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Wisconsin Legislative Council
Special Committee on
Expunction of Criminal Records
c/o Attorney Mary Delaney
P.O. Box 6702
Monona, Wisconsin 53716-0702

Dear Ms. Delaney, Rep. Vos and Committee Members:

Per our previous communications, thank you for forwarding this to the Legislative Council Special Committee for their consideration and to supplement the record.

I have been practicing law in Wisconsin for thirty years and have seen a multitude of changes, many of which have been for the worse, for persons arrested and/or charged with a crime, even if that charge is later amended, dismissed or there is an expungement ordered. In the 1970's, expungement was left to the discretion of the court in both misdemeanor and felony matters. The legislature enacted a Youthful Offender Act back then which allowed for expungement of any conviction if the youthful offender successfully completed supervision, counseling, etc. This law was later repealed and what is the current expungement law, section 973.015, is all that remains. This statute allows for expungement of only a misdemeanor conviction if a person was under 21 at the time of its commission.

I was active in efforts back in the late 1970's to get amendments to Wisconsin's anti-discrimination laws to make it illegal to deny a person a job based on arrest or conviction record which was not related to the job being applied for. Wisconsin was the first state in the country to have such legislation. Section 111.321, *Stats.*, was the result.

Wisconsin's expungement law is currently a shell of what it once was. The anti-discrimination law is not in much better shape, due to several decades of administrative rulings and court interpretations which make almost all crimes related to any job, for one reason or another. Section 111.335 was enacted and expanded so that the exceptions now swallow the anti-discrimination rule.

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Section 973.015 gives a court discretion to act on expungement request at any time, not just at the time of sentencing. However, some judges around the state say that expungement can only be addressed at the time of sentencing, never later. If the request is then denied, too bad, so sad. This is not what the statute says and is not the practice in most courts, but there is a lack of state-wide consistency on this issue.

The DOJ Crime Information Bureau (CIB), which collects arrest and conviction information and is part of the national NCIC system, to which it feeds such information, has taken the position over the past 10+ years that they do not have to clear their publicly-accessible record of a charge, even if it has been expunged. Thus a youth charged with a felony for a brief "joy ride" in a stolen car, who obtains an amendment to a misdemeanor theft, successfully completes his sentence and has the theft ordered expunged under section 973.015 does not really have that it expunged. In the "old days," after court-ordered expungement, clerks of court sealed the file and it was not publicly accessible without specific court order (somewhat like children's court records). At that time, CIB also deleted the entire original arrest, charge and disposition on its publicly-accessible records.

Now, the original charge or charges a person was arrested on remains listed, a notation that a conviction on another charge is shown, with the statute listed and at the bottom of the CIB printout is a note "sec. 973.015 applied". For any member of the public or prospective employers, landlords, licensing agencies, etc., the original charge still remains despite expungement. Unless they have a statute book (or lawyer versed in the criminal law) handy, they have no idea what 973.015 means. Thus, the case is not expunged for practical purposes and public consumption.

The only way CIB will currently delete a record from public accessibility is if there has been a dismissal of the charge or no criminal prosecution. This only occurs upon specific application by a party's attorney utilizing a special form. Unfortunately, getting a charge amended or issued as a noncriminal municipal ordinance violation does not resolve the record expungement problem. Many municipal ordinance convictions are also reported to CIB, especially if there was originally an arrest for a possible criminal violation. In such cases, both the original crime from the arrest (even if not formally charged) and the municipal conviction are still noted. 973.015 does not apply to expunge ordinance convictions, so there is no way to get CIB to expunge such a conviction, short of getting it dismissed.



This was the situation at the dawn of the CCAP system. Those of us lawyers who are "in the trenches" day in and day out truly appreciate the access that CCAP allows us to court records. But, CCAP has the same faults as the CIB system. Even if the case is dismissed or amended, the original charge is still listed on CCAP and for most readers, like with the newspaper, they only look quickly and at the initial charges. Oh, this job applicant has a felony on his record, therefore no job. That may not be the case, but the original felony charge, which was later dismissed or amended and ordered expunged is still set out on CCAP.

In municipal courts throughout the state, many ordinance and traffic violations heard in court also go onto CCAP. Until CCAP instituted some changes in September 2006, a ten-year-old speeding conviction I had gotten in Ozaukee County was listed, with my name, address, date of birth and the charge, amendment and fine paid. DOT purges such records after so many years and the court had actually destroyed the file some years before as too old, but it was still on CCAP until mid-September 2006. The potential for misuse of such information for identity theft, etc., exists, along with adverse employment and other discriminatory consequences. Moreover, why is a noncriminal traffic ticket on the CCAP system at all, especially when it has been deleted from DOT records, access to which is limited by federal driver license privacy laws?

As of late September 2006, my speeding ticket is no longer listed on CCAP if you punch my name in. I am happy that a purging of noncriminal cases is underway, but what is the plan for more? My clients whose cases were expunged or later dismissed do not fare as well. The original dismissed charges can still be viewed. See client K's CCAP notation enclosed.

There is currently no consistent way to administratively request to a clerk of court or to CCAP that a record be deleted, which guarantees that it will truly be deleted from public accessibility. I have had situations in some counties where a court orders the clerk to remove a dismissed case from CCAP and it is done; in other counties, the clerk defies the court order saying that they can't do it because of "what Madison says." There is a crying need for an overall review and establishment of a plan to regularly purge files, criteria for such and administrative means of obtaining deletions, etc. There also needs to be legislation that makes expungement under 973.015 truly expungement, that CIB, CCAP and clerks of court will all follow.



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POWERFUL LEGAL REPRESENTATION

It is important to remember that these records, even if made publicly inaccessible on CCAP or CIB, are still available to law enforcement agencies. There is no downside to law enforcement to the legislature putting teeth back into Wisconsin's expungement law and applying it to CCAP and CIB, as well.

It is the public availability that hurts people each and every day. CCAP has begun to make some changes. A disclaimer now is shown that the record cannot be used to discriminate. While good in theory, this will have little effect in practice. What will have effect is if there is real expungement and deletion of publicly-available records and information from CCAP and CIB, there has been expungement or an amendment to a noncriminal violation or dismissal, or where the case involves noncriminal municipal and traffic violations. Then the disclaimer will really work, because the record will not be there. As it stands now, the disclaimer almost invites someone to "take a little peek" just to see what's there.

If you have any questions or need further input, please contact me. I truly appreciate your committee's reviewing this issue. Please make Wisconsin's expungement law real again.

Very truly yours,

A handwritten signature in black ink, appearing to read 'RAYMOND M. DALL'OSTO', written over a large, sweeping, scribbled-out area.

RAYMOND M. DALL'OSTO

RMD/dkk

Enclosure

cc: Representative Robin Vos

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