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## **As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime** Even if Charges Were Dropped, a Lingering Arrest Record Can Ruin Chances of a Job

By Gary Fields and John R. Emshwiller



Jose Gabriel Hernandez was arrested after being falsely identified as a sexual predator. *Ben Sklar for The Wall Street Journal*

America has a rap sheet.

Over the past 20 years, authorities have made more than a quarter of a billion arrests, the Federal Bureau of Investigation estimates. As a result, the FBI currently has 77.7 million individuals on file in its master criminal database—or nearly one out of every three American adults.

Between 10,000 and 12,000 new names are added each day.

At the same time, an information explosion has made it easy for anyone to pull up arrest records in an instant. Employers, banks, college admissions officers and landlords, among others, routinely check records online. The information doesn't typically describe what happened next.

Many people who have never faced charges, or have had charges dropped, find that a lingering arrest record can ruin their chance to secure employment, loans and housing. Even in cases of a mistaken arrest, the damaging documents aren't automatically removed. In other instances, arrest information is forwarded to the FBI but not necessarily updated there when a case is thrown out locally. Only half of the records with the FBI have fully up-to-date information.

"There is a myth that if you are arrested and cleared that it has no impact," says Paul Butler, professor of law at Georgetown Law. "It's not like the arrest never happened."



Precious Daniels of Detroit is part of a class-action lawsuit against the Census Bureau alleging that tens of thousands of African-Americans were discriminated against because of the agency's use of arrest records in its hiring process. *Fabrizio Costantini for the Wall Street Journal*

When Precious Daniels learned that the Census Bureau was looking for temporary workers, she thought she would make an ideal candidate. The lifelong Detroit resident and veteran health-care worker knew the people in the community. She had studied psychology at a local college.

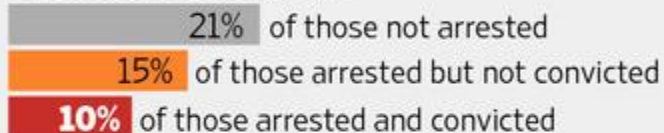
Days after she applied for the job in 2010, she received a letter indicating a routine background check had turned up a red flag.

In November of 2009, Ms. Daniels had participated in a protest against Blue Cross Blue Shield of Michigan as the health-care law was being debated. Arrested with others for disorderly conduct, she was released on \$50 bail and the misdemeanor charge was subsequently dropped. Ms. Daniels didn't anticipate any further problems.

## Impact | What happens after arrest

A national survey of youth indicates that being arrested by the age of 23, regardless of whether convicted, correlates with negative outcomes in one's life. Below, indicators of respondents who have been arrested (convicted and not convicted) compared with those not arrested.

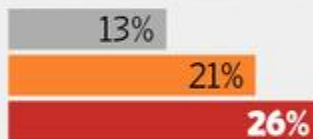
### Own a home at age 25



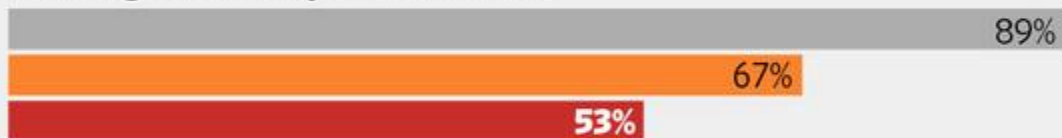
### Median income at age 25



### Household income below poverty line at age 25



### With high school diploma (or more)



### With college degree (or more)



Source: Tia Stevens Andersen of University of South Carolina's analysis of a National Longitudinal Survey of Youth conducted in 1997-2010 by the Labor Department which studied 8,984 people born in 1980-84

The Wall Street Journal

But her job application brought the matter back to life. For the application to proceed, the Census bureau informed her she would need to submit fingerprints and gave her 30 days to obtain court documents proving her case had been resolved without a conviction.

Clearing her name was easier said than done. "From what I was told by the courthouse, they didn't have a record," says Ms. Daniels, now 39 years old. She didn't get the job. Court officials didn't respond to requests for comment.

Today, Ms. Daniels is part of a class-action lawsuit against the Census Bureau alleging that tens of thousands of African-Americans were discriminated against because of the agency's use of arrest records in its hiring process. **Adam Klein**, a New York-based plaintiff attorney, says a total of about 850,000 applicants received similar letters to the one sent to Ms. Daniels.

Representatives for the Census Bureau and the U.S. Justice Department declined to comment. In court filings, the government denied the discrimination allegation and said plaintiffs' method for analyzing hiring data was "unreliable" and "statistically invalid."

The wave of arrests has been fueled in part by unprecedented federal dollars funneled to local police departments and new policing tactics that condoned arrests for even the smallest offenses. Spending on law-enforcement by states and local governments hit \$212 billion in 2011, including judicial, police and corrections costs, according to the most recent estimates provided to the U.S. Census Bureau. By comparison, those figures, when adjusted for inflation, were equivalent to \$179 billion in 2001 and \$128 billion in 1992.

In 2011, the most recent year for which figures are available, the Bureau of Justice Statistics put the number of full-time equivalent sworn state and local police officers at 646,213—up from 531,706 in 1991.

A crackdown on what seemed like an out-of-control crime rate in the late 1980s and early 1990s made sense at the time, says Jack Levin, co-director of the Brudnick Center on Violence and Conflict at Boston's Northeastern University.

"Zero-tolerance policing spread across the country after the 1990s because of the terrible crime problem in late '80s and early 1990s," says Mr. Levin.

The push to put an additional 100,000 more officers on the streets in the 1990s focused on urban areas where the crime rates were the highest, says Mr. Levin. And there has been success, he says, as crime rates have fallen and the murder rate has dropped.

But as a consequence, "you've got these large numbers of people now who are stigmatized," he says. "The impact of so many arrests is catastrophic."

That verdict isn't unanimous. "We made arrests for minor infractions that deterred the more serious infractions down the road," says James Pasco, executive director of the Fraternal Order of Police, which represents about 335,000 officers. "We don't apologize for that. Innocent people are alive today and kids have grown up to lead productive lives because of the actions people took in those days."

At the University of South Carolina, researchers have been examining other national data in an attempt to understand the long-term impact of arrests on young people. Using information from a 16-year-long U.S. Bureau of Labor Statistics survey, researchers tracked 7,335 randomly selected people into their 20s, scrutinizing subjects for any brushes with the law.

Researchers report that more than 40% of the male subjects have been arrested at least once by the age of 23. The rate was highest for blacks, at 49%, 44% for Hispanics and 38% for whites. Researchers found that nearly one in five women had been arrested at least once by the age of 23.

They further determined that 47% of those arrested weren't convicted. In more than a quarter of cases, subjects weren't even formally charged.



Mr. Hernandez carries a laminated legal document from the Bexar County Sheriff's office confirming his innocence in case he is arrested in the future. *Ben Sklar for The Wall Street Journal*

It can be daunting to try to correct the record. In October 2012, Jose Gabriel Hernandez was finishing up dinner at home when officers came to arrest him for sexually assaulting two young girls.

Turns out, it was a case of mistaken identity. In court documents, the prosecutor's office acknowledged that the "wrong Jose Hernandez" had been arrested and the charges were dropped.

Once the case was dismissed, Mr. Hernandez assumed authorities would set the record straight. Instead, he learned that the burden was on him to clear his record and that he would need a lawyer to seek a formal expungement.

"Needless to say, that hasn't happened yet," says Mr. Hernandez, who works as a contractor. Mr. Hernandez was held in the Bexar County jail on \$150,000 bond. He didn't have the cash, so his wife borrowed money to pay a bail bondsman the nonrefundable sum of \$22,500, or the 15% fee, he needed to put up. They are still repaying the loans.

Exacerbating the situation are for-profit websites and other background-check businesses that assemble publicly available arrest records, often including mug shots and charges. Many sites charge fees to remove a record, even an outdated or erroneous one. In the past

year [Google](#) Inc. has changed its search algorithm to de-emphasize many so called "mug-shot" websites, giving them less prominence when someone's name is searched.

On Friday, California Gov. Jerry Brown signed into law a bill making it illegal for websites to charge state residents to have their mug shot arrest photos removed.

In 2013, Indiana legislators approved one of the most extensive criminal record expungement laws in the country. The law was sponsored by a former prosecutor and had a range of conservative Republican backers. One had worked as a mining-company supervisor who frequently had to reject individuals after routine background checks found evidence of an old arrest.

"If we are going to judge people, we need to judge them on who they are now, and not who they were," says Jud McMillin, the bill's chief sponsor.

The "growing obsession with background checking and commercial exploitation of arrest and conviction records makes it all but impossible for someone with a criminal record to leave the past behind," concludes a recent report from the National Association of Criminal Defense Lawyers.

Further analysis by the University of South Carolina team, performed at the request of The Wall Street Journal, suggests that men with arrest records—even absent a formal charge or conviction—go on to earn lower salaries. They are also less likely to own a home compared with people who have never been arrested.

The same holds true for graduation rates and whether a person will live below the poverty line.

For example, more than 95% of subjects without arrests in the survey graduated high school or earned an equivalent diploma. The number falls to 84.4% for those who were arrested and yet not convicted.

Tia Stevens Andersen, the University of South Carolina researcher who performed the analysis, says the results are consistent with what criminologists have found. The data, especially when coupled with other studies, show that an arrest "does have a substantial impact on people's lives," she says. That is in part because "it's now cheap and easy to do a background check."

According to a 2012 survey by the Society for Human Resource Management, 69% of employers conduct criminal background checks on all job applicants. Fewer than that—about 58%—allow candidates to explain any negative results of a check.

Mike Mitternacht, the owner and president of Factory Service Agency Inc., a heating and air-conditioning company in Metairie, La., worries that if he turns down a job applicant because of a criminal record, he could be open to a discrimination claim. But hiring the person could leave him open to liability if something goes wrong. "I have to do the background checks and take my chances," says Mr. Mitternacht. "It's a lose-lose situation."



John Keir says he was fired from his job after failing to mention brushes with the law on his application. Found not guilty of a recent charge, he says he answered truthfully. *Steve Gates for The Wall Street Journal*

John and Jessica Keir, of Birmingham, Ala., have tried various means to combat their arrest stigma. In 2012 the married couple was accused of criminal mischief for scratching someone's car with a key. They were found not guilty at trial.

In January of last year, Ms. Keir, a law-school student, googled herself. "My mug shot was everywhere," she recalls. "I was just distraught."

Though she was in the top 15% of her first-year class at Cumberland School of Law School in Birmingham, she says about a dozen law firms turned her down for summer work. Since she rarely made it to the interview stage, she feared her online mug shots played a role. Eventually, she landed a summer position at the Alabama attorney general's office.

The couple says they paid about \$2,000 to various websites to remove their mug shots. It didn't work, Mr. Keir says. New mug-shot sites seemed to appear almost daily. Keeping up with them all was "like playing Whac-A-Mole," says Mr. Keir.

Ms. Keir, who is finishing her law degree at the University of Alabama, has been using Facebook, LinkedIn and Google to create enough positive Internet traffic to try to push down negative information lower in any search-engine results.

Meanwhile, her husband believes he has been caught up in a separate quagmire. Earlier this year Mr. Keir was hired by Regions Bank as an information security official. Weeks later, he says he was let go from his \$85,000 job for allegedly lying on his application.

The 35-year-old Mr. Keir says his firing resulted after failing to disclose his recent arrest record as well as a number of traffic violations during his teens that had branded him as a

"youthful offender" in Alabama. He says he didn't lie on his application, and only recalls being asked about any criminal convictions.

A spokeswoman for Regions Bank, a unit of [Regions Financial Corp.](#) says the company couldn't discuss individual personnel matters, but says the bank sends applicant fingerprints to the FBI as part of criminal background check and asks candidates to answer questions about previous criminal charges and convictions.

Arrest issues don't necessarily abate with age.



Barbara Ann Finn lost out on a school cafeteria job last year after a background check turned up a 1963 hit on her record, which was a surprise to her. *Greg Kendall-Ball for The Wall Street Journal*

Late last year, Barbara Ann Finn, a 74-year-old great grandmother, applied for a part-time job as a cafeteria worker in the Worcester County, Md., school system.

"I was a single woman on a fixed income. I was trying to help myself," she recalls.

Along with the application came fingerprints and other checks—a process Ms. Finn dismissed as mere formality. After all, she had lived in the area since 1985, had worked in various parts of county government and served as a foster parent. Her background had been probed before.

So she was surprised by the phone call she received from the school district. Her fingerprints, she says she was told, had been run through both the state and FBI criminal



databases. She was clear in Maryland, but the FBI check matched her prints to a 1963 arrest of someone with a name she says she doesn't recognize.

Barbara Witherow, a spokeswoman with the school district, confirms that Ms. Finn had applied for employment and that there were "valid reasons why" she wasn't considered.

Ms. Finn says she believes her problem might trace back to a 1963 episode when she and a girlfriend had gone to a clothing store in Philadelphia. The other woman began shoplifting, she says. Police took both of them into custody, Ms. Finn recalls, but she was released.

"I never heard any more about it and never thought any more about it," says Ms. Finn.

Michael Lee is executive director of the nonprofit Philadelphia Lawyers for Social Equity's Criminal Record Expungement Project and has been working on Ms. Finn's behalf for months.

The challenge, he says, is expunging a record no one can find.

An arrest record can only be removed if the local court system notifies the FBI that it should be taken out of the file. In Ms. Finn's case, the local authorities say they can't find the original record.

A Philadelphia District Court document obtained by Mr. Lee and reviewed by the Journal says Ms. Finn was never charged. A Pennsylvania State Police spokesman declined to comment.

Mr. Lee has asked for another background check from the state to try to put the matter to rest. Says Ms. Finn: "I don't want to die with a criminal record."