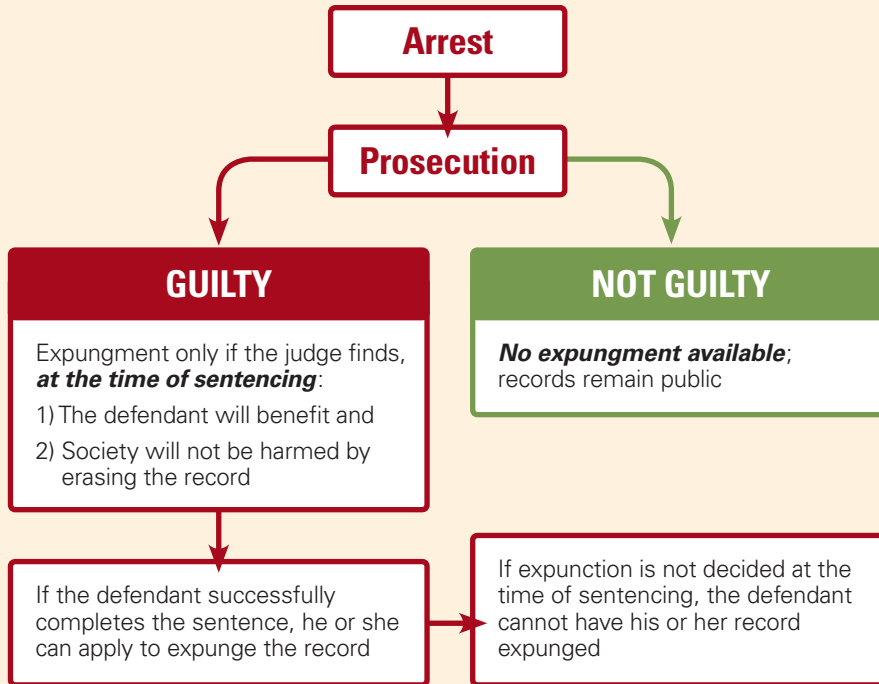


# The Silent Sentence

Wisconsin allows certain young, low-level criminal offenders a way to earn a second chance—the law of expunction. This law, over 40 years old, has been critical to thousands of Wisconsinites, yet an update in procedure is needed. This paper outlines the need for change and the value of passing such a proposal.

## How the current law of Expunction works in Wisconsin (in brief):



Defendants should be allowed an equal opportunity to earn their second chance.

Expunction should be based on the defendant's actions after the conviction, not a guess of what they might do. Those not convicted should also be given the chance to remove the record of the unsuccessful prosecution.

By moving the expunction decision, all eligible defendants will be incentivized to complete their sentences, meaning:

- Greater rates of restitution to victims
- Greater access to employment
- Greater rates of repayment of fines and fees
- Lower recidivism
- Lower crime

A criminal conviction doesn't go away after the initial sentence is served. For tens of thousands of Wisconsinites, an early life mistake, often nonviolent, remains a lifelong scar.

Roughly  
**70** million  
Americans  
have a criminal  
conviction.  
That is **1 out of 3**  
working-age adults

(Source: Brennan Center)<sup>1</sup>

A criminal  
conviction may  
reduce a job  
callback or  
interview by as  
much as  
**50%**

(Source: U.S. Department of Justice)<sup>2</sup>

There are  
**hundreds**  
of professions  
barred for life by  
a misdemeanor  
or felony  
conviction

(Source: National Inventory of Collateral  
Consequence of Conviction)<sup>3</sup>

To find more  
employees, these  
major employers  
no longer ask  
about criminal  
convictions on their  
job applications:  
**Koch Industries,  
Target, Walmart,  
Home Depot, and  
Starbucks**

(Source: National Employment Law Project)<sup>4</sup>

**Not only will a change in procedure help people better enter the workforce, it will help employers.** Wisconsin recognizes Negligent Hiring as a possible civil action when an employee at work injures a third party. While a criminal record alone is insufficient grounds for a lawsuit, see *Miller v. Wal-Mart Stores, Inc.*, 219 Wis. 2d 250 (1998); an employee's criminal record is frequently cited in these lawsuits.

## Reforming Expunction Law may benefit employers by:

- Reducing liability
- Reducing litigation
- Reducing human resource costs
- Reducing insurance costs

## Unequal outcomes in Wisconsin

A review of records obtained from the Wisconsin Circuit Court website (commonly known as CCAP) reveals how few people are earning the chance to expunge their records and the small percentage of cases that are expunged. Below is a collection of data from 2010 cases (used to ensure sentences have been fully completed) throughout Wisconsin. To be included in this report:

- The individual must be 25 years old or younger at the time of the offense
- The individual must be convicted of an eligible crime under Wis. Stat. 973.015 (misdemeanors and low-level felonies)
- The criminal case must include only one charge

**16,246**

cases qualified for expunction

**1,147**

cases were expunged

The expunction rate was roughly **7%**

For the other 93%, or **15,000** cases, there is likely no possible way to erase the conviction.

No matter what they do with their life, the conviction will stand forever.

Rates of expunction vary greatly by crime and jurisdiction. For example, the rate of expunging Possession of Marijuana cases varies by county.

In Southeast Wisconsin, marijuana convictions were expunged in suburban counties at significantly higher rates:

<b>Ozaukee</b>	<b>24/56</b> — rate of <b>43%</b>
<b>Racine</b>	<b>14/65</b> — <b>22%</b>
<b>Waukesha</b>	<b>11/63</b> — <b>17%</b>
<b>Washington</b>	<b>4/42</b> — <b>10%</b>
<b>Walworth</b>	<b>3/43</b> — <b>7%</b>
<b>Milwaukee</b>	<b>18/634</b> — <b>3%</b>

(Source: Wisconsin Circuit Court Access)<sup>5</sup>

The disparities between crimes and counties show that second chances are not equally available in Wisconsin. Wealthier, suburban defendants receive greater rates of expunction than urban and rural defendants. Also, race matters. Communities of color have significantly lower rates of expunction than their white peers.

## The Solution

The idea of moving the Expunction decision away from the sentencing hearing and to provide a path for removing a dismissed or acquitted case has received broad support.

Two simple, immediate changes are needed to improve the Expunction procedure:

- Move the expunction decision so every qualifying defendant has an equal opportunity to earn a second chance
- Allow people not convicted to erase the record of the unsuccessful prosecution

This change doesn't cost money. It empowers young people to be responsible and earn a second chance. This change has the potential to reduce crime, reduce unemployment, and benefit employers looking for workers.

**Expunction is a bipartisan issue.** Across the country, Democrats and Republicans have joined together to make positive changes in expunction law. In 2016, the following states passed expunction reform:

**Kentucky** (Republican Senate, Democratic House, Republican Governor)

**Pennsylvania** (Republican Legislature, Democratic Governor)

**New Jersey** (Democratic Legislature, Republican Governor)

**Maryland** (Democratic Legislature, Democratic Governor)



A unanimous Wisconsin Supreme Court decision, *State v. Matasek*, 2014 WI 27 at ¶41, included the following statement on Wisconsin's expunction procedure:

**"We agree with the defendant, as did the circuit court, that there are policy reasons for permitting the circuit court to decide on expunction after the offender completes his or her sentence rather than at the time of sentencing. The circuit court will probably be better positioned to weigh the benefit to the offender and the harm to society after (rather than before) the offender has successfully completed the sentence."**

1. *Research Supports Fair Chance Policies*; Anastasia Christman and Michelle Natividad Rodriguez, August 2016, published by the National Employment Law Project

2. *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men*; Devah Pager and Bruce Western, October 2009, published by the U.S. Department of Justice

3. The American Bar Association sponsors the National Inventory of Collateral Consequences of Conviction, available at [www.abacollateralconsequences.org](http://www.abacollateralconsequences.org)

4. *Voices in Support: Fair Chance Gains Support Across the Spectrum*; June 2015, published by the National Employment Law Project

5. Records were obtained through a request filed and reviewed by Representative Evan Goyke and staff.

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