expunged pursuant to *J.J.P.* are finding that DHS is maintaining its statutory authority, stating that there is still enough data on the record to disqualify the client.¹⁶⁷ DHS holds that its statutory authority under chapter 245C allows it to include the admission and findings from a juvenile court case when deciding whether to disqualify an individual.¹⁶⁸ Therefore, according to DHS, the supreme court decision in *J.J.P.* does not affect the way DHS investigates a juvenile's file.¹⁶⁹ In essence, *J.J.P.* has failed if a petitioner who has successfully petitioned the court for an expungement finds no remedy because of the continued existence of and reliance on executive branch files containing everything but the order of adjudication.¹⁷⁰

There are valid counterarguments to the expansion of relief for collateral consequences of an adjudication. One counterargument is that while this may be an imperfect remedy, petitioners who are denied employment through an agency that relies on DHS to conduct background checks can simply go find another type of job. This argument underestimates the reach of DHS, as out-of-poverty jobs are highly regulated by DHS.¹⁷¹ DHS must perform background checks on employees wishing to work in these regulated environments, including janitorial or housekeeping, maintenance, and other similar positions.¹⁷² In total, the Licensing Division of DHS regulates over 22,000 programs, which includes a number of facilities that require individuals willing to work in entry-

warrants, weapons used, commitment duration, dispositions, and detention stays. It also contains all documents filed by the court, all documents from the juvenile's probation officers, and county home schools or detention centers. *See id.* § 260B.171. This statute has been amended to preclude public access of electronically stored juvenile records. Act of May 22, 2013, ch. 109, § 1, 2013 Minn. Laws 1154 (codified as amended at MINN. STAT. § 260B.171 (Supp. 2013)).

167. *Expungement Law CLE*, *supra* note 144, at 47:35 (statement of Jon Geffen).

168. *See Expungement Working Group Meeting #2*, *supra* note 56, at 1:45:35 (statement of Jerry Kerber, Inspector General's Office).

169. *See id.*

170. This is notwithstanding DHS's statutory authority to protect the vulnerable populations it works with.

171. *See Expungement Law CLE*, *supra* note 144, at 48:50 (statement of Jon Geffen); *see also Background Studies*, MINN. DEP'T HUM. SERVICES, <http://mn.gov/dhs/general-public/licensing> (follow "Background studies" hyperlink) (last visited Mar. 16, 2014) (stating that a background study must be initiated "before a person has access to clients or residents or belongings" (emphasis omitted)).

172. *See Background Studies*, *supra* note 171.

level, out-of-poverty positions.¹⁷³ DHS performs approximately 270,000 background checks each year, which breaks down to about 1100 per day.¹⁷⁴ The agency disqualifies 8000–10,000 each year, and DHS admittedly “gets it wrong” about seven percent of the time.¹⁷⁵ This affects a large number of jobs and creates real obstacles for individuals with non-adjudications.

Under chapter 245C of the Minnesota Statutes, DHS is authorized to conduct background studies using a preponderance of the evidence standard.¹⁷⁶ In doing so, the agency does not require a conviction to disqualify an individual; it looks at the individual’s conduct to predict future behavior.¹⁷⁷ At this point, DHS uses its statutory authority to make an independent determination of the likelihood of guilt by analyzing whether the facts of the case match the elements of the crime the individual has been accused of.¹⁷⁸ Even if an individual was acquitted or otherwise found not guilty by a judge, DHS nevertheless investigates the matter to determine anew whether that individual is “guilty” enough to be barred from working in that system.¹⁷⁹

To complicate matters even more, the applicant’s only chance at clarifying his or her record is post-decision.¹⁸⁰ Thus, DHS adheres to the practice of “labeling first,” then following with the right to appeal.¹⁸¹ Two important issues arise from this practice. First, employers are likely to choose another candidate if presented with

173. MINN. DEP’T OF HUMAN SERVS., LICENSING HUMAN SERVICES PROVIDERS PROTECTS HEALTH, SAFETY, RIGHTS 2 (2012), available at <https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-4743-ENG> (noting the total number of programs is approximately 23,000).

174. *Expungement Working Group Meeting #2*, *supra* note 56, at 38:30 (statement of Jerry Kerber, Inspector General’s Office).

175. *Id.* at 58:00–1:04:00 (noting that individuals have the right to appeal DHS’s findings).

176. MINN. STAT. § 245C.14, subd. 1 (2012).

177. *Expungement Working Group Meeting #2*, *supra* note 56, at 55:45 (statement of Jerry Kerber, Inspector General’s Office) (noting that a decision is based on conduct, not conviction).

178. *See id.* at 58:00. This can include accusations at various stages—it need not come from the court.

179. *Id.* (reiterating that DHS may disqualify people based on a preponderance of the evidence, which aligns with its granted authority as stated in section 245C.14).

180. *See id.* at 59:45.

181. *Id.* at 1:05:00 (clarifying that in certain circumstances, the individual may be allowed to work during the appeals process).

the complications of a DHS appeals process that can often take at least forty-five days.¹⁸² Second, and more importantly, the individual who was never adjudicated, or whose case was acquitted for another reason, is judged anew by the agency for employment consideration.¹⁸³ This bears direct relation to the failure of *J.J.P.* to give relief to juveniles who were never adjudicated, which sheds light on the larger issue: that of the long-lingering stigma after an individual has been “released” from the court system.

DHS does not support changing the existing law.¹⁸⁴ The agency stands in opposition to some practitioners and judges, using *J.J.P.* to bolster its argument that the law is being appropriately interpreted.¹⁸⁵ Jerry Kerber, the Inspector General for DHS, sees clarity in the court’s decision, noting that parties may not see the same clarity because they disagree with the outcome.¹⁸⁶ There is validity to the adherence by DHS to its statutory authority because of the agency’s obligation to the people it is empowered to protect. This cannot be minimized in the conversation regarding expungements or collateral consequences in general. Whatever the interpretation of *J.J.P.* and its impact on expungements, the movement toward some sort of legislative reform is gaining traction, as seen through the formation of the Expungement Working Group.

3. *Other Issues*

Several issues will need to be addressed by the legislature before the judiciary can effectively act. These problems are practical in nature, and they affect every petitioner who seeks the remedy of an expungement. It is outside the scope of this note to address all of the issues facing petitioners as they move forward after *J.J.P.*, but it is crucial for lawmakers and practitioners to

182. *See id.* at 1:11:00 (statement of Rep. Carly Melin) (voicing concerns about whether employers would really “wait around” for the applicant to have a hearing). The disqualified individual has thirty days to contact DHS with a request for reconsideration. MINN. STAT. § 245C.21, subdiv. 2(a) (2012). After receiving the request, DHS has fifteen to forty-five days to respond, depending on the type of reconsideration sought. *Id.* § 245C.22, subdiv. 1.

183. *Expungement Working Group Meeting #2, supra* note 56, at 58:00 (statement of Jerry Kerber, Inspector General’s Office).

184. Thornton, *supra* note 158, at 20.

185. *See id.*

186. *Id.*

understand what those who seek an expungement face. Because *J.J.P.* both expanded and constricted juvenile expungements, the effects of the new ruling are just beginning to be felt.¹⁸⁷

One problem the legislature will have to address is what the consequences of an expungement might be on obtaining housing, employment, or on some other external pursuit such as immigration status.¹⁸⁸ Because the court held that that a juvenile expungement can only include the sealing of the order of adjudication, arrest and various other records preceding the order may be discoverable by officials and others making decisions about a petitioner's life. Those who know how to analyze an offender's record can still easily infer that someone was adjudicated without seeing the actual order of adjudication.¹⁸⁹

Additionally, housing and employment sectors often utilize computer data brokers to run criminal background checks on applicants.¹⁹⁰ For a fee, these data brokers will provide an employer or landlord a profile of the applicant that contains any criminal information, even if outdated. Because “[d]ata brokers are not [always] required to update their records,” “expungement orders

187. See *Expungement Law CLE*, *supra* note 144, at 47:22. The ruling expanded expungements in the sense that district courts are not limited to judicial-branch records. On the other hand, the ruling constricted who may be granted an expungement by limiting the remedy to only those individuals who were adjudicated.

188. Aside from problems with DHS, maintaining juvenile records can have particularly adverse effects if the petitioner “later decides to pursue a career in the armed forces, law enforcement, politics, . . . [or] higher education.” Carrion, *supra* note 159, at 335.

189. See *Expungement Law CLE*, *supra* note 144, at 48:23.

190. See Logan Danielle Wayne, *The Data-Broker Threat: Proposing Federal Legislation to Protect Post-Expungement Privacy*, 102 J. CRIM. L. & CRIMINOLOGY 253, 253–55 (2012) (discussing the need to regulate the information private data brokers are able to obtain on an individual). In Minnesota, data brokers are regulated under Minnesota Statutes section 332.70. These private business screening services may obtain criminal records and disseminate only a “complete and accurate record.” MINN. STAT. § 332.70, subdiv. 2 (2012). Many adults are affected by their past adjudications even though not all juvenile records are disseminated to the public. Members of the Expungement Working Group expressed concern that these records, while regulated, are available to anyone who would pay the fee. See Expungement Working Group, *Presentation on Expungements from House Research and Senate Counsel*, at 24:30, MINN. HOUSE REPRESENTATIVES (Sept. 19, 2013) [hereinafter *Expungement Working Group Meeting #1*], <http://www.house.leg.state.mn.us/comm/workinggroups/expungaudio.asp> (statement of Rep. Debra Hilstrom, Chairwoman, Expungement Working Group).

do not apply to non-government sources,” and there are currently few regulations to force data brokers to obtain only current and correct information,¹⁹¹ petitioners may find they are denied these opportunities even after an expungement.¹⁹² The expungement process is confusing to begin with, and clearly petitioners who are granted expungements are left with more than just an imprint of their adjudications. The only remedy is the one that Justice Anderson suggests: an alignment of the district courts’ reach in regard to executive branch records with the purpose of an expungement.

Another issue is that of proper service. The court has made it abundantly clear that chapter 609A does not govern juvenile expungements,¹⁹³ yet the current statutory framework is so vague that petitioners are still forced to rely on the adult statute for information regarding the proper timeframe and process for service.¹⁹⁴ This directly affects an agency like DHS.

191. Wayne, *supra* note 190, at 255. State-to-state regulations differ, but because data brokers gather information from multiple sources across state lines, there may be an increasing need for federal legislation. Data brokers in Minnesota are regulated. See MINN. STAT. § 332.70. The burden is on the individual to initiate correction of a false or outdated record. *Id.* § 332.70, subdiv. 3; see also *Expungement Working Group Meeting #1*, *supra* note 190, at 32:40 (statement of Matt Gehring, Legislative Analyst from House Research).

192. See Wayne, *supra* note 190, at 263–66 (discussing the need to regulate the information private data brokers are able to obtain on an individual); *Expungement Working Group Meeting #1*, *supra* note 190, at 28:30 (statement of Rep. Mary Liz Holberg) (noting that there are problems with regulating what businesses can use against applicants because the information gathered by data brokers can come from sources not subject to legislation, such as newspaper articles). Ms. Holberg (and others in the group) recognized that it is unrealistic for legislators to “unring the bell,” or use a “magic eraser” to “erase any element of data around a bad time in somebody’s life.” *Id.*; see also *Expungement Law CLE*, *supra* note 144, at 48:23.

193. *J.J.P. II*, 831 N.W.2d 260, 269 (Minn. 2013).

194. See *Expungement Law CLE*, *supra* note 144, at 51:50. This packet instructs petitioners that agencies require service at least sixty-three days before the scheduled hearing date, that those agencies have sixty days to appeal after an order is issued, and that victims have the right to present an oral or written statement to the court. JUVENILE COURT, FOURTH JUDICIAL DIST.—HENNEPIN CNTY., *supra* note 156, at 5–6. Under the adult statute, victims have the right to be notified of the expungement hearing if they proactively expressed to the court or prosecuting agency the desire to be made aware if an expungement has been sought by the offender. MINN. STAT. §§ 611A.06, subdiv. 1a, 609A.03, subdiv. 4. Additionally, of note is that Minnesota Statutes chapter 609A requires sixty days service, not sixty-three. *Id.* § 609A.03, subdiv. 4. Still, since section 260B.198 offers

Section 260B.198 gives no direction on service—only indirect service through the Minnesota Attorney General’s Office. Therefore, it would be entirely plausible for pro se petitioners to miss that aspect of service if they were to pick up an expungement packet from the district court or download it from the Internet.¹⁹⁵ This self-directed packet provides an affidavit of service, yet only contains a pre-addressed contact for the Minnesota Attorney General, the attorney for DHS.¹⁹⁶ This is not direct DHS service, yet without any statutory language in section 260B.198, petitioners have to trust that DHS will be indirectly served through its attorney. Without direct service, a district court judge is within her power to deny the request for expungement of executive branch records as held by DHS.¹⁹⁷ DHS considers the statute very clear on this issue.¹⁹⁸ In line with *J.J.P.*, the agency admits that, once granted, expungements do reach DHS, but only after two prongs are met. First, DHS must be directly served so that they are given an opportunity to respond. Second, the order that is issued granting the expungement needs to “specifically relate to them.”¹⁹⁹

This technicality issue is but one loophole in the statutory framework. Unless the legislature addresses section 260B.198, petitioners will continue to be forced to rely on chapter 609A, which procedurally speaking is counter to the stated objective of the ruling in *J.J.P.*²⁰⁰ Therefore, petitioners will have a difficult time

no guidance on technical requirements and individuals were consistently deferring to chapter 609A before *J.J.P.*, the inference can be made that chapter 609A is still controlling on these matters, even though the packet oddly requires sixty-three days service.

195. See JUVENILE COURT, FOURTH JUDICIAL DIST.–HENNEPIN CNTY., *supra* note 156, at 5–6.

196. *Id.* at 5, 11; OFFICE OF THE MINN. ATTORNEY GEN., ANNUAL REPORT REQUIRED BY MINNESOTA STATUTE SECTIONS 8.08 AND 8.15, SUBDIVISION 4 (2011): FISCAL YEAR 2012, at 23 (2012).

197. DHS does not physically hold files, but consults BCA, which does keep files.

198. See MINN. STAT. § 245C.08, subdiv. 1(6)(ii)(b) (“[T]he commissioner may consider information . . . unless [DHS] received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.”).

199. *Expungement Working Group Meeting #2*, *supra* note 56, at 1:16:00 (statement of Jerry Kerber, Inspector General’s Office) (admitting that DHS may disagree with the court’s authority to issue the order, but is required to adhere to it and may appeal if it disagrees with the outcome).

200. There is evidence to suggest that legislative reform in this area may be

positioning themselves for success unless they are aware of every intricate detail of the process.

B. Suggestions for Possible Legislative Reform

Reforming the existing expungement laws in Minnesota will undoubtedly be a daunting, complicated task. With the formation of the legislatively based Expungement Working Group, the task is closer than ever before. However, this is not the first working group formed to study the collateral consequences of criminal convictions and juvenile adjudications. In fact, legislators this time around are charged with considering findings from previous working groups so as not to re-create the wheel.²⁰¹

Expungements should never be granted lightly.²⁰² With this in mind, the goal should be to eliminate some of the collateral consequences associated with juvenile adjudications in order to rehabilitate those individuals back into society.²⁰³ The ever-increasing dissemination of criminal records through largely unregulated avenues makes any kind of regulation seem overwhelming, but by focusing on controlling what is within reach, the task becomes more manageable.

The most important objective after the *J.J.P.* ruling should be to provide the judiciary with language by which they do not feel “hamstrung.” The court has invited legislative action; in fact, it is a key element for change in this area of the law. When the juvenile justice system was formed, courts “did not envision themselves creating a criminal record for each delinquent that would follow him or her into adulthood.”²⁰⁴ Nor did judges intend to feel

coming. State Representative Debra Hilstrom is the co-chair of a new working group charged with examining possible changes to the statute. *See* Thornton, *supra* note 158, at 1; *Expungement Law CLE*, *supra* note 144, at 1:08:00 (discussing the formation of the Expungement Working Group to address the statutory issues).

201. *See Expungement Working Group Meeting #1*, *supra* note 190, at 53:30 (statement of Matt Gehring, Legislative Analyst) (citing CRIMINAL & JUVENILE JUSTICE INFO. POLICY GRP., REPORT TO THE LEGISLATURE ON BACKGROUND CHECKS AND SEALING OF CRIMINAL RECORDS (2008), available at <https://dps.mn.gov/divisions/bca/boards-committees/crimnet/Documents/Background%20Checks%20and%20Record%20Sealing.pdf>).

202. Geffen & Letze, *supra* note 10, at 1335 (“Expungement is defined at law as an ‘extraordinary form of relief.’ It does not apply to every individual suffering the detrimental effects of a criminal history . . .”).

203. *See* Wayne, *supra* note 190, at 257.

204. Stuart & Zaske, *supra* note 38, at 922.

restricted by the statute.²⁰⁵ In formulating a new statutory scheme, it is this author's contention that the following guidelines should be considered.

The juvenile requirements must be completely disentangled from the adult statute. The court made it abundantly clear in *J.J.P.* that chapter 609A is not to govern juvenile adjudications.²⁰⁶ Therefore, the statute must be completely rewritten to stand as an independent statutory framework for juvenile expungements. Special attention should be paid to the requirements of the petition itself, which will have to be rewritten by the court system notwithstanding any legislative action. It should encapsulate all requirements for petitioners, including service, form, contents, and any limitations. Currently, judges are caught between *J.J.P.*'s interpretation of statutory authority under section 260B.198 and the forced reliance on chapter 609A for technicalities. Creating an independent framework will allow juvenile court judges to execute legislative intent while preventing petitioners from appealing a decision based on the forced reliance on chapter 609A.

The legislature will need to consider the tension between petitioners' interest in expunging their records, executive branch agencies' need to protect the parties they serve, and law enforcement and prosecuting agencies' responsibility in protecting the public. The Council on Crime and Justice has provided its suggestions for legislative reform concerning juvenile records: that "arrest records, expunged records, and juvenile records may not be requested or used for purposes of employment, housing, or licensing, or for acceptance into programs of post-secondary education."²⁰⁷ Additionally, it suggests that Minnesota Statutes section 260B.198 be interpreted to extend to *all* juvenile records.²⁰⁸

In stark contrast, the Minnesota County Attorneys Association wishes to maintain access to criminal records, holding that it is a "critical public safety function."²⁰⁹ The Association rests on thirteen

205. See Thornton, *supra* note 158, at 20.

206. *J.J.P. II*, 831 N.W.2d 260, 269 (Minn. 2013).

207. MARK HAASE, COUNCIL ON CRIME & JUSTICE, CRIMINAL RECORDS RELIEF ACT SUMMARY (2013), available at <http://www.house.leg.state.mn.us/comm/docs/ChampionMelinHaaseCriminalRecordsReliefActSummaryCCJ.pdf>.

208. *Id.*

209. MINN. CNTY. ATTORNEYS ASS'N, MCAA EXPUNGEMENT PRINCIPLES 1 (2007), available at <http://www.house.leg.state.mn.us/comm/docs/MNCoutnyAttorneysAssocExpungementPrinciples.pdf>.

guiding principles to advise the legislature of its interests in future expungement law reform—pushing for expunged records to be sealed, not destroyed, so they can be accessible in the future.²¹⁰ This would support the primary goal of protecting the public interest against the needs of individual petitioners who may recidivate at some point.²¹¹

The legislature should write the statute in accordance with the language of *J.J.P.*—that is, the petitioner must demonstrate that the benefit of an expungement to him outweighs the detriment to the public and the burden on the court—in order to guide the district courts in their evaluations of petitioners as distinct individuals. Some petitioners will meet this burden and others will not, just as some petitioners will be denied simply through their failure to serve the correct parties. However, a new statute must be constructed in such a way to give the petitioner who embodies the entire purpose of the expungement process the ability to find actual relief. It would behoove the Minnesota legislature to once again be “in the vanguard of the reform trends”²¹² as the nation deals with the impact of saddling its youth with records that can prevent them from becoming productive members of society.

All parties are interested in a fair, predictable, and impartial process, consistent between all Minnesota courts and individual petitioners’ cases. Even the Minnesota County Attorneys Association supports automatic judicial expungements for petitioners in certain situations where charges were either dismissed or where the case was decided in favor of the petitioner.²¹³ This is one area on which the legislature can focus its attention in an effort to improve judicial efficiency, especially in the case of juvenile records. While the legislature is in a prime position to decide whether to address the gaps left by *J.J.P.*, it

210. See *id.* at 1–2. Multiple principles address the availability of post-expungement records to affected agencies.

211. This is a nebulous equation. There are certainly petitioners who recidivate and the public interest *can* therefore be harmed by the expungement of these prior records. However, the expungement process is designed to assist those people who have demonstrated positive, forward movement in their lives. The assumption underlying expungement reform should not be that all petitioners would at some point recidivate.

212. Walling & Driver, *supra* note 22, at 900.

213. The Association does not support the expungement of executive branch records. MINN. CNTY. ATTORNEYS ASS’N, *supra* note 209, at 4.

should be mindful of the particular mission of the juvenile justice system.

V. CONCLUSION

The materialization of the court's decision in *J.J.P.* has resulted in consequences that the court might not have anticipated. The mere fact that the majority addressed the plain meaning of the word "expunge," recognizing that it indeed means to "erase or destroy," conveys that the court's intention was to deliver a clear solution under the juvenile expungement statute section 260B.198.²¹⁴ However, in light of the court's decision to limit an expungement to the "order of adjudication" instead of the entire process of adjudication as acknowledged by Justice Anderson in his concurrence, the real-life impact is to deny petitioners the relief the court is statutorily empowered to give. The combination of confusion concerning the law in this area and the way in which records are disseminated makes obtaining effective relief difficult.²¹⁵

The biggest problem with the majority ruling is that it fails to give relief at all to a "stay of adjudication" or other circumstance where the decision may have been in the petitioner's favor.²¹⁶ It seems contrary to legislative intent to produce a result in which an individual who was fully adjudicated may have his or her record at least partially restored, but an individual who was not adjudicated cannot find relief.²¹⁷

214. See *J.J.P. II*, 831 N.W.2d 260, 267 (Minn. 2013).

215. See Telephone Interview with Jon Geffen, *supra* note 148 ("Nobody knows what's going on. Even the confusion at the supreme court level was significant. People have tried to decipher the decision as it pertains to records, [but it's difficult].").

216. See *State v. C.P.H.*, 707 N.W.2d 699, 704 (Minn. Ct. App. 2006) ("In determining whether a case was resolved in favor of the petitioner . . . the existence of an admission or finding of guilt is the deciding factor.").

217. A district court judge may use her inherent authority to expunge judicial records. See *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981). However, that remedy is limited. When thinking of long-term consequences of an adjudication under the *J.J.P.* ruling, it might make more sense for a juvenile to argue *for* adjudication at the time of charging only so that he or she may qualify for an expungement of executive branch records should one be warranted. It is hard to believe that this "absurd and unreasonable" result was in fact the intent of the majority in deciding to limit *J.J.P.* to the order of adjudication.

Individuals who have borne the burden of proof under the *J.J.P.* decision—that their benefit outweighs the burden on the courts and public—deserve to be fully restored to the position they were in before they were charged. The court has given no clear reasoning for the conclusion that those who have rehabilitated themselves and shown themselves to be productive members of society should carry the burden of having to explain an arrest record or miscellaneous court document. When the district court has found that a petitioner has sufficiently demonstrated need in the areas of education, housing, and employment to the extent that the benefit of an expungement would outweigh the burden to the courts and public, the petitioner has a right to expect that expungement to have a practical effect. The courts, however, have gone as far as they can within the current framework of the statutory language. Therefore, until the legislature takes action, petitioners will continue to face legitimate hardship in the wake of the court's ruling in *J.J.P.*