



The Harmful Impact of Online Criminal Histories

Sarah Esther Lageson, Northeastern University

The public availability of online criminal histories for individuals is dramatically changing the relationship many Americans have with the justice system. The Internet publicizes even minor brushes with the law, documenting arrests, booking photos, and charges that may later be dismissed. In a recently published qualitative study that included interviews, I learned that many people who are affected by the stigma of online records did not know that these records existed until they “popped up” unexpectedly. Even inaccurate or outdated online criminal information can lead people to withdraw from family duties and limit their access to good jobs, rentals, and other opportunities.

Scope and Human Impact

Given the sheer number of arrests each year, there are millions of Americans who face the posting of their criminal justice interactions online. While slightly more than 1.5 million persons were held in U.S. prisons in 2013, more than seven times that number were arrested in that year – about 11.3 million according to data from the U.S. Department of Justice. Researchers estimate that a full 30 percent of U.S. youth are arrested by age 23, including about half of all African American males and 44 percent of Hispanic males.

Compounding any difficulties from accurate arrest records, criminal histories are known to be full of errors. Unlike other types of reporting agencies, such as those providing credit reports, criminal background information sources disseminate raw governmental data without federal oversight, regulation, or mandated updates, resulting in many erroneous or out-of-date online profiles. Common shortfalls involve mismatched identities, reporting of expunged or sealed records, or failure to update case dispositions. In addition, people who read reports routinely misunderstand their seriousness or details. Although these records carry serious consequences, they are sometimes the result of simple data entry errors or failures to update information.

Many interviewees worried about the lasting impact of their online records for their children, and opted out of direct contact with schools to avoid being “found out” by other parents and school administrators. As one of my interviewees, Jaci, explained, “They seen me on this thing called ‘Mugshots’ I would like to volunteer at my daughter’s school but ... [t]hey give you a list of what you’re not supposed to have on your background. So I’m like, ‘Well I can’t do that.’ And it’s kinda hard telling that to your daughter, ‘I can’t volunteer today.’”

As this example suggests, digitization of public records means that troves of governmental data, including individual-level data (such as addresses, birthdates, and arrest histories), are routinely available to anyone with a computer. Jaci was seeking expungement for several low-level drug convictions that happened more than a decade ago, and the booking photo she mentioned came after an arrest three years ago for a domestic altercation involving a former boyfriend – a matter about which charges were later dropped. But both the long-ago convictions and the dismissed charges attached to her photo continue to haunt Jaci and her capacity

to be a good mother.

What Recourse Do Individuals or Society Have?

There is currently little recourse for those seeking to remove an online record, even if it is incorrect. U.S. courts have ruled that the First Amendment protects re-publication of information about crimes obtained from publically accessible sources, and the Supreme Court has held that even the most “vile” of personal attacks are under Constitutional protection when they relate to matters of public concern. In a particularly relevant defamation case, *Martin v. Hearst Corporation*, the Second Circuit protected online news sources from having to remove or modify a story that reports a person’s arrest even if the arrest record was later expunged, holding that news accounts were not defamatory because the historical fact of the arrest remains true.

In sum, the rapid and widely-accepted availability of public crime data has outpaced the creation of legal protections for those marked, even unfairly, with criminal labels. There remains room to debate whether this is a public benefit or a breach of privacy, and policy interventions may be possible. We still lack rules to help millions of parents who, without ultimate convictions, face dated, incorrect arrest records available online. As reformers seek to strengthen family ties to prevent people from repeat encounters with the criminal justice system, this online distribution of incomplete or misleading information undermines family and community ties for no good reason.

Several areas are ripe for reform. Legislators could disallow the sale or unfettered distribution of criminal records via private vendors or corporate data management services. Another useful reform would be to strengthen federal oversight by requiring licensing for criminal background check companies, akin to that required for credit reporting agencies. In addition, there should be a way for citizens to seek remedies for incorrectly reported data and a way to make corrections, perhaps through a central clearinghouse of criminal justice data.

Of course, any reforms must carefully balance the public’s First Amendment right to obtain and report government data with the Constitutional protections afforded to those accused of crimes. The United States might consider developing its own version of the 2010 European Court of Justice ruling on the “right to be forgotten” online. Since this landmark decision, E.U. citizens can request that search engines remove links with dated or non-conviction criminal history information that is deemed inaccurate, inadequate, irrelevant, or excessive. The original sources remain in a publicly accessible government database, but rapid access through Google searches is limited.

Beyond issues of accuracy and availability, Americans must recognize that the collateral consequences of individual encounters with the criminal justice system now include extralegal forms of criminal punishment, such as embarrassment by data spread on reporting websites. Readily accessible digital reports increase the “stickiness” of lifetime criminal histories, allowing past incidents to haunt future life chances. For many Americans, these records come as a surprise many decades after an original incident. Stigmatizing labels, errors and incomplete information, and worries about what might appear online can have devastating effects on workers and parents, leading to constricted opportunities and retreat from family and community responsibilities.

Read more in Sarah Lageson, "Found Out and Opting Out: The Consequences of Online Criminal Records for Families." *The ANNALS of the American Academy of Political and Social Science* 665, no. 1

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