Special Committee on Expunction of Criminal Records: Comment and Recommendations

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We appreciate the opportunity to comment on the study now being undertaken by the Joint Legislative Council's Special Committee on the Expunction of Criminal Records. The questions raised by the Committee's mandate are important ones; how we resolve those questions will have a profound on the economic and social health of the state.

Wisconsin's current expunction law, set out in WIS. STAT. §§ 973.015 and 938.35, is among the narrowest in the nation.[1] WISCONSIN STAT. § 973.015, the key provision of that law, was passed in 1975 and has been virtually unchanged since that time. It thus predates the creation of the two electronic databases through which most members of the public and almost all law enforcement entities now access criminal and court records: the Consolidated Court Automation Programs (CCAP) and the Crime Information Bureau's criminal history database.[2] Through those two systems of data collection and dissemination, any Wisconsin citizen can access records of his neighbors' arrests and convictions—civil and criminal, any damage judgments entered against those individuals, and any evictions filed or injunctions requested. Together, those systems also make it possible to obtain critical personal identifying information, including birth dates, social security numbers, home addresses, about anyone who has had contact with

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[1] Wisconsin courts have not clearly established that courts have an inherent right to seal or expunge their own records and the current statutory right to expunction is limited to misdemeanor convictions if a) the defendant is under 21 when the offense was committed and b), at sentencing, the court "determines the person will benefit and society will not be harmed by this disposition." WIS. STAT. § 973.015(1). The majority of other states either recognize state court's authority to seal records or provide statutorily for the opportunity to expunge non-juvenile convictions or both.

[2] Wisconsin's Open Records Law, sec. 19.35, also predates electronic databases and internet access to those databases. The records covered by the Open Records Law are thus "paper records" and the avenue through which citizens' access public information is through written requests to a record custodian. The established legal framework was thus predicated on a model which involved a balancing of interests and individualized records request. The legislators who enacted the Open Records Law did not envision the production, on demand, of vast quantities of data, collected, complied, and aggregated by the state for state purposes.

either the civil or criminal justice systems in this state.[3] No effective mechanism currently exists for correcting errors in these systems and to date there has been no systematic effort to measure the effect of this revolution in information dissemination on Wisconsin's economy or its citizens.

Based on our understanding both of the laws currently governing public access to court and arrest record information and of the impact of new technologies for data dissemination on these laws, we urge the Committee to recognize that no new legislation in the records area can achieve its goals if it does not accept three fundamental premises. First, any new expunction legislation must apply to all branches of government that disseminate aggregated data on court and criminal records to the general public. There can be no "clean slate" or "second chance" if information expunged from CCAP is sold to the general public by the CIB or vice versa. Second, rethinking the state policy on access to criminal court records also requires rethinking the policy with respect to civil court records. Third, discussions about limiting public access to court and arrest records must recognize the distinction between traditional forms of access to public records and the new form of unlimited access to vast data compilations made possible by state-created electronic databases.

Summary of Recommendations

As Wisconsin's largest non-profit law firm, Legal Action of Wisconsin, Inc., has provided legal representation to many of Wisconsin's poorest citizens for over 35 years. Since 1999, Legal Action of Wisconsin's **Legal Intervention for Employment (LIFE) Project** has specifically targeted the legal disabilities that limit our clients' abilities to find and maintain the kind of employment that provides a path out of poverty. The Life Project began its work in Milwaukee and has recently expended into Wausau, Green Bay and Stevens Point, providing an unparalleled opportunity for Project staff to examine the barriers to full employment in different-sized and demographically diverse communities.

Increasingly, the Life Project has found that arrest and conviction information comprises the most powerful of these barriers. That information affects opportunity directly and dramatically. It can also eliminate access to the tools necessary to become employable and the conditions required to remain employed: including training and educational opportunities, housing, and government-run or subsidized programs.[4] The Life Project has worked with community advocates, reentry organizations, and a diverse group of state and county agencies to ameliorate the devastating effects such record information, true and false, can have on individuals, families, and communities. We

[3] The very existence of these systems, in their current form, thus increases both the opportunity for, and the likelihood of identity theft.

[4] Between January 1, 1999 and December 31, 2005, the LIFE Project represented 5,664 clients in 4,072 cases, including 795 criminal background record cases. That figure drastically under represents the number of clients affected by criminal background record problems, however, because it does not include all those whose problems we could not address because of resource limitation or because their legal issues were best dealt with by an agency such as the EEOC or, more often, because current law made it impossible to address the records issue in question.

recognize the need to protect public safety and respect the First Amendment right of access to public information that allows citizens to monitor the workings of their government. We also recognize the rehabilitative and economic value of work, however, and the profound public interest in encouraging all Wisconsin's citizens to become productive members of their communities.

Based on our experience with our clients, current expunction law, and the state system of criminal records maintenance and dissemination, we make the following recommendations:

Automatic Expunction: Level I

1) All information relating to the arrest and conviction of wrongfully convicted defendants should be expunged[5] automatically and removed from CCAP and the CIB databases.
2) No records of arrests that do not lead to convictions, whether for criminal or civil ordinance violations, should be available to the general public through CCAP or the CIB. Once the decision to dismiss or not to prosecute has been made any information about that arrest should be expunged for the purposes of dissemination to the general public from all state generated electronic databases
3) All information pertaining to dismissed eviction actions and injunction petitions should be treated the same way as arrest records in (2).
4) All information pertaining to juvenile arrests and convictions for civil ordinance violations should be treated in the same way as the arrest records in (2).
5) All information pertaining to expunged convictions shall be removed from any state created electronic database reports disseminated to the general public.

Automatic Expunction: Level 2

1) All misdemeanor convictions should be automatically removed, for the purposes of public access, from CCAP and the CIB after three years, if the defendant has no other felony or misdemeanor convictions between the date of his or her conviction and the date of expungment.[6]
2) All information about civil ordinance violations should be removed, for the purposes of public access, from CCAP and the CIB after one year.
3) All information about eviction judgments should be removed, for the purposes of public access, from CCAP and the CIB one to three years after the date judgment is entered.
4) All information about damage judgments should be removed, for the purposes of public access, from CCAP and the CIB one to three years after the date judgment is entered.

Discretionary Expunctions:

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[5] Wisconsin has defined "expungment" or "expunction" as sealing a record or removing it from public view rather than as destroying it. For many reasons, destruction of records is neither necessary nor wise. I use "expunction" or "expunction" in that commonly understood sense throughout this comment.

[6] As with the majority of other recommendations, this "limited expunction" would affect neither law enforcement access to information nor tradition open records requests to a record guardian.

1) Individuals convicted of any misdemeanors should after three years, and on petition to the convicting court, be given the opportunity to demonstrate that the public interest in the presumptive openness of information about their arrest and conviction is outweighed by the public interest in protecting the personal privacy and reputational interests of all citizens, encouraging rehabilitation and full access to fundamental freedoms of association, and preventing the growth of a class of stigmatized individuals who have no incentive to integrate into ordinary civil society.
2) Individuals with a single felony conviction should be granted the same right, for the same reasons, to petition for discretionary expunction after eight years.

The Scope of the Problem

The criminal records problem in Wisconsin tracks, and to some extent reflects, a growing national problem. From 1973 to 2003, the number of individuals incarcerated in U.S. prisons grew exponentially, from approximately 200,000 to 1.4 million.[7] Today approximately 650,000 individuals are released each year from federal and state prisons.[8] Local jails annually release around nine million more men and women.[9] As social scientists have now demonstrated, a disproportionate number of these released prisoners return to "core counties," like Milwaukee, located primarily in urban centers.[10] These communities, already stressed by existing social and economic ills, are further stressed by the problems caused by, and facing, those seeking to reenter society after encounters with the criminal justice system. This is particularly true because these counties can be expected to absorb an increasing number of formerly incarcerated individuals in the future.

These raw numbers reflect a grim reality. Based on current incarceration rates, one out of every fifteen Americans will serve time in prison.[11] And incarceration rates are worse for the poor and for communities of color. According to Bureau of Justice Statistics, 5.9% of all white males will enter a state or federal prison during their life; the same statistics show that 17% of all Hispanic males will be incarcerated and 32% of all black males.[12] Wisconsin statistics are equally disturbing, reflecting similar associations between poverty and incarceration and race and incarceration.

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[7] Dep't of Justice, *Learn About Reentry*, http:// www.ojp.usdoj.gov/reentry/learn.html (last visited September 25, 2006).

[8] *See, e.g.,* Nancy G. La Vigne & Cynthia A. Mamalian, PRISONER RENTRY IN GEORGIA 31 (2004), available at http://www.urban.org/UploadedPDF/411170_Prisoner_Renetry_GA.Pdf; *see also* Dorthey E. Roberts, THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES, 56 Stan. L. Rev 1271 (2004).

[9] Davis Bushn, *Out of Jail, in the Job Market, and Behind the Eight Ball*, The Boston Globe, (Nov. 7, 2004) *available at*, http://www.boston.com/jobs/articles/2004/11/07/out_of_jail_in_the_job_market_and_behind_the_eight_ball/.

[10] *See* James Lynch & William Saboi, *Prisoner Reentry in Perspective*, http://www.urban.org/pdfs/410213_reentry.pdf.

[11] FBI, Uniform Crime Reports: *Crime in the United States* 2004, http://www.fbi.gov/ucr/05cius/.

[12] *Id.*

Adding arrest data to the picture only deepens the problem, indicating just how many individuals will be affected over time by state policies on arrest and conviction information. In 2005, for example, a total of 275, 752 people were arrested in Wisconsin.[13] Of those arrested, almost 70,000 were juveniles.[14] These figures do not include the thousands arrested each year in this state for traffic offenses and civil municipal ordinance violations. Nor do they include those who enter the civil justice system by way of eviction actions, damage judgments, and petitions for injunctions. Nationally, the FBI calculates that, in 2005, over fourteen million people were arrested. How we handle information about the records arising from these millions of encounters with the police may thus shape the future economic trajectories of many citizens throughout their working lives.[15]

At one time, information about the vast majority of these arrest and convictions was available to the general public, but often remained in the "practical obscurity" of clerks of courts offices and police files.[16] Today, it is available, at the click of a mouse, to anyone who wants it.[17] On the last day of 2003, state criminal history repositories contained over 71 million criminal history records.[18] Of those 71 million records, 92% were maintained by states in automated repositories. [19] Depending on state law, information about these records may remain available in electronic form anywhere from one year to forever. A man convicted of a drug crime thirty years ago may thus find himself, despite rehabilitation and full integration into his community, denied a job today based on that record. Someone who was arrested several times as a teenager, with no convictions, may be denied housing or other opportunities ten years from now based on a history that says as much about economic conditions, race, and police practices as it does about his or her threat to public safety. One of the unintended consequences of our current records policy is that it is helping to create a population permanently stigmatized by their encounters with the civil and criminal justice system, a class disproportionately poor and minority.[20]

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[13] *Id.* at. http://www.fbi.gov/ucr/05cius/data/table_69.html.

[14] *Id.*

[15] Studies of race and incarceration rates indicate these patterns only increase existing racial disparities in income, etc. *See, e.g.,* Bruce Western & Becky Pettit, *Black-White Earnings Inequality, Employment Rates, and Incarceration* 29 (Nat'l Sic. Found., Working Paper No. 150, 1999), at http://www.princeton.edu/~western/rubin09.pdf; Richard B. Freeman & Harry J. Holzer, *The Black Youth Employment Crisis: Summary of Findings, in The Black Youth Employment Crisis* 3, 3, 17-18 (Richard B. Freeman & Harry J. Holzer eds., 1986).

[16] *See, e.g.* Peter A. Winn, *Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information*, 79 WASH. L. REV. 307, 315 (2004).

[17] And more and more people do want it. In the past decades new federal and state laws increasingly mandate criminal background checks for a variety of purposes. *See, e.g.,* Michal Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals,* 86 B.U.L. REV 623, 637-38(2006).

[18] DOJ, Bureau of Justice Stats

[19] *Id.*

[20] Criminal records have a statistically different impact on black and white male job seekers; the effect of a record, to put it another way, is to marginalize further those who are already marginalized by race. *See, generally,* Shawn D. Bushway, *Labor Market Effects of Permitting Employer Access to* Criminal

Recommended Solutions: Expungment Legislation Proposals

As currently practiced in Wisconsin, expunction of both court records and police records does not involve destroying those records physically, but rather restricting public access to those records *in some fashion. See, e.g.,* SCR 70.2(L); *see also State v. Leiter*, 2002 WI 77, ¶3, 253 Wis.2d 449, 455, 646 N.W.2d 341. Nor does this restriction necessarily mean that the public can never have access to information contained in an expunged record. It would be more precise to say rather than what expunction does is to transform a presumptively public record into a presumptively private one, a presumption that could be overcome. Under those circumstances, the facts underlying an expunged conviction or any other sealed record would remain available to law enforcement and other agencies whose interest in that information was compelling. And private citizens could still seek access to that information through a record custodian by asserting a compelling public interest in its publication.

Under this broad definition, expunction could involve sealing or removing all record information—in both paper and electronic form. However, the legislature could also choose to adopt a more limited form of expunction, restricting public access to certain information by making it unavailable to the general public through a name search on both CCAP and the CIB. This more limited form of expunction would protect traditional public records access by allowing interested individuals to obtain information through records guardians while recognizing the very different balance of interests involved in unrestricted public access to electronic databases that aggregate, compile, and instantaneously distribute vast amounts of information, information subjected to a variety of documented abuses.

The United States Supreme Court has recognized that new information technologies may require courts to rethink the balancing tests and policy interests traditionally associated with public records analysis. *United States Dept. of Justice v. Reporter's Committee for Freedom of the Press*, 489 U.S. 749 (1989). In a case involving FOIA (Freedom of Information Act) access to F.B.I. "rap sheets," the majority began by recognizing a critical distinction between paper records and the cumulative, indexed, and electronically disseminated information. *Id.* at 764.

> Plainly there is a vast difference between the public record that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.

Id. Referring specifically to 5 U.S.C. § 522a, the Privacy Act of 1974, the Court noted a strong public interest in the nondisclosure of compiled computerized information. *Id.* at 766. That interest, it concluded, could extend even to information that had at one time been made public or was available through other publication mechanisms. *Id.* at 767-68. Public interest in access to government compiled summaries such as the rap sheets was

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History Records, 20 J. CONTEMP. CRIM. JUST. 276, 278, 288 (2004).

further diminished by such factors as time and by the core information conveyed by those records, information not about government activities, but about individual actions. *Id.* at 771, 775. Based on this analysis, the Court concluded that there was a clear "privacy interest in maintaining the practical obscurity of rap sheet information." *Id.*[21]

The Seventh Circuit has similarly acknowledged a difference in the privacy interest associated with information about individual arrests or convictions and the interest associated with aggregated information. *Doe v. Biang*, Slip Op., 2006 WL 1302408, N.D. Ill. 2006) (citing Daniel J. Solove, *A Taxonomy of Privacy*, 154 U. PA. L. REV. 477, 506 (2006). *Biang* also suggests that the privacy interest in compiled data should be linked not only to FOIA, but also to the United States Constitution. *Id.*

Given that many of the injuries associated with our current arrest and conviction policies arise from the use and misuse of information disseminated through the state's two computerized record access systems, we believe the legislature should consider both a traditional expungment model and a more limited form of expungment, the outline of which is suggested by these federal cases. This kind of expungment would limit public access through CCAP or CIB criminal history reports to certain heretofore public information. The underlying public record would, however, remain public in its tradition venue. Such an approach would have the further virtue of standardizing publication practices and ensuring that any revised expunction law would actually be effective.

The cost of inconsistent practices is made clear when we examine how records policy affects expunction law today. Under current C.I.B. policies, information about convictions that are expunged statutorily—and thus removed from CCAP—is included in the criminal history report sold to the general public. Thus, any employer who does criminal background checks by buying a report from the C.IB. receives full information about any misdemeanors a court has ordered expunged. Similarly, individuals who can prove that an arrest, for a felony or a misdemeanor, did not lead to a conviction can provide that proof to the C.I.B. and get the record of that arrest removed from the C.I.B database. But if the proceedings resulted in court action prior to dismissal, information about those proceedings, and the arrest that led to them, will remain readily available to the general public through CCAP. To be effective a law that limits public access to arrest and conviction and other court information must therefore make that limit universally applicable to the appropriate state agencies and databases.

Automatic Expunction: Level I

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[21] The constitutional right to access information was first articulated in *Richmond Newspapers* as the right of the press and public to attend criminal trials. 488 U.S. at 588. That right reflected a long tradition in Anglo-American history of presumptive openness which made it "implicit in the first Amendment." *Id.* at 580. But the analytic framework know as the *Richmond Newspapers* tests was established by Justice Brennan's concurring opinion which made right of access to information a function of whether experience supported a right of access to a proceeding or information and whether logic dictated that public access is structurally significant. *Id.* at 587. Access to criminal trials is structurally significant, according to *Richmond Newspapers*, because it promotes informed discussion of government affairs, generates perceptions of fairness, checked corruption and basis, and enhanced the fact finding function of the judicial process.

We recommend that all information relating to the arrest and conviction of innocent exonerees be expunged automatically and removed from CCAP and the CIB. Once a wrongful conviction has been proven, information about the underlying arrest and conviction should no longer be presumptively public.[22] Men and women injured once by a systemic mistake should not be further punished by having to try to remake shattered lives and reputations knowing that information about their wrongful arrests and convictions are matters of public record. That expunction should be automatic, triggered by a finding to be determined by the legislature. The victims of wrongful convictions are usually destroyed economically by legal expenses and the costs of incarceration. Placing any further burden on them would be bad public policy and fundamentally unfair.

We recommend that records of arrests that do not lead to convictions, whether for criminal offenses or civil ordinance violations, should not be available to the general public through CCAP or the CIB. Once the decision to dismiss or not to prosecute has been made, individual members of the public should not be able to access arrest information through general names searches in CCAP or through CIB record requests. We recognize that the traditional purpose of open records law, to allow citizens to exercise their First Amendment right to keep a watchful eye on the actions of their government is a vital one. We also recognize that that interest extends to the exercise of police power involved in arrests. But that interest diminishes as time passes and an arrest is not pursued. It is also diminished when the information sought is related not to government practices, but to the behavior of other citizens, particularly when information about that behavior cannot be legally used as a basis for making many decisions.

Employers are legally forbidden to ask potential employees, for example, about their arrest records. And there is a powerful public interest in not stigmatizing individuals who have merely been suspected by the police to the extent that they become economic and social drains on their community. Given established links between arrest rates, race, and poverty, that interest is particularly compelling. Neither the Constitution nor public policy thus requires providing the general public with instantaneous and unlimited access to information about arrest records through either CCAP or CIB.

We recommend that all information pertaining to eviction actions and injunction petitions that are dismissed be treated the same way. The public interest in the first stages of a civil action is considerably less than in the state action of arresting a citizen because that action is, in essence, a private one. But the potential for misuse and illegal or discriminatory use of civil court information remains high. Anecdotal evidence suggests that landlords routinely see eviction filings as evidence that a potential tenant is

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[22] Most states that have recently revised their expunction statutes and procedures include similar provisions. Illinois has formulated the standard this way:

> [i]f a conviction has been set aside on direct review or on collateral attack and the court determines by clear and convincing evidence that the defendant was factually innocent of the charge, the court shall enter an expungement order as provided in subsection (b) of Section 5-5-4 of the Unified Code of Corrections.

an undesirable type. Employers can similarly interpret civil court information as an indicator of instability, poverty, and marginality—markers for many of an undesirable employee. Removing records of these filings from CCAP would not prevent landlords from investigating prospective tenants' financial histories or contacting their references or accessing information in any of the traditional ways they have used to investigate tenants. It would, however, limit the stigmatizing effect of making easily available information about an action private citizens do not fully understand. An eviction filing need not meet a standard such as "probable cause." Such filings can be, and sometimes are, based on misunderstandings of the law, malice, and other inappropriate private motives.

We recommend that all information about juvenile arrests and convictions for civil ordinance violations should be made unavailable to the general public in CCAP and the CIB. As a matter of policy, Wisconsin has restricted public access to juvenile criminal records, despite what might seem to be an obvious public interest in such records. Public and state interest in not stigmatizing the young outweighs any interest in keeping such information in the public realm. The public interest in juvenile arrest and conviction records for municipal ordinance violations is much lower than the interest in juvenile criminal records. Existing records policy would thus seem to dictate that information about juvenile arrests and convictions for civil ordinance violations should not be available to the general public in C.I.B. record requests. Other factors—including fewer procedural protections for defendants and lack of representation—also favor limiting public access to these records. Perhaps most important, untrained readers find it difficult to distinguish between criminal and civil offenses which are described in the same way, such as "possession of THC."

We recommend that all information pertaining to expunged convictions, and the arrests leading up to those convictions, should be immediately expunged from the criminal record reports provided to the general public by the CIB. For obvious reasons of efficiency, consistency, and common sense, any law designed to provide a "clean start:" or to limit the stigmatizing effect of arrest or conviction information must ensure that such limits apply at least to both CCAP and the CIB.

Automatic Expunction: Level 2

We recommend that all records of misdemeanor convictions should be automatically removed from CCAP and the CIB after three years, if the defendant has no other felony or misdemeanor convictions between the date of his or her conviction and the date of expungment. This recommendation simply extends the current "clean start" provision from juveniles to adult citizens. Police access to an individual's arrest and conviction records would remain unchanged. Those records would remain available to the public at the traditional points of access: the court house and the police station. Removing misdemeanor arrest and conviction record from the state data bases after three years would thus simply limit the stigmatizing effect of immediate availability of that information to the period of time in which, statistically, a defendant is most likely to reoffend.

We recommend that all information about civil ordinance violations should be removed from statewide databases after one year. We further recommend that all information about eviction and damage judgments should be removed from state databases 1 to 3 years after the date judgment is entered. In the case of civil ordinance violations, eviction judgments, and damage judgments, the limited public interest in immediate accessibility of court record information diminishes radically after the civil procedures are concluded. The clear public interest in certain civil settlements, the operation of the courts themselves, and the behavior of repeat players in the system would remain protected by the right to access court records through traditional avenues. No public policy justifies, however, the state acting as a sort of super credit bureau, offering access at the click of a mouse or the touch of a button to anyone who wants a dossier on someone else's financial history.

Discretionary Expunctions

Expunctions in the first two categories should be what this comment has described as automatic. Access to information would thus be limited after a triggering event such as a reported disposition or the passage of a period of time. Expunction legislation that places the burden for limiting access on a defendant or arrestee would be least effective for those who suffer most from the stigmatizing effects of arrest and conviction records: poor and minority populations. To be most effective, statutory expungement should not require an interested party to be represented or to negotiate an independent court proceeding.

But we also recommend the legislature provide a statutory mechanism for citizens convicted of more serious crimes to pursue discretionary expunctions, through petition to the court that convicted them, after certain conditions are met. In such cases, we believe it would be appropriate for the court to act as a traditional record custodian and balance the public and private interests in individual disclosure on a case by case basis.

We recommend that individuals convicted of misdemeanors should after five years, on petition to the convicting court, be given the opportunity to demonstrate that constitutionally protected privacy interests and public policy concerns outweigh the continuing public interest in access to information about their arrest and conviction records. We recommend that individuals with a single felony conviction be granted the same right to petition for discretionary expunction after eight years. The balancing test that would be applied in such cases reflects a well-developed legal standard which would restrict expunction to extraordinary situations. A law that allows for the possibility of a discretionary expungment after a certain period of time would protect the public interest in security and safety while demonstrating a legislative commitment to the idea of reintegration and rehabilitation. An ex-offender who knows that at some point he or she can escape from the stigmatizing effect of a past error has a compelling reason to continue struggling to rise above that mistake by becoming a productive part of the community.

Further Support for these Recommendations

In addition to addressing the problems already discussed in this comment, legislation that followed these suggested revisions would help ameliorate three other problems which increasingly threaten all of Wisconsin's citizens.

The Problem of Inaccurate Records

Precise information on the accuracy of databases such as CCAP or the CIB is not readily available.[23] Most studies of commercial databases have discovered significant levels of inaccuracy, however.[24] A 2003 study by the Bureau of Justice Statistics identifies another significant source of inaccuracy. According to that study, prosecutors failed to report 20% of decisions not to prosecute in felony cases and 25% of decisions to dismiss.[25] In misdemeanor cases, prosecutors failed to report decisions not to prosecute or to dismiss 50% of the time. *Id.* Existing empirical evidence thus bears out what LIFE Project experience has demonstrated: the records used by the general public to make critical decisions affecting employment and other key economic and social opportunities are both incomplete and inaccurate a significant amount of the time. If that information is being used to discriminate illegally, or even in ways that the user suspects might not be acceptable, the user is unlikely to communicate that information to the person being injured by an inaccurate record. Given the difficulties of ensuring that the information contained in the CCAP and CIB databases is accurate and the kind of injuries inflicted by inaccurate information, limiting the public dependence on such information sources would serve valuable public policy purposes.

The Problem of Identity Theft

Both anecdotal and statistical evidence indicates that databases such as the CIB criminal record archive and the CCAP record system provide a rich source of personally identifying information that facilitate identity theft. A combined CCAP and CIB record request search on an individual name is likely to produce a full name, a home address, a birthdate, and in many cases a social security number. Job history and other biographical details, including race and appearance, are also generally available. Limiting public access to composite and aggregated data summaries would thus tend to make identity theft more difficult.

The Magnification Problem

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[23] But most researchers agree that the data compilations used in the checks are rife with errors. *See, e.g., Devah* Pager, *Double Jeopardy: Race, Crime, and Getting a Job,* 2005 WIS. L. REV. 617, 639 FN89.

[24] *See, e.g.* Sharon M Dietrich, *Expanded Use of Criminal Records and Its Impact on Re-entry,* http://www.clsphila.org/PDF.

[25] Accessible at http://www.ojp.usdoj.gov/bjs/pub/pdf/rporchr.pdf (last visited September 24, 2006); *see also* Dietrich.

Private data brokers now routinely mine all large state databases, amassing their own records and disseminating even more complete "dossiers" on individual citizens. There is currently no way to control these commercial enterprises and correcting information in their systems has proven virtually impossible. Criminal records, traffic violations, and arrest histories are now routinely included on credit reports and other commercial record reports, magnifying the stigmatizing affect both of correct and incorrect information. Rethinking current records policy would allow the legislature to take into account, and correct for, these magnifying effect.

Conclusion

The problems described here are not hypothetical or future consequences of actions as yet untaken. Tens of thousands of Wisconsin citizens are struggling today with the stigmatizing effects of our current arrest and court record information policies and the legal framework that gives those policies shape. Many thousands more will face the same struggle in the months and years to come. Recognizing the cost that all of us will pay, directly and indirectly, if things remain unchanged, we strongly urge the Committee to recommend a comprehensive revision of Wisconsin's current expunction law that reflects the goals, if not the precise recommendations, set out in this comment.