



MEMORANDUM

TO: Michael Hays

FROM: Lynn Deavers
Aaron Eidelman
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DATE: August 3, 2005

RE: Survey of State Expungement Statutes

Introduction

In most states, expungement is available for arrests and juvenile records. Whether denoted as “expunging” or “sealing” a record, or “annulling” a conviction, the result is generally the same: government records identifying an incident are made unavailable to the public.¹ The extent to which records are actually destroyed varies, but a minimum amount of information is typically retained by the criminal justice system.² In addition, most states have processes for correcting or removing inaccurate information from statewide registrations as sex offenders or child abusers.³ Finally, many jurisdictions define the availability of expungement only under narrow circumstances.⁴

Identity Theft

A growing number of states have passed laws aimed at preventing identity theft, and many include provisions for expungement of inaccurate information from the records of persons whose identities were stolen. For example, in Alabama, records of inaccurate or incomplete information may be expunged upon request from the person who believes such information is

¹ Black’s Law Dictionary defines expungement as “the removal of a conviction . . . from a person’s criminal record.” Black’s Law Dictionary 603 (7th ed. 1999). Here, the term expungement shall be used, regardless of the specific terminology of individual state statutes.

² See, e.g., ARK. CODE ANN. § 16-90-903 (Michie 2005); DEL. CODE ANN. tit. 16, § 1230 (2005); FLA. STAT. § 943.045 (2005); 20 ILL. COMP. STAT. § 2630/12 (2005); IND. CODE ANN. § 31-39-8-6 (Michie 2004); KAN. STAT. ANN. § 21-3110a (2005); MINN. STAT. § 609A.01 (2004).

³ ALA. CODE § 41-9-645 (2005); GA. CODE ANN. § 35-3-37 (2004); MISS. CODE ANN. § 97-45-27 (2004); MO. REV. STAT. § 575.120 (2004); N.C. GEN. STAT. § 15A-147 (2004); OKLA. STAT. tit. 22 § 19 (2004); TEX. CRIM. PROC. CODE ANN. art. 55.01(d) (Vernon 2004); VA. CODE ANN. § 18.2-186.5 (Michie 2004).

⁴ See, e.g., 705 ILL. COMP. STAT. § 405/5-915 (2005); LA. REV. STAT. ANN. § 44.9 (2004); NEB. REV. STAT. § 29-4010 (2004); N.H. REV. STAT. ANN. § 651:5 (2004); OR. REV. STAT. § 137.225 (2004); R.I. GEN. LAWS §§ 12-1.3-1 – 12-1.3-4 (2004).

incorrect.⁵ Similarly, Mississippi and North Carolina laws permit expungement of records for victims of identity theft, and Missouri courts may expunge a false identification from records where a person falsely impersonates another.⁶ In Virginia, if someone is charged or arrested while using a person's name without consent, the victim of identity theft is eligible for expungement.⁷ In these states, hearings are often held to determine that the person requesting expungement did not actually commit the crimes improperly attributed to him.⁸

The policy reasons for permitting expungement of offenses committed through identity theft are fairly straightforward. Persons who have their identities stolen are victims, rather than perpetrators of these crimes, and should not be penalized for the illegal actions of others.

DNA Information

Most states allow expungement of DNA information from state databases upon reversals of convictions, failure to press charges after information is collected, or a showing that no charges were filed after collecting the information. Currently, twenty six states permit expungement of DNA records upon reversal or dismissal of a conviction.⁹

Some states have passed variations on general reversal or dismissal requirements for DNA expungement. For example, California and Missouri permit DNA information to be expunged if there is no past or present offense or pending charge which qualifies the person for inclusion in the state DNA database.¹⁰ Further, Illinois, New York, and Vermont laws allow expungement of DNA records if a pardon was granted, and Illinois requires genetic records to be expunged within thirty days after a person is found innocent or otherwise not criminally penalized.¹¹ If DNA information is included in the Pennsylvania state database by mistake, the requesting party must show proof of the mistake by clear and convincing evidence.¹² However, South Dakota law does not permit the invalidation of any ID, warrant, probable cause, or arrest

⁵ See ALA. CODE § 41-9-645 (2005); *see also* GA. CODE ANN. §35-3-37 (2004), OKLA. STAT. tit. 22, § 19 (2004).

⁶ MISS. CODE ANN. § 97-45-27 (2004); N.C. GEN. STAT. § 15A-147 (2004); MO. REV. STAT. § 575.120 (2004); *see also* TEX. CRIM. PROC. CODE ANN. art. 55.01(d) (Vernon 2004).

⁷ VA. CODE ANN. § 18.2-186.5 (Michie 2004).

⁸ *See, e.g.*, N.C. GEN. STAT. § 15A-147 (2004).

⁹ ALA. CODE § 36-18-26 (2005); ARIZ. REV. STAT. § 13-610 (2004); CAL. PENAL CODE § 299 (Deering 2005); CONN. GEN. STAT. § 54-1021 (2004); DEL. CODE ANN. tit. 29, § 4713 (2005); GA. CODE ANN. § 24-4-65 (2004); IDAHO CODE § 19-5513 (Michie 2004); 730 ILL. COMP. STAT. § 5/5-4-3 (2005); IND. CODE ANN. § 10-13-6-18 (Michie 2004); KY. REV. STAT. ANN. § 17.175 (Michie 2004); LA. REV. STAT. ANN. § 15:614 (2004); ME. REV. STAT. ANN. tit. 25, § 1577 (2004); MASS. GEN. LAWS ch. 22E, §15 (2004); MO. REV. STAT. §650.055 (2004); MONT. CODE ANN. § 44-6-107 (2004); NEB. REV. STAT. § 29-4109 (2004); N.H. REV. STAT. ANN. § 651-C:5 (2004); N.J. REV. STAT. § 53:1-20.25 (2004); N.Y. [EXEC.] LAW § 995-c (Consol. 2005); N.C. GEN. STAT. § 15A-148 (2004); N.D. CENT. CODE § 31-13-07 (2004); 44 PA. CONS. STAT. ANN. § 2321 (West 2004); R.I. GEN. LAWS § 12-1.5-13 (2004); S.C. CODE ANN. § 23-3-660 (2004); S.D. CODIFIED LAWS § 23-5A-28 (Michie 2003); TEX. GOV'T CODE ANN. § 411.151 (Vernon 2004); VT. STAT. ANN. tit. 20 § 1940 (2004); VA. CODE ANN. § 19.2-310.7 (Michie 2004); W.V. CODE ANN. § 15-2B-11 (Michie 2005); WIS. STAT. ANN. § 165.77(4) (West 2004); WYO. STAT. ANN. § 7-19-405 (Michie 2004).

¹⁰ CAL. PENAL CODE § 299 (Deering 2005); MO. REV. STAT. § 650.055 (2004).

¹¹ 730 ILL. COMP. STAT § 5/5-4-3 (2005); N.Y. [EXEC.] LAW § 995-c (Consol. 2005); 410 ILL. COMP. STAT. § 513/15 (2005).

¹² *See* 44 PA. CONS. STAT. ANN. § 2321 (West 2004).

based on DNA information still included in the state database due to delay or failure to expunge those records.¹³

The policy considerations for expungement of DNA information are largely driven by privacy concerns. Considering that DNA provides independently unique information about a person, and is the most private physical information that can be obtained, the potential invasiveness and misuse of this information weighs heavily in favor of permitting destruction of these records. Although arrest information may be automatically expunged if no charges are filed, DNA information frequently requires an affirmative petition to the court for expungement. This increased burden may reflect the convenience and utility of a comprehensive DNA database in solving crimes. However, convenience must yield to privacy when a person requests removal following the reversal or dismissal of the crime that warranted entry of their DNA information into the database.

Juvenile Records

The majority of states have laws permitting the expungement of juvenile records after a minor has reached eighteen or twenty-one years of age, if the person has not been subsequently convicted of another crime. Felonies may only be expunged in a handful of states.¹⁴ If a state permits expungement of felonies, a much longer period of good behavior is usually required after release (up to 15 years in Nevada), and violent or sexual offenses are generally not eligible for expungement.¹⁵ In Alabama and New Mexico, juvenile delinquency records may be sealed upon request if the person has not been convicted of another crime after two years,¹⁶ and Arkansas permits expungement anytime after the person's twenty-first birthday.¹⁷ Illinois, Louisiana, Texas, and Wisconsin permit expungement of juvenile records upon a person's seventeenth birthday,¹⁸ and expungement is available in Illinois for all juvenile records except those based upon first degree murder and sex offenses which would be felonies if committed by an adult.¹⁹ Notably, Michigan requires the expungement of juvenile records when the person becomes thirty years old;²⁰ similarly, juvenile records in Virginia are automatically destroyed in January of each year if the person is at least nineteen years old, and it has been five years since any convictions.²¹ In New Jersey, records related to possession of a controlled substance may be expunged after one year if the person was twenty-one years or younger at the time of the conviction.²² If

¹³ S.D. CODIFIED LAWS § 23-5A-31 (Michie 2003).

¹⁴ See, e.g., ARK. CODE ANN. § 16-90-602 (Michie 2005); IDAHO CODE § 20-525A (Michie 2004) (juvenile felony offender may request expungement after five years, or after reaching eighteen years of age, whichever occurs later).

¹⁵ See KAN. STAT. ANN. § 38-1610 (2005) (expungement of juvenile records not available for certain aggravated offenses); S.C. CODE ANN. § 20-7-8525 (2004); WYO. STAT. ANN. § 14-6-241 (Michie 2004).

¹⁶ ALA. CODE § 12-15-103 (2005); N.M. STAT. ANN. § 32A-3B-21 (LexisNexis 2004).

¹⁷ Ark. Code § 9-27-309 (Michie 2005).

¹⁸ 705 ILL. COMP. STAT. § 405/1-9 (2005); LA. CHILD CODE ANN. art. 919 (2004) (person seventeen or older may move to expunge records of juvenile criminal conduct); TEX. CRIM. PROC. CODE ANN. art. 45.0216 (Vernon 2004); WIS. STAT. ANN. § 938.355 (West 2004).

¹⁹ 705 ILL. COMP. STAT. § 405/5-915 (2005).

²⁰ See MICH. COMP. LAWS §§ 5.925(E)(2)-(3)(a) (2004).

²¹ VA. CODE ANN. § 16.1-306 (Michie 2004).

²² N.J. REV. STAT. § 2C:52-5 (2004).

expungement is not done as a matter of right, hearings are held to determine whether a person's juvenile records should be expunged.²³

Most states permit expungement of juvenile records because minors are held to a lower standard of culpability in crimes, and society is often more forgiving of children who commit crimes than adults. Some states maintain records for several years after minors reach eighteen years of age, to ensure that information is available if minors reoffend after reaching adulthood. In addition, minors who commit violent or sexual offenses may not have their records expunged likely because these crimes are considered more heinous by society. Records of these crimes may be useful in determining whether a person has exhibited a pattern of such behavior.

Standard of Proof

For most jurisdictions, arrests that do not result in a conviction or guilty plea may be expunged as a matter of right.²⁴ Records may be expunged if there are no further charges or convictions for a certain period of time.²⁵ Some states also apply the same standard to acquittals,

²³ See, e.g., Okla. Stat. tit. 10 § 7307-1.8 (2004) (person who is at least twenty-one years old with no adult convictions may petition the court for an expungement hearing, at which the court may order expungement if harm to the person's privacy interests outweighs the public interest).

²⁴ See ALASKA STAT. § 12.55.085 (Michie 2004) (conviction may be set aside if person was discharged by court without imposition of a sentence); ARK. CODE ANN. § 16-93-303 (Michie 2005) (first-time offender who completed probation, without a judgment of guilty, may have his record expunged); CAL. PENAL CODE § 851.85 (Deering 2005) (person acquitted of charge, if found factually innocent by the court, may have his records sealed); CONN. GEN. STAT. § 54-142a (2004) (person found not guilty of a charge, or if his charge is dismissed, may have his records erased upon expiration of time period for appeal); DEL. CODE ANN. tit. 10, § 1025 (2005) (person may request expungement of criminal records if charge is dismissed or not otherwise prosecuted); GA. CODE ANN. § 35-3-37 (2004) (person arrested for an offense but not prosecuted, or if charges are dismissed, may request expungement of records); 20 ILL. COMP. STAT. § 2630/5 (2005) (person acquitted or released without being convicted may request expungement of records upon showing good cause); IND. CODE ANN. § 35-38-5-1 (Michie 2004) (person may request expungement of arrest record if no charges filed, charges dropped due to mistake, no offense was committed, or upon an absence of probable cause); KAN. STAT. ANN. § 22-2410 (2005) (person may request expungement of arrest record); KY. REV. STAT. ANN. § 431.076 (Michie 2004) (person charged but found not guilty, or against whom charges were dismissed, may request expungement of all records, including arrest records, fingerprints, photographs and other data); MD. CODE ANN. [CRIM. PROC.] § 10-103 (LexisNexis 2004) (person may request expungement of arrest record if no charges filed); MISS. CODE ANN. § 99-15-57 (2004) (records shall be expunged if case dismissed or otherwise not prosecuted); N.J. REV. STAT. § 2C:52-6 (2004) (if arrest does not result in conviction, record may be expunged); N.C. GEN. STAT. § 15A-146 (2004) (arrest that does not result in conviction may be expunged); OHIO REV. STAT. ANN. § 2953.52 (Anderson 2005) (person may request sealing of records anytime after found not guilty or charges dismissed, or after two years from the return of no bill by a grand jury); OKLA. STAT. tit. 22 § 18 (2004) (person arrested with no charges filed, or upon reversal of conviction, may request expungement); 18 PA. CONS. STAT. ANN. § 9122 (arrest records expunged after eighteen months from date of arrest upon order or certification of no proceedings); S.C. CODE ANN. § 17-1-40 (2004) (arrest records expunged if acquitted or charges dismissed); TENN. CODE ANN. § 40-32-101 (2004) (expungement of arrest records available at no cost if acquitted, charges dismissed, arrested without charges, or no bill returned by a grand jury); UTAH CODE ANN. §§ 77-18-9 – 15 (2005) (expungement of arrest records available if released without charges filed, charges dismissed or acquitted); VA. CODE ANN. § 19.2-392.2 (Michie 2004) (person may request expungement if charged and acquitted, pardoned, or charges dismissed); W.V. CODE ANN. § 61-11-25 (Michie 2005) (person found not guilty or charged dismissed may apply for expungement of arrest records if no previous felony convictions); WYO. STAT. ANN. § 7-13-1401 (Michie 2004) (person may request expungement if at least 180 days since arrested and no charges filed or charges dismissed).

²⁵ See, e.g., MO. REV. STAT. § 610.122 (2004) (arrest records expunged if person has no other convictions, and no charges pending related to arrest).

pardons, and other resolutions in favor of the defendant after a matter has reached trial.²⁶ Nebraska also requires individuals to prove by clear and convincing evidence that they were arrested by mistake in order to have the record of the arrest expunged.²⁷ In contrast, Maine automatically keeps arrest information confidential when no conviction results.²⁸

Additionally, Idaho law requires a showing of clear and convincing evidence that the person is not at risk to commit any violent crimes,²⁹ and Illinois law requires a showing of good cause before expunging arrest records.³⁰ Other states have specific standards of proof that apply only to certain crimes. For example, Iowa require that dependent adult abuse information be expunged only upon showing by a preponderance of the evidence that the information is unfounded.³¹ Similarly, Nebraska requires a showing by clear and convincing evidence that a sex offender does not have a criminal charge pending and is not at a substantial risk to commit another sexual offense before the person's records may be expunged.³² Finally, Kansas mandates a showing that expungement of a person's arrest records is in the best interest of justice,³³ and expungement of arrest records may be granted in Utah unless there is clear and convincing evidence that it would be contrary to the interests of the public to do so.³⁴

States that do not include a standard of proof in their expungement statutes may do so because they focus more on a balancing test between the applicant's need to seal the records and the legitimate needs of a state to maintain and access the records. States often permit expungement if the harm to the person outweighs society's interests. The few states that enunciate a specific standard of proof do so to leave courts discretion in deciding whether to grant an applicant's request for expungement, rather than following a bright-line rule. This allows for flexible determinations based on the circumstances surrounding each crime. However, many states permit expungement upon an affirmative request and a showing that all statutory requirements, such as a time limit and no subsequent offenses, are met. Nevertheless, courts often retain discretion in deciding whether to expunge records, striking a balance between bright-line rules mandating expungement and purely discretionary judgments.

Convictions

The expungement of conviction records are typically left to the court's discretion, conditioned on the defendant not having further convictions within a specified time after being released from incarceration or discharged from parole; expungement may also be mandatory if specific conditions are met. The former is the general rule. Almost every jurisdiction allows expungement of a first-time misdemeanor, especially if it was committed by a minor, as long as there have not been further convictions within a subsequent time period, usually two to five

²⁶ See, e.g., NEV. REV. STAT. §§ 179.255, 197A.160 (2004) (person may have arrest records sealed at any time after acquittal).

²⁷ See NEB. REV. STAT. § 29-3523 (2004) (person may have erroneous arrest record expunged upon showing of clear and convincing evidence).

²⁸ ME. REV. STAT. ANN. tit. 16, § 613 (2004).

²⁹ IDAHO CODE § 18-8310 (Michie 2004).

³⁰ 20 ILL. COMP. STAT. § 2630/5 (2005).

³¹ IOWA CODE § 235B.9 (2003).

³² See NEB. REV. STAT. § 29-4010 (2004).

³³ KAN. STAT. ANN. § 12-4516a (2005).

³⁴ UTAH CODE ANN. §§ 77-18-9 – 15 (2005).

years.³⁵ For example, Iowa law permits expungement upon request from a conviction after two years if the person has had no subsequent criminal convictions, other than simple misdemeanor violations.³⁶ In Kansas, courts will expunge a conviction records if the person has had no felony convictions for the past two years, and no charges are pending; the requesting person must also show that expungement of his records is in the public's interest.³⁷ In contrast, Massachusetts courts may seal records of a misdemeanor conviction ten years after the person's discharge or release, and felony conviction records may be sealed after fifteen years, if there have been no subsequent convictions.³⁸

Convictions that are reversed and dismissed are often expunged upon request. For example, New Hampshire law permits persons to request expungement immediately after charges are dismissed; if there is a conviction, however, the defendant must wait one to ten years, depending on the severity of the crime.³⁹ Similarly, Maryland law permits expungement for charges that do not result in a conviction, if a request is made within three years.⁴⁰ Michigan courts may expunge a conviction if the person is convicted of only one offense, but only one conviction per person may be expunged; moreover, no expungement requests may be made until five years after the sentence was imposed or any term of imprisonment ended, whichever occurs later.⁴¹ South Dakota and Hawaii also permit one-time expungement of conviction records upon successful completion of probation.⁴²

Expungement is often available to offenders who complete probation or other diversion programs. For example, Nevada courts shall seal conviction records three years after the offender is discharged from probation, and may also seal records of a person convicted of drug possession three years after release if the court is satisfied that the person is rehabilitated.⁴³ Arizona courts also permit expungement of conviction records if the sentence is set aside as a result of successful probation.⁴⁴ In Vermont, expungement is available after two years from the person's successful completion of a diversion program, as long as there are no subsequent or pending charges.⁴⁵ The person must show, however, that he has been rehabilitated to the satisfaction of the court.⁴⁶

Many states have specific provisions for expunction of drug or alcohol-related offenses.⁴⁷ In Arkansas, first-time offenders convicted of driving under the influence may have their records expunged upon successful completion of probation; records of felony convictions for possession

³⁵ See, e.g., KY. REV. STAT. ANN. § 431.078 (Michie 2004) (person convicted of a misdemeanor or other minor violation may request expungement after five years); see also MISS. CODE ANN. § 99-15-59 (2004) (first-time misdemeanor offender may have conviction expunged).

³⁶ See IOWA CODE § 123.46 (2003).

³⁷ KAN. STAT. ANN. § 12-4516 (2005).

³⁸ MASS. GEN. LAWS ch. 276, § 100A (2004).

³⁹ N.H. REV. STAT. ANN. § 651:5 (2004).

⁴⁰ MD. CODE ANN. [CRIM. PROC.] § 10-105 (LexisNexis 2004).

⁴¹ MICH. COMP. LAWS §§ 780.621(1), (3) (2004).

⁴² S.D. CODIFIED LAWS § 23A-27-17 (Michie 2003); HAW. REV. STAT. ANN. § 706-622.5 (Michie 2004).

⁴³ NEV. REV. STAT. §§ 176A.265, 453.3365 (2004).

⁴⁴ ARIZ. REV. STAT. § 13-907 (2004).

⁴⁵ VT. STAT. ANN. tit. 3 § 164 (2004).

⁴⁶ *Id.*

⁴⁷ See, e.g., CAL. HEALTH & SAFETY CODE § 11361.5 (Deering 2005); see also COLO. REV. STAT. §§ 42-4-121, 42-4-1715 (2004).

of controlled substances may be also be expunged upon the successful completion of probation.⁴⁸ However, many states forbid expungement of conviction records for certain offenses, such as sex offenses,⁴⁹ aggravated violent crimes,⁵⁰ or those involving a child victim.⁵¹

In addition, some states allow expungement of conviction records for younger offenders. In Mississippi, a person who commits a drug offense prior to his twenty-sixth birthday and is a first-time offender may have his record expunged if he completes probation or rehabilitation instead of imprisonment.⁵² Similarly, in Wisconsin, a person who commits a misdemeanor while under twenty one years of age may have those records expunged after completion of the sentence.⁵³

The diverse treatment of expungement for convictions illustrates that states have not yet come to a consensus on this issue. States classify the availability of expungement in a variety of ways, ranging from general classifications of offenses, to a specific enumeration of eligible and non-eligible crimes. Other jurisdictions choose to leave the availability of expungement to the court's discretion. States that provide a required waiting period may do so to ensure that offenders are not likely to commit subsequent offenses. In addition, states that have more lenient expungement standards for younger offenders likely do so as a natural extension of juvenile expungement provisions. Similarly, states that permit expungement for drug or alcohol-related offenses may believe that offenders are better served through treatment and rehabilitation programs.

Arrests

Arrest records are generally expungeable as a matter of right, if they do not result in a conviction.⁵⁴ One interesting exception is Nebraska, which allows arrest records to be "expunged," but nevertheless allows access to arrest records of public officials and candidates for public office.⁵⁵ Some states permit expungement of arrest records if no charges are filed, while other states allow expungement even if charges are filed, as long as no conviction results.⁵⁶ California courts may seal arrest records only if the person was found factually innocent of all charges.⁵⁷ Notably, Hawaii mandates a waiting period of one year before expungement of arrest records may be requested.⁵⁸ Some states also require a hearing date, to determine whether

⁴⁸ ARK. CODE ANN. §§ 5-65-108, 16-90-1201 (Michie 2005).

⁴⁹ *See, e.g.*, IDAHO CODE § 18-8310 (Michie 2004).

⁵⁰ *See, e.g.*, WASH. REV. CODE § 9.94A.640 (2005).

⁵¹ *See, e.g.*, ARIZ. REV. STAT. § 13-907 (2004).

⁵² *See* MISS. CODE ANN. § 41-29-150 (2004).

⁵³ WIS. STAT. ANN. § 973.015 (West 2004).

⁵⁴ *Supra* n.28.

⁵⁵ *See* NEB. REV. STAT. § 29-3523 (2004) (arrest records may be sealed, except for public officials or candidates for public office, if prosecution is inactive or completed within one year).

⁵⁶ *Compare* IDAHO CODE § 67-3004 (Michie 2004) (person may request expungement of records if arrested but not subsequently charged with crime); MD. CODE ANN., [CRIM. PROC.] § 10-103 (LexisNexis 2004) (person may request expungement of arrest records if no charges are brought), *with* ARK. CODE ANN. § 16-90-906 (Michie 2005) (person arrested and charges without a conviction may request expungement); CONN. GEN. STAT. § 54-142a (2004) (arrest records erased upon expiration of time for appeal if found not guilty of charges or charges dismissed).

⁵⁷ CAL. PENAL CODE § 851.85 (Deering 2005).

⁵⁸ HAW. REV. STAT. ANN. § 853-1 (Michie 2004).

expungement is in the interests of justice.⁵⁹ Massachusetts has the broadest language in its law, permitting the sealing of records in any action that is dismissed in any fashion.⁶⁰ In contrast, Missouri law notes that expungement does not deem an arrest invalid, and state agencies may retain records for any necessary administrative actions.⁶¹

Virginia law states a specific policy reason for permitting expungement of arrest records. The law states that arrest records may hinder an innocent citizen's ability to obtain employment, education, or credit.⁶² The availability of expungement for arrest records highlights a tension between unfounded arrests and those that simply fail to result in a conviction. In some states, this tension is reflected in a mandatory waiting period before requesting expungement. Other states expunge arrest records automatically upon the expiration of this waiting period, or immediately upon acquittal. As noted in Virginia's policy statement, many states permit expungement of arrest records because of the prejudicial impact on a person's reputation. However, states may want to maintain these records for use as evidence against repeat offenders.

Sex Offenses

In most states, expungement of records of sexual offenses is not possible. However, some states do permit expungement of sexual crimes under limited circumstances. In Idaho, offenders may request expungement and exemption from their duty to register in the state database after ten years, if they show by clear and convincing evidence that they are not at risk to reoffend and no similar charges are pending. No expungement is possible for violent sexual predators of those convicted of an aggravated offense. Similarly, in Nebraska, offenders may request expungement if they are no longer obligated to register in the state database if they can show by clear and convincing evidence that they are not at a risk to reoffend and no similar charges are pending. Offenders sentenced to lifetime registration in the state database may not have their records expunged.

Some states do not allow expungement of sex offense records despite the fact that no conviction was obtained. Generally, sex offenses that are reversed or dismissed are treated as expugnable under conviction provisions.

The policy reasons for prohibiting expungement of sex offenses are fairly straightforward. States that prohibit expungement of sex offense records likely do so because sex offenders are at a higher risk of recidivism than those who commit other offenses. In addition, society considers these crimes particularly heinous. States may also want to maintain records of these offenses as evidence of past behavior if the offender commits a subsequent sex offense. States that fail to expunge sex offense records when no conviction is obtained may do so to retain them for future related charges that may be filed against the same offender.

⁵⁹ See, e.g., KAN. STAT. ANN. § 22-2410 (2005); KY. REV. STAT. ANN. § 202A.091 (Michie 2004); OHIO REV. CODE ANN. § 2593.52 (Anderson 2005); OR. REV. STAT. § 137.225 (2004).

⁶⁰ MASS. GEN. LAWS ch. 276, § 100C (2004).

⁶¹ MO. REV. STAT. § 610.126 (2004).

⁶² See VA. CODE ANN. § 19.2-392.1 (Michie 2004).

Domestic Violence

Domestic violence encompasses child abuse, spousal abuse, and dependent adult abuse. In the states that do address this topic, expungement is discussed in the context of convictions, for which it is generally not available,⁶³ and reports of abuse, which may be expunged if certain requirements are met.⁶⁴ For example, South Carolina law specifically exempts domestic violence convictions from expungement eligibility.⁶⁵ Other states allow for expungement of convictions, but require more difficult standards to be met. In Rhode Island, expungement is only available three years after domestic violence charges are brought, regardless of whether the person is actually convicted.⁶⁶ If reports of domestic violence are unfounded, particularly for claims of child abuse, expungement is generally available as a matter of right, and the burden of proof may rest with the government. For example, South Dakota law notes that the burden is on the government to prove the accuracy and consistency of findings of child abuse or neglect,⁶⁷ and Vermont law notes that the government has the burden of proving by a preponderance of the evidence that child abuse and neglect records should not be expunged.⁶⁸

Expungement of domestic violence crimes tends to have more stringent requirements than ordinary convictions, but is generally more available than expungement for sex offenses. This reflects the need for society to protect vulnerable persons, while the availability of expungement recognizes that unfounded or inaccurate domestic violence reports can substantially harm a person's reputation. As with sex offenses, states may want to maintain these records as possible evidence of past behavior if a person commits a subsequent offense. Because these crimes are shunned by society, there may be a greater public interest in keeping the records available.

Miscellaneous

Some states have laws relating to expungement that do not fit into the categories described above. For example, Alaska and North Dakota permit expungement of mental health proceedings at any time, if the requesting person releases all claims arising from the proceedings.⁶⁹ Arizona law specifically forbids a person from carrying a concealed weapon in the state, even if the person has a permit from another state, if he is under indictment for, or has been convicted of, a felony offense in any jurisdiction, even if that conviction has been expunged.⁷⁰ In Illinois, the State Appellate Defender must establish and maintain a program to provide information about expungement to eligible persons.⁷¹ West Virginia law permits expungement of first-time drug possession offenses, and Minnesota law specifically permits

⁶³ See, e.g., N.Y. [FAM. CT. ACT] § 1051 (2005).

⁶⁴ ALA. CODE § 26-14-3 (2005); ARK. CODE ANN. § 5-28-220 (Michie 2005); COLO. REV. STAT. § 19-3-505 (2004); GA. CODE ANN. § 49-5-184 (2004); HAW. REV. STAT. ANN. § 350-2 (Michie 2004); IDAHO CODE § 39-5304 (Michie 2004); 325 ILL. COMP. STAT. § 5/7.14 (2005); ME. REV. STAT. ANN. tit. 22, § 4008 (2004).

⁶⁵ S.C. CODE ANN. § 22-5-910 (2004).

⁶⁶ R.I. GEN. LAWS § 12-1-12 (2004).

⁶⁷ S.D. CODIFIED LAWS § 26-8A-11 (Michie 2003).

⁶⁸ VT. STAT. ANN. tit. 33 § 4916 (2004).

⁶⁹ See ALASKA STAT. § 47.30.850 (Michie 2004); N.D. CENT. CODE § 25-03.1-45 (2004).

⁷⁰ ARIZ. REV. STAT. § 13-3112 (2004).

⁷¹ 705 ILL. COMP. STAT. § 105/10.6 (2005).

expungement of minor marijuana offenses occurring before 1976.⁷² In Nevada, offenders who have completed a reentry program after imprisonment may have their records sealed after five years.⁷³

These statutes likely reflect policy choices regarding unique issues facing individual states. It is unclear why some states choose to include expungement provisions for distinctive circumstances. Nevertheless, these statutes may exist as a result of extensive lobbying by specific interest groups, or a risk particularly linked to certain geographic areas.

⁷² W.V. CODE ANN. § 60A-4-407 (Michie 2005); MINN. STAT. § 152.18 (2004).

⁷³ NEV. REV. STAT. § 179.259 (2004).