



# 50 STATE OVERVIEW OF EXPUNGEMENT AND SEALING STATUTES

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**PCE**



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# 50 State Overview of Expungement and Sealing

## INTRODUCTION

This article provides an overview of the nation’s sealing and expungement statutes as it applies to adults.<sup>1</sup> This article is based on a fifty-state survey of expungement and sealing laws, as well as interviews with prosecutors in California, Massachusetts, Nevada, New York, Pennsylvania, and West Virginia. Through this review, the article outlines the issues that legislatures consider in enacting or amending statutes that prohibit public access to criminal records. Some states’ statutes are detailed; some are sparse. Some give greater discretion to prosecutors and judges in applying the law in a particular case; some give less. This article demonstrates the complexities of our nation’s expungement and sealing laws.

Given the broad scope of the legislative review, and for the sake of conciseness, footnotes are not provided for the many statutory details provided. The reader is encouraged to review the statutes themselves for the specifics of the laws in each state. See Appendix A.<sup>2</sup>

One thing is known – the laws and practices on expungement and sealing will continue to evolve and change.

## DEFINITIONS

States have different definitions of the terms expungement, sealing and setting aside; even within a state, a single term can have different meanings.

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<sup>1</sup> Many states have special or different provisions for juvenile, youth, first or drug offenders (e.g., AZ, CA, GA, HI, LA, MA, MI, MS, MO, MN, NH, NJ, NC, NY, OK, OR, PA, RI, SC, TN, WA, WI, WV). They are beyond the scope of this article.

<sup>2</sup> Amendments to existing statutes are being enacted every year. Several organizations maintain up-to-date 50-state surveys of expungement and sealing statutes. See, e.g., NACDL, The Restoration of Rights Project, 50-State Comparison: Expungement, Sealing, and Other Record Relief, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2/>; the Cornell Project for Records Assistance, <https://cjei.cornell.edu/fix-your-record/sealing-and-expungement>; and Justia, Expungement Forms: 50-State Resources, <https://www.justia.com/criminal/expungement-record-sealing/expungement-forms-50-state-resources/>. In 2021, the Virginia State Crime Commission published Update: Expungement and Sealing of Criminal and Court Records, with recommendations for the legislature.

<http://vscc.virginia.gov/2022/VSCC%202021%20Annual%20Report%20-%20Expungement%20and%20Sealing%20Update.pdf>. The Restoration of Rights Project ranks states by the extent to which they authorize sealing of misdemeanor and felony convictions.

About half of the states use the term "expungement" ("expunction," "annulment") to mean prohibiting public access and not total destruction. Indeed, only a half dozen states use the term expungement to mean total destruction but, in three of them, it can also mean prohibiting public access.<sup>3</sup> In most of the rest of the states, the term "seal" ("vacate," "set aside," "erasure," "restrict," "remove," "sequester") is used to mean prohibiting public access. In some states where public access is prohibited, a court order may be required for criminal justice agencies to access criminal records as well.

In the few states that use the term expungement to mean total destruction, it is of limited scope and applicability. For the most part, it applies only to non-conviction (or minor misdemeanor) records, cases where the person has been wronged (e.g., identity theft, false identification and other misfeasance), convictions of human trafficking victims, convictions for offenses that have been decriminalized (e.g., marijuana), and/or findings of factual innocence. Even where the records of some agencies are subject to destruction, other agencies may be able retain them. Some examples include:

- **Connecticut** excludes official transcripts from its definition of court records.
- In **Illinois**, when other records are destroyed, court records are sealed and all references to an arrest or prosecution are removed from all indices and records available to the public.
- **Kentucky** specifies that "[t]he order of expungement shall not preclude a prosecutor's office from retaining a nonpublic record for law enforcement purposes only."
- **Maryland** refers to police and court records only and, at that, exempts published opinions, transcripts in multi-defendant cases, investigatory files, and the law enforcement work product that is used solely for police investigation.
- **Montana** requires only records maintained by the department of justice (including court filings or documents) to be destroyed; other criminal justice agencies are required to seal them.
- **Wisconsin's** statute has been interpreted to require "expunging only the record of the court, as opposed to those records of district attorneys and other law enforcement." *State v. Leitner*, 646 N.W.2d 341, 346 (Wisc. 2002).

It is important to understand what these terms mean to avoid either destroying records that should be kept (appropriately labelled or segregated); or keeping records that should be destroyed.

Even where an official criminal record is destroyed or concealed from public view, it may be impossible to remove it entirely, for example, references to the case could be in published court opinions or news reports. Moreover, even if a criminal record is destroyed in toto, it only "erases an individual's involvement with the criminal justice system of record, not his actual conduct and

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<sup>3</sup> Where a file, case, document or other record is completely destroyed, references to it in logs, indices, or other tracking mechanisms may also be destroyed, thereby making it permanently irretrievable. See *State v. Noel*, 5 P.3d 747, 749 (Wash. App. 2000). It becomes "a legal nullity, as if it didn't exist." See *State v. Wiley*, No. 01CA00119, WL 1064563 (Ohio 5/23/2002). In some states, a nonpublic index may be retained (e.g., ID, KY, VT).

certainly not his conduct's effect on others.”<sup>4</sup> Finally, although a few statutes extend to data bases kept by non-governmental entities, the majority do not. Thus, while the information may not be available from the government, it may still be found online and in people’s memories.

Most state statutes specify that when a criminal record is destroyed or concealed from public view, the person to whom it applies may lawfully assert that no such record exists and/or the person may not be prosecuted for perjury or false statements for denying the existence of such records. Similarly, government officials must respond that no record exists or no record is available.

## TERMS GENERALLY USED IN STATUTES

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As used in different state statutes, the terms "expunging," "sealing," or “setting aside” may mean:

- **Destruction:** the total obliteration/elimination of a criminal record so that there is no historical account of the contact with the criminal justice system;
- **Court Ordered Access:** removal to a separate secure area or from a publicly accessible data base that can be retrieved only with a court order;
- **Prohibited Public Access:** removal to a separate secure area or areas that can be retrieved by the holder of the record, e.g., the court, prosecutor, or police, but is not available to the public;
- **Limited/Restricted Public Access:** removal to a separate secure area or areas inaccessible to the general public with exceptions for certain employers (e.g., law enforcement, licensing boards).

## TERMS USED IN THIS ARTICLE

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For ease of reference throughout this article, regardless of the term used by individual states, the article will use the terms "destroying" or "destruction" to mean obliteration of the record and the term "sealing" to mean prohibited public access, restricted or limited public access, access only with a court order or any other procedure, including vacating, erasing, reducing, removing, sequestering or setting aside, that has the effect of concealing the record. For the purposes of this article, unless expressly noted, it is assumed that records are sealed and not destroyed. The article also uses the term "petition" to cover any form of motion, application or request for sealing or expungement.

### Destruction

Total destruction of criminal records are permitted by more than a dozen states. Destruction is more likely to apply to arrest or non-conviction records than conviction records.

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<sup>4</sup> *Matter of Finley*, 457 P.3d 263, 268 (Nev. App. 2019).



As cases progress through the criminal justice system, they generate more records and they may include some that are difficult, if not impossible, to hide, such as published trial and appellate court decisions and media accounts of the case. Unlike arrest records that may not be public initially, cases that progress into the court system are more likely to be available to third-party data collectors as well.

There are situations where fairness may dictate the destruction of an arrest or non-conviction record. This is particularly true where a person was wrongfully arrested or identified as having been arrested. If a person should not have been arrested in the first place, then destroying the record has fewer potential drawbacks, although it reduces the possibility of analyzing such cases to reveal systemic issues, if any, that a community or criminal justice system should address. A few states specifically authorize the destruction of criminal history records when the person was falsely identified or accused of the crime; where the person was the victim of identity theft; where the offense is no longer a crime; where there was misfeasance by law enforcement, witnesses, or court employees; where a fraud on the court was perpetrated; where the person was pardoned; and/or the person was determined to be factually innocent (e.g., CA, FL, IL, KS, MD, MA, MO, MT, RI, TN, TX). Some of the same states, and others, authorize destruction of arrest records in any case that did not result in prosecution, was dismissed, or resulted in an acquittal, vacatur or reversal (e.g., FL, ID, IL, MO, PA, SC, SD, TN, TX). A few states destroy identifying information, booking records, fingerprints, photographs, mug shots, and/or DNA related to expunged offenses (e.g. CA, RI, VA). Other states specify that sealing does not include destruction (e.g., AR, CO, DE, IN, LA, MN, MO, OK, SC, SD).

Examples of statutes authorizing destruction:

- **Alaska** permits purging of records only where information has lost its usefulness because of death, age, nature of the offense, or record management considerations.
- **Connecticut** authorizes destruction of sealed records, upon the person's request, not less than three years after sealing.
- **Oklahoma** authorizes the destruction of sealed records if not unsealed within 10 years of the expungement order.
- **Pennsylvania** mandates destroying records of certain drug arrests where the charges were withdrawn, dismissed, or resulted in an acquittal.
- **Tennessee** has an unusual provision to remove and destroy records of a felony or misdemeanor "while protesting or challenging a state law or municipal ordinance whose purpose was to maintain or enforce racial segregation or racial discrimination" if an arrest did not result in a conviction or thirty-seven or more years have passed since a conviction, the offense or petitioner meets several other conditions, and the prosecutor does not object within 20 days. However, it exempts documents that are utilized exclusively for education purposes and are displayed in public museums, libraries, and buildings.
- **Texas**, with caveats, requires destruction of records that are sealed based on an acquittal, pardon, dismissal, or other non-conviction disposition.

Examples where destruction is authorized for some, but not all records:

- **Florida** requires any criminal justice agency to destroy expunged criminal history records in its custody except the Department of Law Enforcement which must retain them, when a court orders expungement. Such records are confidential and exempt from disclosure except pursuant to a court order.
- **Illinois** and **Missouri** exempt certain court files from the requirement to destroy records.
- **Maryland's** law states "Expungement with respect to a court record or a police record means removal from public inspection: (1) by obliteration; (2) by removal to a separate secure area...." and only police records related to a person who was arrested and not charged can be obliterated three years after they are automatically expunged.
- **Rhode Island** seals arrest records of a person who was wrongfully or incorrectly arrested and destroys all identifying information and indices of arrest including photographs and fingerprints.

## Sealing

Sealing, rather than destruction, can achieve the same objective of preventing unwarranted harmful effects of a criminal arrest or conviction. Sealing arrest records has several advantages over destroying them:

- **Investigative Information:** it allows law enforcement to use investigative information should similar crimes be committed, or additional evidence of defendant's culpability be discovered;
- **Brady Material:** it is available to the prosecution as potential Brady material if the case proceeds against a different defendant or if the person is a witness in a criminal case (see, e.g., AZ, CA, CO, SC, VA);
- **Accountability:** it promotes accountability by ensuring that researchers, monitors or the media can review and analyze accurate arrest data and conviction data;
- **Civil Litigation:** it preserves the record in the event of civil litigation resulting from the arrest; and
- **Access to the Accused:** it allows the accused to access the records to refute false or malicious allegations that are public.<sup>5</sup>

There are many reasons why an arrest does not result in charges or a conviction. Some of them are for the benefit of the arrestee, like drug treatment in lieu of prosecution, diversion, or probation before judgment. Some of them result from insufficient evidence, including unavailable witnesses, victims who change their minds about testifying (of their own accord or because of pressure from others), lack of corroboration, or insignificant physical injuries or financial loss. Some of them result from court congestion and insufficient police and

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<sup>5</sup> Virtually every state that permits record sealing gives the person access to them.

prosecutorial resources. Retaining arrest records in a nonpublic file may be beneficial to the safety of particular individuals or the community at large in all these situations.

## OVERVIEW OF THE LAWS

### ARREST AND OTHER NON-CONVICTION RECORDS

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In some states, arrest records are not public, but they may be accessible to at least some employers. Most states authorize sealing or destroying arrest records that do not result in charges, some automatically. Although some state laws single out arrests that do not result in charges (declination), other states include them with other kinds of cases that are terminated in favor of the accused, such as: prearrest or pretrial diversion; successful probation before judgment; nolle prosequi or dismissals of all or part of a case, with or without prejudice; failure to proceed with the prosecution within certain time limits; acquittals or partial acquittals; annulments or set-asides; findings of actual innocence; and pardons. It should be noted that if a record is not publicly available, there should be no adverse employment/housing/educational or other collateral consequences to the arrestee.

Examples are:

- In **Alaska**, non-conviction records can be sealed only in case of mistaken identity or false accusation.
- **Arizona** amended its statute to permit sealing of non-conviction records, in addition to sealing cases where the person was wrongfully arrested or charged.
- In **Colorado**, arrests resulting from mistaken identity may be sealed if no charges were filed.
- **Georgia** seals cases where the person was acquitted except where the prosecution "was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine". It also has provisions for correcting an erroneous criminal record.
- In **Rhode Island**, wrongful arrest records are sealed, but all identifying information is destroyed.

### SEALING MISDEMEANOR CONVICTIONS

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For a person convicted of a misdemeanor, the long-term harm resulting from a criminal record can far outweigh the short-term harm the person caused to society. Even where there is a cognizable victim, the harm may be relatively small compared to the negative effects of a criminal record on the person convicted, although there are exceptions.

In weighing the potential harm to the person convicted against the potential harm to other individuals or the community, most legislatures have enacted statutes that authorize sealing some or all adult misdemeanor convictions. They vary greatly in terms of which crimes they include or exclude from consideration, waiting times, other eligibility requirements, and the

findings a court must make if a prosecutor opposes making the criminal history record unavailable to the public. The most common exclusions from misdemeanor sealing statutes are:

- Violent offenses
- Domestic violence
- Sex offenses
- Offenses involving a child
- Certain traffic offenses

**Delaware, Iowa, Missouri, and Tennessee** have comprehensive lists of ineligible misdemeanors.

## SEALING FELONY CONVICTIONS

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About 15 states have no statutory provisions for sealing felony conviction records and another two states permit it only when the sentence was suspended or was for probation only. As of 2022, about a dozen states allow for sealing or expungement of most felonies and two dozen states either limit eligibility for sealing to lower-level felonies and/or restrict the number of felony offenses eligible. For example:

- **Connecticut**, with exceptions, Class D and E felonies and unclassified felonies carrying a term of imprisonment of not more than five years, that occurred after 12/31/1999, are sealed by operation of law ten years after the most recent judgment of conviction.
- **Kentucky** allows for sealing of only specified Class D felonies.
- **Michigan** recently enlarged the number of eligible felonies that could be sealed from one to three. It limits the number of assaultive crimes that can be sealed to two and, for the same felony, to one if it is punishable by more than 10 years imprisonment.
- **Minnesota** has a lengthy list of non-violent felonies that are eligible for sealing.
- **New York** excludes Class A felonies and allows only a single felony to be sealed, although it treats multiple felonies in a single event as one felony.

### Ineligible Offenses

Almost all of the states with statutory provisions for sealing convictions exclude, in some or all circumstances: violent crimes, felony firearm or armed offenses, and/or crimes that carry a maximum penalty of life or 10 or more years of imprisonment (e.g., AL, AZ, AR, CA, CO, CT, DE, ID, IN, KS, KY, LA, MD, MA, MI, MS, MO, NH, NJ, NM, NY, NC, OH, OK, PA, RI, TN, TX, UT, WA, WV, WI, WY). However, a few of these states allow some violent felonies to be sealed. For example: a felony domestic violence conviction if the defendant does not have previous DV misdemeanor convictions (MI) or convictions for violent crimes that did not involve a firearm, deadly weapon, or sexual motivation for second degree assault, third degree assault when not committed against a law enforcement officer, and second-degree robbery (WA). **Idaho** gives the court discretion to reduce a crime of violence from a felony to a misdemeanor, if the prosecutor stipulates to the reduction.

One or more states exclude: perjury (e.g., IN), crimes of dishonesty for automatic sealing (e.g., MI), crimes against pregnant women (e.g., CO), aggravated offenses (e.g., NH), persons who have served their sentence in a state prison (e.g., CA), a felony involving violence or intimidation when a person is ineligible to possess a firearm (e.g. ND).

Offenses commonly excluded from sealing statutes are:

- **Domestic violence** (e.g., CO, CT, DE, GA, IL, LA, MI, MO, NV, OH, PA, TN, TX, UT, WA, WV, WY).
- **Sex offenses** (e.g., AZ, AR, CA, CO, CT, DE, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, TN, TX, UT, WA, WV, WY)
- **Offenses against a vulnerable person** such as a child or minor (e.g., AZ, AR, DE, KS, KY, LA, MA, MI, NV, NM, OH, OR, PA, TN, TX, UT, WA, WV, WY) or an elderly, disabled or vulnerable adult (e.g., DE, FL, GA, MA, MI, MS, OR)
- **Certain traffic offenses** (e.g., AL, AR, CO, IL, MD, MI, MO, NV, NM, NC, OH, SC, TN, WA, WV, WY)

## Other Restrictions

States may impose other restrictions on eligibility for sealing a conviction record that may include one or more of the following in some or all circumstances:

- **Prior convictions:** Cannot have a prior felony conviction or more than one prior felony conviction (e.g., AR, DE, GA, HI, IL, IN, MS, NJ, NY, NC, OH, OK, PA, RI, TN, UT, WI, WY).
- **Intervening conviction or pending case:** Cannot have an intervening conviction (e.g., CA, CO, DE, GA, ID, LA, MD, MI, MO, NV, NH, NY, NJ, NC, ND, RI, SC, TX, VT, WA, WI) or a pending case (e.g., CA, DE, GA, ID, IN, IA, KS, KY, LA, MD, ME, MI, MO, NE, NV, NM, NJ, NY, NC, OH, OR, OK, RI, SC, UT, WA, WV).
- **Number of cases to be sealed:** Cannot have more than a specified number of eligible misdemeanor convictions sealed, ranging from one to six (e.g., DE, GA, IN, IA, MA, MO, NJ, NY, OH, RI, TN, UT). Cannot have more than a specified number of eligible felony convictions sealed, ranging from one to three (e.g., DE, IL, IN, MA, MD, MI, MO, MS, NJ, NY, NC, OH, OK, TN, UT, WY). Many jurisdictions count multiple crimes in one incident or related incidents as one conviction (e.g., GA, IN, IA, MI, MS, NV, NY, OH, TN). In some cases, if one of them is not eligible, none are (e.g., MD, TN).
- **Incarceration status:** Applies only to convictions for which the person was not incarcerated (e.g., ID) or was not incarcerated in the state prison (e.g., CA). Cannot be incarcerated at the time of the petition (e.g., CA, DE, LA), although most states will not entertain a petition to seal a record until the sentence for the crime at issue is complete in any event.
- **Frequency:** Applies only one time or only one time in a certain number of years (e.g., DE, GA, HI, IA, KY, LA, MS, MO, MT, NJ, NC, SC, WY).
- **Fees, fines and restitution:** Applies only to persons who have paid all fines, fees, and restitution (e.g., AZ, AR, DE, IN, IA, MO, NJ, NM, NC, ND, OH, RI, TN, TX, UT, VT, WA, WY).

- **Rehabilitation:** Applies only to persons whom the court finds to have been rehabilitated (e.g., KY, MS, OH, NJ, ND, RI, VA, WV).<sup>6</sup>

## Repealed or De-Criminalized Offenses

Less than a dozen states authorize sealing a criminal history record for *any* offense that has been legalized or decriminalized (e.g., MA, NV, RI, VT). Some of them have exceptions. For example, in **Nevada**, a prosecutor can object, in which case the court must hold a hearing to determine whether good cause exists to deny the request.

As states de-criminalize possession of marijuana and other drugs, sealing convictions for these offenses is not far behind. For example, two months after decriminalizing possession of small amounts of marijuana in 2020, **Virginia** enacted legislation to seal records of marijuana-related convictions.<sup>7</sup> After the legalization of marijuana in **California**, the Yolo County District Attorney used “Clear My Record” technology that could automatically locate and seal marijuana convictions.<sup>8</sup>

Altogether two-thirds of the states have legalized or decriminalized some or all offenses relating to the possession or use of marijuana; of these more than half now permit or require convictions for these offenses to be sealed, referencing marijuana specifically or decriminalized offenses generally. A handful of states make a conviction for the possession of any drug eligible for sealing under some or all circumstances (e.g., GA, NJ, NY, SC, WV).

## Victims of Human Trafficking

Increasingly, state legislatures are authorizing criminal records of victims of human trafficking to be sealed. The burden is usually on the person to prove by a preponderance of the evidence that they were trafficked, and the offense was committed as the result or direct result of being trafficked, although one state uses the “reasonable probability” standard (MA), and other states require clear and convincing evidence (e.g., AR, AZ, CA, FL, OR). In several states, official documentation that the person was the victim of human trafficking establishes a rebuttable presumption that a person was a victim of human trafficking, although it is not required (e.g., CO, FL, GA, ID, KY, MA, MS, MT, NJ, NY, OR, PA, VT, WY). Some states limit such provisions to prostitution and related offenses (e.g., AR, AZ, HI, KS, MI, MO (if <18), OK, OR, RI, WV, WI), to prostitution, drug possession, theft or similar offenses (e.g., MA, ND, PA, TX), to specific

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<sup>6</sup> Efforts at rehabilitation are one of the factors courts may take into consideration in assessing a petition for sealing (e.g., AL, CA, KY, MD, MI, MN, MS, MT, NY, NC, ND, WA).

<sup>7</sup> See National Conference of State Legislatures, Cannabis Overview (5/31/2022). Marijuana is still illegal under federal law but President Biden announced the granting of full and complete pardons of persons convicted of simple possession of marijuana under federal law. White House, A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana (October 06, 2022).

<sup>8</sup> See, <https://www.dailydemocrat.com/2019/09/06/yolo-da-erases-over-700-marijuana-convictions/> (last viewed 8/8/2022).

misdemeanors (e.g., CO, MD, UT), or to non-violent crimes (e.g., CA, FL, KY, MO, MT, NV, NC, TN, WA). Some states include almost any offense related to human trafficking (e.g., AL, GA, ID, IL, MS, NE, NH, NY, SC, SD (juveniles only), WY), except for homicide (e.g., NM), murder and rape (e.g., OH), listed violent crimes (e.g., VT), or crimes with a penalty of more than ten years (e.g., CT).

Some examples include:

- In **California**, except for a violent felony, it is both a defense and a basis for sealing a conviction that a person was coerced to commit an offense as a direct result of being a victim of intimate partner or sexual violence and had a reasonable fear of harm.
- **Connecticut** requires the petitioner to notify the victim of crimes sought to be vacated and the victim has the right to be heard.
- **Hawaii** changed its law so that persons convicted of prostitution and related offenses no longer must prove that they were the victims of sex trafficking to be eligible for sealing and the prosecutor's review and written approval is no longer required.<sup>9</sup> However, Hawaii's law does not provide for sealing other offenses committed as a result of human trafficking.
- **Idaho** gives the court discretion to seal any offense the court deems appropriate except when coercion is not a defense.
- **Nebraska** and **New Hampshire** list evidence that the court may consider in assessing whether the petitioner is a victim of sex trafficking including branding or tattoos; financial records; internet listings; texts, email and voicemail messages; and affidavits of people who have first-hand knowledge of the petitioner's involvement in the commercial sex trade.
- **Ohio** lists factors the court should take into consideration in assessing whether the petitioner's interests should prevail, including: the degree of duress to which the petitioner was subjected, the seriousness of the offense sought to be sealed, and the relative degree of physical harm done to any person in the commission of the offense. At least one of the offenses to be expunged must be for prostitution.
- In **Pennsylvania**, the Commonwealth attorney must consent to a motion to vacate and expunge a conviction based on human trafficking for it to be considered.
- **Washington** authorizes the prosecutor to apply to vacate the person's record for certain felonies and cautions that "the prosecutor is not deemed to be providing legal advice or legal assistance on behalf of the victim but is fulfilling an administrative function on behalf of the state in order to further their responsibility to seek to reform and improve the administration of criminal justice."

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<sup>9</sup> "According to the [Hawaii State Commission on the Status of Women](#), 82% of the state's sex trafficking victims were trafficked when they were children, and the average age of entry was just under 15 years old. Advocates for victims say that some people may not be able to prove that they were victims of sex trafficking, and others may fear retaliation from a pimp if they come forward." US News and World Report, July 3, 2019.

- **Utah** refers to offenses committed while subject to force, fraud or coercion.

## PARDONED OFFENSES

Several states refer to pardons in their sealing statutes. Two states explicitly do not permit the prosecutor to oppose sealing a pardoned offense:

- In **Illinois**, "whenever a person who has been convicted of an offense is granted a pardon by the Governor which specifically authorizes expungement, an objection to the petition may not be filed."
- In **Nevada**, upon receipt of a petition, the court "shall seal ... all records of criminal history subject to [an unconditional] pardon" and the petition ... is not subject to review by the prosecuting attorney or an agency of criminal justice."

Other states allow the prosecutor to object or the court to assess the pardon:

- In **Colorado**, the prosecutor's or victim's objection will trigger a hearing where, to deny sealing, the court must find by clear and convincing evidence that the public interest outweighs the harm to the person and the intent of a full and unconditional pardon.
- In **West Virginia**, the court must find "good cause" to expunge a pardoned offense.

In some states, sealing is mandatory:

- In **Connecticut**, "the Superior Court shall direct all police and court records and records of the state's or prosecuting attorney pertaining to [an offense for which the person received an absolute pardon to] be [sealed]."<sup>10</sup>
- In **Nebraska**, the court must grant a motion to seal criminal history information if it finds that the person received a pardon.
- In **Utah**, upon granting a pardon, the Board of Pardons and Parole shall also issue an expungement order, which has the same effect as one issued by the court.

Other states have exceptions:

- In **Arkansas** the Governor is required to notify the court upon issuing a pardon and the court is required to seal the criminal record except for offenses involving minor victims, sex offenses, and offenses resulting in death or serious physical injury.

Some states require a petition:

- In **Delaware**, except for certain homicide and sexual convictions, a person unconditionally pardoned may request expungement.
- In **Georgia**, a person who is granted a pardon from the State Board of Pardons and Paroles may petition the court to restrict access to the criminal history record if it was

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<sup>10</sup> In this, and other sections of the code, "'court records' shall not include a record or transcript of the proceedings made or prepared by an official court reporter, assistant court reporter or monitor."



not a serious violent felony or a sexual offense, the person has not been convicted since the pardon was granted, and has no pending cases.

- In **Maryland**, a person may petition for expungement if the person has been convicted of only one non-violent crime and has been granted a full and unconditional pardon by the Governor.
- In **Oklahoma**, a person is authorized to file a motion for expungement when factual innocence was established by DNA or when the person received a full pardon from the Governor.
- In **Pennsylvania**, criminal history information pertaining to a conviction for which a pardon was granted is subject to limited access.

Sealing in some cases may be conditioned on a pardon based on actual innocence:

- In **North Carolina** and **Texas**, a person is entitled to sealing if the pardon was granted on grounds of innocence.
- In **Virginia**, the court shall order the expungement of police and court records when a person received an absolute pardon for a crime the person did not commit.

## PROCEDURES

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### Automatic Sealing<sup>11</sup>

#### *Arrests*

If the sole criterion for sealing an arrest record is the fact that it did not initially result in charges being filed, then there is little to be gained by not sealing the record automatically and immediately, or within a short amount of time after disposition. Automatic sealing under these circumstances, if achieved by a computer program, would impose no administrative burden on the court and no additional work for the parties (police, prosecutor, pretrial services, court) except to mark the records as having been sealed, and, if required, to store them in a separate physical or electronic area. The more expeditiously the sealing occurs, the less potential for harm to the arrestee. It also would not prevent the police and prosecutors from continuing to investigate the case and, if warranted, to bring charges at a later time.

#### *Other Non-Conviction Records*

Even though a case may have been in the system for several months or years, some states automatically seal the records at the time of the disposition in favor of the accused for some or all types of non-convictions. There are a variety of approaches:

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<sup>11</sup> See National Conference of State Legislatures, 50-State-Chart, *Automatic Clearing of Records* (07/19/2021); Restoration of Rights Project, 50-State Comparison: Expungement, Sealing & Other Record Relief, *Automatic Record Clearing* (August 2022). See also, PCE's 50 state chart of sealing/expungement statutes at [https://pceinc.org/wp-content/uploads/2023/05/20230524-Chart-of-Sealing-and-Expungement-Statutes-PCE\\_.pdf](https://pceinc.org/wp-content/uploads/2023/05/20230524-Chart-of-Sealing-and-Expungement-Statutes-PCE_.pdf) (2022).

- **Colorado** automatically seals arrests made on or after January 1, 2022, when no charges have been filed within one year, but must unseal them if it receives notice that charges have been filed. There is a schedule for sealing arrest records with no conviction for earlier dates.
- **Connecticut** automatically seals some dispositions after the time for appeal has expired and 13 months later for others.
- **Delaware** mandates sealing records of cases that resulted in a disposition in favor of the accused.
- **Florida**, with some exceptions, automatically seals records where an indictment was not filed, or the prosecutor entered a nolle prosequi in the case after indictment, or the defendant was acquitted.
- **Georgia** is required to seal cases that did not result in a conviction because the case was not referred to a prosecutor within certain time limits, the case was dismissed by the prosecutor or “no-billed” by the grand jury, the person successfully completed a diversion program, or was fully acquitted. However, there are exceptions to sealing dismissals or acquittals where, inter alia, the charge was part of a plea bargain, the prosecuting attorney was barred from presenting material evidence on legal grounds, there was only a partial acquittal, or there was jury tampering.
- **Kentucky** automatically seals records where the person was acquitted or where the charges were dismissed with prejudice. Otherwise, the person must file a petition.
- **New Jersey’s** courts must order sealing of non-conviction records at the time of disposition.
- **New York** automatically seals such cases unless the prosecutor (or the court itself) objects and demonstrates that the interests of justice require otherwise.
- **North Carolina**, which previously required a petition, changed its procedures to seal "by operation of law" cases that are dismissed or result in a not guilty verdict after December 1, 2021. However, legislation suspending this provision for a year was enacted in 2022 in order to give stakeholders the opportunity to "to resolve the issues that have arisen with the implementation of [the statute], including issues related to notice to all relevant agencies and file retention. The stakeholder group may consider and recommend solutions for issues related to the expunction of records that do not require the total destruction of all court files and that would allow access to these particular expunction records by additional parties."
- **Pennsylvania** records are automatically expunged when no disposition has been reached in 18 months and the case is not pending, when the court orders expungement, or when the defendant has been fully acquitted. The prosecutor has 60 days to object on the basis that the person has not been acquitted of all charges.
- **Utah** has different procedures for automatic sealing depending on the disposition of the case. For some, the prosecutor has 35 days to object that the case is not Clean Slate eligible, or restitution has not been paid, or there are facts to support a reasonable belief that the person is continuing to engage in criminal activity.
- **Virginia** calls for automatic sealing of non-conviction records starting in 2025.

## *Conviction records*

Unlike non-conviction records, conviction records are rarely automatically sealed. A few states authorize automatic sealing for: all misdemeanors, non-violent misdemeanors, lower-level misdemeanors, infractions, and/or some marijuana offenses (e.g., DE, MI, OK, PA, UT). While not quite automatic, a few states have a rebuttable presumption that records should be sealed if the person has met the statutory requirements (e.g., MO, NV, TN).

States have recently enacted laws to seal eligible felony convictions automatically under some circumstances.

- **California** reviews the records in the statewide criminal justice databases and identifies persons who are eligible for automatic conviction record relief. People who are required to register as sex offenders, who are under supervision, who are serving a sentence, who have pending charges, or who were sentenced to incarceration in a state prison are not eligible.
- **Colorado** has expanded automatic sealing to all eligible offenses, but for longer waiting periods than for petition-based sealing, giving prosecutors 45 days to object to sealing non-drug related felonies on the basis of public interest and public safety.
- **Connecticut** seals some lower-level felonies by operation of law ten years after the most recent conviction.
- **Michigan** automatically clears two eligible felonies ten years after sentencing or release from incarceration whichever comes last. The following offenses are excluded: assaultive crimes, serious misdemeanors, "crimes of dishonesty" (such as forgery and counterfeiting), crimes punishable by 10 or more years in prison, and crimes that involve a minor, a vulnerable adult, human trafficking, injury or serious impairment, and death.
- In **Wisconsin**, at the time of sentencing, the court can order that the record be sealed upon successful completion of the sentence if the court finds that the person will benefit, and society will not be harmed, the person was under 25 at the time of the offense, and the offense carried a maximum penalty of six years or less.

## **Non-Automatic Sealing**

### *Sealing without a Petition*

In states where sealing is not automatic, a case can still be sealed with the prosecutor's consent. **Minnesota** dispenses with the need for a petition if the prosecutor agrees to sealing; **Nevada, North Dakota, Vermont,** and **Virginia** do not require a hearing if the prosecutor stipulates to sealing. **Colorado** allows an ineligible misdemeanor conviction to be sealed if the prosecutor consents. As a practical matter, a prosecutor's failure to object in many states may have the same effect as a prosecutor's consent.

## *Sealing with a Petition*

### **Arrest and No Charge or No Conviction**

In states where arrests did not result in a charge and are not automatically sealed, the arrestee is allowed to petition to seal or destroy their arrest records. This gives prosecutors an opportunity to object, although they are not required to do so. However, these petitions are used infrequently, probably because the arrestee is either unaware of the process or does not have the means to engage in it. This process can be more easily used by those who are well-off or have legal representation. The requirement of a petition can exacerbate the gaps that have led to racial and economic disparities in the criminal justice system.

However, even in cases where there is no conviction some states restrict sealing under certain circumstances, including:

- In **Delaware**, if a person is not acquitted of all charges or if all charges are not dismissed.
- In **Michigan**, although biometric data has to be returned in cases not resulting in a conviction, sealing does not apply to certain sex offenses and crimes "with or against a child under 16 years of age" and, for a person who has a prior conviction, unless ordered by the court.
- In **New Jersey**, a dismissed charge cannot be sealed if it resulted from a plea bargain on other charges until the other charges are sealed.

### *Misdemeanor Convictions*

In most of the states that permit misdemeanor convictions to be sealed, the conviction is not sealed automatically, and the person must file a petition. Again, it may be difficult for people to know that they can petition and to do so successfully without help. From a public safety perspective for those who committed low-risk misdemeanors or have had no further involvement in the criminal justice system, requiring a petition may be counter-productive as it may keep the petitioners from gainful employment.

### *Felony Convictions*

In almost all jurisdictions that permit felonies to be sealed, the person must file a petition. If the prosecutor (or in some instances, the victim) objects, the court must schedule a hearing although, without objection, it can decide on the papers. If the petitioner satisfies the basic eligibility requirements, among the factors that various legislatures have directed courts to consider are:

- **Nature of the Offense:** the nature and gravity of the offense or conduct that resulted in the petitioner's conviction.
- **Characteristics and Behavior of the Petitioner:** the petitioner's age, criminal history, and employment history; the petitioner's behavior since the conviction(s), as evidenced by participating in rehabilitative activities in prison and living a law-abiding life since release.
- **Consequences:** the specific adverse consequences to which the petitioner may be subjected if the petition is denied.
- **Public Safety Considerations:** whether sealing the record is consistent with the welfare and safety of the public and whether sealing is warranted by the interests of justice.

## *Determining Eligibility*

In most states where a person must petition the court, it is not always clear whether the court determines eligibility or relies on the prosecutor to oppose the petition if it believes the person is ineligible. A few states delegate eligibility determinations to a centralized office. For example:

- In **Alabama, Colorado** and **Delaware**, petitioners must attach or submit a copy of their official criminal history record to the petition for it to be considered.
- The **California** Department of Justice is required to "review records in the statewide criminal justice databases, ... shall identify persons with convictions ... [who] are eligible for automatic conviction record relief" and inform the appropriate court.
- The **Florida** Department of Law Enforcement must issue a Certificate of Eligibility.
- In **Kentucky**, a petition must include a certification of eligibility from the State Police and the Administrative Office of the Courts.
- The **Massachusetts** Commissioner of Probation determines eligibility and makes a recommendation to the Governor.
- In **Nevada**, the petition must include "the petitioner's current and verified records received from the Central Repository for Nevada Records of Criminal History."
- In **Pennsylvania**, a person must obtain a background check from the state police before petitioning the court.
- In **Utah**, the Bureau of Criminal Identification issues a certificate of eligibility, the identification number of which must be incorporated into the person's petition. The court then obtains the certificate from the Bureau.

Even if another entity ultimately determines eligibility, the burden will likely fall on the prosecutor to either confirm eligibility or oppose the petition on the grounds the person is not eligible. **New Jersey**, for example, specifically charges the prosecutor with "verify[ing] the accuracy" of a petition and "bring[ing] to the court's attention any facts which may be a bar to, or which may make inappropriate the granting of such relief."

Other than challenges to basic eligibility, some states have general provisions authorizing prosecutors to object to sealing. Some states specify grounds that prosecutors may raise including:

- **Public Safety:** the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record (e.g., MN, OK)
- **Nature of the Offense:** the nature of the offense and the petitioner's history (e.g., AL, ND)
- **Not in the Interest of Justice:** it is not in the interests of justice to grant relief (e.g., MA)
- **Relevant Evidence:** there is evidence to overcome the presumption of sealing (e.g., MO, MT, NV)
- **Character of Defendant:** defendant's character and lack of rehabilitation (e.g., NY, NC, ND, OH, RI)
- **Seriousness of Offenses:** the seriousness of other offenses for which the petitioner has been convicted (e.g., NY)

## *Burden of Proof and Victim Notification*

In some states, when they objects to sealing, prosecutors bear the burden of proof by a preponderance of the evidence (e.g., CA, LA) or by clear and convincing evidence (e.g., AR, MN, OR); in others, petitioners bear the burden of proof by a preponderance of evidence (e.g., DE, IN, IA, LA) or clear and convincing evidence (e.g., KY, MN, ND, SD, TN, UT, WV) that the harm they will suffer from not sealing the record is greater than the harm to the public from sealing.

Some states require victim notification and allow victims and others to weigh in on the issue either on the papers or at a hearing, or both (e.g., AZ, FL, IN, KS, MD, MI, MN, MO, MT, NC, ND, OK, OR, UT, VT, WV, WY). The requirement of victim notification may be found either in sealing statutes or victims' rights statutes. **Delaware** requires the Attorney General to ascertain the victim's position on sealing, to include it in her answer to the petition, and to orally inform the victim of the court's decision but she may not provide the victim with a copy of the court order. **Indiana** specifies that a victim's statement may be in support of or opposition to the petition.<sup>12</sup>

## Waiting Period

### *Arrest and Non-Convictions*

States prescribe various amounts of time after which an arrest or other non-conviction record can be concealed. They range from "at the time of disposition" or immediately, after the time for appeal has expired, to 30 days to one year to 18 months later. The longer an arrest or other non-conviction record remains public, the greater the potential harm to the person who was not charged or convicted or whose case was later reversed, vacated, or otherwise terminated. As a result, in fairness, the eligible information should be removed from public access as expeditiously as possible.

### *Misdemeanor Convictions*

States generally have some period in which a person demonstrates rehabilitation before either automatically wiping a misdemeanor record clean or permitting the person to bring a petition. This is to provide some time for the person to demonstrate that they are now leading a law-abiding life. However, the tension here is that people may be hobbled by a criminal record until their conviction is sealed. If the purpose of such statutes is to remove an obstacle to employment and housing, and thereby reduce the chances of recidivism, then the longer the wait, the less effective the sealing process may be.

The amount of time before a misdemeanor conviction may be eligible for sealing varies. Three to five years is most common, although a few states have shorter periods (e.g., AZ, AK, MN, NE, NV, NH, NM, OH, TX), and an almost equal number of states have longer periods (e.g., MD, NY, NC, PA, SD, TN). Some states distinguish between low level misdemeanors and more serious ones (e.g., DE, NM). Some put misdemeanor and low-level felonies together (e.g., CO, KS, MN, NV). At least one state (e.g., VT) lengthens the waiting period if there is an intervening conviction,

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<sup>12</sup> Victim notification is not required in Indiana if the court has no discretion in sealing the record.

and at least one state tolls the period until any period of incarceration in the case at issue or for the most recent conviction is complete (e.g., NY). Some examples include:

- **Arkansas** allows a misdemeanor to be sealed 60 days after the sentence is finished.
- In **Maryland**, there is a ten-year waiting period.
- In **Oregon**, there is a one-to-two year waiting period for a first-time marijuana offense for those under 21.
- **West Virginia** has a one-year waiting period for the first-time drug possession conviction and one- or two-year waiting period for other misdemeanors.

### *Felony Convictions*

The waiting periods for felony convictions are triggered by the same events as for misdemeanor convictions but are generally much longer. In most states, the waiting period is between 5–10 years after completion of sentence (e.g., CO, DE, IN, LA, MA, MI, MS, MO, MT, NV, NH, NM, NY, NC, OK, RI, TN, UT, WA, WV, WY). The wait can be as long as 10-15 years in some states (e.g., MD, OR, PA, SC) or as short as immediately (e.g., AR), 2 or 3 years (e.g., AZ, CA, NV), or 3 to 5 years (e.g., IL, KS, KY, NJ, ND, OH, WA) in others. Unlike other jurisdictions, which require the waiting time to be crime-free, **Vermont** extends the waiting time if the applicant has an intervening conviction.

### *Triggering event*

In most states, the waiting period starts when the person finishes his or her sentence, including prison, probation, parole, or supervised release. It also generally includes the requirement that all fees, fines, and restitution be paid. In a few states, the waiting period starts upon arrest, conviction, or last conviction (e.g., NJ, NM). In **Delaware**, the waiting period begins at the date of the most recent conviction or the date of release from incarceration, whichever is later.

States have landed on different sides of the fence with respect to payment of fines, fees, and restitution. Most states require all financial obligations to be satisfied before sealing can be granted (e.g., AL, AZ, AR, DE, IN, MO, NJ, NM, NC, ND, OH, RI, TN, TX, VT, WA, WY); a few do not. However, for people without a job or without a job that covers basic living expenses, this may be difficult.

- In **Colorado**, conviction records may not be sealed if restitution is outstanding unless the original court vacates the order imposing it. Colorado recently amended its statute to prohibit taking unpaid fees and fines into consideration in making a sealing decision.
- **Delaware** requires restitution to have been paid but permits unpaid fees and fines to be waived or converted to a civil judgment if they have not been paid for reasons other than willful noncompliance.
- **Illinois** does not deny sealing because the petitioner has not satisfied outstanding legal financial obligations, not including restitution.
- **Michigan** authorizes a conviction to be sealed, but it can be reinstated if the person has not made a good faith effort to pay ordered restitution thereafter.

- In **Minnesota**, a court making a sealing decision must consider "the amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted."
- **New Jersey** enters a civil judgment for the unpaid portion of any monetary obligations if they have not been satisfied for reasons other than willful noncompliance prior to sealing.
- In **North Carolina**, a person must submit with his petition an affidavit that there are no restitution orders or civil judgments for restitution outstanding.
- In **Pennsylvania**, all court-ordered restitution must be paid, but there is no reference to fees and fines.

## Scope of Records Sealed

The scope of records subject to sealing statutes vary. Traditionally, a public request for a person's arrest or criminal history record would be directed to police or sheriff's departments, state bureaus of investigation, criminal records offices or central repositories, and the courts. It is logical, then, for expungement and sealing statutes to address these records. However, statutes may not be limited to only those files.

**Intelligence, Investigative and Work Product:** Intelligence, investigative and/or work product information may be explicitly excluded from sealing as well (e.g., CT, NE, MT, NH, OH, PA, TN, WV, WY). Some police and prosecutor files may fall into this category. To the extent they are so considered, the distinction between official records and investigation information is intuitive. Sealing procedures restrict only public access to records, and neither investigative work nor prosecutors' files are records to which the public typically has access. However, prosecutors may be required to "clearly identify in their respective files and in their respective electronic records that the arrest or conviction and sentence have been annulled" or sealed (e.g., NH).

**Law Enforcement Records:** Typically, only law enforcement agencies submit their records to the National Criminal Information Center (NCIC). For purposes of NCIC, federal law defines criminal history record information as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release."<sup>13</sup> The same or similar language is found in several state statutes defining what records are subject to sealing (e.g., MT, NE, NV, NH, NM, ND, OR, PA, SD, VT, VA). Other jurisdictions refer to courts, law enforcement, police, criminal history information systems, central repositories, and/or probation records (e.g., CA, DE, HI, ID, MD, MA, MI, MT, NM, RI, NY, VA, WV, WI, WY), none of which appear to include prosecutors' records and files.<sup>14</sup>

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<sup>13</sup> 28 CFR § 20.3.

<sup>14</sup> In New Hampshire, "although the statute requires that courts and the state police criminal records unit make annulled records "inaccessible to the general public," the records of arresting and prosecuting agencies may



**Criminal Justice Agency Records:** Some states refer to sealing by criminal justice agencies, which would include prosecutors (e.g., CT, FL, NJ, ND, NH, SD), but the scope of sealing generally appears to be limited to official or formal records. At least one state defines criminal records as court and prosecution records (e.g., ND); and one refers explicitly to sealing records of the state's or prosecuting attorney (e.g., CT).

**Applicability to Prosecutor Records:** A few states explicitly exclude prosecutors' records and files from their definitions of records that can be sealed (e.g., NM, FL, RI, TN, UT, WI). Others make it clear that an order of expungement: "shall not preclude a district attorney's office from retaining a nonpublic record thereof for law enforcement purposes only" (e.g., KY, MS); do not prohibit evidence or information in prosecution files from being used for investigation and prosecution of a criminal case (e.g., SC); allow prosecutors to keep such records separately and to hold them confidentially (e.g., MO); or require prosecutors to seal or sequester their records, but do not restrict their access to or use of them for law enforcement purposes (e.g., AR, KY, NH). The exclusion of prosecution records otherwise depends on statutory definitions of the records subject to sealing.

## ACCESS TO SEALED RECORDS

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### Public Access

A court, law enforcement agency, central criminal information bureau, or other government agency which possesses sealed records is not permitted to make them publicly available. Sealing statutes have different ways of expressing how sealed records must be kept. The variations include:

- **Concealed from Public View:** Records must be kept in a way to ensure that they are not open to public inspection and to prevent disclosure of information to the public (e.g., DE, GA)
- **Removed from Public Databases:** Records must be removed from a publicly available database to prevent disclosure in background checks or access to the general public (e.g., KY, NM)
- **Available Only to Criminal Justice Agencies:** Records are not available for dissemination other than to a criminal justice agency (e.g., WY)

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"remain subject to disclosure under the Right to Know Law." *Grafton County Attorney's Off. v. Canner*, 147 A.3d 410, 415 (N.H. 2016). Since the issue was not before it, the Court did not resolve the question whether exemptions for confidentiality or privacy would preclude disclosure under the Right to Know law. In Illinois and Michigan, sealed/nonpublic records are exempt from disclosure under the Freedom of Information Act. In South Carolina, the name and other identifying information must be redacted from incident reports before responding to a FOIA request.

- **Subject to a Prohibition on Inquiries about Sealed Records:** Some jurisdictions prohibit employers, landlords, and others from inquiring about a sealed criminal record (e.g., CO, CT, MD, NE).<sup>15</sup>
- **Subject to a Prohibition on Responding to Inquiries about Sealed Records:** The record will not be available on an official government site and, if asked, an agency will generally respond that no record exists or as **North Dakota** forthrightly states, “No information is available because either no information exists or dissemination is prohibited.”

### *Exceptions*

A number of states carve out exceptions for certain employers, including law enforcement agencies, prosecutors, courts, criminal and juvenile justice agencies, and/or state bars (e.g., AL, AK, AZ, AR, CA, CO, DE, FL, KS, MI, MN, MO, NJ, NY, NC, ND, OH, PA, RI, TX, VA, WA, WV). Some states also except insurance, regulatory or licensing agencies; utilities, banks, and financial institutions; health care agencies; agencies serving children, the disabled or the elderly; certain lottery, and/or gaming or racing positions, among others (e.g., AZ, AR, CA, FL, KS, MO, NM, NV, PA, RI, TX, UT, VA).

Several states address the availability of sealing for candidates or public officials:

- **California’s** automatic sealing "does not affect a prohibition from holding public office that would otherwise apply ...."
- **Indiana** requires a longer waiting period for "[a]n elected, official convicted of an offense while serving the official's term or as a candidate for public office" but excludes from consideration "[a] person convicted of official misconduct."
- **Kentucky** excludes persons convicted of abuse of public office from sealing.
- **Mississippi** precludes sealing records of a public official for any conviction related to his official duties.
- **Nebraska** permits public inquiries about candidates for or holders of public office.

Other states authorize the person or the agency to disclose a sealed record under some circumstances, including:

- **Arizona** lists sealed criminal records that the people must disclose if they are relevant to the job they are applying for, for example, burglary or theft from a structure if applying for a job that requires entering a residential structure; theft, forgery and fraud if applying for a job involving handling someone else's money; child abuse or aggravated assault if applying for a job involving children.
- **Georgia** recently revised its law to make sealed records available to the prosecution or defense with an affidavit that states that they are relevant to a criminal proceeding, hence

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<sup>15</sup> In Mississippi, an employer can ask an applicant if an order of expunction has been entered on the applicant's behalf. Some states give immunity to employers for administrative or legal claims or causes of action related to the employee's expunged offense (e.g., SC).

ensuring that *Brady* or *Giglio* information is not concealed. (E.g., AZ, CA, CO, IN, OH, OK, TN, TX).

- **Kansas** has a catchall that permits a court to determine that an arrest record should be available "in any other circumstances which the court deems appropriate."
- **Mississippi** requires a prospective juror to disclose an expunged record *in camera* and the court to advise the attorneys representing the parties.
- **North Dakota** releases information to an entity that has a statutory obligation to conduct a criminal records background check.
- In **Pennsylvania**, "an expunged record or a record subject to limited access that otherwise would prohibit employment ... may not be considered a conviction that would prohibit the employment of a person under any law of this Commonwealth or under Federal laws that prohibit employment based on State convictions to the extent permitted by Federal law." (e.g., WV).

## Prosecutors' Access to and Use of Sealed Records

Most states make sealed records available to prosecutors, attorneys general, or criminal justice agencies.<sup>16</sup> A significant portion of them state that such records can be used for criminal justice, law enforcement, investigative or prosecution purposes or proceedings; carrying out their duties; any lawful purpose; or any purpose (e.g., AR, FL, GA, IL, IN, KS, LA, MA, MN, MS, NH, NY, OR, PA, TX, VA, VT, WA, WV, WY) and make it clear that confidential or sealed files are accessible or available to, can be disseminated or disclosed to, or can be retained by prosecutors or criminal justice agencies (e.g., AZ, CA, CO, GA, ID, IL, LA, MS, MT, NE, NV, NC, ND, SC, TN, UT, WA).

Some jurisdictions, however, restrict or specifically authorize prosecutors and/or the courts to access sealed records for one or more purposes, such as determining:

- first offender or habitual offender status (e.g., AR, DE, LA, MS, NH)
- eligibility for probation before judgment, treatment, or diversion (e.g., DE, NJ, OH, PA)
- bail or pretrial release (e.g., NJ)
- charges (e.g., IN, MI, OK, PA)
- plea offers (e.g., MI)
- sentences (e.g., DE, MI, MN, NE, NH, NJ, TN, UT, VT)
- pardon eligibility (e.g., MI)
- the identity of persons in criminal investigations (e.g., PA)
- whether a subsequent conviction can be set aside (e.g., MI, NE)
- or for use:
  - where a prior conviction is an element of a new offense (e.g., KY, NE, OK, WA)
  - where the person is likely to stand trial for the same or a similar offense (e.g., NV)

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<sup>16</sup> Obviously, records that have been destroyed would not be available to anyone, including prosecutors. (e.g., MA).

- as exculpatory, mitigating, impeachment or character evidence (e.g., AR, GA, OK, VA)
- where the prosecutor establishes relevance to a new prosecution (e.g., IN).

This does not mean that prosecutors cannot access their own records in cases where court and law enforcement records are sealed unless they are also sealed in a way that prohibits access.

In a few states, prosecutors have more expansive responsibility:

- In **Hawaii**, the Attorney General is responsible for issuing sealing orders for non-conviction records and collecting and maintaining the files.
- In **Pennsylvania**, "the prosecuting attorney ... shall ... maintain a list of the names and other criminal history record information of persons whose records are required by law or court rule to be expunged ...or where the court has ordered expungement" for specified purposes.
- In **South Carolina**, applications for expungement are administered by the solicitor's [e.g., district attorney's] office.
- In **Tennessee**, the district attorney must prepare the petition and proposed order and give it to the petitioner to file with the court.
- In **Texas**, the attorney for the state shall prepare the expunction order for the court's signature in non-conviction cases.

Even where prosecutors can access sealed records, a court order may be required, at least under some circumstances (e.g., IN, MD, NM, NV, NC, OK, OR, VA, WV), though some states explicitly state that no court order is required (e.g., IA). Minnesota requires a court order if the defendant was acquitted or the case was dismissed for want of prosecution, but otherwise does not. The absence of a statutorily-mandated court order to make sealed records available to prosecutors suggests none is required.

### *Witness Testimony*

Presumably, prosecutors in any state that makes sealed records available to them would have and could use them as *Brady* information. In Virginia, " No arrest, charge, or conviction that has been sealed may be used to impeach the credibility of a testifying witness at any hearing or trial unless (i) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect and (ii) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use."

Without a specific reference to criminal trials, Kansas and Rhode Island, authorize witnesses to say that they have never been arrested or convicted of a crime. Vermont requires witnesses to respond only with respect to arrests and convictions that have not been sealed.

## DISCLOSURE BY PERSON WITH A SEALED RECORD

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Generally speaking, at least to the extent of the sealed crime, persons whose records are sealed are treated as not having a criminal history record. In more than two-thirds of the states, sealing allows persons to lawfully say that they were not arrested, charged, or convicted; to deny that they have a criminal record; to respond "no" when asked whether they have a

criminal record; to state that no record exists; and/or to swear under oath that they have no record without risking a prosecution for perjury (e.g., AL, AK, AZ, AR, CO, CT, DE, FL, HI, KS, KY, LA, MD, MA, MN, MS, MO, NE, NV, NH, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY). In Texas, when questioned under oath about an expunged arrest, the person may state only that the matter in question has been expunged.

This is based on the rationale for such statutes in the first place. For example,

- In **New Jersey**, the "expungement statute, as a matter of law, an expunged *conviction* is deemed not to have occurred .... [b]ut the expungement statute does not transmute a once-true fact into a falsehood. ... Although our expungement statute generally permits a person whose record has been expunged to misrepresent his past, it does not alter the metaphysical truth of his past, nor does it impose a regime of silence on those who know the truth."<sup>17</sup>
- In **North Carolina**, the purpose of the expungement statute is "to clear the public record of any entry of any *arrest, criminal charge, or criminal conviction* ... so that (i) the person who ... obtains the expunction may omit reference to the charges or convictions to potential employers and others and (ii) a records check for prior arrests and convictions will not disclose the expunged entries."<sup>18</sup>
- In **Virginia**, "The General Assembly [found] that arrest records can be a hindrance to a citizen's ability to obtain employment and an education. It further finds that the police and court records of those of its citizens who have been absolutely pardoned for crimes for which they have been unjustly convicted or who have demonstrated their rehabilitation can also be a hindrance. This chapter is intended to protect such persons from the unwarranted damage that may occur as a result of being arrested and convicted."

Two states, however, appear to take a more expansive view:

- **Arkansas** declares that "Upon the entry of the uniform order, the person's *underlying conduct* shall be deemed as a matter of law never to have occurred."
- **Nebraska** permits a person who is asked about a sealed record "to respond as if the *offense* never occurred."

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<sup>17</sup> *G.D. v. Kenny*, 205 N.J. 275, 15 A.3d 300, 315–16 (N.J. 2011) (quotation and citation omitted), cited in *Grafton Cty. Attorney's Off. v. Canner*, 147 A.3d 410, 415 (N.H. 2016); see also *Martin v. Hearst Corporation*, 777 F.3d 546, 551 (2d. Cir. 2015) ("The statute creates legal fictions, but it does not and cannot undo historical facts or convert once-true facts into falsehoods.").

<sup>18</sup> *In re Robinson*, 172 N.C. App. 272, 274, 615 S.E.2d 884, 886 (2005); citing *State v. Jacobs*, 128 N.C. App. 559, 569, 495 S.E.2d 757, 764 (1998) (statute does not apply to investigative files).

## EFFECT OF SEALING ON RIGHT TO POSSESS A FIREARM

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The effect of sealing on the right to possess a firearm involves complex issues of federal and state law.<sup>19</sup> A thorough review of these laws is outside the scope of this article. Nevertheless, some states' sealing statutes address possession of firearms after a conviction is sealed.

Although it may depend on other provisions, some states restore the right to carry a firearm after a conviction is sealed (e.g., AR, KS, TN, WV); some do not (e.g., AZ, CA, WA); some refer to another provision in the code (e.g., IN); and some make sealed records available to the agency responsible for background checks (e.g., NY, VA) or any agency required to conduct a criminal history record check on an individual (e.g., CO).

- **Kansas** fully restores a person's right to keep and bear arms when a disqualifying conviction is sealed. In making the sealing decision in the first place, however, the court must find that the person's possession of a firearm is not likely to pose a threat to the safety of the public.
- **Minnesota's** statute requires that "[a]n order expunging the record of a conviction for a crime of ... must provide that the person is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime." However, such a person can apply and the court can grant relief from this restriction for good cause shown.
- **Nebraska's** expungement order must notify the person that he or she should consult with an attorney about the effect of a sealing order on person's ability to possess a firearm under state or federal law.

## UNSEALING SEALED RECORDS

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Sealing a criminal history record may not end the matter forever. For example:

- In **Colorado**, if the person is convicted of a new criminal offense, the law requires the court to unseal the conviction records. Colorado also allows any member of the public to petition to unseal a sealed conviction where circumstances have changed and "the public interest in disclosure now outweighs the defendant's interest in privacy."
- In **Indiana**, if a prosecutor shows that sealed records are relevant to a new prosecution, the court shall unseal the records and give the prosecutor access to them. If the records are admitted in evidence or used to enhance a sentence, the court is not required to reseat the records; otherwise it is.
- **Illinois** allows "[p]ersons engaged in civil litigation involving criminal records that have been sealed [to] petition the court to open the records for the limited purpose of using

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<sup>19</sup> "Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U.S.C.A. § 921.

them in the course of litigation." Illinois also permits the court to unseal a felony record upon conviction for a subsequent felony offense.

- **Iowa** allows access with a "court order," but does not provide additional guidance on the circumstances under which a court order can be granted. It is not clear who may make such a request or whether it is considered unsealed for public access.
- In **Michigan** a conviction that has been set aside can be reinstated if the person has not made a good faith effort to pay ordered restitution.
- In **New York**, certain sealed drug offenses are unsealed immediately and remain unsealed when the person is arrested or formally charged with a new felony or misdemeanor unless the new case results in a disposition in favor of the person in which case they shall be conditionally sealed.
- **North Dakota** permits any member of the public to request access to "information to which access was previously prohibited" by filing a motion with the court. To allow access "the court must consider whether there are sufficient grounds to overcome the presumption of openness of case records and continue to prohibit access under applicable constitutional, statutory and case law."
- **Oklahoma** permits the prosecutor, arresting agency, the Oklahoma State Bureau of Investigation, or *other interested person* to petition to unseal such records and, after a hearing, the court to unseal all or a portion of the records if "there has been a *change of conditions or ... there is a compelling reason* to unseal the record."
- In **Pennsylvania**, when a person is convicted of a misdemeanor or felony the prosecutor may move for and the court shall enter an order vacating any prior order for limited access to a prior conviction, except under its "Clean Slate" provisions.
- In **Utah**, the court may open sealed records when sentencing a new offense, but must seal the records again at the end of the proceedings.

By implication, statutes in other jurisdictions giving prosecutors access to sealed records for general or specific criminal justice purposes authorize their disclosure in court, which may have the practical effect of unsealing.

## NON-GOVERNMENTAL DATA BASES AND INFORMATION

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### Private Databases

No matter the scope of a sealing statute, if it does not consider third-party companies who routinely purchase and disseminate criminal justice records, the basic goal of concealment itself is difficult to achieve. Without a mechanism to apply sealing requirements to third parties, employers, housing providers, and educational institutions can use private background check companies to screen potential employees, tenants, and students for a criminal history that is officially sealed.

A number of states have addressed non-governmental data bases directly. They include, for example:

- In **Colorado**, if a person sends a copy of the sealing order to a private custodian, it is required to remove the records that are subject to the order from its database.
- **Connecticut** requires entities that purchase criminal records from the government to update them monthly and delete records that have been sealed.<sup>20</sup>
- In **Idaho**, it is illegal for a person or agency other than the state police to disseminate information obtained from the state police without a signed release from the person involved.
- In **Indiana, Louisiana, North Carolina, and Texas**, after receiving notice of an expungement, private commercial criminal history record providers are prohibited from disseminating arrest or conviction records.
- In **Nevada**, the court "may order sealed all records of the conviction which are in the custody of ... any public or private agency, company, official or other custodian of records in the State ...."
- In **New Hampshire**, no one can be penalized for not removing or making corrections to a statement that a person has a criminal record that was thereafter annulled.
- **Texas** requires entities that compile and disseminate for compensation criminal history record information to destroy them when an order of expunction or an order of non-disclosure has been issued.
- In **Virginia**, business screening services are required to delete records that have been sealed and to destroy copies of the sealing order after they have deleted the records.

## News Media

News media are rarely mentioned in expungement and sealing statutes. However, a few states provide guidance:

- **Connecticut's** statute "was not intended to create any duties on the part of private parties (notably including publishers) or create a cause of action against them."
- **Indiana** excludes from the definition of "criminal history provider" various news organizations, editors and reporters, and others who gather, record, compile, or disseminate criminal history records or information "solely for journalistic, academic, governmental, or legal research purposes."
- **Louisiana** provides that nothing in its statute shall be construed to "limit or impair the subsequent use of an expunged record by a "news-gathering organization."
- **Michigan** recently amended its statute so that "An entity is not liable for damages or subject to criminal penalties under this section for reporting a public record of conviction that has been set-aside by court order or operation of law, if that record was available as a public record on the date of the report."

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<sup>20</sup> This is in accord with the Fair Credit Reporting Act which requires commercial screeners to, inter alia, "maintain strict procedures designed to insure that whenever public [record](#) information which is likely to have an adverse effect on a [consumer's](#) ability to obtain employment is reported it is complete and up to date." 15 U.S.C. §1681k.



- **New Hampshire** prohibits penalties "for publishing or broadcasting ... that a person had a criminal record that has been annulled, including the content of that record...[or] "that a person has a criminal record ... without reporting that the record has been annulled, if the journalist or reporter does not have knowledge of the annulment."
- **Virginia** excludes from its definition of "business screening service" "any government entity or the news media."

Clearly, the First Amendment is implicated any time restrictions are placed on the publication of truthful information.<sup>21</sup>

## COST OF SEALING

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The more decision-making the statute requires, as opposed to automatic sealing, the greater the cost. Responding to petitions, determining eligibility, parsing which records are implicated, and managing the appropriate retention or destruction of those records is resource intensive. It is rare that expungement statutes address the cost of implementing them.

The states that have directly addressed funding did so in a variety of ways:

- **California's** law is "subject to an appropriation in the annual Budget Act."<sup>22</sup>
- **Michigan's** implementation of automatic sealing is "subject to any necessary appropriation." Michigan has also created a "set aside fund" that can receive money or assets from any source to defray the costs associated with the recent statutory changes.
- **Montana's** prosecutors are directed to seal all their records in the case "within existing resources."
- **New Jersey's** prosecutors are charged with verifying "the accuracy of the allegations contained in the petition for expungement and to bring to the court's attention any facts which may be a bar to, or which may make inappropriate the granting of, such relief" without any mention of funding.
- **Tennessee** provides for both a district attorney's expunction fund and a public defenders expunction fund.
- **Utah** dictates that reasonable efforts be made to expunge or delete a case as quickly as possible "within available funding."
- **Vermont's** Criminal History Record Sealing Special Fund collects petitioners' filing fees and disburses them to various entities to offset the administrative costs of sealing.

In some cases, determining eligibility is assigned to a central bureau or to the court. It is beyond the scope of this article to examine appropriations statutes.

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<sup>21</sup> See, Clay Calvert & Jerry Bruno, *When Cleansing Criminal History Clashes with the First Amendment and Online Journalism: Are Expungement Statutes Irrelevant in the Digital Age?* 19 Comm. Law Conspectus (2010).

<sup>22</sup> "The San Francisco District Attorney's Office said that the automated system will cost taxpayers 4 cents per record, while each record processed under the old paper system cost \$3,757." Bill to Help Scrub Records of Low-Level Offenders Hits Newsom's Desk, Courthouse News Service (9/10/19).

## CONCLUSION

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Statutes on the expungement and sealing of criminal history records are a rapidly evolving area of the law. The laws can be complex and daunting for all in the criminal justice system and most particularly for those who wish to petition for the relief. Amendments to sealing statutes are being proposed and enacted every year. Many statutes are new and do not have the test of time to establish whether they are achieving the goal of benefiting people with a criminal history by increasing employment, education, and housing and reducing recidivism. Hopefully soon, research will provide some answers about the benefits and detriments of sealing laws – have they gone too far, or have they not gone far enough?

# APPENDIX A

## EXPUNGEMENT AND SEALING CONSIDERATIONS FOR PROSECUTORS

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The following list of issues and considerations can assist prosecutors in evaluating or proposing legislation.

### What Offenses/Convictions are Eligible?

- Should all misdemeanors be eligible? Or should there be a list of eligible misdemeanors? Should there be a list of exceptions?
- Should felonies or some felonies be eligible?
- Should certain kinds of misdemeanors and felonies be ineligible for sealing (e.g., violent offenses, domestic violence, sex offenses, offenses involving a child or vulnerable adult, certain traffic offenses)?
- Should there be a limitation on sealing crimes that are relevant to particular jobs or professions?
- How many crimes can be sealed and how often?
- Should offenses that have been legalized or decriminalized be eligible?
- Should some or all offenses that were committed by a person as a direct result of having been the victim of human trafficking or intimate partner violence be eligible? If so, should courts consider, for example, the degree of duress to which the person was subjected, the seriousness of the offense sought to be sealed, and the relative degree of physical harm done to any person in the commission of the offense?

### Which Persons are Ineligible?

- Should people be ineligible if they:
  - Were more than 18 or 21 years of age at the time of the offense of conviction?
  - Are not first-time offenders?
  - Have been convicted of a crime of violence?
  - Have been convicted of a felony?
  - Have a certain number of prior felony or misdemeanor convictions?
  - Have a pending or intervening case?
  - Have already had a conviction sealed?
  - Are seeking to seal more than one offense or multiple offenses in one incident?
  - Have been incarcerated for the crime at issue?
  - Have not paid all their fines, fees, and restitution?
  - Are a candidate for public office or a public office holder?

- Are there other factors that might disqualify people from expungement or sealing such as:
  - Untreated mental health or addiction issues?
  - A history of violence unrelated to a conviction?
  - Failure to demonstrate rehabilitation or attempts at rehabilitation?

## Should All Records Pertaining to a Disposition that was Resolved in the Accused's Favor be Sealed?

- Should sealing be automatic in such cases?
- Should there be an exception if relevant/related charges are still pending or resolved against the accused?
- Should there be an exception if the charges were dropped as the result of a plea bargain? How is this ascertained?
- Should prosecutors, victims, or others have the opportunity to object either before or after automatic sealing?

## What Records Should be Sealed?

- Court records?
- Police/law enforcement records?
- Criminal history record offices/central criminal history record repositories?
- Attorneys General?
- Prosecutors' (District/Commonwealth Attorneys') records?
- Pretrial, Probation, Parole records?
- Other criminal justice agencies' records?
- Commercial criminal history record providers data?

## Should Sealing be Limited to What is Traditionally Provided in a Criminal Record History Search?

- Should only data that identifies a person be made inaccessible to the public?
- Should investigation or intelligence data continue to be exempt from disclosure to the public?
- Should prosecutor's files (not traditionally a source of criminal history information) be sealed?
- Should officially published records, such as court opinions, be exempt from sealing?

## How Should the Record be Concealed?

- Should records be sealed or destroyed?
- Should only those records that pertain to a wrongful arrest or conviction be destroyed?

- Should certain records, such as non-conviction records and decriminalized offense records be sealed automatically?
- Should low-level misdemeanors be sealed automatically?
- Should a person be required to file a petition to seal other conviction records?
- Should sealed records be available to other law enforcement or criminal justice agencies without a court order?

## How Long Should the Waiting Period be for Filing a Petition or Automatic Sealing?

- How long should the waiting period be?
- Should it be longer for felonies than for misdemeanors?
- Are there factors other than the crime of conviction that should affect the length of the waiting period?

## When Should the Waiting Period Begin?

- Should there be a waiting period for cases that do not result in a conviction?
- If so, should the waiting period begin at disposition for cases that do not result in a conviction?
- Should the waiting period begin at sentencing, release from incarceration, or completion of probation, parole, or supervised release for convictions?
- If the waiting period begins at sentencing, should it be tolled during any period of incarceration?
- Should the waiting period run concurrently with probation, parole, or supervised release? If so, should it be structured so that it does not expire before the end of the sentence (i.e., 5 years or the termination of probation, parole or supervised release, whichever is later)?
- Should the waiting period start over if there is an intervening conviction (if the intervening conviction does not eliminate eligibility for sealing)?

## Who Determines Whether a Person Meets Basic Eligibility Requirements?

- Is there a statewide agency that can/should determine eligibility (based on criminal history information)?
- If not, should the person, the court, the arresting law enforcement agency, the prosecutor, the probation or parole agency, or some other entity be charged with documenting whether the person meets the minimum requirements to be considered for concealing a criminal record?
- Regardless of which agency determines eligibility, should a prosecutor verify that the minimum requirements have been met?

## What Other Factors Should Be Considered for Automatic Sealing or a Petition?

- The underlying facts of the crime?
- Evidence of the person's rehabilitation or lack thereof?
- Evidence that the person is/is not likely to recidivate?
- The interests of justice?
- Other relevant information?

## What Constitutes Rehabilitation?

- No further (known) involvement in the criminal justice system?
- Obtaining an education?
- Having a job?
- Supporting one's family?
- Involvement in community, religious, charitable organizations?
- Successful addiction treatment?
- Compliance with mental health treatment?

## Who Can Object to Sealing?

- Prosecutor?
- The court?
- Other criminal justice agencies?
- The victim(s)?
- Other interested persons?

## What is the Standard and Burden of Proof to Grant Relief?

- Should the burden be on the person to prove or on the prosecutor to disprove that a petition should be granted?
- Should the standard of proof be different if one or the other has it?
- Should a petition to seal a case be granted if the prosecutor/others fail to object within a stated period of time?
- Should a petition to seal a case be granted/denied if there is:
  - some evidence?
  - a reasonable probability?
  - a preponderance of the evidence?
  - clear and convincing evidence that harm to the person outweighs harm to the community or vice versa or that the person/government has/has not met the statutory requirements?

## Should There be a Mechanism to Oppose Automatic Sealing in Particular Cases?

- At the time of disposition?
- Prior to sealing?
- X days or months after the case has been automatically sealed?

## Who Can Have Access to Sealed Records?

- Should all criminal justice agencies, including the court, have access to sealed records for any criminal justice purpose or for any purpose?
- Should certain employers, including law enforcement agencies, the courts, prosecutors' offices, state bars, certain government or private employers, have access to sealed records for employment purposes?
- Should certain public and private agencies dealing with vulnerable populations have access to sealed records to exercise their responsibilities to their clients (e.g., placement of foster children; services to the elderly; mental health facilities, schools; etc.)?
- Should there be exceptions to prohibiting public access where the crime of conviction is relevant to the employment sought?
- Should victims of crime have full access to records pertaining to the crime against them? Other crimes committed by the same person?
- Should prosecutors and defense attorneys have access in order to discharge their Brady and other legal obligations?

## Can Sealed Records be Unsealed?

- For use in decisions on bail, charges, sentencing, sentencing enhancements?
- When the sealed offense is an element of a subsequent offense?
- When the sealed offense is relevant evidence in a new case?
- When a person is convicted of another misdemeanor/felony?
- When circumstances have changed?
- For impeachment?
- For civil litigation?
- When the public's interests in disclosure outweigh the person's interest in privacy?
- When there is a compelling reason to unseal the record?

## Who Should Pay for the Costs of Sealing/Unsealing?

- Funds appropriated by the legislature to the involved agencies?
- Central repositories of criminal history information?
- The courts?
- Prosecutors?

- Fees imposed on petitioners (with a waiver provision for those who cannot afford them)?
- Indirectly through:
  - automatically sealing classes of non-conviction and conviction records as appropriate?
  - the development and use of computer systems that can facilitate determinations of eligibility, notification to appropriate persons and agencies, and sealing or sequestering relevant records?
  - requiring a petitioner to obtain a certificate of eligibility before filing a petition?

## Should Private Companies be Required to Delete or Seal Records that Have Been Officially Sealed?

- Should commercial criminal history record/business screening services providers be required to delete any information pertaining to an arrest or conviction that has been destroyed or sealed?
- Should the burden be on the petitioner, the state, or the business to inform/ascertain whether an arrest or conviction has been destroyed or sealed?
- Should news-gathering organizations and individuals be exempt from any adverse consequences for reporting on arrests and convictions that have been destroyed or sealed, or for retaining in their archives articles, reports, and information about proceedings in the case?
- Should others who gather and disseminate criminal history information solely for journalistic, academic, government, or legal research be exempt from adverse consequences for using it?



# APPENDIX B

## 50 STATE CHART OF STATUTES

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See 50 state chart of expungement and sealing statutes: [https://pceinc.org/wp-content/uploads/2023/05/20230524-Chart-of-Sealing-and-Expungement-Statutes-PCE .pdf](https://pceinc.org/wp-content/uploads/2023/05/20230524-Chart-of-Sealing-and-Expungement-Statutes-PCE.pdf)