Expungement and Collateral Sanctions

The Other Side of Justice:
A Look at Rehabilitated and Otherwise Harmless Persons
And The Long Term Effect Of Having a Criminal Record

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Acknowledgment

Expungement is generally someone else's problem. And for those who don't need an expungement, they may not even think that it's an important topic. However, if the truth were to be told, at some point in life each one of us needs and in many cases deserve a second chance. Special thanks to the citizens of Cleveland; the judges of Cleveland Municipal Court, the Honorable Larry A. Jones Sr., Presiding and Administrative Judge; and to Court Administrator Michael E. Flanagan for affording me an opportunity to participate in this project.

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ABSTRACT

Two strikes and you're out! In Ohio, because expungements are reserved for first time criminal offenders only, one may be treated as a career criminal after the second conviction of a misdemeanor and/or felony offense. In many states one may be treated as such even after his or her first criminal offense where expungement is not available at all. Because there are no restrictions on the use of a person's conviction status, the state of Ohio and its employers may exclude a person from employment and other opportunities based solely upon their conviction status, whether one is truly a career criminal or not. Within this loose standard, the author explores specific research on: (1) the opinions of Ohio municipal court judges on the policy and practice of expungement and (2) the rate of expungements granted for persons convicted of a first offense in the Cleveland Municipal Court Selective Intervention Program.

The goal of the research is to observe both how the justice system sees and responds to rehabilitated and otherwise harmless persons with a criminal record and what effect having the criminal record has on those persons' ability to compete for available job opportunities. This research also identifies what support there is for ending indefinite punishment placed on those rehabilitated and otherwise harmless persons who may be denied employment opportunities based solely upon their having a criminal record. The significance of this research is that it addresses the fact that years after their last conviction, rehabilitated and otherwise harmless persons with criminal records who are otherwise qualified for a job, are often treated by

employers, the justice system, and society the same as if they were habitually criminal persons[1] because of their convictions status.

In order to gauge the feeling for change, the author desired to survey the opinions of Ohio municipal court judges on the availability and use of expungement. A cover letter and a one page survey with addressed return envelope were mailed to all Ohio municipal court judges during the month of November 2005. As to the rate of expungements being granted, the author desired to know how frequently persons who appear to be most eligible for expungement in the Cleveland Municipal Court actually expunge their records within their first year of eligibility. In the Cleveland Municipal Court there is a diversion program of designated cases with persons who are classified as first time offenders called the Selective Intervention Program (SIP). To get the most recent class of cases available for testing, the author obtained a computer listing of all SIP first time offender cases that were closed during the years 2001 and 2002. For cases closed in 2001, persons could begin expunging those cases beginning in 2003, and 2002 closed cases could begin expungement beginning in 2004.

The findings from the responding Ohio municipal judges' opinion survey were that: (1) judges were pretty evenly split on the general statement that courts have inherent authority to expunge criminal records, under certain circumstances; (2) a significant majority believe that most persons do not expunge their eligible first offense within one year of eligibility and/or within two years of their final discharge; (3) an overwhelming majority say that the filing of a petition and a $50.00 filing fee is an easy and simple process to obtain an expungement; (4) another overwhelming majority says that one common collateral sanction of a criminal conviction is impairment of the person's ability to keep or to obtain gainful employment; and (5)

[1] Two persons may have the same criminal conviction record, and one receives a fine and probation only based upon the particular facts of that case, and another may receive the maximum period of incarceration allowed by law, based upon the particular facts of their case. But years later, both are generally treated the same based upon the title and degree of the conviction offense.

only a slim majority agree with the statement that certain rehabilitated persons with multiple convictions should have some opportunity to be relieved of the stigma and the collateral sanctions of having a criminal record. The findings on the frequency of first offender (SIP) cases being expunged in the Cleveland Municipal Court for cases closed in both years 2001 and 2002 was a surprisingly low three percent for each year.

Based on the specific findings in this research, the author recommends the Cleveland Municipal Court initiate measures to increase the rate of expungements for eligible persons with their first offense. During the time of this research, the judges of Cleveland Municipal Court have adopted a practice of notifying the person before accepting a plea of their right to seal a first offense when eligible. Additionally, within a reasonable time of the date or just after the date of becoming eligible, the court could send one additional notice to notify persons of their option to expunge. Long term, the author recommends that the judicial branch, at its highest levels, seek statutory authority to limit the overbroad use of collateral sanctions and to expand the criteria of persons eligible to expunge, thereby expanding the discretion of trial judges to grant expungement where justice requires, including persons with multiple convictions where the person is rehabilitated and otherwise harmless. Specifically, the sentencing judges should have discretion to grant expungements when taking into consideration: (1) it is deserved under the facts of the case(s); (2) the demonstrated rehabilitation and/or law abiding practice of the person since conviction(s); and (3) there is no clear and present harm to the public, or any compelling interest of the public to keep the record(s) unrestricted. Without judicial discretion, and the authority to end punishment through collateral sanctions, the author opines that the judicial branch is limited in its ability to provide fairness and impartiality with respect to sentencing, and will continue to be viewed as an arm of the law enforcement community and its over broad

labeling and punishment of rehabilitated and harmless persons through the use of indefinite collateral sanctions.

Introduction

> *Justice is justly represented blind, because she sees no difference in the parties concerned. She has but one scale and weight, for rich and poor, great and small. Her sentence is not guided by the person, but the cause.... Impartiality is the life of justice, as that is of government.* (William Penn)

Although in a different context from its original meaning, the phrase "blind justice" does come to mind when viewing how the judicial branch currently fails to see, hear and respond to the indefinite sanctions and prejudice against those rehabilitated and otherwise harmless persons who suffer discrimination in employment based solely upon their having a criminal record. During the spring and summer of 2005, there was a choir of Ohio voices crying out to the judicial system to intercede on their behalf to stop the continual punishment, associated with having a criminal record, for crimes long paid for by the completion of their court imposed sentence (Simakis Hundreds B1+).[2] Most of those voices were from persons who, years after their last conviction(s), claim that they are nonviolent persons being treated by employers, the justice system, and society as if they were habitually violent persons as represented by their criminal conviction record(s). Under Ohio law, even if warranted under the facts of the case, the judicial branch was without the authority to grant the majority of these petitions, due either to the degree of the offense or because the person had more than one conviction in their lifetime. In light of this reality, the author offers conclusions and personal opinions throughout this research based upon the findings contained herein, as well as his personal experience in the criminal justice system as an Administrator, a former Magistrate, and a former Assistant Law Director and Assistant City Prosecutor in the city of Cleveland and the Cleveland Municipal Court.

[2] Simakis, Andrea. "Hundreds in church look to void past crimes." Plain Dealer 14 August 2005 : B1. See Appendix 1.

The purpose of this research is to explore: (1) The voices of the rehabilitated and otherwise harmless persons who desire to petition the Court for relief from the excessive prejudice of having a criminal record; (2) How do some of us get into the circumstance of having a criminal record; (3) Why it is important to discuss the effect of collateral sanctions for having a criminal conviction and the use of expungement; (4) What expungement is and what purpose it serves; (5) How difficult it is to obtain an expungement; (6) What collateral sanctions are and what impact do they have on rehabilitated and harmless persons with criminal records; (7) What support is there for lesser or greater use of criminal history information; (8) How does having a criminal record impacts employment opportunities; (9) Research Methodology; (10) Findings of an Ohio Municipal Judges Opinion Survey Questionnaire on Misdemeanor Expungements; (11) Findings of the frequency of persons with first offenses obtaining an expungement that are placed in the Cleveland Municipal Court's Selective Intervention Program (SIP); (12) An analysis of Ohio General Assembly H.B. Number 317 proposing to expand the eligibility of expungement for persons with multiple convictions under certain circumstances in the state of Ohio; and (13) Recommendations for improving justice for rehabilitated and harmless persons with a criminal record, including ABA Criminal Justice Standards on Sentencing that discuss and propose limitations on the use of collateral sanctions.

At the outset, it is important to acknowledge that under all expungement statutes reviewed, this author did not find any that would seal any prior conviction records from the view of law enforcement. The author agrees that law enforcement should always have access to criminal records to review for suspected subsequent criminal activity by persons, or for enhancement of new crimes charged against persons with prior criminal convictions. Likewise, it is important to note that expungement statutes, where authorized, are simply not available to offenders with serious violent and/or sexual offenses. Therefore, this research and commentary

is not related to the sealing of records from any law enforcement agency or personnel or to the sealing of records from the most violent or sexual predator type offenders whose sentence was commensurate with that of the offense conviction. In addition, the author agrees that the prosecutor can always argue against a request for expungement and of course the judge can always deny a request for expungement. On the other hand, this research is addressing the expungement eligibility for those other rehabilitated and otherwise harmless persons who have paid their just debt to society, who are still feeling the effects of indefinite punishment associated with the overbroad application of collateral sanctions, and who are seeking redemption from the system that labeled them. These are the citizens, as represented by the voices of Cleveland in this past year, who are seeking protection from indefinite punishment and complaining that "justice delayed is justice denied.[3]" The author has seen and heard these voices and understands and agrees that it's about time that the justice system views this other side of justice and responds to those rehabilitated and harmless persons who are suffering from the long term effects of having a criminal record.

Voices of rehabilitated and otherwise harmless persons who are asking for relief from the excessive prejudicial effects of having a criminal record

> *O Essence of Negligence! Myriads of mystic tongues find utterance in one speech, and myriads of hidden mysteries are revealed in a single melody; yet, alas, there is no ear to hear, nor heart to understand* (A Book of Wisdom – Baha'i).

In February 2005, thousands of persons came to Cleveland Municipal Court to surrender and face justice on their outstanding cases before the court.[4] Those thousands of people were encouraged to come by the promise of amnesty on outstanding arrest warrants[5] and the hope of

[3] Gohman v. City of St. Bernard, 111 Ohio St. 726, 737 (1924)

[4] Long, Karen R. "Court Offers Fugitives a Break; Clergy, Judges Unite to Give Minor Offenders a Chance to Come Clean." Plain Dealer 16 Dec 2004: A1. See Appendix 2.

[5] No arrests on outstanding warrants were made where persons voluntarily surrendered to the court on non-violent offenses only and the person did not have to pay the $25 fee associated with the outstanding arrest warrant.

putting to rest the unresolved case(s) that were hanging over their lives like a dark cloud. The intimidating fear of possibly being arrested at anytime weighed heavily on those compelled to come forward during the amnesty program.

Following this very popular amnesty program, The National Restoration Movement, U.S.A., Inc., (hereinafter, "the Movement") through its leader, the Reverend Mark C. Olds contacted Cleveland Municipal Court's Administrative and Presiding Judge, Larry A. Jones Sr., to again collaborate on an effort to address the issue of clearing persons conviction records of crimes committed in the distant past. This next effort to help the people was to conduct expungement educational forums in churches throughout the city. This effort was frequently referred to by the Rev. Olds as a "jobs program" during the introduction at the forums. The Rev. Olds believed that the use of expungements would essentially free up deserving Cleveland citizens for better employment opportunities, as well as help to satisfy the needs of Cleveland employers. Between April and September of 2005, the Movement, with the Cleveland Municipal Court, brought together faith based organizations and criminal justice agencies to address the yearning of persons with criminal records to be granted restoration. The object was to learn about eligibility for, and the process of obtaining, a judicial expungement of criminal conviction records. These educational forums where held in Cleveland and other major cities in the state, including in the state capital of Columbus, Ohio, through September 2005.

Unfortunately, what the people heard from judges, politicians, clergy, and criminal justice officials was a very frustrating message. The people learned that the majority of hopeful attendees did not, in fact, qualify to be cleared of their past criminal records. All seemingly good citizens, some of whose records were more than 20 and 30 years old, complained that even though they have paid their just debt to society for the crime committed, and although having been law abiding citizens for years, that they are still being punished by the use of their criminal

record. The most prevalent punishment echoed was the denial of employment in which they were being told by employers that the denial of their employment opportunity was based upon their having a criminal record.

How do some of us get into this circumstance?

> *So what we have seen from our educational forums is that people may not necessarily go out and commit an isolated offense, they might engage in a short pattern of criminal activity and then years later have led a law abiding, productive life as a contributing member of society* (Transcript 9-10).[6]

The fact is that there are a large number of people with criminal records who are not violent or dangerous. Likewise, there are a lot violent and/or dangerous people who do not have criminal conviction records.[7] However, one reason that harmless persons end up with serious felony convictions is that those persons have a legitimate fear of prosecution for overly charged or indicted offenses, and the process results in a misleading plea bargain agreement for a serious and/or violent offense. Consequently, nonviolent and/or harmless persons plead to violent offenses everyday and are given probation due to their "actual" less than culpable circumstances. Even so, thereafter they will be treated as violent persons for no other reason than for their past conviction for that serious and/or violent offense.

In many cases, the justice system determines that a person is essentially non-violent and/or is not a risk to the public.[8] Nevertheless, under current Ohio law and in the majority of other states, this same non-violent person with a criminal record may be treated essentially the

[6] Cleveland City Council. Transcript of the Council Committee Hearings, Employment, Affirmative Action & Training. (June 12, 2006) : 9-10. See Appendix 3.

[7] For example, unreported domestic abuse occurs in all communities.

[8] Generally a person sentenced to probation with no jail time by the sentencing judge is not a risk to the public. Even in cases where the person is convicted of a violent offense, some facts persuade the sentencing judge that this person is not a threat and does not warrant punishment by incarceration.

same as an actually violent person convicted of the same crime and given the maximum sentence of incarceration permitted by law, based upon the facts of that person's offense.

Certainly, all persons suspected, charged, and in some cases, convicted by the justice system are not factually criminals[9] and it is equally true that there are a large number of "factual criminals"[10] who are never suspected or charged by the law enforcement community and thereby never presented to the justice system for potential conviction. Therefore, the author is sensitive to the cries of those rehabilitated and otherwise harmless persons with criminal records who ask: Why the judicial system, in the name of justice, cannot stop their indefinite punishment? And when you look at the large number of faces coming through our big city courts, there appears to be disparate enforcement of the criminal laws in urban communities. Consequently, in urban communities, the associated suspicion and treatment of persons with a criminal record by the law enforcement community, the justice system, employers, and the society at large just happens to fall disproportionately on members of the minority and the economically disadvantaged community. And without the wider use of expungement and/or some other methods of limiting the currently indefinite collateral sanctions, the judicial branch is commonly perceived as the source of indefinite punishment of these rehabilitated and otherwise harmless persons with criminal records who have already "paid their just debt"[11] to the court and to society.

[9] It is not an uncommon fact that a person convicted of a crime can be found later to have been innocent of that crime.

[10] The author defines "factual criminals" as those persons who actually violate the criminal laws in their home and community, regardless of whether or not they have been caught and successfully prosecuted by law enforcement.

[11] The author defines "paid their just debt" as being discharged from the jurisdiction of the sentencing court for having satisfied all duly imposed conditions of sentencing including incarceration, fine, court costs, and any other conditions mandated.

Why it is important to discuss the effect of collateral sanctions of a criminal conviction and the use of expungement?

> *Justice, which is the end of law, is the ideal compromise between the activities of each and the activities of all in a crowded world. The law seeks to harmonize these activities and to adjust the relations of every man with his fellows so as to accord with the moral sense of the community* (Pound 395).

In the United States, by some estimates, nearly one in three adults (over 64 million) has a criminal record (Smyth 485). These convictions result in a large amount of information and documentation on an individual's alleged action at a specific time and place regarding the criminal offense. In addition, the legal process of the court now etches that occurrence into stone with regard to society's referencing of that individual and that criminal offense. Within this tremendous amount of arrest and conviction information collected, there is the potential for misuse and abuse as well as the possible threat to an individual's privacy and reputation regarding the use of that information (Buethe 1087-1088).

Collateral sanctions of a criminal conviction include all civil restrictions that flow from a criminal conviction (Demleitner 154). And, given the number of people who have been convicted at one time or another, collateral sanctions have become one of the most significant methods of assigning legal status in America (Black Letter 441).

According to standards prepared by the American Bar Association (ABA), it is an unfair and inefficient premise that the criminal justice system label significant legal disabilities and penalties as "collateral" and ignore them in the process of criminal sentencing when in reality those disabilities and penalties can be the most important and permanent results of a criminal conviction (Black Letter 444).

Over 80% of those charged with crimes are indigent and unable to afford an attorney (Smyth 485-486). There is an additional argument that collateral sanctions are invisible

punishments that in many cases result from deep inequities in the current criminal justice system (483):

> First, many people going through the system never should have been there in the first place. Recent criminal justice policy has created a class of "criminals" through "quality-of-life" or order-maintenance policing that criminalizes petty social ills, such as public urination and public drinking. People in targeted neighborhoods – almost without exception communities of poverty and communities of color – easily rack up misdemeanor records for minor illegal activities. […] Moreover many commentators have written extensively about the overwhelming pressures on indigent clients to plead guilty regardless of culpability (483-484).

In Cleveland, drinking a beer in public is a criminal offense punishable by a maximum $250.00 fine and up to 30 days in jail.[12] Likewise, a parent who has a child that gets caught skipping school during school hours is also subject to a criminal offense punishable by up to a $250.00 fine and 30 days in jail.[13] If that parent has a prior conviction for having a truant child, that parent may face a maximum penalty of a $500.00 fine and up to 60 days in jail. If that child happens to be suspended or expelled and is not being supervised by a responsible adult, that parent even on a first offense is punishable by up to a $750.00 fine and up to 90 days in jail, and on a second offense is subject to a $1,000.00 fine and up to 180 days in jail.[14] Yes it's important not to drink in public, and to keep children in school and to have them properly supervised at all times, however these violations are creating criminal history records and, after the first offense, will disqualify convicted persons from expunging subsequent similar offenses and/or, more

[12] "No person shall have in his possession an open container of beer or intoxicating liquor in […a] public place." Open Container, Cleveland Codified Ordinance § 617.07.

[13] Under certain circumstances, "No child between the ages of six and seventeen […] shall be at any place within the City except in attendance at school between the hours of 10:00 a.m. and 2:30 p.m. during any school day." Children of Compulsory School Age to be in Attendance at School; Parental Duty Imposed, Cleveland Codified Ordinance § 605.141.

[14] During school hours, and with certain exceptions, "If a child is suspended or expelled from school, then each parent or legal guardian of the child shall have […the] duty to personally supervise the child, or to arrange for a responsible adult to supervise the child […and the] duty to prohibit the child from being in any public place." Children Suspended or Expelled from School to Remain Under Supervision; Parental Duty Imposed, Cleveland Codified Ordinance § 605.142.

importantly, other more serious offenses such as theft or simple assault that are more commonly known as being criminal.

In Ohio there are 361 collateral consequences – also known as collateral sanctions – buried like landmines throughout the Ohio code, and most defendants don't even know they exist when they plead guilty to avoid prison time or to receive shorter sentences (Simakis Life Sentence 8).[15] While some collateral sanctions affect civil and political rights, most are designed to keep persons with criminal records from holding specific jobs and earning various licenses (8).

Ironically, collateral sanctions not only rob persons with criminal records of the opportunity to make a living and private employers of manpower, they also cost the state money (8). The Ohio prison system offers job-training programs to its inmates, but in a classic Catch-22, Ohio's collateral sanctions bar them from becoming licensed in the very field for which they have been trained (8).

With the seventh-largest prison population in this country; an average of 77 prisoners are released from Ohio prisons each day (Simakis Absolution 7).[16] While some states forbid employers from asking applicants about prior convictions, Ohio permits employers to reject workers because of their criminal histories alone (7). Even years later, persons are continually being punished for having a criminal record. Even if they have been a model citizen for years, Ohio law prevents most residents with more than one conviction – whether they are felonies or misdemeanors – from having their criminal records sealed by the court (Simakis Hundreds B1+).

However, as stated above the use of criminal record history affects nearly one in three Americans. And given the overwhelming evidence of the use and reliance upon criminal records

[15] Simakis, Andrea. "Life Sentence: Explain, Please: Why can't a felon who's paid his dues be hired to drive seniors around town?" Plain Dealer Sunday Magazine. 27 November 2005: 8. See Appendix 4.

[16] Simakis, Andrea. "The Absolution Argument." Plain Dealer Sunday Magazine. 27 November 2005: 6. See Appendix 5.

it must be agreed that a problem exists (Buethe 1112). While one would not treat, or even refer to, one in three Americans as criminals, the unrestricted use of criminal history information is cause for concern. The fact is that, just as this significant number of persons with criminal records should not be referred to as "criminals," there are a significant number of persons with criminal records who have been rehabilitated. No one can deny that people can and are being rehabilitated, and that gainful employment is a necessity in life. And yet, what are we going to do with these people if we take away their opportunity to prosper? (Simakis Absolution 13)

Interestingly, one of the most important objective(s) of the criminal justice system is to get to the truth of the matter. And one of the most important forum(s) to get to the truth is the fair and impartial trial and/or disposition of the case. Ironically, according to Ohio law and Rules of Court with appropriate exception, persons with misdemeanor and/or felony convictions that do not bear on the tendency of the person to be truthful to testify in a trial may do so without fear of impeachment solely on the basis of their having a criminal conviction.[17] In the author's opinion, the judicial branch applies the appropriate standard for evaluating a person's credibility when testifying in trial, solely with respect to the witness also having a criminal record. Employers, in addition to evaluating skills for a job, are also assessing the person's credibility to be a good employee for the company. And barring a direct relationship to the person's capability to do the job, criminal records of rehabilitated and otherwise harmless persons should be irrelevant to a current job opportunity beyond a reasonable length of time from the close of the

[17] For the purpose of attacking the credibility of a witness, "evidence of a conviction under this rule [that a witness other than the accused has been convicted of a crime] is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement, or the termination of community control sanctions, post-release control, or probation, shock probation, parole, or shock parole imposed for that conviction, whichever is the later date, unless the court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence." Impeachment by Evidence of Conviction of Crime. Ohio Rules of Evidence 609(B).

matter. An example of a reasonable time frame would be such as in the bad use of credit, including bankruptcy, not affecting the person beyond 7-10 years. And if the company intends to use such record against the person, the company should provide advance written notice of such intent and to provide the person a fair opportunity to contest the use of such records.

The author agrees that if a person's conviction to a particular offense objectively bears a relationship on the person's capacity to do the job, then the conviction should be taken into account. On the other hand, if the conviction does not bear on the person's capacity to do the job, but the person is excluded from the employment opportunity based solely on the person having a criminal record, then it appears to be overly broad to apply such a discriminatory standard to rehabilitated and otherwise harmless persons who happen to also have a criminal record.

What is expungement and what purpose does it serve?

> *The legislature, which is closer to the people, recognizes that people make mistakes, but that afterwards they regret their conduct and are older, wiser, and sadder. The unarguable fact is that some people do rehabilitate themselves.*[18]

Once convicted of a crime, persons would expect to be sentenced to a fine and court costs and perhaps a term of probation or confinement, and they also understand that they will bear the social stigma of a criminal conviction (Black Letter 441). But what they do not often appreciate is that their convictions will result in numerous additional legal penalties and disabilities, some of which may be far more burdensome than the sentence imposed by the judge in open court (441). The primary protection for individuals with arrest or conviction records has been the allowance of expungement or sealing of such records (Buethe 1089).

An expungement is the judicial version of a pardon (Wagner 495). Generally, the pardon legally closes the offense, giving the person a restored capacity, and rehabilitating him or her to

[18] State v. Krutowsky, Cuyahoga App. No. 81545 (Apr. 3, 2003)

their former position in society and ending further punishment pursuant to the conviction (495). Expungement is designed to restore forfeited rights and restore the offender's status by uplifting him or her from the fact of a conviction and concealing the conviction from public view, thereby eliminating the penalties imposed by public opinion rather than those imposed by law (Wagner 480-481).

State legislatures have enacted laws commonly known as "expungement statutes" to deal with the problem of the person with a criminal record and their relationship with society (Wagner 480). Because most criminal records are available to the general public, this fact gives rise to many of the collateral sanctions associated with criminal conviction (480). Justice should provide, after the proceeding against the offending person, that he or she be given an opportunity to meet the requirement of restoration (484). Some states make expungement the goal of rehabilitation and require that the person seeking the expungement show that he or she has reformed before their application is made, that he or she has exhibited good moral character since their conviction, and that it is in the public interest to grant the relief (482). Once an expungement is granted, the person may state that he or she has never been convicted of a crime in an application for employment (481).

Almost all expungement statutes permit the record of conviction of the expunged crime to be available to law enforcement and proved in a subsequent criminal prosecution (Wagner 481). The law was never intended to benefit the worst of criminal offenders (Simakis Absolution 9). The factual standard is demonstration that a person had made every effort to conform to the norms and demands of society, that there is no evidence to show that the person has any propensity toward continuing criminal activity, and that he or she is not a clear or present danger to society (Wagner 485).

However, even for the most deserving persons, the option of expungement in some states is not available at all. And in other states the law is very restrictive such as for dismissals or first time offenders only. For example, Ohio law is for first time offenders only, but the law may be so restrictive that it excludes just about everybody who has been in trouble (Simakis Absolution 13). Society must realize that:

> If one subscribes to the notion that ex-offenders should be given a second chance to rehabilitate themselves and become useful and productive members of society, society must also provide means for such reintegration, including employment opportunities (Demleitner 161).

How difficult is it to obtain an expungement?

> *The courts mediate society's interest in opposite but true mandates, in particular the tension between social order and individual freedom* (Purposes and Responsibilities 13)

Some states have addressed the collateral sanctions for persons with criminal records with a comprehensive solution adopting the expungement of criminal records after a certain period of time following the end of a sentence (Demleitner 162). In jurisdictions in which there is no statute of limitations or expungement mechanism, the criminal justice system is creating an ever-growing number of people with criminal records (162). And to concern oneself with expungement, one has to think in terms of eligibility first and foremost (Transcript 8).

There is no specific federal statute providing for expungement of criminal records (Buethe 1109). However, the inherent equity power of a federal court has been recognized in a number of cases as authorizing an order of expungement (1100). And although these courts have equitable power to order expungement, a number of courts have expressed the view that the legislature is the proper body to create such a remedy (1108). Thus, the criminal record problem has seen the attention of Congress as well as state legislative bodies (1108).

Legislation is certainly needed to end the collateral sanctions and social stigma of having a criminal record and, in many cases, relief is long overdue (Buethe 1122). In 33 states, there is a specific statute providing for some type of expungement of criminal records.[19] And even among the 33 states that provide for the expungement of criminal records, many of them only provide for the expungement of arrests, dismissals, and/or cases that end in acquittal. Still others provide for expungement in cases of first-time offenders only.

Prior to the passage of expungement legislation, gubernatorial pardons provided the sole opportunity for ending collateral sanctions and, because pardons are considered extraordinary procedures, they have historically been available only to a limited number of persons with criminal records (Demleitner 155). This is still the case in those states that do not allow for the expiration of post-sentence collateral sanctions (155).

However, state law which determines the impact of gubernatorial pardons does not always lead to the restoration of rights to persons with a criminal record (Demleitner 155). In West Virginia, once a person receives a "full unconditional pardon" from the governor, they must wait at least two years from the pardon and at least twenty years from the discharge of their sentence before petitioning the court for an expungement, with an additional requirement that they advertise and publish notice of when the petition will be made.[20]

Even in jurisdictions where statutes permit the expiration of a criminal record after the passage of time, eligibility for expungement will still vary due to the fact that judges hand out different types of sentences (Transcript 9). In very similar cases, the difference will be apparent where one would be accountable to one judge for six months and to another for over five years (9).

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[19] SEARCH, The National Consortium for Justice Information and Statistics. Criminal History Policy Compendium. August 19, 2005 from http//www.search.org/programs/policy/compendium/compendium.asp. See Appendix 6.

[20] Expungement of criminal record upon full and unconditional pardon. West Virginia Code § 5-1-16a).

Nevertheless, there are some good practices coming out of the states that do offer expungement opportunity for conviction records. Many states require notification to the prosecutor and/or the victim in requests for expungement. And other states require other forms of notice provisions regarding either the filing of a petition for expungement and/or the use of expunged information. The following discussion will highlight some requirements of various states.

There are several states that offer support of judicial discretion. In New Hampshire, criminal misdemeanors can be annulled after three years "if in the opinion of the court, after hearing, the annulment will assist in the petitioner's rehabilitation and will be consistent with the public welfare."[21] Likewise, in the state of Kansas statutes authorize expungement after waiting a period of three to five years depending on the case, with no pending cases, and the court finds that "the circumstances and behavior of the petitioner warrant the expungement; and the expungement is consistent with the public welfare."[22]

Arizona statutes state that:

> Every person convicted of a criminal offense may, upon fulfillment of the conditions of probation or sentence and discharge by the court, apply to the judge […] to have the judgment of guilt set aside.[23]

In addition, Arizona states that "the convicted person shall be informed of this right at the time of discharge."[24] Colorado statutes provide that "any person in interest may petition the district court in which any arrest and criminal records information pertaining to said person is

[21] Annulment of Criminal Records, New Hampshire Revised Statutes § 651:5.

[22] Expungement of certain convictions, arrest records and diversion agreements, Kansas Statutes § 12-4516.

[23] Setting aside judgment of convicted person on discharge; making of application; release from disabilities; exceptions, Arizona Revised Statutes § 13-907 (A).

[24] Arizona Revised Statutes 13-907 (A).

located for the sealing of all records"[25] Furthermore, Colorado states that whenever a person is sentenced following a conviction, "the court shall provide him with a written advisement of his rights concerning the sealing of his criminal justice records"[26]

California statutes provide that:

> Every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he has been convicted. **The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced.** [27] (Emphasis added.)

Also, Oregon statutes provide that for some convictions, after three years from the judgment, and full compliance with the sentence of the court that the person "by motion may apply to the court wherein that conviction was entered for entry of an order setting aside the conviction."[28] Massachusetts statutes require a minimum of ten years wait before a misdemeanor can be expunged, but they also require a protective notice regarding inquiry of criminal history information on employment applications:

> **An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: "An applicant for employment with a sealed record on file with the**

[25] Sealing of Records, Colorado Revised Statutes Annotated § 24-72-308- (f) (1).
[26] Sealing of Records, Colorado Revised Statutes Annotated § 24-72-308- (f)(1).

[27] The Judgment, California Penal Code § 1203.4a (a).

[28] Order setting aside conviction or record of arrest; fees; prerequisites; limitations, Oregon Revised Statutes § 137.225.

> **commissioner of probation may answer 'no record' to an inquiry herein relative to prior arrests or criminal court appearances."** In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child.[29] (Emphasis added.)

Utah statutes provide for an opportunity to petition for expungement with specific notice and procedure requirements, after a waiting period of between three to fifteen years depending on the misdemeanor conviction and that:

> The petitioner shall be responsible for service of the order of expungement to all affected state, county, and local entities, agencies, and officials including the court, arresting agency, booking agency, Department of Corrections, and the division. […] The division shall provide the petitioner with a list of the agencies affected by this subsection with clear written directions regarding the requirements of this section.[30]

Among the several states that offer expungement opportunity to first time offenders "only" include Ohio,[31] New Jersey,[32] Rhode Island,[33] and Hawaii.[34] The wait to be eligible for a misdemeanor expungement is twenty years in Hawaii without any subsequent arrest or conviction; however, statutes state further that:

> **A person shall not be disqualified from public office or employment by the State or any of its political subdivisions or agencies,** […] or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificated is required by the State

[29] Requests to seal files; conditions; application of section; effect of sealing of records, The General Laws of Massachusetts. Chapter 276: § 100A.

[30] Order to expunge – Distribution of order – Redaction – Receipt of Order – Administrative proceedings – Division Requirements, Utah Code § 77-18-14(1) – (8).

[31] Sealing of record of conviction or bail forfeiture, Ohio Revised Code § 2953.32. (A)(1).

[32] Conditional discharge for certain first offenses; expunging of records, New Jersey Permanent Statutes §2C: 36A-1.

[33] Motion for expungement, State of Rhode Island General Laws § 12-1.3-2.

[34] Prior convictions; criminal records; noncriminal standards, Hawaii Revised Statutes § 831-3.1 (a)(b); (4)(c).

> or any of its political subdivisions or agencies, **solely by reason of a prior conviction of a crime.**[35] (Emphasis added.)

Hawaii does require rehabilitation where a prior conviction does relate to requirements or performance of a job. However, it also set the standard for disqualification:

> When such offense directly relates to the applicant's possible performance in the job applied for, or to the employee's possible performance in the job which the employee holds, or to the applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held. After proper investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, may be considered as one of many factors to determine sufficiency of rehabilitation.[36]

Minnesota Statutes offer both opportunities for expungement for criminal records by the court and for pardons by a board of pardons. The expungement statute expressly states that:

> Expungement of a criminal record is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of: (1) sealing the record; and (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order. An expunged record of a conviction may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order.[37]

Likewise, the pardons statute expressly states that:

> Any person, convicted of a crime in any court of this state, who has served the sentence imposed by the court and has been discharged of the sentence either by order of court or by operation

[35] Hawaii Revised Statutes § 831-3.1(a).

[36] Hawaii Revised Statutes 831-3.1 (c).

[37] Petition to expunge criminal records, Minnesota Statutes 2005 § 609A.03. Subdivision 5(a); Subdivision 7(b)(2).

> of law, may petition the board of pardons for the granting of a pardon extraordinary.[38]

And five years after discharge of the sentence, during which time the person has not been convicted of any other crime:

> If the board of pardons determines that the person is of good character and reputation, the board may, in its discretion, grant the person a pardon extraordinary. The pardon extraordinary, when granted, has the effect of setting aside and nullifying the conviction and of purging the person of it, and the person shall never after that be required to disclose the conviction at any time or place other than in a judicial proceeding or as part of the licensing process for peace officers.[39]

A possible difference in the application of the expungement statute and the pardon statute in Minnesota could be the difference between sealing the record as it relates to an expungement, and the setting aside and nullifying the record as it relates to the pardon extraordinary. A Minnesota news article is critical of the Minnesota Court in addressing the attempt of a person to clear his or her name through the use of expungement:

> Spokesman Record – Appeals court makes it harder to clear your name
>
> Having trouble getting a job or renting an apartment because of an old conviction? Thinking about applying for an expungement that will seal your record from background checkers? The Minnesota Court of Appeals, in a March 30 decision, has made that course of action generally worthless. […] An expungement petition to the court can only lead to the sealing of the court record. […] Since most background investigations check BCA and police department records, the fact that a court record has been sealed will have limited impact on employment and housing prospect for many. […] If factors unrelated to criminality lead to a biased rate of convictions for people of color as compared to Whites, the effects of keeping data public becomes an indirect means to encourage long-term housing and employment discrimination based on race.[40]

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[38] Pardons, Minnesota Statutes 2005 § 638.02. Subdivision 2.
[39] Pardons, Minnesota Statutes 2005 § 638.02. Subdivision 2.

[40] Friedman at http://www.spokesman- recorder.com/News/Article/Article.asp?NewsID=42119&sID=13. See Appendix 7.

There is a wide range of eligibility criteria for expungement of criminal history records. And while some states have specifically responded to the collateral sanctions of having criminal records, other states have not. Nevertheless, it is clear from the language of state statutes that have addressed such collateral sanctions that the public use of criminal records does have an impact on individual's employment and other opportunities.

What are collateral sanctions and what impact do they have on rehabilitated and/or harmless persons with criminal records?

> *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted* (US Const., amend VIII).

In a set of distinctions created by constitutional interpretation and court rule, courts have deemed some legal sanctions of conviction to be within the purview of the criminal justice system, while categorizing others as regulatory or civil, and therefore unnecessary to take into account at the time of a guilty plea or at sentencing (Black Letter 444). The American Bar Association Standards for Criminal Justice define a collateral sanction as "any legal penalty, disability, or disadvantage … that is imposed on a person automatically upon that person's conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence" (Mossoney and Roecker 614). A discretionary disqualification is:

> a penalty, disability or disadvantage […] that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense on grounds related to the conviction (614).

Collateral sanctions do not include punishments that occur as part of a criminal conviction (Mossoney and Roecker 614). For example, some convictions require the person convicted to turn over a driver's license immediately to the judge at the sentencing hearing (614). This is not a collateral consequence because it is part of the sentence, not collateral to it (614). Collateral sanctions for many rehabilitated and/or harmless persons convicted of a crime, and

especially those who never serve any prison time, are the most persistent punishments that are inflicted for their crime (Demleitner 154).

Collateral sanctions have been increasing steadily in variety and severity for the past 20 years, and their lingering effects have become increasingly difficult to shake off (Black Letter 441). The dramatic increase in the number of persons convicted and imprisoned means that this half-hidden network of legal barriers affects a growing proportion of the population (441-442). The number and scope of such adverse sanctions tend to be unknown even to participants in the criminal justice system, often because they are scattered throughout different bodies of law (Demleitner 154).

Collateral sanctions may apply for a definite period of time, or indefinitely for the lifetime of a person convicted of a crime (Black Letter 441). And to the extent they occur outside the sentencing process, they may take effect without judicial consideration of their appropriateness in the particular case, without notice at sentencing that the individual's legal status has dramatically changed, and indeed without any requirement that the judge, prosecutor, defense attorney or defendant even be aware that they exist (441).

Not only does a prior record act to "imprison" an individual in a "record prison" within the criminal justice system, because of the widespread dissemination of these records, persons may have difficulty in obtaining insurance, credit or admission to certain schools (Buethe 1092). For example, licensing boards consider a prior record in deciding whether to deny or revoke a license (1092).

Legally imposed restrictions and the social stigma that comes with a criminal record effectively operate to penalize rehabilitated and/or harmless persons convicted of a crime even after they have paid their "debt" to society (Wagner 480). Exclusions from the political, economic and social opportunities of life ultimately undermine the notion that persons with

criminal records can ever be successfully rehabilitated (Demleitner 154). And even after the expiration of their maximum sentences, collateral sanctions still result in exiling rehabilitated and/or harmless persons with criminal records within their own country (154).

Due to what is happening nationally in terms of everyone's concern for homeland security, the issue of indefinite restrictions on rehabilitated and/or harmless persons with criminal records is a struggle for those informed and compassionate advocates that do not support this type of overly broad use of criminal records (Transcript 56). But even with national security concerns, there is still a grave interest by the public and media in the constitutional protections afforded to Americans. When a conviction does occur and the individual has served time and paid a fine, then is it not true that the offender has "paid his debt to society?" (Buethe 1090) As a result of collateral sanctions, and in response to the question of paying ones debt to society, one commentator has observed that though payment is tendered, the individual "neither receives a receipt nor is free of his account" (1090).

At a hearing of testimony before the Employment, Affirmative Action and Training Committee of the Cleveland City Council, on June 21, 2005, among a number of testimonies, two young people told their story about the burdens of trying to overcome having a criminal record. One young man talked about going to school which prompted another hearing participant to state about this young man that:

> He's at Cleveland State University, he's working on a degree and he wants to be a school teacher. Someone should have told this young man at college, he would never be a school teacher in the State of Ohio under existing laws of the State of Ohio. So he's spinning his wheels. For both of these young people who are very bright, one of the things you have to try to do is, like, get in where you fit in. There are some professions that would not keep you barred out because of your background, like drug abuse counselors. There are other professions you need to investigate to further your education in a field that would allow you to move ahead. A woman could try to be a home health care aide, get caught with one marijuana cigarette, 20 years later she's still

> barred from that field, a doctor can get caught using hard drugs that he stole from a hospital, six months later, he's back to being a doctor. So they can find ways around it for certain classes of people. So I think both of you are really bright young people, [but you must] really try to explore [and investigate] the opportunity (Transcript 67-68).

Collateral sanctions may serve an important and legitimate public purpose, such as keeping firearms out of the hands of persons convicted of crimes of violence, protecting children from individuals with histories of abuse, or barring persons convicted of fraud from positions of public trust, but other collateral sanctions are more difficult to justify, when they are applied automatically across the board to a whole category of persons with criminal records (Black Letter 443). Generally, the language of prevention is employed to justify collateral sanctions, but they are not grounded in sound penological theory and cause even non-dangerous and rehabilitated persons with criminal records to feel exiled (Demleitner 154).

Collateral sanctions not only impact the person with the criminal record, they also result in a de facto punishment for their families (Demleitner 153-154). Rehabilitated and/or harmless persons with criminal records are frequently excluded from participation in important aspects of life (153). Moreover, regulatory and administrative decisions are increasingly denying governmental benefits and restricting employment opportunities and participation in governmental programs for persons with criminal records (153). Consequently, the rise in the rate of individuals with criminal records has caused a growing number of persons with criminal records and their families to experience this de facto punishment (153-154).

Additionally, the imposition of collateral sanctions extends beyond fairness to the individuals affected and causes burdens to be placed on the community (Black Letter 443). Laws restricting persons with criminal records in their ordinary life activities have multiplied, discouraging rehabilitation and contributing to the creation of a class of people who live permanently at the margin of the law (443). Ironically, the criminal justice system aims to avoid

recidivism and to promote rehabilitation, yet collateral sanctions and discretionary barriers serve to alienate persons with criminal records from the community and may severely impede the rehabilitated and/or harmless persons' ability for self-support in the legitimate economy (446). This is both a problem of fairness to rehabilitated and/or harmless persons with criminal records and one of public safety and fiscal responsibility as well (446).

Once again, collateral sanctions are all in addition to the punishment that is imposed by the Court. One commenter lamented:

> I mean, you think that you give your pound of flesh with the sentence that you serve, the money that you pay, the probation, and the parole, and it's not over. And that can't be forgotten but there must come a point in time where punishment is finalized (Transcript 42).

As a result of collateral sanctions, rehabilitated and/or harmless persons with criminal records are treated in an exclusionary manner and are becoming the society's outcasts (Demleitner 154).

What support is there for lesser or greater use of criminal history information?

> *Justice should not only be done, but should be seen to be done! Ideally, public trust and confidence in trial courts should stem from the direct experience of citizens with the courts* (Trial Court Performance Standards 212).

As we have seen, collateral sanctions do have a substantial impact on rehabilitated and/or harmless persons with criminal records.

> The most heartrending deprivation of all is the inequality of status that excludes people from full membership in the community, degrading them by labeling them as outsiders, denying them their very selves (Demleitner 153).

Ironically, Americans view individuals' criminal history records as confidential information and favor some restriction in access (Public Attitudes 5). Specifically, where there is some public safety and/or crime prevention interest, a substantial majority of the public supports access to conviction records by various organizations outside the criminal justice

system (5). However, there is a high level of concern about the collection, maintenance and distribution of criminal history records by private companies (5). Sixty-nine percent of respondents identified their worry about criminal history records being handled by commercial organizations, but favor these records being handled only by the government (6).

While approximately 9 out of 10 adults would allow some access to conviction records by potential employers or to government occupational licensing agencies, a majority (11 out of 20) believes that the right of access to conviction records should be linked to whether the position involves sensitive work, such as handling money, dealing with children or serving as security guards (Public Attitudes 5). And most adults (90%) say that they prefer that state agencies do not use the Internet to post criminal history information that is already a matter of public record (5). In many cases:

> In balancing the equities between an individual's interest in privacy and the government's interest in retention [of criminal records], courts can still be sympathetic to the hardships and disabilities attendant to [persons with] a criminal record. Although perhaps not entitled to the weight of fundamental rights, the individual's interest in reputation and privacy can clearly outweigh any governmental interest in retention of the records (Buethe 1108).

Opponents of expungement say that there are alternatives to concealment, that expungement requires history to be rewritten, and that it creates new problems (Buethe 1116). Alternatives include requiring the maintenance of complete and accurate records, making the records more available to insure accuracy, and changing social attitudes through education and supporting legislation (1121).

In Ohio, the spokesperson for the Prosecutors Association during a hearing in October, 2005, told the 11-member committee that Ohio's current expungement law, drafted more than 30 years ago, works just fine and that no tinkering is required (Simakis Absolution 9). Likewise, for a limited number of people, the current law does work just fine:

Judge expunges conviction of top developer

> One of Lorain County's most prolific developers is no longer a felon. A judge agreed Monday to expunge the conviction […] t**he Attorney told Lorain County Common Pleas Judge that the sentence was not the worst toll on his client.** The felony conviction forced his client to resign from many boards, and he found it difficult to deal with banks and government agencies. "It was an isolated incident" the judge told the offender, "the scales tip in the favor of expungement." **A joyful offender hugged supporters and said he was grateful to the judge for restoring his dignity**.[41] (Emphasis added).

And what about the less fortunate individual who is not well off or a prolific developer? Once poor individuals are classified as morally undeserving, they can be viewed more easily as having forfeited the right to receive social assistance (Demleitner 159).

> While the overall concept of such exclusions may be rational and defensible on preventive grounds, individual cases reveal their inequity and over-inclusiveness. When Jane Smith pled guilty to Medicare fraud in 1992, she was sentenced to three years probation. The agency subsequently imposed a ten-year Medicare/Medicaid exclusion. While she did not appeal her sentence, her two co-defendants, the owners of the medical equipment company for which she had worked as a bookkeeper, appealed theirs. The Assistant United States Attorney in charge of the case stated publicly that Ms. Smith was by far the least culpable of the three defendants. Yet, in the end her Medicare/Medicaid exclusion was as long as that of the most culpable member of the group, and twice as long as that of the second most culpable offender.
>
> After her conviction, Ms. Smith stayed home to bring up her children and later to take care of her ailing husband. During that time she developed an interest and skill in nursing, which she decided to turn into a profession. She applied to nursing school in 1995, was accepted, and then realized that upon graduation she would not be able to find work as a nurse because of her still-continuing Medicare/Medicaid exclusion. Even though her only brush with the law had been her fraud conviction, and despite the cooperation of the prosecutor, it was, at this point, legally impossible to decrease or end Ms. Smith's exclusion.

[41] Puente, Mark. "Judge Expunges Conviction of Top Developer." Plain Dealer 13 December 2005: B1. See Appendix 8.

> This case illustrates the way in which collateral sentencing consequences that were designed to prevent further fraudulent conduct may served to punish low-level offenders for long periods of time after their probationary period has expired. "Where such restrictions on the pursuit of a calling are placed on ex-prisoners, the society has reinforced the definition of the prisoner as a non-citizen, almost a pariah" (Demleitner 156-157).

More recent testimony from a private attorney includes:

> I have a case that it's a young African American who is trying to acquire her nursing degree and she had only two misdemeanors, Theft; it was not more than a hundred dollars. And as the law is designed she cannot expunge. […] The lady is over 30 years old and she incurred these crimes when she was in her early 20's. Unfortunately, she can not work as a nurse with those two little misdemeanors. I have to say that the limitation, and the discretion of the Judge, we have to change that. So when we're looking into how we're going to change the law, we have to give the space to the Judge, felony or misdemeanor, that we can take into consideration the intricacies of the crime, and how many years have gone, and how you have changed your life. At this point today, that's not available. So I think [a change in Ohio law] will give a great opportunity to many people and the Judge would then have the ability to place each individual in particular with their own circumstances to apply what would be the best for that individual and for society. Because the purpose of the law is to protect society, but at the same time you are not allowing a person that change their life to live in the society and to be productive and then they are a burden to society. So that's when you have the law that is contradictive as to the outcome that it wanted to achieve when it was drafted (Transcript 52-53).

In Ohio, in response to a recommended change in the expungement law, the Cleveland Plain Dealer reports on the thoughts of Cuyahoga County Prosecutor William Mason:

> Some people get caught up in drugs during a three- or four year period, and then they clean themselves up," Mason says. Offering to seal the records of reformed addicts-"I don't see the harm in that, but violent crimes? I don't think I'd ever go there." What about an older guy who held up a convenience store at 22 and hasn't had a brush with the law since? Should he never have the opportunity to better himself? "I don't know the answer to that one, I really don't," Mason says. "Obviously, you can feel for the man who hasn't committed a crime for 20 years, but do you put the community at risk by hiding it – and that's basically what expungement is, you're hiding it so nobody can see it- or do you

> keep the community aware and protect them? I'm going to fall on the side of protecting them" (Simakis Absolution 9).

A State Representative and others respond that "someone who hasn't broken the law for a decade or more has arguably been reformed and is no longer a threat, so how does keeping that person from finding a good job protect the public?" (Simakis Absolution 9) The spokesperson for the Prosecutors Association adds that the "public right to know outweighs an ex-con's right to work" and those violent crimes are "so serious they should leave a permanent mark" (9).

Although it is possible for violent offenders to be rehabilitated, and reformed persons should be helped by society to rejoin their community, this research does not find that there is any substantial support for expunging the convictions of violent offenders. However, it is important to understand that there is not a violent offender behind every conviction for a violent offence. Prosecutors realize that some people may not actually be as violent as it appears in the original charge. Beneath the theories and public persuasion, prosecutors occasionally enter into plea bargains that recommend no jail time for what seems to be a serious and/or violent offense.

As a former prosecutor, the author knew that what he wanted most was a plea or a conviction to the most serious cases charged in order to leave that permanent mark, and to teach that person a lesson. But in between the witnesses' accusations, the prosecutors' and defense theories, and by the end of the case there is also the judge who most often knows as well as anyone what really happened and what appropriate punishment is deserved. But when the law does not permit sufficient judicial discretion, non-violent and in some cases innocent persons convicted of overcharged violent offenses, are forever treated as violent people. A young lady testifying before the Cleveland City Council gives this example:

> Honestly, when I was in high school, I couldn't define felony for you. I couldn't have told you what a felony was, but I could have said something smart to you and not understood the consequences behind it (Transcript 48). When I was 19 years old, I received a felony because I was with a person who did the crime. At 19 years

> old, I was a graduate of Glenville High School and ignorant to understanding of what a felony was. So when I went to the court for trial and the Judge, the court appointed attorneys informed us that we were facing 21 years in jail, we were afraid, and we did not want to go. […] The end of the trial and the result of it was that we plead down and we plead guilty to Aggravated Burglary, Attempted Aggravated Burglary, and probation one year. Because I was with a person who did the crime, I was convicted as well. Not understanding the law or not understanding what a felony was when I said I'm guilty, I did not know that I was going to be guilty for the rest of my life (43).

Again, as a former prosecutor, the author knows that is it possible for a person caught in a petty theft [42] for a loaf of bread, for example, now fleeing from the store out of fear of being caught can then be charged with robbery [43] and if in the process of fleeing they knock someone over, regardless of the extent of the victim's injury, the accused can then be charged with Aggravated Robbery.[44]

However, justice demands that judicial discretion be involved in convictions, sentencing and in ultimately ending the punishment of just sentences fully served. And as justice requires the application of more judicial discretion, not less, in the sentencing arena, licensing boards should also have discretion as it relates to fitness for service in the particular fields of occupation. In view of the "high degree of professional skill and fidelity to the public that licensed occupations serve," licensing boards must be allowed their own discretion in deciding whether a person with a criminal record has been rehabilitated sufficiently to assume such responsibilities (Wagner 494).

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[42] "No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services […] without the consent of the owner or person authorized to give consent." Theft, Ohio Revised Code §§ 2913.02(A)(1); 2913.02(B)(2) (1st degree misdemeanor).

[43] "No person, in attempting or committing a theft offense or in fleeing immediately after the attempt of offense, shall […] Inflict, attempt to inflict, or threaten to inflict physical harm on another." Robbery, Ohio Revised Code §§ 2911.02(A)(2); 2911.02(B) (3rd degree felony).

[44] "No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall […] Inflict, or attempt to inflict, serious physical harm on another. "Aggravated Robbery, Ohio Revised Code §§ 2911.01(A)(3); 2911.01(C) (1st degree felony).

But it is also important to note that while discretionary disqualifications, as would be permitted by licensing boards outside of the justice system, seem less harmful than mandatory sanctions, too much discretion placed in one official would allow a discretionary disqualification to be transformed into a mandatory sanction, and in this way, rehabilitation rights become even more important as a means of limiting excessive punishment (Mossoney and Roecker 618). As stated by a local employer in the Cleveland area:

> In general, we understand why the [criminal record disqualification] regulations are on the books, and we feel that they help us protect our customers." Says Alan Grodel, Provide A Ride's president and owner. What he and his manager don't quite understand is why people who committed "small petty crime" or broke the law years ago and haven't been in trouble since still don't qualify. "We've looked long and hard at these lists of crimes," says General Manager Tim Lewis, "and we can find no expiration date" (Simakis Absolution 8).

According to Ohio State Representative Shirley Smith, Ohio's current expungement law is "much too harsh" and antiquated, and "there should not be an [expungement] law that has zero tolerance."[45]

How does having a criminal record impact employment opportunities?

2nd chance should be an option

> *Ex-offenders often are doomed to lives of underemployment and an inability to adequately provide for families. Many never get a shot at a real second chance. […]Thousands of Ohioans continue to be punished for crimes committed in the distant past. Those who have truly transformed theirs lives and committed themselves to abide by the law deserve a second chance to be productive citizens. And the option shouldn't be available only to the wealthy or the politically connected"* (Editorial B8)[46]

"In the U.S. society, work constitutes a prerequisite for full membership" (Demleitner 156). Because access to employment generally constitutes a civil right, a host of international

[45] Price, Gilbert. "Cleveland Minister Leads Rally For Expungement Bill." Call and Post. 22 September 2005: 9A. See Appendix 9.

[46] Editorial. "2nd Chance Should Be An Option." Plain Dealer 15 September 2005: B8. See Appendix 10.

treaties guarantee access to work; some even demand a right to work (160). While international law would presumably permit limiting such access under certain conditions, the stigmatization and exclusion of rehabilitated and/or harmless persons with criminal records is not a sufficient justification (Demleitner 160).

The impact of the denial of employment is more dramatic in the daily lives of rehabilitated and/or harmless persons with criminal records, although the removal of civil and political rights is frequently considered the most serious deprivation suffered (157). This is especially true given that our society treats labor force participation as a prerequisite for full membership in the organized society (157).

In most states with expungement laws, the person is entitled to respond to questions as if they do not have a criminal record. In Ohio, the person with an expunged criminal record accepts the position of the law that "the proceedings shall be deemed not to have occurred, but the diligent employer may still learn of prior convictions in other ways" (Wagner 492).

Disclosures of criminal records have an overwhelming impact on one's ability to seek and hold "gainful" employment (Buethe 1092). Most private employers show great hesitation in hiring persons with criminal records (Wagner 491). Some flatly reject them, and most will not hire them if there are other applicants without criminal records (491). In addition, even if the person with a criminal record does find a job, he or she is usually relegated to menial, unskilled labor, and restrictions on public employment may be even greater (491).

An increasing number of mandatory exclusions from the labor force and governmental programs have followed a temporary decrease of some collateral sanctions during the 1960's and early 1970's (Demleitner 153). Because organizations and employers are generally considered responsible for their employees, they must be allowed access to applicants' backgrounds and

have the right to exclude those who present a danger to society as measured by their prior record (161).

The use of background checking is impacted by a number of factors such as improvements in technology, global political developments such as terrorism and societal factors such as an increase in the number of individuals with criminal records (Schramm 27). Human resource professionals will lead the way in shaping both the policies and processes that guide the use of reference and background checking in the recruitment process (27).

In recent years, the number of employment and licensing arrangements that demand the disclosure of a prior criminal record also has increased substantially, and pressure continues to add additional disclosure requirements (Demleitner 156). This means that even more employers mandate the requirement that persons with criminal records reveal their convictions, which usually will result in the denial of jobs to these applicants (156). In Ohio:

> Collateral employment consequences make up 72% of the total number of consequences in Ohio law. Similar to the civil rights category, most of the consequences fall within the mandatory and discretionary sections with no restoration rights. Mandatory sanctions make up 34.4% of the consequences, while discretionary disqualifications comprise 37.5%. Examples of employment rights consequences include the loss of an asbestos hazard abatement license or the inability to apply for state government positions (Mossoney and Roecker 615-616).

According to Schramm, in research by the Society of Human Resource Management (SHRM) on the future use of reference and background checking:

> Changes in the use of reference and background checking may be increasingly driven by developments in technology, and technology is certainly one of the most important factors behind the rapid increase in the use of background checking over the last few years. Less than a decade ago, only 51% of employers conducted background checks. Now 96% of employers use background checks, with nearly as many small-and medium-sized employers utilizing them as large employers (Schramm 26).

> The development of reference and background checking technologies and processes is likely to make it more difficult for some job seekers. Those with criminal records, poor driving records or a history of worker's compensation claims may find it more difficult to hide these issues in their records (Schramm 26).

According to Burke, SHRM in a 2004 study says further that:

> Sixty-eight percent of respondents indicated that they always perform a criminal background check on job applicants. Criminal background checks can uncover useful information such as propensity for violence, but they must be used with care to prevent accusations of adverse action against a protected class. Generally speaking, organizations cannot automatically deny employment to someone just because the individual has a criminal record. Instead, the employer must consider the nature and other specifics of the offense as well as its relevance to the job in question. Additionally, the United States has no central source of information on criminal records, which makes conducting a comprehensive criminal background difficult. Because of legal and ethical concerns, it is wise to consult legal counsel when considering criminal background checks. With proper guidance, however, criminal record checks may be very worthwhile, as more than half of respondents (54%) who conduct criminal background checks indicate that they always or sometimes find inconsistencies between the record and what the applicant reported (Burke 6).

The Ohio Department of Rehabilitation and Correction (ODRC) strives to attain low levels of recidivism by instilling in persons with criminal records "the capacity to become law abiding members of society" (Freisthler and Godsey 532). However:

> Collateral consequences create a public policy that is particularly hard to justify in light of the dueling policies established by ODRC practices. ODRC has created extensive vocational and apprenticeship programs, the appropriateness of which is frequently evaluated, in order to assist prisoners in developing employable skills. We live in a society where "low-skilled jobs continue to disappear and government regulatory mechanisms and professional organizations oversee an ever larger number of professions." Regulation of these professions has traditionally been justified as necessary 'to foster high professional standards,' and have been couched in general terms, such as 'good moral character.' As low-skilled jobs continue to be outsourced and jobs requiring technical and professional skills continue to be regulated, reentering ex-offenders will find themselves in an even more precarious situation: "The exclusion of ex-offenders from vast

> segments of the labor market as a result of governmental regulation of many professions parallels the effect of restrictions on the ex-offender's right to contract in the nineteenth and early twentieth centuries." Even in the case where a prison vocation or apprenticeship program appears to prepare a person to eventually become a licensed professional. Ohio law basically forbids such advancement based on conviction status. To subject rehabilitated ex-offenders to this continued discrimination is not justifiable on any level (Freisthler and Godsey 539).

There are certainly areas where the nature of the job virtually requires exclusion of persons convicted of particular offenses: a former embezzler with a bank; a former sex offender as a teacher; any previous offender as a policeman or in a position involving high national security and defense (Wagner 492). And the Supreme Court has upheld the right of states to establish qualifications for entry into certain employment that have traditionally been justified as necessary "to foster high professional standards," and have been couched in general terms, such as "good moral character" (Demleitner 156).

However, rehabilitated and/or harmless persons with criminal records are also formally excluded from many employment opportunities that require professional licenses, ranging from lawyer to bartender, from nurse to barber, and from plumber to beautician, because professional disqualifications do not depend on the existence of a connection between the prior offense and the employment (156). In addition to being treated as outcasts, such legal deprivation of rights and benefits is particularly demeaning since its effects are often permanent (158).

Frequently, collateral sanctions result in a lifetime of exclusion and the permanence and scope of the exclusion of rehabilitated and/or harmless persons with criminal records from society could make it subject to challenge under the norms of international human rights (158). Study after study has shown that when persons with criminal records can't find jobs and earn a living, some become so desperate and frustrated that they return to a life of crime, which translates into more dangerous streets and more people back in prison (Simakis Absolution 10).

As stated by a person with a criminal record testifying before the Cleveland City Council in June 2005:

> I'm just tired of this devil on my back . . . when you go put in an application, you are darned if you do and darned if you don't. When they ask have you been convicted […] you say no. You work about a month and they pull you in the office and say, well you forfeited [your job], on your application because you didn't tell us the reason (Transcript 23).

In the United States, symbolic as well as practical sanctions excluding rehabilitated and otherwise harmless persons from employment combine to underscore the internal exile of persons with criminal records (Demleitner 157).

Research Methodology

In light of complaints of the people petitioning their judicial system for a change in the eligibility for expungements for rehabilitated and otherwise harmless persons with criminal records, the author desired to survey the opinion of Ohio municipal court judges on the availability and use of expungement. A cover letter and survey,[47] with addressed return envelope were sent to all Ohio municipal court judges during the month of November 2005 seeking the judge's opinion on the following:

- The inherent authority of the courts in the area of expungement
- The frequency of eligible persons seeking expungement
- The ease of lay persons filing for expungement
- The impact of having a criminal record on employment opportunities
- Expanding the eligibility to persons with multiple offences in some cases

In addition to the municipal court judges, a copy of the survey was sent to municipal court administrators and/or administrative staff, providing awareness to the judge's assistant that a reply to this opinion survey has been requested. The judges were requested to respond to the

[47] See Appendix 11.

statements provided in the survey questionnaire with either: (1) Strongly Agree; (2) Agree; (3) Not Sure; (4) Disagree; or (5) Strongly Disagree.

The one page survey with five questions and additional space for comments under each question was pre-tested on the Presiding and Administrative Judge of the Cleveland Municipal Court. The survey was then mailed to 185 Municipal Court Judges with copies to their court administrators. The judges were requested to take just a few moments to complete the survey and place it in their out bound mail on that same day. It was expected that the judge would take that brief time to complete the survey and, in some instances, where the survey was not completed the court administrator may possibly provide an extra reminder to the judge.

One hundred seventy five surveys were completed, by the date of this research, which represents an exceptional return rate of ninety five percent. Only one envelope was returned due to having an undeliverable address. The survey was designed to be anonymous and to elicit honest feelings and comments without concern of associating specific opinions with any particular court. On the returned surveys, a total of 211 comments were made on one or more of the five survey questions. This represents a comment rate of 25% on the total number of questions. The author was very pleased and encouraged by the quick response of the judges, by the total number of returned surveys, and by the willingness of the judges to make comments on the survey.

For data review regarding how frequently first offenders, in the Cleveland Municipal Court, were timely seeking to have their cases expunged, the author obtained computer print outs from the years 2001 and 2002 which data was analyzed to determine the number of cases expunged versus the number of cases closed.

Findings of Ohio Municipal Judges Opinion Survey Questionnaire on Misdemeanor Expungements

First, the author desired to begin with the general thought about the inherent authority of the courts to correct perceived injustice. The author knows that the eligibility and granting of expungement is a statutory matter in which the judges have limited discretion. However, the author was surprised by the U.S. Supreme Court in January of 2005, when the Court found that the federal sentencing guidelines, which also permitted judges very little discretion, were advisory rather than mandatory.[48] While the author does not explain fully the proper context of the Booker holding, the author merely states that the judges were able to determine the appropriate method to follow the spirit of the law as set by the legislature. In relation to the granting of expungements, there has to be some discussion on the appropriateness of limiting rehabilitated and/or harmless persons from being indefinitely punished with collateral sanctions, based solely on their having a criminal record. The first survey question /statement and results were as follows:

Table 1: Courts have inherent authority to expunge criminal records of persons who have been convicted of an offense under certain circumstances				
(1) Strongly Agree	**(2) Agree**	**(3) Not Sure**	**(4) Disagree**	**(5) Strongly Disagree**
55 [32%]	**29 [17%]**	**14 [8%]**	**43 [25%]**	**30 [18%]**

In response, the judges were pretty evenly split on the general statement that courts have inherent authority to expunge criminal records under certain circumstances. Of 171 respondents, 49% either agree or strongly agree that courts have the inherent authority to expunge criminal records. Forty-three percent of respondents either disagree or strongly disagree with the statement that courts' have inherent authority to expunge. Eight percent were not sure. Of those

[48] U.S. v. Booker, 543 U.S. 220, 128 S.Ct. 738 (2005).

who responded to the statement, 57 made written comments[49] of which 44 made reference to the requirement of "statutory" authority for the courts to expunge. Specifically, the comments largely stated that statutory authority is required because Municipal Courts are statutory courts with limited powers.

Second, the author desired to determine whether most judges thought that eligible persons with a first offense were attempting to expunge their offense in a timely manner, within one year of their reaching eligibility. The second survey question/statement and results were as follows:

Table 2: Under the current law, most first offenders petition the sentencing court to expunge their conviction record within the year following their reaching eligibility (i.e. within two years from final discharge).

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
7 [4%]	38 [22%]	24 [14%]	77 [44%]	27 [16%]

In response, the experience of municipal court judges is that most persons do not expunge their eligible first offense within one year of eligibility or within two years of their final discharge. Of 173 respondents, 60% either disagree or strongly disagree with the statement that most first offenders (those that qualify under the current expungement laws) actually petition the court to expunge their conviction record within one year following their reaching eligibility to do so. Twenty-six percent either agree or strongly agree with the statement, and fourteen percent are not sure. Of those who responded to the survey, 46 provided written comments[50] on this statement. Most of the written comments (approximately 65%) state that most eligible persons do not petition the court; if they petition it is usually several years later; and when they petition the court it's usually because the person with the criminal record is seeking employment opportunities including promotions. Twenty percent of the comments state that most eligible

[49] See Appendix 12.

[50] See Appendix 13.

persons never petition for expungement. Several comments stated that the reason that most do not petition is because of not being aware of their rights; not being aware of the process; or their thinking that an attorney is needed. These comments are consistent with the finding in the next section of this research related to the number of eligible first offenders in the Cleveland Municipal Court that do not seek to expunge their criminal record. And although these eligible persons may not realize how important it is to expunge these records while they remain eligible, if they were to hear the pains suffered by those ineligible to expunge, these first offenders may just make more of an effort to expunge these records while they can. There was one jurisdiction that has "a first offender program where expungement occurs automatically," and there was one jurisdiction which acknowledged that there are not many petitions compared to convictions.

Third, the author desired to know the opinion of the judges as to whether they thought that the process required to expunge was an easy process. The third survey question/statement and results were as follows:

Table 3: The filing of a petition and a $50.00 filing fee is an easy and simple process for the average eligible citizen to obtain an expungement.

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
52 [30%]	**82 [47%]**	**11 [6%]**	**22 [13%]**	**6 [3%]**

In response, an overwhelming majority of municipal judges say that the filing of a petition and a $50.00 filing fee is an easy and simple process to obtain an expungement. Of 173 respondents, 78% either agree or strongly agree with that statement. Sixteen percent either disagree or strongly disagree that the process is easy and simple, and six percent are not sure. Of the respondents to the statement, 33 provided written comments.[51] Several commented that "many are not aware of the process" and that "many poor defendants cannot afford the fee." Several courts reported that they have provided a standard form to be completed by the

[51] See Appendix 14.

petitioner, and several stated that assistance is needed and that to successfully complete this process, an attorney is advised.

Fourth, the author desired to know the judge's thoughts on whether having a criminal conviction affects the person's ability to get or keep a job. The fourth survey question/statement and results were as follows:

Table 4: One common collateral sanction of a criminal conviction is impairment of the convicted person's ability to keep and/or to obtain gainful employment.

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
49 [28%]	**86 [49%]**	**17 [10%]**	**16 [9%]**	**6 [3%]**

In response, another overwhelming majority of municipal court judges say that one common collateral sanction of a criminal conviction is impairment of the person's ability to keep or to obtain gainful employment. Of 174 respondents, 78% either agree or strongly agree with this statement. Twelve percent either disagree or strongly disagree, and ten percent are not sure. Of the respondents to the statement, 28 provided written comments.[52] The written comments were evenly split between belief that "without question" persons with criminal records are "clearly" impaired to; that it "depends on" "the nature of the criminal offense;" "on the person;" or "in some circumstances yes, some no." Specifically, one judge makes the statement that it is:

> "Particularly true today because manufacturing jobs are diminishing, or non-existent. Services jobs, i.e. ones that require interaction with the public, are primary jobs available. No employer is willing to risk having a person with a record. Market conditions don't require them to hire such persons."

Another judge wrote that "this problem is creating a large urban population ineligible to maintain current job or obtain one. Thus poverty has increased." And in relation to losing control of the use of records, another judge states "but now, with proprietary databases – expungement is nearly a moot point."

[52] See Appendix 15.

And fifth, the author desired to know the judge's thoughts on whether there should be some relief from collateral sanctions for the rehabilitated person, even with multiple convictions, after a period of time. The fifth survey question/statement and results were as follows:

Table 5: Certain convicted persons even with multiple convictions, once their sentence is served, the person is rehabilitated, and after a minimal time of good conduct, should have some opportunity to be relieved of the stigma and collateral sanctions of being a convicted criminal.

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
28 [16%]	**58 [34%]**	**23 [14%]**	**42 [25%]**	**18 [11%]**

In response, only a slim majority of municipal court judges state that certain rehabilitated persons with multiple convictions should have some opportunity to be relieved of the stigma and collateral sanctions of their criminal record. Of 169 respondents, 51% either agree or strongly agree that rehabilitated persons with multiple convictions should have the opportunity to be relieved of the collateral sanction. Thirty five percent either disagree or strongly disagree with the relief from having a criminal record, and fourteen percent are not sure. Of the respondents, 47 provided written comments.[53] Many of the written comments say that "it depends on the type of convictions," "the number of multiple convictions," and the "time period" or "length of time the individual has been free from criminal involvement." There was sentiment that "some crimes should not be expunged;" that "expungement should never be available to multiple/repeat offenders;" and the feeling that "a person with multiple offenses causes great concern." There were several other statements saying that the problem is "how can the court determine who those (rehabilitated) persons are. It will end up being a person who can afford a lawyer." And that "this is a complicated area that should not be dealt with lightly." However, there were also statements that "certain individuals can be found to be rehabilitated after multiple convictions,"

[53] See Appendix 16.

and "especially compelling are the cases where someone has a long period (e.g. 20 years) between convictions."

Findings of the Frequency of First Offenders obtaining an expungement that are placed in the Cleveland Municipal Court's Selective Intervention Program (SIP)

Given the great amount of interest of expungement by those who are often ineligible for that relief, the author desired to know how frequently persons who are eligible actually get their records expunged within one year of becoming eligible. There is a designated case load in the Cleveland Municipal Court with persons who are classified as first time offenders called the Selective Intervention Program (SIP).

To get the most recent class of cases available for testing, the author obtained a computer listing of all first time offender cases that were closed during the years 2001 and 2002. At the time of this research, the latest completed year of available statistics is 2004. Cases closed in the year 2002 would be eligible to file for expungement after the expiration of one year, which would be waiting through the year 2003 and filing some time in 2004. Next, the author wanted to give at least a year of time after becoming eligible to see if persons who have completed their SIP did expunge their case within a year of becoming eligible. In fact, only the latest cases closed in 2002 would have to wait into 2004 to become eligible to expunge. Most cases closed throughout the year of 2002 would actually become eligible throughout 2003. Therefore, at the time of this research, in November of 2005, in many cases persons who had their records expunged, or who had not had their records expunged, had up to as much as two years since their cases where closed early on and throughout the year of 2002. And to complete two years of study, the author also reviewed SIP cases closed in the year 2001, to determine how many of those cases had been expunged after eligibility and by the date of this research.

The findings of the frequency of persons with first offenses who were placed in the Cleveland Municipal Court's SIP program obtaining an expungement are as follows:

Table 6: Findings of the Frequency of First Offenders obtaining an expungement that are placed in the Cleveland Municipal Court's Selective Intervention Program (SIP)		
	2001	2002
SIP Closed Cases (Total Jan. 1 – Dec. 31)	1002	919
Expunged SIP Cases (As of November 14, 2005)	34 [3%]	28 [3%]

The findings on the frequency of first offender (SIP) cases being expunged in the Cleveland Municipal Court for cases closed in both years 2001 and 2002 was a surprisingly low three percent. Therefore, of SIP cases (first offenders most eligible for expungement) who were eligible to expunge their case beginning in 2003, if not before, because their case was closed sometime during the year 2001, only three percent of those cases had been expunged by November of 2005. Likewise, SIP cases eligible to expunge their case beginning in 2004, if not before, because their case was closed sometime during the year 2002, again only three percent of those cases had been expunged by November 2005, the closing date of this research[54].

This finding is somewhat consistent with the majority opinion of the Ohio judges[55] who felt that most eligible persons did not seek to expunge their case(s) when they became eligible. Although there does not appear to be any universal answer as to why persons do not take advantage of this opportunity, it is most likely a combination of the individual's ignorance of the law, process, and/or the need to get their record expunged.[56] It does not help that, in general, there could be indifference on the part of the judicial system which is not concerned with the convicted person who has completed their sentence unless and/or until that person appears before

[54] The author is not aware of whether persons were not eligible to expunge do to more than one conviction on their record.

[55] See Table 2, page 41.

[56] See Appendix 13.

the court again. And while it may not seem fair to label the judicial system as "indifferent" to these persons, it is the judicial system that knows as much as it is possible to know about the nature of activity the person engaged in; the extent of punishment warranted by the actions of that person under the applicable law; and some measure of rehabilitation and level of threat associated with this person based upon their compliance with appropriate conditions of probation and/or parole, and ultimate release. Even so, it is evident that the Court has sent and will continue to send back into the community rehabilitated and otherwise harmless persons with a conviction status who will likely suffer indefinite prejudice and discriminatory punishment by employers and society at large through the use of collateral sanctions. And while this unmerited treatment seems irrational compared to the actual threat level of the rehabilitated and harmless person, it is their conviction status that will unfairly punish them for the rest of their life. In the spirit of justice, the Cleveland Municipal Court and the judicial system in general, should do a better job of availing rehabilitated and otherwise harmless persons a better opportunity to clear their records.

An analysis of Ohio General Assembly H.B. Number 317

> *The problems inherent in the vast dissemination of criminal records cannot be ignored. The overwhelming impact these records have on prospects of employment and schooling as well as the use to which they are put by law enforcement agencies demonstrates the need for some sort of protection of the individual against abuse and misuse. Because the equitable expungement relief by the courts has been scarce, it is to state legislatures that individuals look for relief* (Buethe 1121).

In England, records of misdemeanor arrests will be kept for seven years after the arrest if there is a conviction and five years where there is no conviction, and by the end of the latter period, a misdemeanor-type conviction would have been deemed to have never occurred (Davis

868). In Ohio, records of misdemeanor convictions will be kept for a minimum of 50 years,[57] and if you have more than one conviction, you are not eligible to have those records sealed.

As stated earlier in this research, The National Restoration Movement's collaborative effort with the courts, criminal justice agencies and the religious community to educate the public on expungements culminated with proposed changes to the current Ohio expungement law. According to the Movement, House Bill 317 as introduced by the 126th Ohio General Assembly includes the following highlights:[58]

1. Prior to accepting a plea of guilty or a plea of no contest, the court shall inform the defendant of the circumstances under which official records may be sealed.
2. If a court denies an application for sealing of records, the applicant may file a new application at any time after one year from the date of the denial.
3. Persons convicted of multiple misdemeanor offenses may apply to each court for the sealing of records after seven years of clear conduct.
4. Persons convicted of multiple felony offenses (offenses cannot include murder, sex crimes or kidnapping) may apply to each court for the sealing of records after seven years of clear conduct.
5. Persons convicted of a driving under the influence (dui) may apply for sealing of records after five years of clear conduct from the last conviction.
6. Within thirty days after the entry of an order sealing officials records any private individual, business organization, or other non-governmental entity shall delete the information from their records or destroy the records, releasing sealed records shall result in a two hundred fifty thousand dollar fine.
7. Any private individual, business organization, or other non-governmental entity knowingly release or otherwise disseminate or make available official records that have been ordered sealed shall be fined five hundred thousand dollars.
8. Any private individual, business organization, or other non-governmental entity knowingly release or otherwise disseminating or making available sealed information over the internet shall be fined one million dollars.

[57] "[F]irst through fourth degree misdemeanor […] criminal case files shall be retained for fifty years after the date of the final order of the municipal or county court or one year after the issuance of an audit report by the Auditor of State, whichever is later." Rules of Superintendence for the Courts of Ohio § 26.05(G)(3).

[58] See Appendix 17.

In addition to the above highlights, a Bill Analysis prepared by the Legislative Service Commission, of House Bill 317 provides a more detail analysis from the legislator's perspective.[59] Nevertheless, the obvious intent of House Bill 317 is to benefit rehabilitated and otherwise harmless persons by permitting the court where appropriate to grant expungements to said persons after a minimum of seven years, even if they have more than one offense. Additionally, the Defendant prior to entering a plea would be informed regarding the opportunity and eligibility of having a criminal record sealed. And once sealed, individuals, businesses, and nongovernmental entities would become liable for substantial penalties when they knowingly release sealed information. These are significant improvements in the current Ohio law, if passed.

However, one significant addition to this Bill, and to all state laws with or without expungement opportunities, would be the statement of law as practiced in Hawaii. As stated earlier in this research, Hawaii goes one step further and states that a person shall not be disqualified from certain public office, employment, licenses, or business "solely by reason of a prior conviction of a crime."[60] This addition would be significant in that improvement in the area includes both increasing the opportunity for expungement eligibility for those who are rehabilitated and otherwise harmless persons with criminal records, as well as reducing the practice of unwarranted discrimination by employers and the community against those who are rehabilitated and otherwise harmless, where the criminal record does not bear on the job or license being sought.

[59] http://www.legislature.state.oh.us/analysis.cfm?I...CT=As%20Introduced&hf=analyses126/h0317-i-126.htm.

[60] Hawaii Revised Statutes 831-3.1(a).

Recommendations for improving justice for rehabilitated and/or harmless persons with a criminal record

> *Ex-offenders shouldn't be banned forever from bettering themselves, say judges and others who study ways to reduce recidivism –the imprisonment of former inmates. After a certain period of time, their rights should be restored* (Simakis Absolution 8). *We wanted to bring the awareness to the communities, the number of persons who need to be considered for expungement and that generated the fact that we need to expand the law and build on what is currently there* (Transcript 16).

According to criminal law expert and Case Western Reserve University law professor Lewis Katz, collateral sanctions are often counterproductive (Simakis Absolution 10). Professor Katz says that most people who commit crimes do so between the ages of 14 and 25, and that eventually, many outgrow their illegal ways (10). "A lot of criminals decide 'I'm too old for this – I gotta lead a different life,'" says Katz (10). But "by keeping that person from getting any constructive employment, we are possibly pushing them back into criminal life" (10).

The re-establishment of civil and political rights, pardons and expungement are back- rather than front-end measures (Demleitner 162). They attempt to repair the reputation and rights taken by the negative impact of collateral sanctions after sentencing, when it would be more effective if the courts were to consider the value and necessity of collateral sanctions in each individual case prior to their imposition (162).

Generally, collateral sanctions should be short-lived and, if based on preventive grounds, they should be subject to examination at certain, regular intervals after release (161). While the effect of such measures would be critical, the course by which a person with a criminal conviction is welcomed back into the larger community may also be of significance (162). Like many applicants for citizenship who prefer the official swearing-in ceremony conducted by a federal judge over the faster but less formal administrative naturalization process, rehabilitated and otherwise harmless persons with criminal records should have access to a formal procedure

marking their official reintegration into the community and the end of their exclusion and degradation (162).

Some form of relief from collateral sanctions is necessary. This research is partly a response to the weary question of a young person who appeared to be a rehabilitated and harmless person with a criminal record (a felony drug conviction and a separate misdemeanor within two years) and the compassionate response of his local city council representative:

> Q. I'm tired of this devil on my back. You mean, I have to carry this all the way to my graveyard? (Transcript 25)
> A. There are some mistakes that we make in life we have to live with all of our lives. We have to pray and hope somewhere down the line there would come some kind of situation that would help us through that. And waiting is the hard part about getting anything done. (24)

His question is to the judicial system. If this person is not in fact a career criminal, how long should we justly treat him as such? The conventional sentiment here is that if we continue to treat rehabilitated and otherwise harmless persons the same as career criminals, chances are more likely that we will create a self fulfilling prophecy.

The current lack of a rational structure for collateral sanctions leads to disproportionate, illogical, and unjust results by punishing too broadly (Demleitner 160). It's a very black-and-white procedure the way expungement law is set up right now, it gives judges little to no discretion to make compassionate decisions, and just as all persons convicted of a crime are not created equal, under the current law, there is no room for a careful case-by-case analysis and weighing of the evidence as it relates to the application of collateral sanctions (154).

Therefore, it makes sense to review the quality and quantity of collateral sentencing sanctions (154):

> An alarming gap in services exists for the large population of people involved with the criminal justice system. This gap primarily manifests itself in three ways. First, many clients simply

> cannot obtain necessary services, particularly legal services, to cope with hidden civil consequences. Second, the existing services are fragmented and marked by a lack of coordination and communication. Finally, when clients are able to access services, the providers are often uninformed about the wide-ranging consequences of criminal proceedings, particularly those outside the provider's narrow practice areas (Smyth 486).

Legal penalties and disabilities resulting directly and immediately from the fact of conviction are in every meaningful sense "sanctions" that should be accounted for openly in the circumstance of the sentencing process, and imposed only when the conduct underlying the particular offense warrants it (Black Letter 445). The judge, prosecutor, defense counsel, the defendant and all in the process should be aware of these collateral sanctions and the court, or an administrative body, should be empowered to waive or modify them in appropriate cases (445). To successfully prevent crime, employment restrictions should be tied to the nature of the occupation or activities involved and require a close correlation between the employment and the conviction (Demleitner 161). And the proper standard for testing whether the criminal conduct disqualifies a person because it is alleged to relate directly to the applicant's possible performance in the job, is the one specified in the Hawaii statutes which includes proper investigation, notification of results and planned action, and an opportunity to meet and rebut the finding.[61]

The deficiency of protective legislation against misuse of criminal history information contributes to the burden on the rehabilitated and otherwise harmless person with a criminal record (Buethe 1112). Most adults, or approximately 85%, feel that profit-making companies maintaining and distributing criminal history records should follow the same rules and

[61] See also footnote 17, Impeachment by Evidence of Conviction of Crime. Ohio Rules of Evidence 609(B).

procedures regarding fair information practices as do government criminal history agencies (Public Attitudes 6).

To accomplish the goal of condemnation, the imposition of collateral sanctions must be public and should be part of the sentencing process (Demleitner 162). If there are privacy interests to be protected during judicial proceedings, the States must take action by means which would avoid public documentation or other disclosure of private information, and their political institutions must weigh the interests of the public's right to know and of the press to publish (Buethe 1120). Even though limited, there is some evidence that collateral sanctions are designed to act retributively and to give the offender her "just deserts" (Demleitner 160):

> If that is the case, collateral sentencing consequences should be clearly designated as part of the sentence at the time punishment is imposed and explicitly considered part of the penalty. To be proportionate, which is a hallmark of retributive sentencing; they must also be calibrated specifically to the offense and the offender's background (160).

Integrating collateral sanctions into sentencing would also allow the court to factor them into the overall sentence rather than having the offender see them as a separate and additional punishment (162). Public awareness of the existence and impact of such sanctions would grow, and apparent injustices might be more easily scrutinized (162):

> Collateral consequences should generally be imposed only if necessary, based on preventive and, to a lesser extent, retributive and denunciatory grounds. Sweeping, automatically imposed restrictions, which are reminiscent of mandatory sentences, should be abolished since they are unnecessarily punitive. Sentencing courts should announce all collateral consequences publicly and factor them into the overall sentence. Those collateral consequences that are retained should be based on guidelines constructed primarily on preventive grounds. New legislation imposing collateral consequences should include sunset provisions so as to force lawmakers to assess their efficacy.

The criminal justice system must also concern itself with unfair discrimination against rehabilitated and/or harmless persons with criminal records (Black Letter 445):

> Discretionary disqualification" from benefits or opportunities on grounds related to conviction, while not [officially] a "sanction" that must be considered at sentencing, may just as surely prevent or discourage convicted persons from successfully reentering the free community, and impose on the community the costs of their recidivism. Therefore, these [ABA] Standards prohibit discretionary administrative or judicial disqualification of a convicted person from eligibility for a benefit or opportunity on grounds related to the conviction, unless there is a substantial relationship between the person's offense conduct and the specific duties and responsibilities of the particular benefit or opportunity involved (445).

In these cases where the conviction does not bear a direct relationship to a specific job, the legislature and the courts should specify an ending or expiration date on collateral sanctions just as it imposes with the requirement of being on probation to the court. If sanctions can be imposed automatically, they can be removed automatically. Likewise, expungements after long periods of time for minor offenses should be automatically purged. To prevent injustice, collateral sanctions should be individualized and become more discretionary with the court (Demleitner 161). To facilitate the decision-making process within judicial discretion, a flexible guideline system should be designed for collateral sanctions, which rather than being grounded in retribution, it should endeavor to mainly prevent future crimes (161). Moreover, penalties and disadvantages triggered solely by a criminal conviction should be part of the criminal justice process and not solely civil, administrative or regulatory (Black Letter 445).

The American Bar Association (ABA) has established some Criminal Justice Standards on Sentencing which include the nature and impact of collateral sanctions on a criminal sentence.[62] The ABA recommends a standard for imposing collateral sanctions on a person convicted of a crime that is the same standard that would be applied to a person of the same

[62] See Appendix 18.

conduct, but who does not have a criminal conviction record. Specifically, the objectives of the ABA standards include:

> Standard 19-1.2 Objectives
>
> (a) With respect to collateral sanctions, the objectives of this chapter are to:
>
> (i) limit collateral sanctions imposed upon conviction to those that are specifically warranted by the conduct constituting a particular offense;
> (ii) prohibit certain collateral sanctions that, without justification, infringe on fundamental rights, or frustrate a convicted person's chances of successfully reentering society;
> (iii) provide the means by which information concerning the collateral sanctions that are applicable to a particular offense is readily available;
> (iv) require that the defendant is fully informed, before pleading guilty and at sentencing, of the collateral sanctions applicable to the offense(s) charged;
> (v) include collateral sanctions as a factor in determining the appropriate sentence; and
> (vi) provide a judicial or administrative mechanism for obtaining relief from collateral sanctions.

Additional standards include recommending that the legislature identify all collateral sanctions by name, type, severity, and duration in a single section in the criminal code;[63] that the court notifies a defendant before accepting a plea of guilty that the defendant has been informed by the court or his or her attorney of collateral sanctions applicable to the offense(s) of conviction;[64] that the legislature should not impose collateral sanctions unless there's a substantial basis for imposing such;[65] that the legislature should prohibit discretionary disqualification of a convicted person from benefits or opportunities, including housing, employment, insurance, and occupational and professional licenses, permits and certifications,

[63] See Appendix 18. Codification of collateral sanctions § 19-2.1.

[64] See Appendix 18. Notification of collateral sanctions before plea of guilty § 19-2.3.

[65] See Appendix 18. Limitation on collateral sanctions § 19-2.2.

on grounds related to the conviction;[66] that the legislature authorize the court to consider applicable collateral sanctions in determining overall sentence;[67] that legislative and executive bodies should encourage the employment of persons with criminal records through financial and other incentives;[68] and that the legislature should authorize the court and/or an administrative body to waive, modify, or grant timely and effective relief from any collateral sanctions imposed.[69]

Of course some will agree and/or disagree with the standards recommended by the ABA. However, the standards are credible given the fact that the ABA represents the collective professionalism of attorneys and judges on a national level. In an effort to have these recommendations debated, understood and ultimately implemented in whole or in applicable parts, there needs to be a campaign of awareness and education of federal, state, and local legislatures, executives, judges, and employers.

Where Cleveland has already initiated a campaign of public awareness on the issue of expungements, whose result is currently pending before the Ohio legislature in House Bill 317, there needs to be a continuation of the educational effort with all levels of government and business. The appropriate entities to champion this education and legal reform are the bar associations, as evidenced by the ABA, because these are the professional association of attorney's that represent the interest of rehabilitated and harmless people that are most directly impacted by the excessive punishment of collateral sanctions. However, the judicial system, including judges and court management, must also take some responsibility for acting on these kinds of recommendations. After all, having heard both sides of a case, it is the judicial system,

[66] See Appendix 18. Prohibited discretionary disqualification § 19 – 3.1.

[67] See Appendix 18. Consideration of collateral sanctions at sentencing § 19 – 2.4.

[68] See Appendix 18. Unreasonable discrimination § 19 – 3.3.

[69] See Appendix 18. Waiver, modification, relief § 19 – 2.5

and in particular the trial judge, that most often knows as well as anyone, base upon findings of fact and conclusions of law, of how long and how hard a person deserves to be punished as a result of a conviction on the law and facts before the sentencing court.

Conclusion

> *Law and order exist for the purpose of establishing justice and.[…] when they fail in this purpose they become the dangerously structured dams that block the flow of social progress* (Dr. Martin Luther King, Jr.).

An expansion of eligibility criteria for expungements is needed, as well as, some established limits on the extent of collateral sanctions that are being placed on persons convicted of misdemeanor crimes. This opinion is the result of a combination of direct observation of people seeking judicial relief from collateral sanctions; a literature review of the cause and effect of collateral sanctions; a direct study of the opinions of Ohio municipal judges; and of expungements granted in the SIP first offenders program for Cleveland Municipal Court.

Specifically, this research explored: (1) The voices of the rehabilitated and otherwise harmless persons who desire to petition the Court for relief from the excessive prejudice of having a criminal record; (2) How do some of us get into the circumstance of having a criminal record; (3) Why it is important to discuss the effect of collateral sanctions for having a criminal conviction and the use of expungement; (4) What expungement is and what purpose it serves; (5) How difficult it is to obtain an expungement; (6) What collateral sanctions are and what impact they have on rehabilitated and harmless persons with criminal records; (7) What support there is for lesser or greater use of criminal history information; (8) How having a criminal record impacts employment opportunities; (9) Research Methodology; (10) Findings of an Ohio Municipal Judges Opinion Survey Questionnaire on Misdemeanor Expungements; (11) Findings of the frequency of persons with first offenses obtaining an expungement that are placed in the Cleveland Municipal Court's Selective Intervention Program (SIP); (12) An analysis of Ohio

General Assembly H.B. Number 317 proposing to expand the eligibility of expungement for persons with multiple convictions under certain circumstances in the state of Ohio; and (13) Recommendations for improving justice for rehabilitated and harmless persons with a criminal record, including ABA Criminal Justice Standards on Sentencing that discuss and propose limitations on the use of collateral sanctions.

The findings on the judge's opinion survey were that: (1) courts were pretty evenly split on the general statement that courts have inherent authority to expunge criminal records, under certain circumstances; (2) the experience of the responding judges is that most persons do not expunge their eligible first offense within one year of eligibility and/or within two years of their final discharge; (3) an overwhelming majority of responding judges say that the filing of a petition and a $50.00 filing fee is an easy and simple process to obtain an expungement; (4) another overwhelming majority of responding judges say that one common collateral sanction of a criminal conviction is impairment of the person's ability to keep or to obtain gainful employment; and (5) only a slim majority of responding judges agree with the statement that certain rehabilitated persons with multiple convictions should have some opportunity to be relieved of the stigma and the collateral sanctions of having a criminal record. The findings on the frequency of first offender (SIP) cases being expunged in the Cleveland Municipal Court for cases closed in both years 2001 and 2002 was a surprisingly low three percent (3%).

The author recommends the Cleveland Municipal Court initiate measures to increase the rate of expungements for eligible rehabilitated and/or harmless persons with their first offense. During the time of this research the judges of Cleveland Municipal Court have adopted a practice of notifying the person before accepting a plea of their right to seal a first offense when eligible. Additionally, within a reasonable time of the date or just after the date of becoming eligible, the court could send one additional notice to notify persons of their option to expunge. More

extensively, the author recommends that the judicial branch, at its highest levels, seek statutory authority to expand the discretion of trial judges to grant expungement where justice requires, including the use of automatic expungement in minor offenses after a sufficient number of years of good conduct. Specifically, the sentencing judges should have discretion when in the judges opinion of the relevant information: (1) it is deserved under the facts of the case; (2) the demonstrated rehabilitation and/or law abiding practice of the person since conviction; and (3) there is no clear and present harm to the public, or any compelling interest of the public not to expunge.

This is an important issue for the judicial system to investigate and review, and that judges should be able to respond to the judicial relief sought by the rehabilitated and harmless persons with a criminal record. It's common knowledge that people do get rehabilitated. Moreover, in this research, Ohio judges acknowledged that a persons employment prospects are negatively impacted by having a criminal record. In addition, Ohio judges acknowledged that their experience is that persons do not timely expunge their eligible first offense, which opinion was substantiated by the fact that only three percent of cases in the Cleveland Municipal Court's first offenders program had expunged their cases within two years of their case closing. Clearly more public and justice system education is needed.

In addition to more education being needed on all levels, it is also important that the judicial system take affirmative steps to reduce the ill effects of collateral sanctions on individuals and families of rehabilitated and otherwise harmless persons with criminal records. In the interest of justice, this course of action is necessary to prevent said collateral sanctions from continuing to develop into dangerous roadblocks for the social progress of the effected individuals, the judicial system, and the society at large.

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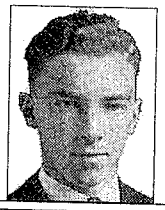
APPENDIX

SUNDAY, AUGUST 14, 2005 | SECTION B *°

METRO

THE PLAIN DEALER



A LIFE STORY

Mel Henry of Chagrin Falls sold old homes and loved good songs. **B4**

Hundreds in church look to void past crimes

Told to support legislation that gives second chance

ANDREA SIMAKIS
Plain Dealer Reporter

The Rev. Mark C. Olds stood at the pulpit Saturday and looked at the 800 people staring expectantly from the plush lavender pews.

They had streamed into the Cathedral Church of God in Christ on Cleveland's East Side pushing baby carriages and carrying sleeping children in their arms. Some were dressed in their Sunday finest, arriving with their hair done and nails polished. Others sported flip-flops, bandanas and tattoos.

But in one way, they were very much alike: All had criminal records, or loved someone who did. They wanted to know how they could apply for good jobs or qualify for student loans without their felonies popping up during routine background checks. How could they earn a decent living or go to school?

They had come for quick salvation, for Olds to tell them what they wanted to hear. Instead, he told them the truth.

"You didn't get into this mess in a day," he said, his North Carolina lilt bouncing off the vaulted ceiling. "You're not going to get out of it in a day either."

Ohio law prevents most residents with more than one conviction — whether they are felonies or misdemeanors — from having their criminal records sealed by the court, even if they have been model citizens for years.

SEE RECORDS | B7

EUSTACIO HUMPHREY | THE PLAIN DEALER

Joseph T. Smith Jr., 57, listens as Cleveland Municipal Judge Joan Synenberg and City Council President Frank Jackson review his case during a forum on the sealing of criminal records Saturday at the Cathedral Church of God in Christ.

RECORDS

FROM B1

Hundreds look to void past crimes

Olds is trying to build support for legislation, conceived by him and sponsored by State Rep. Shirley Smith, a Cleveland Democrat, that would allow people with several convictions who have stayed out of trouble for seven years to ask that their criminal records be sealed, or expunged.

Once their convictions are expunged, prospective employers won't be able to learn about their records. Any agency that broadcasts the information would face fines of up to $1 million. Only police and government agencies can access a sealed criminal file.

"You could almost describe it as a jobs bill," said lawyer David Dawson, deputy director of the Legal Aid Society of Cleveland, who was there to answer questions from the throng.

The legislation was written in June after a slew of forums just like Saturday's, with hours spent listening to stories of men and women in search of a second chance.

"Today, some of you will learn that you are ineligible for expungement," Olds said. Groans erupted from the crowd, bodies shifted, some headed for the door.

"I do not want you to leave," Olds called out. "I do not want you to be discouraged! Stay with us, work with us because we are working to change the law — somebody oughta shout hallelujah! Clap you hands! Get excited!"

"Amen!" someone yelled and a wave of applause drowned out the clatter of exiting feet.

A man in a black T-shirt and long denim shorts jumped up. "You're not doing any good for us!" he shouted. "Everybody is getting up and leaving! Everybody here needs food, water and shelter!"

Olds tried to calm him, but the man wouldn't listen and started swearing, loud and long.

"You can excuse yourself sir. This is a house of God," Olds said quietly.

He understood the man's frustration. A reformed sinner himself, Mark Olds was riding a bus 16 years ago to a halfway house with $100 in his pocket, no job prospects and a rap sheet that included armed robbery and manslaughter.

Unfazed by the outburst, the pastor moved along. "Did everyone get a copy of the highlights of House Bill 317," he asked.

So far, no opposition to the bill has emerged, though the Ohio Prosecuting Attorneys Association has not weighed in on the issue, according to Cuyahoga County Prosecutor Bill Mason, who heads the group.

Cleveland City Council President Frank Jackson, who is running for mayor, pressed flesh and urged everyone to join Olds at 10 a.m., Tuesday, Sept. 13, in Columbus for a prayer rally in front of the Statehouse during the week legislators are to set hearings for the bill.

Cuyahoga County Common Pleas Judge Dick Ambrose and Cleveland Municipal Court Judge Joan Synenberg shook hands and dispensed advice to a line of people that snaked from the front of the church to the back.

"I'm here on behalf of my son," one woman said, her voice trembling. "In 1992, at 18, he was convicted of a drug possession charge, then he got into an altercation with another kid at Severance Mall and was convicted of assault. He's 31 years old now and has been arrest-free since 1992. Can he get his record expunged?"

"No," Ambrose answered. "Once you have two offenses, you're stuck — unless we can change the statute."

The woman's eyes welled with tears.

"It seems that God forgives easier than the state forgives," Ambrose said.

To reach this Plain Dealer reporter:
asimakis@plaind.com, 216-999-4565

TODAY: Windy, milder.
High 42, low 28. Map, **B10.**

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THE PLAIN DEALER

THURSDAY, DECEMBER 16, 2004

Court offers fugitives a break

Clergy, judges unite to give minor offenders a chance to come clean

KAREN R. LONG
Plain Dealer Reporter

There is a warrant out for Butch's arrest.

He ran a red light in Cleveland in the fall of 2002, skipped his court date and is now a fugitive from the law.

But Butch wants back in from the cold. The 36-year-old Euclid man, who delivers furniture and appliances, wants to put things straight and get on with his life.

He listened intently Wednesday at Second Ebenezer Baptist Church as Cleveland officials and Christian ministers announced an amnesty.

Get right with the Lord, the men offered, and get right with the law.

Beginning in February, a program called the "28 Days of Peace Initiative" will give some fugitives a chance to report to the Justice Center, skip their $25 warrant fee and work out a settlement. The amnesty is directed toward citizens like Butch — those facing arrest for nonviolent misdemeanors in Cleveland.

An estimated 35,000 people share his predicament.

They live with arrest warrants out against them from Cleveland Municipal Court — meaning any traffic cop in any state who pulls them over and bothers with a computer check can cart them off to jail. Cleveland Clerk of Courts Earle Turner said he fields calls from desperate people in places from Cincinnati to Pittsburgh arrested for minor infractions they ignored in Cleveland.

SEE AMNESTY | **A12**

Hold your calls

- Administrative Judge Larry Jones anticipates running the program on Tuesday and Thursday afternoons in February.
- Court officials have not yet installed a hot line for questions, but they will before the program begins.

AMNESTY

FROM A1

Minor offenders get chance to come clean

The vast majority of the 127,000 misdemeanor warrants choking the Cleveland court stem from traffic violations — infractions like speeding and running stop signs and red lights.

"If a person is a fugitive, it forces him or her into a subculture where you can easily complicate your life, and move from a misdemeanor to a felony," said the Rev. Mark Olds, a 55-year-old minister at Eagle Rock Covenant Assembly who negotiated the amnesty. "If there is a warrant out, you can't move forward with a job or education."

Nobody facing only misdemeanor charges who shows up voluntarily will be arrested, officials promised.

They stressed that the offer was good only for those charged with minor crimes, such as running a stop sign or trespassing. Anyone accused of a felony or sitting on unpaid parking tickets does not qualify.

"The police would rather see someone come down and take care of a case than to have to arrest someone," said Sanford Watson, director of public safety.

Olds' initiative incorporates four daily prayer vigils offered in five churches rotating each day of the amnesty. He said he has recruited 20 congregations to participate, and is hoping for about 80 by February.

"These changes cannot take place without a spiritual transformation," Olds said. "Otherwise you get rid of the warrants in February and you're back in trouble in March."

Butch agreed.

"I'm trying to be more responsible, get past some of my mistakes," he said. "God will make a way and it will be OK."

Chief Administrative Judge Larry Jones said he was happy that the clergy approached him, predicting the court backlog will diminish, the revenues from collected fines will increase and fewer people will fall more deeply into trouble.

"If someone comes in voluntarily, we are going to be in a better mood than if you come in under arrest," Jones said.

To reach this Plain Dealer reporter:
klong@plaind.com, 216-999-5012

Appendix 3

Selected Pages

Meeting of the Council Committee Hearings, Employment, Affirmative Action & Training was called to order by the City Council on Thursday, June 12, 2005 at City Hall.

Present:

Fannie Lewis
Roosevelt Coats
Judge Joan Synenberg
Mansfield Frazier
Reverend Mark Olds
Algenon Pugh
Randolph Douglas
Anthony Gregorio
Bishop F.E. Perry
Asia Whitehead
Jazmin Torres Lugo
Jose D. Colon
Ms. Gregorio
John Gregorio
Pastor Michael O. Exum
Frank Whiley

Court Reporter: Tanya E. Gibson

as well as, a number of social agencies of which I am acquainted with and ladies and gentlemen of this table. And it's been an honor and privilege to represent the City of Cleveland Municipal Court on an expungment Awareness Program. What we have done, your Honors, is gotten into the community with the faith based community to inform about eligibility of expungment. And what we have learned is that expungment which is a mechanic that the law allows to get a record cleared is something about which many people were unaware. Getting out there has produced some quick results. To be eligible right now, you have to be a first offender. The parameters are laid out in the hand out that I have provided. And to concern yourself with expungment, you have to think in terms of eligibility first and foremost. Not everyone who's convicted of a criminal offense is eligible. Certain felonies are automatically excluded. First and second degree felonies cannot be expunged. Sex offenses cannot be expunged. There are -- any case that carries mandatory time cannot be expunged. Crimes of violence whatever degree felony including fours or fives cannot be expunged. So of the five levels of felonies, the first two are automatically

excluded from eligibility. And with the last three, you need to look at the factors of violence, a crime of a sexual conviction, or if there's mandatory time, those would be excluded as well. After any period of incarceration plus supervision that means probation is served. The accused needs to wait an additional, the convicted needs to wait an additional three years before they are eligible to file. This, of course, brings great disparity in when people are eligible because as I know from my experience, having practiced law 16 years, and from being on the bench, Judges hand out different types of sentences. And you could be accountable to one Judge for perhaps six months in a case and to another for over 5 years. So that would change dramatically when that person would be eligible to apply to have their record sealed.

So those are some concerns. In addition to the type of offense, you must be a first offender and that means that you can't have a conviction before and you can't have a conviction after that period of time within which you must file. So what we have seen from our educational forums is that people may not necessarily go out and commit an isolated offense, they might engage in a short

pattern of criminal activity and then years later have led a law abiding, productive life as a contributing member of society. And the frustration with people who have been so doing is that because of having committed more than one offense in the past they maybe ineligible. I believe that that is what has inspired Reverend Olds and the rest of us, Pastor Exum, and Bishop Perry, all of us who have been engaged with the public and that is to see that people who clearly deserve a second chance have the opportunity to do so within reason. There's disparity in the timing of the filing. And then the other, of course, frustrating point is that, if there's more than one offense, you can't file. There are rare exceptions. The law allows someone who's convicted of two or three offenses that occurred within a three month period to be considered a first offender. But, we hope that people are encouraged by the fact that there is this movement. And I just want to say briefly, and then I would, with gratitude relinquish the floor, that as a result of the educational forums that we have conducted thus far, with the participation of the Public Defender's Office and Legal Aid, we made

THE WITNESS: I'm fine.
MS. LEWIS: You're fine, ma'am?
THE WITNESS: Yes, good morning.
MS. LEWIS: You are ma'am.
THE WITNESS: Yes. Excuse me, could I address that council?
MS. LEWIS: Yes, that's fine. Introduce yourself.
REVEREND OLDS: I'm Reverend Mark Olds, President of the National Restoration Movement USA. As part of the reason that we engaged in the expungment educational forums, first was to bring awareness to the community of what was the existing law and how people could take advantage of that. Second, we wanted to bring the awareness to the communities, the number of persons who need to be considered for expungment and that generated the fact that we need to expand the law and build on what is currently there. If there is a demand for expungment and the current law has not reached it's capacity, then there would be no need to expand the law. And we have. Through the expungment hearing or forums in April and now the three that we have planned for June, would clearly demonstrate that there is a, more of a demand for expungment than the current

can't you pay your child support? Because I'm a convicted felony and it holds me back. And I'm tired of this felony holding me back. I have done my time for it. I hadn't been in no trouble for four years. I'm not trying to go back in there. Only thing I want is a chance. I have a great resume. Positive people are helping me out. And I'm just tired of this devils on my back. Like you said, when you go put in an application, you are darned if you do and darned if you don't. When they ask have you been convicted of a felony, you say no. You work about a month and they pull you in the office and say, well you forfeited on your application because you didn't tell us the reason. So they are not going to give you a chance. But, when I tell them that I am license and bonded for the state, anything, which I don't take nothing, the state give us a $10,000 bond. If we take something, the state pays them and then we a $1,500 tax reduction. Every job that hires a felony, they get $1,500 off. Well, who going to take a chance? Why I can't get a chance? Like I said, I don't have nothing for retirement so what do I do? And I have two felonies. And then, you know, like I said, I cut my attorney's grass. I will get out

here and I'll cut all y'all grasses. I'm not going back to where I was at. I refuse to go back. Even if I get -- I work at Dave's Surf and Turf, they are calling me now to come in. I took this time to come in and voice my opinion because I'm tired of working for $6.00 an hour. By the time I go home and pay my rent, I don't have nothing.

MS. LEWIS: Let me say this to you, and I tell this to young people now. There are some mistakes that we make in life we have to life with all of our lives. We have to pray and hope somewhere down the line there would come some kind of situation that would help us through that. And waiting is the hard part about getting anything done. If you can wait, you know, it's like waiting on the bus.

MR. PUGH: I understand that.

MS. LEWIS: If you --

MR. PUGH: I understand that. I been through my trials and tribulations just like Christ did and, it's like, I'm tired of it.

MS. LEWIS: And what I'm saying is, is that you can get tired, but you can't afford to get tired.

MR. PUGH: You right, I can't. I have to

keep moving just like Christ did. He kept on moving. I refuse to go back to where I was at Ms. Lewis.

MS. LEWIS: That's good. So as long as you just hold on, help will come.

MR. PUGH: I would like to excuse myself because I do have to go to work.

MS. LEWIS: We appreciate you being here.

MR. PUGH: Like I said, I hope this do pass because I'm tired of this devil is on my back. You mean, I have to carry this all the way to my graveyard?

MS. LEWIS: Well, you know, I'm not here to say how long you got to carry it. You got to carry it as long as you got to carry the load. The point of it is, you have some help out here. You have people trying.

MR. PUGH: Like I said, I cut grass. I'll cut all y'all grass so I won't be back downtown in that Justice Center.

MS. LEWIS: Thank you.

JUDGE SYNENBERG: Why don't you come to the, we're having an educational forum on Saturday morning at Second Ebenezer, why don't you show up because you are the kind of person that Reverend Olds wants to

addition to the punishment that they served imposed by the Court. I mean, you think that you give your pound of flesh with the sentence that you serve, the money that you pay, the probation, and the parole, and it's not over. And that can't be forgotten there must come a point in time where punishment is finalized. Thank you.

THE WITNESS: Okay. Can I speak?

MS. LEWIS: Yes, ma'am, you're going to speak, that's why I moved you down here.

THE WITNESS: All right.

MS. LEWIS: Did you finish?

MR. GREGORIO: Yes, I did. Thank you.

MS. LEWIS: God bless you. And suffering brings about change and it builds character. Suffering makes character. Okay. So I know you are much stronger now than you were, okay. You know what the scripture says, counter the joy when you fuel into diverse temptation, okay, and that's when somebody is hitting you cross the head, you say ha, ha, ha, thank you, Lord. That's hard to do, but that's what it says and it means just what it says, okay. So I'm telling you as experience, hold on.

MR. GREGORIO: Okay.

MS. LEWIS: God bless your mother, you know, who is sitting over there trying to hide the tears. Okay. God bless you.

MS. LEWIS: Young lady.

THE WITNESS: Okay. Good morning, everyone. My name is Asia Whitehead. My testimony is that when I was 19 years old, I received a felony because I was with a person who did the crime. At 19 years old, I was a graduate of Glenville High School and ignorant to non-understanding of what a felony was. So when I went to the court for trial and the Judge, the court appointed attorneys informed us that we were facing 21 years in jail, we were afraid, and we did not want to go. We had Judge Cleary who has been disbarred. But, since we -- the end of the trial, the disposition, the end of the trial and the result of it, was that we plead down and we plead guilty to Aggravated Burglary, Attempted Aggravated Burglary, and probation one year. Because I was with a person who did the crime, I was convicted as well. Not understanding the law or not understanding what a felony was when I said I'm guilty, I did not know that I was going to be guilty for the rest of my life. At 19 years old, I had my friend, we're not

being by themselves. You have to get to the point, if it ain't nobody but you so be it. As long as you got the good Lord, you got the majority. So the issue is, is that I'm touched by your testimony, but I just see through your testimony the kind of work that can be done with this that needs to be done in this city with this.

MS. WHITEHEAD: Could I just say one more thing? I wish to God -- I can't change time, I can't take back what I have done. The only thing that I can do is live with it and keep pressing forward, and keep pounding the payment, and believe that something is going to happen for me. I never knew this would happen for me. This is one thing forward for me as well. But, the one thing I would like to say is that we're changing a law which is awesome, but the one thing also that I see needs to be or could be addressed is that the fact that education on what you are facing when you are making bad decisions. Because honestly, when I was in high school, I couldn't define felony for you. I couldn't have told you what a felony was, but I could have said something smart to you and not understood the consequences behind it. My cousin he's getting in trouble because he does not

for allowing me to speak. My name is Jasmine Torres Lugo. I'm a private attorney and I have commend Reverend Olds for what you are doing. As a private practitioner, right now, I have a case that it's a young African American who is trying to acquire her nursing degree and she had only two misdemeanors, Theft, it was not more than a hundred dollars. And the law as it's designed she cannot expunge. So something that -- I don't know if you already have have discussed all of this, the discretion, as a former Judge of Cleveland Municipal Court, I have to say that the limitation, and the discretion of the Judge, we have to change that. And those two are the best examples including you as well the best example of it because when a Judge -- first of all, I believe they have to set up some guidelines like they do for felony cases. When they are sentencing, in felony cases should I send you to probation or should I send you to jail. There's some guidelines that they need to be included in misdemeanors and in felony cases and they have to take into consideration the level of the offense because that would give you an idea and those guidelines, the age of the individual should be included. The lady

that went to my office she is 30 some years old and she incurred these crimes when she was in her early 20's. Unfortunately, she can not work as a nurse with those two little misdemeanors and much less with a felony. So when we're looking into how we're going to change the law, we have to give the space to the Judge, felony or misdemeanor, that we can take consideration the intricacies of the crime, and how many years have gone, and how you have changed your life. At this point today, that's not available. So I think that will give a great opportunity and to many people and the Judge would then have the ability to place each individual in particular with their own circumstances to then to apply what would be the best for that individual and for society. Because the purpose of the law is to protect society, but at the same time you are not allowing a person that change their life to live in to society and to be productive and then they are a burden to society. So that's when you have the law that is contradictive as to the outcome that it wanted to achieve when it was draft. I just want to share my experience with you.

MS. LEWIS: One of the things that you shared

for the outstanding work they are doing along this particular line. Certainly, something needed. I support this effort 100 percent, Reverend. Thank you. If you would comment on the status of the legislation that bands discrimination against formally incarcerated individuals where that is and where it's going to go before council any time in the near future thank you.

MR. COATS: Thank you, Mr. See. And let me just join you and in commending the individuals that are sitting around the table this morning, thank you. Let me just bring up the main question that you have Mr. See. When we first be began to talk about this initiative, which is the banning of discrimination against previously incarcerated individuals, I don't think that we really understood the magnitude or the depths of just what we were really embarking on. There are still individuals who have the compassion, have the sympathy, and have the will, but they're struggling with the issue because what's happening nationally as it deals with Homeland Security and all of these things that really, in my view, perhaps, it is an overkill. We are fortunate in city council where we have a number of councilmen who have been

THE WITNESS: That was Rahkim Azziz from Community Re-entry.
MS. LEWIS: Who?
MR. FRAZIER: Rahkim Azziz from Community Re-Entry.
MS. LEWIS: I couldn't pronounce it. You can. My tongue doesn't twist like that.
THE WITNESS: Councilwoman, could I say one other thing? When we conducted re-entry hearings, on the committee, that you asked us to serve on, one of the most disheartening things, there was a man that came forward, he's at Cleveland State University, he's working on a degree and he wants to be a school teacher. Someone should have told this young man at college, he would never be a school teacher in the State of Ohio under existing laws of the State of Ohio. So he's spinning his wheels. For both of these young people who are very bright, one of the things you have to try to do is, like, get in where you fit it in. There are some professions that would not keep you barred out because of your background, drug abuse counselors. There are other professions. You need to investigate furthering your education in a field that would allow you to move head. So much of this

legislation is class based. I'll give you and example. A woman could try to be a home health care aide, get caught with one marijuana cigarette, 20 years later she's still barred from that. A doctor can get caught using a hard drugs that he stole from a hospital that he's at. Six months later, he's back to being a doctor. So they can find ways around it for certain classes of people. So I think both of you are really bright young people, really try to explore the opportunity when one door closes, there are other doors that open to bright people. So just don't give up, okay.

MS. WHITEHEAD: Could I say one last thing? I just recently graduated from cosmetology school as a managing cosmetologist, but even -- I'm licensed and the job that I did receive still doesn't pay enough in cosmetology at Super Cuts. My mind is more expandable. I want to do more for myself and other people. So having this felony on my record is not allowing me to go and pursue the medical field. I believe that I would be a great candidate for someone in the medical field who would be able to provide not only the care, but the compassion that other people need in that field. But, I can't do it because of what's holding me back. My mind

C E R T I F I C A T E

CLEVELAND CITY COUNCIL MEETING
June 12, 2005

I, Tanya E. Gibson, official court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the videotaped proceedings had in said City Council Meeting; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the proceedings; that said transcipt is a complete record of the videotaped proceedings had in said City Council Meeting, and constitutes a true and correct transcript of the proceedings had therein.

Dated this_____day of September, 2005.

_____
Tanya E. Gibson

Life Sentence

Explain, please: Why can't a felon who's paid his dues be hired to drive seniors around town?

IN HIS STATE of the Union address at the beginning of his second term, President Bush talked about the price of keeping people with criminal records on society's margins. He proposed spending $300 million to help freed prisoners become productive citizens.

"This year, some 600,000 inmates will be released from prison back into society," Bush said. "We know from long experience that if they can't find work — or a home or help — they are much more likely to commit crime and return to prison. ... America is the land of second chances, and when the gates of prison open, the path ahead should lead to a better life."

It's one thing that Cleveland Democrat and U.S. Representative Stephanie Tubbs Jones and Bush can agree on. She's a sponsor of the Second Chance Act, bipartisan legislation that would make the transition from prison easier by pumping money into local re-entry programs that focus on jobs, housing, substance abuse and mental health treatment.

Trouble is, all the money and programs in the world can't erase the barriers erected by tough-on-crime politicians in Ohio and throughout the country who pass laws that punish those convicted of crimes long after they've served their time.

Stealth consequences — known as collateral sanctions — are buried like landmines to doctor's appointments and providing transportation for the mentally retarded and the developmentally disabled for 17 years.

Finding qualified drivers is as hard as guessing what gas will cost from one day to the next.

The company's human resource manager, Jason Roderick, says he'll fall in love with an applicant — she looks good on paper, her qualifications are just right, and she sails through her interviews. Then, he offers her a job, contingent on the results of her criminal record screen. With depressing regularity, he has to turn people away because they have committed one of a slew of crimes spelled out in the Ohio Revised and Administrative Codes.

"In general, we understand why the regulations are on the books, and we feel that they help us protect our customers," says Alan Grodel, Provide A Ride's president and owner. What he and his managers don't quite understand is why people who committed "small, petty crimes" or broke the law years ago and haven't been in trouble since still don't qualify.

"We've looked long and hard at these lists of crimes," says General Manager Tim Lewis, "and we can find no expiration date."

That's true for most of Ohio's collateral sanctions: Whether someone broke the law 10 years ago or 10 minutes ago, Provide A Ride state law and amend those penalties with no end date and do away with some of the wildly general license restrictions that often have absolutely no relation to a specific crime.

Until then, Provide A Ride and other companies will continue to turn away qualified men and women who have lived crime-free for years.

"We feel like our hands are tied," Grodel says. "If there was a mechanism to help these folks get their records expunged or cleaned up, and we were able to legally hire them, we'd be awfully happy."

But collateral sanctions don't just rob ex-offenders of the opportunity to make a living and private employers of manpower. They also cost the state money. The Ohio prison system offers job-training programs to its inmates, but in a classic Catch-22, Ohio's collateral sanctions bar them from becoming licensed in the very fields for which they have been trained.

They leave prison with certificates of completion for a variety of jobs but can't become bona fide tradesmen such as plumbers or electricians, or cut hair or fix refrigerators, and they should forget about pursuing a career as a nurse, accountant or dental hygienist. The list goes on, tax dollars wasted on vocational programs, ex-felons left with a stark choice: They can scrape by on the straight and narrow

throughout the Ohio code. There are 361 of them, and most defendants don't even know they exist when they plead guilty to avoid prison time or receive shorter sentences. While some collateral sanctions affect civil and political rights, most are designed to keep ex-offenders from holding specific jobs and earning various licenses.

Some make perfect sense: A politician convicted of bribery probably shouldn't be able to hold another public office, and nobody wants a convicted pedophile teaching grade school gym. But the logic in barring a car thief from becoming a barber is far from clear. And why should a person who did time for selling drugs be denied a student loan once she returns home?

These hidden life sentences make it impossible for even the most progressive employers to put ex-felons on the payroll.

Provide A Ride, doing business on the border of Cleveland and Warrensville Heights, has been ferrying senior citizens and other companies can't hire them. "That's a head-scratcher," Lewis says.

"We feel like our hands are tied. If there was a mechanism to help these folks get their records expunged or cleaned up, and we were able to legally hire them, we'd be awfully happy." *— Alan Grodel, Provide A Ride's president and owner*

Ex-offenders shouldn't be banned forever from bettering themselves, say judges and others who study ways to reduce recidivism — the imprisonment of former inmates. After a certain period of time, their rights should be restored.

Although there is no proposal being floated in the Ohio House or Senate to challenge the universe of collateral sanctions on the books, judges, attorneys and legal scholars are informally urging legislators to comb through or prosper by traveling the most crooked path.

A regime of collateral consequences, applied "indiscriminately" and "automatically across the board," wrote U.S. Court of Appeals Judge Robert Gorman in an article published this spring in the *University of Toledo Law Review*, "encourages recidivism." *— A.S.*

For a complete list of collateral consequences to a criminal conviction in Ohio, visit the University of Toledo Law Review site at http://law.utoledo.edu/lawreview/collatsanctions/CSCompilationProject.htm.

The Plain Dealer Sunday Magazine
Nov. 27, 2005

The Absolution Argument

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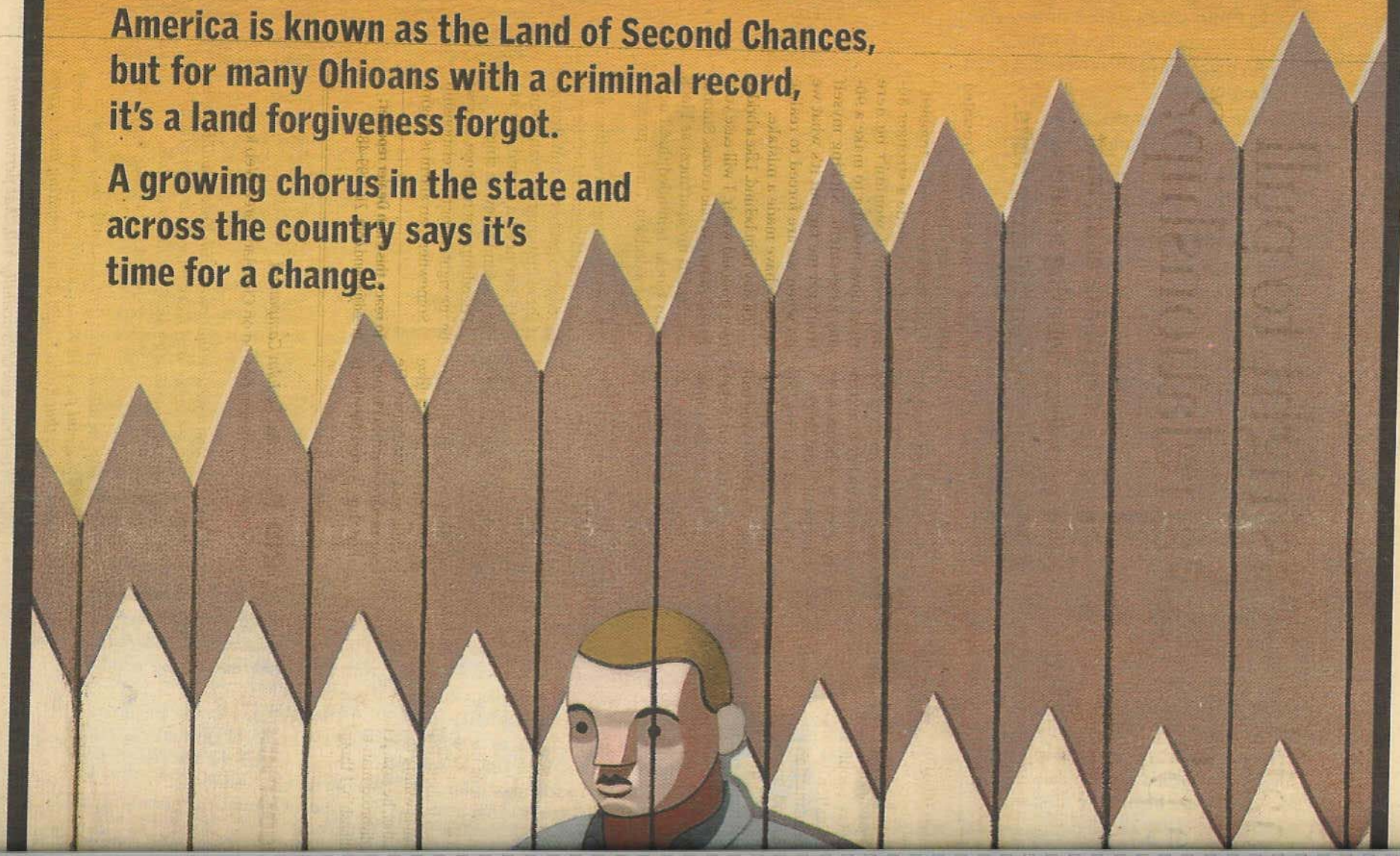
A growing chorus in the state and across the country says it's time for a change.



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Story by ANDREA SIMAKIS | *Photographs by* TOM ONDREY

ON A STEAMY SEPTEMBER MORNING Norma Running trudged across the Statehouse lawn, flushed from the heat. Bob, her husband of 31 years, and their round-faced grandson Joe ambled along behind her. She took her place at the head of an assembly of about 200 — dapper pastors in straw hats, tattooed men and care-worn grandmothers, their ankles swelling over the stiff sides of their going-to-church shoes. She knew she shouldn't have driven 150 miles from Maple Heights to the prayer rally in Columbus, not the way she was feeling. When she tried to talk, her voice came out a painful croak.


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ANDREA SIMAKIS

On a steamy September morning Norma Running trudged across the Statehouse lawn, flushed from the heat. Bob, her husband of 31 years, and their round-faced grandson Joe ambled along behind her. She took her place at the head of an assembly of about 200 — dapper pastors in straw hats, tattooed men and care-worn grandmothers, their ankles swelling over the stiff sides of their going-to-church shoes. She knew she shouldn't have driven 150 miles from Maple Heights to the prayer rally in Columbus, not the way she was feeling. When she tried to talk, her voice came out a painful croak.

It didn't matter. Tomorrow she would call the doctor. Today was for Bob Jr. Today was for her son. Who could have imagined that stealing a few pieces of copper and scrap metal at 18 and pocketing some fishing lures at 21 would consign her child to a lifetime of debt and shame?

That was why she'd come to cheer and clap for House Bill 317, a piece of legislation that has won an expected scowl from Ohio prosecutors and outspoken support from a group of Cleveland judges. The bill would allow people like Running's son — repeat offenders who have lived law-abiding lives for years — to petition the court to have their criminal records sealed. It would even, say supporters, allow Ohio Governor Bob Taft, convicted of four misdemeanors for ethics violations in August, to clean up his record.

Norma Running watched as a skinny woman with a fat woman's pipes belted out a gospelinfused rendition of America the Beautiful, then State Representative Shirley Smith, a Cleveland Democrat and sponsor of the bill, introduced the Reverend Mark C. Olds as the architect of the legislation. He'd spent the better part of the summer traveling around the state, visiting houses, churches and barbershops, preaching the gospel of second chances.

As Olds tells it, he was born again in the county jail in Raleigh, North Carolina, before landing in a federal penitentiary in Pennsylvania. His résumé before his conversion makes the crimes of Running's child look dime-store. He was a stylish gangster, his hands heavy with gold and diamonds, proud he never had to wear the same outfit twice. He shot and killed a man, robbed banks at gunpoint and an armored car, too. God delivered him from a life that, had it continued uninterrupted, would have made the devil blush.

"House Bill 317 is a jobs bill," Olds boomed into the microphone. "This has nothing to do with being soft on crime.

“We’re saying that after you’ve paid all that the law has demanded you to pay and every ounce of restitution that the government has demanded of you, and you keep doing what’s right for seven years — even though you can’t get a job, even though you can’t get decent housing, even though you might not be able to get a student loan — that ought to complete any sentence and you should have a second chance!”

"Amen!" someone shouted. "Say it, say it, say it," yelled another.

"I want you to pick up the telephone and call your state representative and your state senator," Olds said, "and I want you to ask them one thing: 'Where do you stand on HB 317? Because I just want you to know that I only vote for those people who support my issue.'"

After the speeches and appeals to God to move the hearts and heads of Ohio's legislators, Running joined a line of people waiting to greet Olds. When she reached him, she grabbed his hand and started to cry.

"Thanks for doin' this," she croaked. "I've been prayin' so much for my son, asking God for a miracle."

ONLY DIVINE INTERVENTION, critics say, will keep HB 317 from flaming out before it hits the House floor for a vote. Supporters believe the fate of the legislation rests with mothers like Norma Running, women sick of watching their children struggle against a relentless tide of mandatory background checks for even the most low-paying McJob.

In Colonial America, ex-convicts were easy to spot. Authorities branded their bodies with a letter that described their crimes: "T" for thief, and so on. More than 200 years later, with a criminal record a few mouse clicks away, ex-felons carry an electronic brand. And since the towers came tumbling down on September 11, the desire to know the life history of prospective employees has intensified.

Ohio has the seventh-largest prison population in the country; an average of 77 prisoners are released each day. While some states forbid employers from asking applicants about prior convictions, Ohio permits bosses to reject workers because of their criminal histories alone.

Whether the politician and the pastor can mount an effective campaign to move lawmakers remains to be seen. Today, the future of House Bill 317 is in the powerful hands of the Ohio Prosecuting Attorneys Association, a lobbying group whose stiff opposition to the bill has stranded it in the House Judiciary Committee.

During a hearing in October, John Murphy, the group's spokesman, told the 11-member committee that Ohio's current expungement law, drafted more than 30 years ago, works just fine. No tinkering required.

The statute was written to give some first-time offenders the right to ask the court that their records be sealed. Those convicted of a misdemeanor have to wait one year after completing

their sentences to make the request; felons must wait three years.Repeat offenders and people jailed for violent or other serious crimes are out of luck, regardless of whether they've stayed out of trouble.

"Sealing was intended to benefit those who have had comparatively minor offenses and an otherwise law-abiding life," Murphy told legislators. The law was never intended to "benefit the worst of criminal offenders."

House Bill 317 would give a steroid shot to the expungement law already on the books. After seven years of "clean living" as the Reverend Olds calls it, most offenders, with the notable exception of those convicted of murder, kidnapping, rape and all other sex crimes, can ask the judge who sentenced them to seal their record. Law-enforcement officials would still be able to look behind the seal.

While supporters and detractors use the terms "expunge" and "seal" interchangeably, neither the proposed legislation nor the existing statute calls for criminal records to be erased, just veiled from public view.

As is the case today, House Bill 317 does not guarantee anyone's criminal record will automatically be sealed -- a prosecutor can still argue against the request and a judge can deny it.

Not good enough, say prosecutors. The public's right to know outweighs an ex-con's right to work. Under the proposed bill, people convicted of arson, armed robbery and manslaughter would be among those who could ask for their record to be expunged. Violent crimes, Murphy argued, even if they were committed when disco was all the rage, are so serious they should leave a permanent mark.

About a month after the hearing, Representative Smith met with Cuyahoga County Prosecutor Bill Mason, head of the Ohio Prosecuting Attorneys Association, and asked him to support her legislation. He said no. However, Mason might throw his consid-erable weight behind a rewritten bill, one that would cut violent offenders out of the expungement equation but would leave the option for those who had committed low-level multiple felonies such as drug crimes.

"Some people get caught up in drugs during a three- or four-year period, then they clean themselves up," Mason says. Offering to seal the records of reformed addicts -- "I don't see the harm in that, but violent crimes? I don't think I'd ever go there."

What about an older guy who held up a conven-ience store at 22 and hasn't had a brush with the law since? Should he never have the opportunity to better himself?

"I don't know the answer to that one, I really don't," Mason says. "Obviously, you feel for the man who hasn't committed a crime for 20 years, but do you put the community at risk by hiding it -- and that's basically what expungement is, you're hiding it so nobody can see it -- or do you keep the community aware and protect them? I'm gonna fall on the side of protecting them."

Smith and others point out that someone who hasn't broken the law for a decade or more has arguably been reformed and is no longer a threat, so how does keeping that person from finding a good job protect the public?

"This bill has nothing to do with helping people that are committing crime," says Smith, "but it has everything to do with helping the people that have straightened up their lives."

Smith is willing to hash out the particulars of the bill with Mason, but it won't be easy. She's already made compromises that irk her, such as requiring ex-offenders to wait seven years to apply to have their record sealed rather than a kinder five.

Beneath the quotes and the rhetoric, there is a clash of core belief systems. Smith says everyone makes mistakes, especially hot-headed adolescents, and "to not forgive a person for a wrong they've done when they're young -- it's abhorrent."

It's also counterproductive says criminal law ex ---pert and Case Western Reserve University law pro-fessor Lewis Katz. Most people commit crimes between the ages of 14 and 25. Eventually, many outgrow their unlawful ways. "A lot of criminals decide I'm too old for this -- I gotta lead a different life," says Katz. But "by keeping that person from getting any constructive employment, we are possibly pushing them back into the criminal life."

The outcome of this little-known debate will affect more than the 28,000 inmates released from Ohio prisons each year and the people they've hurt or robbed. It will affect every taxpayer in the state.

Study after study has shown that when ex-convicts can't find jobs and earn a living, some become so desperate and frustrated they return to a life of crime. That translates into more dangerous streets and more people back in prison.

The state's Department of Rehabilitation and Corrections spent $1.6 billion in 2004 to run its prisons that house 44,903 inmates. Today, it costs about $23,000 a year to incarcerate one person in Ohio. For roughly the same amount, the state could pay the yearly tuition of three students at Ohio State University.

Those who manage to eke out a living in legitimate ways are often forced to go on the dole, supplementing their meager incomes with food stamps and Medicaid costing the state more money still. To a person, they say they'd all rather be self-sufficient.

Municipal Court Judge Joan Synenberg never intended to be an advocate. Neither did Dick Ambrose, her colleague who's on the Cuyahoga County bench. It's rare for judges to take a public stance on any issue -- unlike prosecutors, they don't usually offer their opinions on pending legislation. But when Larry Jones, the presiding judge of Cleveland's Municipal Court, threw his support behind House Bill 317, he tapped Synenberg to help teach the public about expungement law and Ambrose joined her.

All summer long on evenings and weekends, they traveled to mostly black churches in Cleveland to address thousands at a series of forums organized by the Rev. Olds. There, they dispensing practical advice and bad news, Synenberg in pearls and Stuart Weiztman heels, Ambrose in a sport's coat and loosened tie.

"How much does it cost to file a motion to have my criminal record sealed?" $50. And you can file the paperwork yourself. Lawyers who claim you need to pay them thousands of dollars to apply for an expungement are ripping you off.

"Where can I get the application form?"

At the Public Defender's Office on West Third Street.

"Am I eligible to have my record sealed?"

For most, the answer was No.

The first few sessions weren't packed, but as word spread, more people showed up. Soon, hundreds were filling the pews. Some stood in line for an hour or more just to speak to the judges for a moment, desperate to learn if they'd qualify, bursting into tears or simply muttering a quiet "Thank you" when they learned their records would follow them to the grave.

The judges were moved.

What they saw was an expungement law "so restrictive, that it excludes just about everybody who's been in trouble," Synenberg says. And that's a lot of people -- just under 40,000 are indicted in Cuyahoga County each year.

All offenders, the judges point out, are not created equal, but under the current law, there is no room for a careful, case-by-case analysis, a weighing of the evidence.

"It's a very black-and-white procedure the way it's set up right now," Ambrose says. "It gives judges little to no discretion to make human decisions."

It wasn't always that way.

Under the original 1974 statute, judges could, in special cases, seal the record of a person with multiple convictions or grant an expungement to someone who had committed a more serious crime if they felt that person had made extraordinary efforts at rehabilitation.

But in 1984, state legislators amended the law, taking away what little decision-making power judges had.

The clampdown followed a seismic shift in the way Americans viewed the goals of the criminal justice system. Beginning in the 1970s, a taste for retribution rather than rehabilitation ruled

politicians and the laws they made. It's been that way ever since, says Case Western's Katz. "Historically, we took the position that a person paid his debt to society and was free to re-enter the community and live free of the stigma of a criminal conviction," he said. "There's no such thing anymore in our society."

Both Ambrose and Synenberg are quick to say that they don't think everyone deserves to have his or her record sealed, and fear that their vocal support of House Bill 317 -- or any change to the existing expungement law -- might make them look soft on crime or too liberal, adjectives no politician or judge wants attached to their names come election time.

"We're not advocating this for every crime and every situation," says Ambrose. "There are serious crimes that, I'm sorry, if you commit 'em, then it's gonna dog you the rest of your life."

"Like hurting a child," Synenberg finishes.

If House Bill 317 -- or some retooled version of it -- crashes and burns, Synenberg asks: "What are you gonna do with these people if you take away their opportunity to prosper?"

IN THE END, there was no one better to address the House Judiciary Committee about life after conviction than Michelle Ortiz, no better poster child for all that is wrong with the way Ohio law treats ex-offenders.

On the first Thursday in October, the same day John Murphy of the Ohio Prosecuting Attorneys Association argued that people like Michelle weren't deserving of a fresh start, she waited through more than three hours of testimony to tell lawmakers just how badly she needed one.

Her speech, a page she'd hastily written the night before, rattled in her trembling hands. It wasn't nearly all she wanted to say.

"I'm honored to be allowed to speak to you today," Michelle began, then the words caught in her throat.

"Relax," said chairman John Willamowski. "Take your time."

"I'm here in support of House Bill 317," she said, her ordinarily self-assured voice a whisper.

How could she put into words how much she'd grown, from a sobbing 27-year-old covered with blood in the back of a police car after stabbing her husband and putting him in the hospital to a harried 37-year-old single mom who works two, sometimes three jobs to support her children? How could she bring them into her small, white split-level in Elyria adorned with hand towels and plaques inscribed with inspirational messages such as Everything is better with love? What could she say to convince them that she came from a good Christian home?

The prosecutor had called Robert Ortiz a bully for the way he treated his wife during their tumultuous union -- blackening her eye, breaking her arm -- but it was Michelle the lawman tried for attempted murder.

She knew there'd be trouble when she slipped the note asking for a separation onto the breakfast bar that January morning in 1995, but she was tired of the screaming fights and the police cars in their driveway. Things escalated fast. She remembers Robert grabbing her by the ponytail and throwing her across the room and her blood trickling down her leg and pooling in her shoe. She remembers that everytime he hit her, she jabbed him with a knife she'd grabbed from the kitchen.

Jurors didn't buy the prosecution's argument that Michelle had intended to kill Robert. They found her guilty of aggravated assault instead. She served an eight-month stint in the women's reformatory at Marysville.

When Michelle lost her freedom, she lost her $19-an-hour job, too -- a spot on a Ford assembly line. Once she came home, she answered an ad for a position as a nursing home aide. She hadn't filled out a job applica tion in years. Before her conviction, Michelle's biggest worry had been remembering the addresses of her previous employers. Now when she saw the inevitable query -- Have you ever been convicted of a felony? -- the words lifted off the page at her. Michelle didn't know how to answer. She didn't want to lie, but she didn't want to lose an opportunity either.

She had to feed her four kids, so she wrote, "No."

In the end, it didn't matter. After seven months, her managers found out about her record and fired her. She cried so hard, they hugged her before showing her the door.

What followed was nearly a decade of dead-end jobs usually filled by retirees or college students. Michelle has been a cashier at Value City and a counter jockey at Speedway. She's waited tables at Lonestar Steakhouse and worked the graveyard shift at Sandy's Kitchen in Elyria, pouring coffee and slinging hash on weekends till 7 a.m.

She supports her children with a combination of tip money, child support and food stamps -- $226 a month -- while the state pays the medical bills.

"I am presently a pre-law student in my fourth year at Cleveland State ...," she told the committee. She'd like to go to law school, but her nickel-and-dime life makes it hard to pay the mortgage, let alone afford tuition.

She wants to be a lawyer to help "women who are sitting in prison for the same exact reason I was sitting there -- defending themselves against an abusive husband."

Quietly, she began to cry, her tears landing on her statement, blurring the words.

"Rather than receiving the pay that matches my qualifications, I have to resort to working at minimum wage or less sometimes," she told lawmakers.

"What I'm really here for today is simply to pray that you will take into consideration that I, Michelle Ortiz, have a felony on my record, which I regret. I'm sure that there are things in everyone's lives that they find them-selves regretting.

"I made a mistake," she said, choking words out over sobs. "I paid a price for that mistake. And I'm sorry."

It wasn't so much what she said, but the raw sincerity of her grief and frustration that kept the committee mem-bers rapt throughout her testi-mony.

Her atonement hung in the air, impossible to ignore.

"Please help me," she said finally. "Help me help my children."

When the hearing ended, one of the legislators, Representative Claudette Woodard from Cleveland Heights, threw her arms around Michelle. "Your story really meant a lot to me," Michelle heard her say.

"You brought tears to my eyes when you started crying. I'm gonna be honest with you -- I wasn't too keen on this bill, but I feel differently after hearing from you."

If you feel strongly about House Bill 317 and want to contact your representative, go to http:/www.house.state.oh.us/jsps/Representatives.jsp.

Andrea Simakis is a staff writer for The Plain Dealer Sunday Magazine. She may be reached at 216-999-4565 or through magmail@plaind.com.

The shadow of Kelly Wright's convictions followed her into the church she'd belonged to since the day she was born. Some parishioners slid their purses closer to their hips when she sat down next to them. She doesn't attend services there anymore.

"I want a paycheck. I wanna contribute."

Kelly Wright just wants a job she can keep — without people being afraid of her.

KELLY WRIGHT can name the three worst moments of her life without thinking about it: The day she was sentenced to prison, the day she arrived at the gates of the women's penitentiary in Marysville and the day her two oldest daughters came home from school, sobbing.

"What's wrong?" she demanded. After much coaxing, the children explained. They'd been fooling around on the computers at the library with some of their classmates, typing in the names of friends and relatives.

"Your picture came up," Twondria said, coldly furious.

It was Kelly's mug shot.

"Your mama's an ex-con!" the other kids screeched. "Once you go to jail, you turn gay! Your mama's gay!"

The teasing became so bad, Kelly and her family moved; the kids transferred to another school in Cleveland.

Kelly claims she was acting on instinct when she committed her crime, like a mother lion protecting her cubs. It was a squabble, she says, an argument with a neighbor that escalated into a knockdown, drag-out street battle. A Cuyahoga County prosecutor called it something else.

In July 1995, Kelly sent one of her daughters to fetch the woman next door. They needed to talk. Kelly's children were having trouble with the neighbor's son, plus Kelly claims she'd floated the woman a loan and wanted it back. Minutes later, she says, the girl returned, crying, with a handprint on her cheek. Nobody slapped Kelly's babies in the face.

"I went over there, kicked her door in and tried to beat her to a pulp," she admits flatly. Kelly says she used her fists.

The victim's statement in the police report tells a different story, one with Kelly demanding money and swinging a Louisville Slugger.

Kelly had a nasty bump on her head where she says she was hit with a telephone and points to a jagged scar on her arm. Still, she concedes, her adversary looked worse, especially to doctors in the emergency room. "She fell through a glass end table while we were fighting."

The charges were as ugly as the woman's cuts: felonious assault, a close cousin to a murder and aggravated burglary, because even though Kelly didn't take anything, she'd broken down the door and entered the house. If convicted, she would be a grandmother by the time she was released.

Both Kelly and her husband worked — he had a job with a medical supply company and she served drinks at a club inside Jacobs Field. Chatty and social, she was a favorite and earned fa

Sometimes, Kelly thinks of her record as a living, breathing thing attached to her body — an evil twin that can't be removed because it shares her heart, her lungs and her brain. "It's never going away till I die."

tips. But even with their combined incomes, they couldn't afford to hire a private criminal defense attorney so the court appointed a public defender.

The evidence was less than ironclad; no baseball bat was ever recovered and Kelly says her victim left town and couldn't be found to testify against her. Her lawyer's advice? Make a deal, she remembers him telling her. She'd be a fool to risk a trial. Kelly was better off pleading guilty to *attempted* felonious assault and burglary. That way, she'd be looking at less jail time. She says he didn't tell her what two felonies on her record would mean for the rest of her life. Or that they could never be expunged. Few attorneys ever do.

"I wish I had fought it to the end," Kelly says. But she was scared and already had a petty theft conviction from years before, so she stood before Judge Patricia Cleary and said she was guilty. Two to 10 years, Cleary said.

Kelly's four daughters, ranging in age from 5 to 11, visited her while she was locked up in Marysville. They cried the whole time — they didn't understand why Kelly couldn't just leave.

While Kelly was away, her mother died. It hurt so bad she wanted to wail, but she kept quiet. She didn't want to be put on suicide watch.

Then her young husband lost custody of the kids — he couldn't handle them by himself. The girls were scattered through the city like leaves by the wind. Three went to live with relatives, one here, one there. The fourth landed in foster care.

In 1998, Kelly came home. She'd served two-and-a half years of her sentence. The first thing she did was gather up her children and look for a place to live. The rental application asked for the basics — previous addresses, former landlords, have you ever been to prison and if so, for what?

When Kelly was honest, the property managers always found "more suitable tenants."

She and the kids moved in with her sister. Kelly and her husband drifted apart.

She applied for her old position at Jacobs Field and her convictions surfaced during a routine background check. The woman doing the hiring said she was sorry.

That's what everyone said.

Kelly tried another tack. She would pursue her dream, the one she'd had since she was little. "Everybody wanted to be a policeman, a firemen, Lola Falana, Diana Ross — I wanted to be a nurse."

For three months, she took the bus from West 98th and Denison to the Cuyahoga Community College campus downtown to become certified as a home health aide.

Two weeks before graduation, a woman came into the classroom to go over a few technicalities. She held up a list: "If you have any of these violent felonies on your record, we won't be able to help you find a job because no company or hospital will hire you.'" By law, the school couldn't certify her either.

Kelly walked out before anyone could see her cry. She still owes $300 in student loans.

On the wall of Kelly's cramped living room, pictures of her daughters surround a photo of her mother like petals of a flower. The arrangement is appropriate. The dignified matron with forgiving eyes was her nourishing center and Kelly's children are what's beautiful about her life.

All are doing well, no small accomplishment for the now-single mother raising girls in the city — none of them became pregnant in high school the way Kelly did, none dropped out before graduation. Her two oldest are grown. Two are still at home.

And then there is Brittany. The county took Brittany from her mother when she was a baby and the smiley, noisy five-year-old has lived with Kelly since she was nine months old.

Kelly took legal custody of the girl but couldn't adopt because of her felony convictions. That means she doesn't qualify for $590 a month in state subsidies — the amount adoptive parents receive for every child they take into their homes.

The hypocrisy of the situation is not lost on Kelly. The same government that won't let her work with old people or any other vulnerable population as a home health aide has delivered Brittany into her arms.

A fragile child, Brittany was born premature with a condition called "short gut syndrome"; doctors had to build her a stomach using tissue from her lower intestine. Because of her disability, Brittany is eligible for Social Security and that monthly check helps Kelly pay the rent. It's more than she earns doing odd jobs and braiding hair for friends and neighbors. Family members help out when they can.

At 37, she goes to job fairs with her teenage daughters and scans the want ads looking for anything, from pushing a broom in a food court to giving change in a parking lot. Sometimes she checks "yes" on the application where it tells her to disclose any crimes. Sometimes she leaves the space blank.

They find out anyway.

When a new hotel opened downtown, she tried to land a spot cleaning rooms. Her phone never rang. "I guess they were afraid I was gonna beat someone with some Comet," Kelly says, her vicious sense of humor showing. Friends tell her she should do stand-up, but she doesn't think her situation is funny — absurd, yes; funny, no — more like a bad joke.

Still, she's not naive, not any more. Even though she hasn't had as much as a speeding ticket since coming home, Kelly knows what she looks like on paper. She can imagine what employers say: *Who is this girl? Oh my God — she beat the hell outta somebody and robbed 'em. What if she gets mad at me? Slide that application over and move to the next one.*

With nowhere to go and nothing to do, her world keeps shrinking. Soon it will be the exact dimensions of her tight living room.

Mornings are hardest. She stands in the doorway of her house on a tree-lined street in Cleveland just outside of Euclid, one she was finally able to rent through a program called Shelter Plus that helps newly released prisoners find places to live, and watches her neighbors head off to their 9-to-5s. Longing is etched in her face. She wishes she had a job to rush to or a boss to complain about.

Her tears come fast, breaking through her tough-girl sarcasm. Kelly doesn't want food stamps or welfare or pity. She'd like to be able to work, earn enough to pay taxes, because then she'd be somebody, somebody other than the mug shot her kids saw.

"I want to be in the world," she says.

Then Kelly opens the door. And goes back inside.

"I'm waiting for my life to begin."

Bob Running Jr. says he might be forgiven in the eyes of God, but in the eyes of the state, he's not.

LIKE SO MANY choices he made when he was a teen, Bob Running Jr. regrets the garish tattoo on his right forearm, a crudely drawn skull with horns, its mouth open in a scream. But here he is, flirting with 30, living with the consequences of a decision his childish, impulsive brain made more than a decade ago. The bad skin art is one of the last remnants of the dumb kid he was. His criminal record is another — breaking and entering, theft, shoplifting.

Bob was arrested for stealing bundles of copper wire and bits of brass and aluminum from a scrap yard in October 1994, six months after his 18th birthday.

In the eyes of the law he was an adult, but truth be told, he was still a child, a rebellious high school dropout who clashed with his "hard-core Christian" parents. He liked rock, they played gospel; he smoked weed, they were high on Christ. The simmering discord finally boiled over when he hit 17.

"If you wanna go, go," his father told him, so Bob went. He crashed on friends' sofas or slept in cars.

It's hard to get a job — even a *Would you like fries with that?* kind — when you don't have an address. Bob improvised. It was his idea to steal the scrap. The place was wide open — he and his buddies didn't have to cut a padlock, climb a fence or outrun a snarling dog. They sold the scavenged metal for $400.

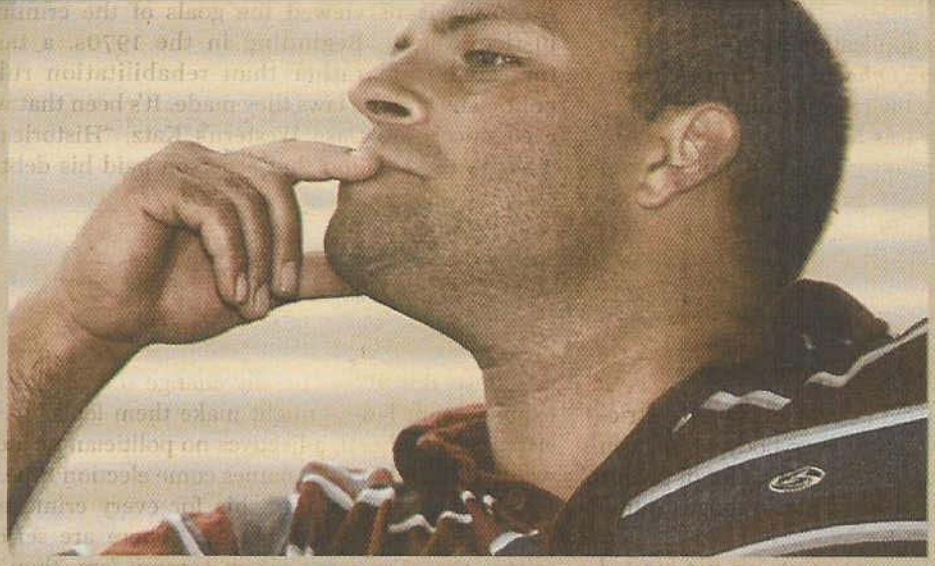
Weeks later, his partners in crime went shopping without him and were snagged by cops who'd set up surveillance at the yard. Police asked them to identify their accomplices or "they'd get 20 years, or some load of hooey," says Bob. They named names. He tried to deny it, but a witness Bob hadn't counted on identified him by describing his distinctive tattoo.

Homeless and awaiting trial, he took up residence with a girl in a car. Looking back, he figures he should have just gone to a shelter, but he was too proud. He needed money but couldn't slink home. So he went scrapping again, this time lifting eight beams of aluminum stacked in a corner of Valley View Park. He was picked up minutes later.

His mother, Norma, visited him at the county jail to tell him how much he'd screwed up.

"Mom," he answered, "the bars don't say it enough?"

The prosecutor offered him a deal: The state would drop four of the six felony charges against



If House Bill 317 fails, Bob Running Jr.'s only hope is a pardon from the governor or the president of the United States. "Realistically," Bob says, "that's gonna be rough."

him and give him a year of probation — no prison time. All Bob had to do was plead guilty to theft and breaking and entering, agree to pay $1,000 in restitution and do some community service. Bob jumped at the offer; he considered himself lucky.

He stayed out of trouble for three years, until a going-out-of-business sale at the Super Kmart in Maple Heights. He was looking for some cheap fishing gear. The store was packed — lines at the checkout snaked around the store. Although he had money in his pocket, he didn't want to wait and walked out without paying. He was caught with a bag of fishing lures. He found out later that dozens of other patrons were arrested that day in a sting operation to nab shoplifters. Bob was 21.

He spent 45 days in the county jail. There he had an epiphany. He would stop stealing — he was bad at it after all — and he'd quit smoking, too.

Bob hasn't had a cigarette, a joint or a ride in the back of a cruiser since that jailhouse vow eight years ago, but his rehabilitation has won him few rewards.

At first it was easy to make money as a landscaper. Sometimes, he didn't even have to fill out an application. He'd show up and the boss would say, "You're hired. Start working." He loved the job. So what if it didn't offer health care benefits? His solid sparkplug of a body was in terrific shape and he was outside, using his muscles.

Ten years later, he's sick of it. At 29, his body isn't as resilient as it once was. He sprained his ankle badly last year and was on crutches for a month and a half, so he couldn't mow lawns or trim bushes. He didn't receive sick pay because the company he worked for at the time didn't offer it. He still owes the hospital money.

Today, Bob is with a new landscaping outfit but doesn't bring home much more than he did at 19. His boss knows about his convictions. Bob slipped and told him once because they used to talk a lot. They don't talk anymore.

When the snow flies, he can't work at all and collects unemployment, only half his regular pay, which drives him further into the hole. He's looked for other positions, but no one wants to hire someone with a felony theft conviction.

Bob thought a GED might help — he earned it years ago because he figured he couldn't do much without it. Since then, he's learned he can't do much with it, either. He lists the businesses that won't even consider him: banks, stores, gas stations, places with a register on the premises. "Anything with money, don't even bother to apply," he says. Ditto for security jobs.

His paycheck-to-paycheck lifestyle shows. The decor of Bob's apartment smacks of early college grad and he drives a 1992 Buick Roadmaster. It cost him $150. The car used to belong to his dad, who wanted to junk the blue behemoth, but Bob saw its potential, cleaned it up and rebuilt it. He just wishes he could do the same with himself.

It was Bob's mother who first told him to ask to have his record expunged. Bob collected the paperwork he needed. A court clerk reviewed his record. Because the scrap busts happened so close together, they could be viewed as one crime, making him a first-time offender, eligible to have his record sealed. If only he hadn't pocketed the lures.

His hope of a fresh start ended at that Super Kmart. The moment he was convicted, the law considered him a career criminal — indistinguishable from serial robbers or rapists.

While he's ashamed of what he's done — "How can you be proud of stealin'?"— he wants to move on. Meet someone, settle down, start a family. But his social life has stalled too.

"What's the point?" he says. "Would you want your daughter to date a landscaper who was a felon?"

Bob has a favorite scene in the Coen brothers' comedy *O Brother, Where Art Thou?*, a tale of three wild-eyed convicts on the run through the Depression-era South. After being baptized in a shimmering lake, one of them crows about how all his sins have been washed away, including that Piggly Wiggly he knocked over. His friend, a more pragmatic sort, answers that while he might be forgiven in the eyes of the Lord, "the state of Mississippi ain't so forgivin'."

Bob can relate. To him, the state is like a parent who never forgets. While his friends marry and throw baby showers, go on vacation and win promotions, Bob is grounded for life. — *A.S.*

Appendix 6

SEARCH
The National Consortium for Justice Information and Statistics

Compendium Search

Select a state

Select a category

SUBMIT

Search results for "**Sealing conviction information**"

26. Sealing conviction information

State	Citation
Alaska	AS 12.62.180
Arizona	13-907
Arkansas	16-90-904 16-90-905
California	Penal Code 1203.45
Colorado	24-72-308
Connecticut	54-142a 54-142a 54-142b
District of Columbia	48-904.01 SCR-Crim. 118 SCR-Crim. 32(f)
Florida	943.059 Reg. 11C-7
Hawaii	712-1256 831-3.1
Indiana	35-38-5-5
Kansas	12-4516 21-4619
Louisiana	44:9
Massachusetts	127-152 276-100A 276-100B 276-100C 94C-34 Reg. 803 CMR 7.02
Michigan	712A.18e 780.623
Minnesota	242.31 364.04

	609A.02(2) 638.02
Missouri	610.106 610.120
Montana	46-18-204
Nevada	179.245 179.259 179.275 179.285 453.336
New Hampshire	318-B:28-a 651:5
New Jersey	2C:52-2 2C:52-3 2C:52-4 2C:52-5
New York	CPL 160.50(1)© CPL 725.15
Ohio	2953.32
Oklahoma	22-18 22-19 22-991cv1 22-991cv2 63-2-410
Oregon	137.225(1)(a)
Puerto Rico	34-1725 34-1725d 34-1731 34-1732 34-367
Rhode Island	12-1.3-1 12-1.3-2
South Dakota	23A-27-14 23A-27-17
Utah	77-18-11
Vermont	CVR 28-050-001
Washington	13.50.050
West Virginia	49-5-18 5-1-16a

Appendix 7

MINNESOTA Spokesman-Recorder

AS IT WAS SPOKEN . . . LET US RECORD .

METROPOLIS

Appeals court makes it harder to clear your name

By: Michael Friedman
Minnesota Spokesman-Recorder
Originally posted 4/21/2004

Having trouble getting a job or renting an apartment because of an old conviction? Thinking about applying for an expungement that will seal your record from background checkers? The Minnesota Court of Appeals, in a March 30 decision, has made that course of action generally worthless.

Decided by Chief Judge Toussaint, Judge Halbrooks, and Judge Huspeni, state law allows the sealing of any record in which no conviction resulted, or if there is some constitutional reason. But when the record is for a conviction, an expungement petition to the court can only lead to the sealing of the court record.

Meanwhile, the record held by the police department that arrested you, and the state Bureau of Criminal Apprehension, will remain open to the public because courts, in those instances, don't have the authority over non-judicial branches of government. Since most background investigations check BCA and police department records, the fact that a court record has been sealed will have limited impact on employment and housing prospects for many.

The legal status of data, or what should be public and accessible, is a critical issue for communities of color in light of state statistics revealing disparities in the criminal justice system, most notably the recent documentation of racially biased policing that came out of a Council on Crime and Justice study. If factors unrelated to criminality lead to a biased rate of convictions for people of color as compared to Whites, the effect of keeping data public becomes an indirect means to encourage long-term housing and employment discrimination based on race.

Perhaps in response to the social inequity, or more generally to address the unintended lifelong consequences of criminal sentences, Hennepin County judges have been granting expungements in increasing numbers over the last few years. With the recent Appeals Court decision, the remedy will now have to come from the state legislature unless the ruling is overturned by the state's Supreme Court. (As of this writing, an appeal to the Supreme Court is under consideration, but has not yet been filed by the Public Defender.)

The problem of old convictions has been compounded over the last 10 years by the ease by which electronic records can be stored, accessed and obtained. Many advocates, including the Legal Rights Center, testified recently at a state Supreme Court hearing against making court records, which already are public, web accessible. Most of the testimony emphasized how criminal record data often becomes a legal means to

discriminate, rather than expressing any support for governmental privacy for its own sake. A decision is pending.

Readers seeking expungement assistance in Hennepin County may contact the Volunteer Lawyer's Network at 612-752-6677, or use the walk-in services of the Self-Help Center at the Government Center. In Ramsey County, you may call the Neighborhood Justice Center at 651-222-4703, or SMRLS (Legal Aid) at 651-222-5863. For general expungement information (but not legal advice or representation), call Michael Friedman at the Legal Rights Center at 612-337-0030 or write to mfrie@legalrightscenter.org.

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METRO

JACKSON SENTENCED
Gilbert Jackson, who conspired with Nate Gray, is sentenced. **B10**

THE PLAIN DEALER

Judge expunges conviction of top developer

MARK PUENTE
Plain Dealer Reporter

ELYRIA — One of Lorain County's most prolific developers is no longer a felon.

A judge agreed Monday to expunge the conviction of Herman "Bucky" Kopf, 67.

Kopf pleaded guilty in 2001 to obstructing justice after giving money to former Avon Lake Mayor Vince Urbin and then lying about it to police and a grand jury. He was sentenced to a year's probation and 80 hours' community service and was fined $2,500.

Kopf's attorney, Dan Wightman, told Lorain County Common Pleas Judge Thomas Janas that the sentence was not the worst toll on his client. The felony conviction forced Kopf to resign from many boards, and he found it difficult to deal with banks and government agencies, Wightman said.


Kopf

Assistant County Prosecutor Mike Nolan objected to the expungement, saying the public has a right to know about the past of such a prominent business leader.

In granting the request, Janas said he considered Kopf's community service, lack of other convictions and age. "It was an isolated incident," Janas told Kopf. "The scales tip in the favor of expungement."

A joyful Kopf hugged supporters and said he was grateful to Janas for restoring his dignity.

Kopf might be the developer most responsible for building Avon Lake into one of Northeast Ohio's fastest-growing suburbs. He owns a golf course, a winery and Kopf Construction Corp., which has built the planned communities of Waterside Crossings and Legacy Pointe in Avon Lake, as well as office and retail complexes such as The Landings.

Former Assistant Prosecutor Jonathan Rosenbaum once labeled Kopf "the Boss Hogg of Avon Lake." But much of the city and business community continued to support him. They forgave him what they called one misstep in a life of community service.

Kopf's crime occurred as former Mayor Urbin was defending himself against charges he stole from a charity and tampered with evidence. Urbin asked Kopf to attend a meeting on raising money for his legal defense. On Dec. 22, 2000, Kopf gave Urbin an envelope with $2,000 in cash, court records show.

Urbin returned the money two weeks later after prosecutors issued subpoenas to investigate the fund-raising events. But Kopf neglected to tell the grand jury that Urbin had suggested he give the money to his mother.

The developer told investigators that he gave Urbin money out of compassion and not to buy influence. Kopf had projects pending before the Planning Commission, of which Urbin was a member.

The expungement will give Kopf what Gov. Bob Taft refused him two years ago. In October 2003, Taft followed an Ohio Parole Board recommendation and rejected Kopf's request for clemency.

To reach this Plain Dealer reporter
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Cleveland minister leads rally for expungement bill

By GILBERT PRICE
Senior Editor

The Rev. Mark C. Olds, a Cleveland Pentecostal minister and the founder of the National Restoration Movement, has a lot in common with the ex-offenders whose cause he champions.

He knows what it's like to be behind bars. "With my past record, in some countries around the world, I would be missing arms and other limbs based on their system of justice," Olds said at a statehouse rally.

But in one important sense, Olds' history is distinct from the past of the ex-offenders who would be aided by the bill he helped write and is now pushing. The ex-drug user and thief is also a killer, having done time in North Carolina for a murder. The provisions of House Bill 317, which would allow the expungement of many records for ex-offenders who have been clean for at least seven years, would not cover his offense. But Olds is still grateful.

"I would not be standing here today if the death penalty had been in effect," when he committed his murder, Olds said.

But the fact that Olds was standing in Columbus – a free man and a contributing member of society – reflected the goal of the legislation that he and his National Restoration Movement, U.S.A., are backing: legislation which would make it easier for thousands of ex-offenders to have their records expunged and ultimately free them to take a wide variety of jobs for which they are currently ineligible.

The statehouse rally brought together about 150 advocates for House Bill 317 to prod the legislature to pass the bill, whose chief sponsor, Rep. Shirley Smith, D-Cleveland, worked with Olds to craft the legislation.

Under the legislation, persons convicted of one or more misdemeanor offenses could petition the courts for an expunging of the criminal records after seven years of behavior without any criminal convictions. Those convicted of multiple felonies could also apply for expungement, except for the offenses of murder, sex crimes, or kidnapping.

The bill would also make it a crime for any business or individual to knowingly release the criminal history of a person whose record has been expunged.

At the rally, Olds said the bill is necessary to provide jobs and opportunity for thousands of people around the state who deserve a second chance.

"This is a jobs bill," Olds said. "This is not about being soft on crime." The bill would not affect sentencing; it would only say that, after the state had extracted its judgment against the offender, he or she would have the ability, after seven years of good behavior, to clear the record and start all over.

"That ought to complete your sentence and you ought to have a second chance," Olds said.

In a rally that felt more like a church service than a political event, ministers and advocates from across the state pressed the case for House Bill 317.

The Rev. Donald Washington, pastor of Mt. Herman Missionary Baptist Church in Columbus, said he was brought into the restoration movement through his work with Olds and through his chaplaincy of death row prisoners.

Washington said that the expungement issue is also critical to the question of reentry for ex-offenders.

An estimated 28,000 Ohioans – about half are Black – will be released from Ohio's prisons this year, the Department of Rehabilitation and Corrections said. Most of them will face great difficulty in getting jobs, because their felony records can be used against them.

Washington placed the issue in spiritual terms. "We serve a God of a second chance," Washington said. "If [ex-offenders] paid their debt to the penal system, if they paid their debt to society, why shouldn't they get a second chance?"

Bishop Fred Marshall, pastor of Smyrna Baptist Church in Columbus, agreed. Marshall said that he has some expertise on the subject: he had been incarcerated in jails in two different countries and 12 different states, before he was released and ultimately pardoned by then-Gov. James A. Rhodes in February 1968. Ever since, he has worked to assist ex-offenders to rebuild their lives, and he believes House Bill 317 is essential to that effort.

Smith, who wrote the bill in conjunction with Olds, called Ohio's current expungement law "much too harsh" and "antiquated."

"There should not be a law that has zero tolerance," Smith said.

Smith had earlier called for 25,000 persons to come down to the Statehouse in a show of force for the legislation. And, while the group did not reach its goal, individuals did come to the rally from a number of different cities, including not only Cleveland and Columbus, but also Dayton and Mansfield.

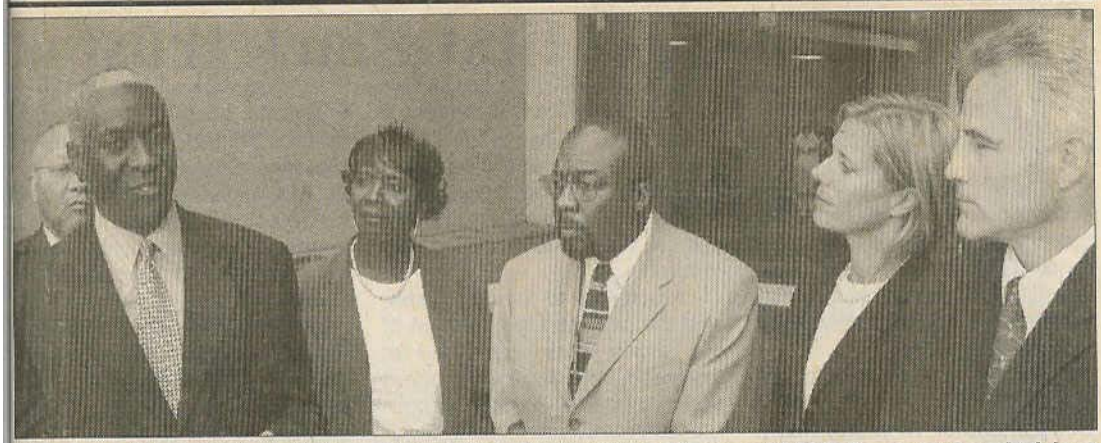
And a number of pastors from around the state also attended the rally, indicating the strength of the Black church and its commitment to restoration.

The legislation, which will be heard in the House Criminal Justice Committee, faces an uphill battle. The Ohio Prosecuting Attorneys Association has not taken a formal position on the bill, but it is expected to oppose the legislation, saying that it would hinder law enforcement by sealing the records of too many ex-offenders.

But the backers of the legislation are not deterred. The Rev. Michael Exom of Cleveland said that, when David took on Goliath, he asked the question "Is there not a cause?"

And everyone knows how that fight turned out.

"This is only the beginning," Smith told the crowd. "But this is a good beginning and don't let anyone tell you otherwise."



The Rev. Mark Olds, left, founder of the Restoration Movement U.S.A., spearheaded last week's rally in Columbus to urge passage of House Bill 317, which would expand expungement eligibility. Olds was joined the week before the rally at a Cleveland press conference by, from left, State Rep. Shirley Smith, Cleveland Municipal Court Judges Larry Jones and Joan Synenberg, and Cuyahoga County Common Pleas Court Judge Dick Ambrose. (PHOTO COURTESY CLEVELAND MUNICIPAL COURT)

OPINION

THE PLAIN DEALER

Thursday, September 15, 2005 | B8

2nd chance should be an option

Martha Stewart walked out of a federal prison this past spring and resumed a life of privilege. A fresh felony record was nothing more than a speed bump. Stewart's experience obviously isn't typical.

Nearly 600,000 people walk out of American prisons each year and into lives filled with challenges. Employment generally is the highest hurdle. Ex-offenders often find that felony backgrounds prevent them from ever passing a background check or finding stable employment.

That, in turn, leads to a host of other social pathologies. Ex-offenders often are doomed to lives of underemployment and an inability to adequately provide for families. Many never get a shot at a real second chance. They frequently return to crime out of desperation or hopelessness.

In view of all of that, a bill pending in the Ohio House that would expunge the criminal records of certain types of offenders deserves careful deliberation.

The measure, sponsored by Rep. Shirley Smith, a Cleveland Democrat, would enable offenders with multiple misdemeanor convictions or certain felonies to apply to have their criminal records sealed, providing they commit no crimes for at least seven years. Currently, that option is not available to those with more than one conviction on their record.

The expungement option would not extend to those convicted of murder, sex crimes or kidnapping.

Some critics understandably worry that such a law would provide loopholes that some criminals – especially sex offenders – might seek to exploit. Simple steps can and should be taken, however, to keep that from happening.

Currently, the sentencing court has the power to decide questions of expungement. But if more people were to qualify for expungement, a board or commission – on the order of the parole board – might provide a better means of determining which ex-offenders are deserving.

Thousands of Ohioans continue to be punished for crimes committed in the distant past. Those who have truly transformed their lives and committed themselves to abide by the law deserve a second chance to be productive citizens. And the option shouldn't be available only to the wealthy or the politically connected.

In some ways, Smith's bill is an economic development measure. It could pave the way for certain people to enter the work force. And it could help untold numbers of ex-offenders and, perhaps even more important, those who look to them for support.

Appendix 11

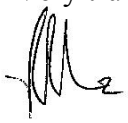
November 7, 2005

Dear Ohio Municipal Court Judge:

Enclosed please find a two-to-five minute Municipal Judges Opinion Survey Questionnaire on Misdemeanor Expungements, with a return pre-addressed envelope. This Survey Questionnaire was sent to all Municipal Court Judges in the state of Ohio. It can be completed within five minutes and mailed. Your response is essential to a research project for my Phase III Court Executive Development Program (CEDP) for the National Center for State Courts (NCSC). My research project is investigating whether the current criteria for sealing misdemeanor conviction records in Ohio is serving the purpose for which they were established. Would you please take the next few moments to complete this survey? It truly can be completed within the next couple minutes.

Thank you for your time and attention to completing this Survey Questionnaire, and my appreciation for your mailing it today.

Very truly yours,



Russell R. Brown III
Deputy Court Administrator

cc: Municipal Court Administrator

Municipal Judges Opinion Survey Questionnaire on Misdemeanor Expungements

Generally, the sealing of a misdemeanor criminal record in Ohio is reserved for rehabilitated first time offenders with a single non-violent criminal infraction, a demonstrated period of good conduct, and after the expiration of one year from final discharge. Please answer the following opinion questions with either: (1) Strongly Agree, (2) Agree, (3) Not Sure, (4) Disagree, (5) Strongly Disagree:

1) Courts have inherent authority to expunge criminal records of persons who have been convicted of an offense under certain circumstances.

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree

Comments:_____

_____

2) Under the current law, most first offenders petition the sentencing court to expunge their conviction record within the year following their reaching eligibility (i.e. within two years from final discharge).

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree

Comments:_____

_____

3) The filing of a petition and a $50.00 filing fee is an easy and simple process for the average eligible citizen to obtain an expungement.

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree

Comments:_____

_____

4) One common collateral sanction of a criminal conviction is impairment of the convicted persons ability to keep and/or to obtain gainful employment.

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree

Comments:_____

_____

5) Certain convicted persons even with multiple convictions, once their sentence is served, the person is rehabilitated, and after a minimal time of good conduct, should have some opportunity to be relieved of the stigma and collateral sanctions of being a convicted criminal.

(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree

Comments:_____

_____

Appendix 12

Municipal Judges Opinion Survey on Misdemeanor Expungements
Question One Comments

1.) Courts have inherent authority to expunge criminal records of persons who have been convicted of an offense under certain circumstances.

-By statute only

- The process is statutory in nature

- Statutory Authority

- Only statutory

- Not aware of inherent authority

- We can expunge only if the law says we can

- The authority is statutory, however

- Our grant of authority is statutory – the statute defines and limits our jurisdiction – no inherent authority

- The authority is statutory, not inherent

- The authority for courts to do so is defined and limited by statutes

- Have statutory authority

- Statutory authority

- I believe the courts should have more latitude ion granting expungements but disagreed with the above statement because I believe the process is controlled by statute

- Municipal court jurisdiction in Ohio is a matter of statute

- Not without legislative authority. However a court may inherently vacate a conviction

- #1 is very untrue. It ought to be a true statement – courts ought to have that authority, but they don't

- Authority is by statute only

- State should have the opportunity to participate in a hearing, to object if necessary

- Although a statute governs there is a wide latitude

- Only per statute

- As provided by statute

- The problem is that one court does not have authority to act for all courts. Risk of other court convictions

- "Inherent" authority emasculated by statute and by visibility of case & victims rights

- I think all convictions of first time should have the right of expungement

- Municipal courts are statutory courts and therefore have limited powers

- Court's authority is limited by statute

- Statutory authority only

- I am in favor of enlarging judicial discretion as long as there is uniformity in any policy to preclude disparities.

- The authority is statutory not "inherent"

- Only authority is pursuant to statute

- Many offenses are excluded by law

- Requirements are set by statute

- Limited by statute

- This is statutory

- Never researched

- Expungements are governed and prescribed by statutes. Judges must stay within these limitations

- Discretion and contemplation are more important than inflexible criteria

- The court's jurisdiction is limited to that conferred by statute

- By inherent authority, I assume you mean without statutory authority

- Mitigation- other circumstances

- Statutory authority <u>not</u> inherent authority

- I believe when the G. A. enacted the realing statutes it was a derogation of the common law

- The legislature continues gradual encroachment into this issue

- Process is governed by statute

- We are statutorily created courts of limited jurisdiction. I think we should have such authority

- Pursuant to statutory requirements

- Court only has statutory authority – not inherent authority to expunge

- We have no "inherent" authority we are statutory creatures

- No "inherent" authority exists but if the interest of justice is served – expungements should be permitted

- This is a statutory procedure – controlled by statute

- No such power unless granted by statute

- Statutory power

- Statutory authority to expunge using discretion

- Expungement is a statutory relief

- The question can be answered 1-5 depending on the context and circumstances pf the matter

- In Ohio it is pursuant to statute

- At least not municipal courts, who have jurisdiction by only statue to do things and hear cases

Appendix 13

Municipal Judges Opinion Survey on Misdemeanor Expungements
Question Two Comments

2.) Under the current law, most first offenders petition the sentencing court to expunge their conviction within the year following their reaching eligibility (i.e. within two years from final discharge).

- Most never avail themselves this. Only 1-5 per year out of total case load of 5,000
- 1st offender typically wait longer than the required year + expungements are under utilized
- Primarily because we have a first offender program where expungment occurs automatically
- Most offenders petition more than 2 years after their final discharge
- Probably 10%
- Very few file
- Most of the time in this court longer before file
- Most do not
- Many petitions I see (more than 50% of those filed) relate to offenses committed more than 2 years ago
- Defendants petition the court (usually) when a conviction will prevent them from gaining employment
- We process few expungements, they range from 2 years +
- Most are more than one year later
- A small fraction of first offenders file in our court
- That is not our experience – they usually file only after several years
- After 1 year
- Most first offenders never petition the court
- Most first offenders who decide to petition for expungement
- Most offenders petition the court when they are looking for a job or some other circumstance prompts it
- Over the last 11 years we have received very few expungement motions
- Many not aware of process
- For underage consumers the above may be true but not as a general statement
- We impose additional unsupervised probation

- Most defendants are not aware of their rights
- Most do not
- Rarely do offenders apply timely because there is paucity of ed + info on this matter
- Very few apply
- I see few expungment requests
- Most do not avail themselves of this process
- Very few
- Well not speculate. I suspect most offenders believe that have to get an attorney Avon Lake Muni has suggested forms available
- Vast majority of individuals do not apply to have their records expunge
- No data available to me
- In this jurisdiction it doesn't appear to be a concern until the record appears when offender is looking for a job often many years after the case
- We don't have many dealings compared to convictions
- However, do receive "old" ones for people searching for new employment or promotions
- Not in my experience – most of them wait until it becomes an issue in their life – if ever
- Not "most", I would say "some" most in my opinion, come in well after the time period
- Very few people file to expunge their record
- "most" 1st offenders do not petition the court – probably due to the fact "most" are unaware of their right to request expungement
- Most offenders don't petition the court unless job hunting in certain fields
- Not enough defendants take advantage of this opportunity
- Distinct minority ever seek the relief
- Most petitions in their court are filed years after conviction – only a few first eligible
- I have less than 10 expungements per year+
- Not quilty sealing occur soon but expungements are delayed until need occurs (job, etc.)
- A small percent wait longer

Appendix 14

Municipal Judges Opinion Survey on Misdemeanor Expungements
Question Three Comments

3.) The filing of a petition and a $50.00 filing fee is an easy and simple process for the average eligible citizen to obtain an expungement.

- There is no standard form in our court. Most expungements have been filed by an attorney
- Many not aware of process
- Not sure we do anything "Easy – Simple"
- Many poor defendants cannot afford the fee and it should not have a filing fee
- The process is simple – not sure about the amount of filing fee
- I lead an effort (successfully) to streamline the Hamilton Co. process which previously required 3 minimum appointments with the clerk, probation, and court. Currently, this courts defers the filing fee until the person appears before the judge, who can either assess it or waive it.
- Process not well-publicized
- Easy for the citizen, yes; but we seem to have a little trouble confirming they are first offenders
- Depends on defendant seems like the proper way to get information to make decision
- It is in this court
- To successfully accomplish the objective of this procedure, a capable attorney is advised
- The process is simple but few people following through with it
- Our court provides an application form for defendants
- If forms are readily available
- We allow almost anything to pass as a petition for expungement
- The amount of the fee shouldn't be fixed
- What does this mean? This is not the law in our jurisdiction
- In our court – Cleveland Municipal Court
- No fee for non-convictions
- Easy with attorney If citizen files, not easy
- There are too many different fees already

- Most people who come through the courts fall below the “average” income range
- Our local cost is $75.00
- The Clerk’s Office assists individuals with filing of expungements with a form petition
- It may not be affordable, but the end result is worth the $50.00
- Our filing fee is higher but we’ve created fill-in-the-blank forms we hand out to applicants. The form procedure is also on our website
- It musn’t be too routine however
- Biggest problem is most people aren’t aware of the process
- Must hire an attorney – notice of process on proper parties Background checks and court hearings – not easy
- Many cannot afford the filing fee & many people are unaware of the filing procedures
- There is much more to it than that
- It is not too onerous

  Most citizens do not understand the process and need assistance

Appendix 15

Municipal Judges Opinion Survey on Misdemeanor Expungements
Question Four Comments

4.) One common collateral sanction of a criminal conviction is impairment of the convicted persons ability to keep and/or to obtain gainful employment.

- This would depend on the type of job he had or desired
- Depends on the type of offense for the most part no
- Especially with misdemeanors
- We have severely limited the rights of people for jobs
- Question implies universal impairment – not always true
- This problem is creating a large urban population ineligible to maintain current job or obtain one. Thus poverty has increased.
- I am really not sure because I don't get much feedback on this issue
- Without question
- Clearly
- It depends a lot on the crime convicted of – whether the person is in a position of trust
- That and loss of driving privileges
- I have hardly ever excluded consideration because of economic difficulties
- But now, with propriety databases – expungement is nearly a moot point
- Housing also becomes a major problem for low-income individuals
- Society seems forgiving of only misdemeanor convictions
- Depends on the economic climate and the nature of the kind of work the person does
- Appearing on time, when scheduled, and not impaired by chemicals appear to be bigger impediments
- In limited situations, this may be the case depending on the type of employment and nature of the crime – felonies are a difficult situation
- At least as to certain types of offenses/certain jobs
- Particularily true today because manufacturing jobs are diminishing, or non-existent. Service jobs, ie) ones that require interaction with the public, are primary jobs available. No employer is willing to risk having a person with a record. Market conditions don't require them to hire such persons.

- My experience in some felony convictions do apply – few misdemeanor convictions impair employment in many unskilled jobs
- It depends on the nature of the charge
- Depends on the nature of the criminal offense
- Depends on the person, crime, etc.
- Under certain circumstances
- In some circumstances yes, some no
- Depends on the offense
- A conviction certainly does not help

Appendix 16

Municipal Judges Opinion Survey on Misdemeanor Expungements
Question Five Comments

5.) Certain convicted persons even with multiple convictions, once their sentence is served, the person is rehabilitated, and after a minimal time of good conduct, should have some opportunity to be relieved of the stigma and collateral sanctions of being a convicted criminal.

- The real problem is particularly drug dependent persons who finally get sober after a series of cases
- Depends on the type of convictions the total no. of convictions, and the length of time the individual been free from criminal involvement
- There are consequences for multiple offenders
- I would be more apt to agree if the adjective was "substantial"
- I am satisfied with the current expungement laws
- Again depends on many circumstances
- Question is too vague – it may not be true of sex offenders, domestic violence, DUI's, etc
- Your question assumes rehabilitation which with a multiple offender is hard to determine – expungement should never be available to multiple/repeat offenders. Police records are very important.
- It should be considered on case by case basis and not involve act of violence
- Again depends on the offenses – Felonies – No; maybe for misdemeanors
- A person convicted of multiple offenses causes great concern
- Let record speak for self if truly rehabilitated should not be a stigma
- Depends on "certain" persons & type of conviction
- We need to allow cases 20 years or older be expunged if the person has no convictions
- It depends on the type of offense and number of violations
- I hesitate to strongly agree because if "certain" persons exceeds a certain "class" of person than there will be racial, economic, etc. disparities
- Certain individuals can be found to be rehabilitated after multiple convictions. Yes
- This is a legislative matter – as far as creating the law

- Here is a problem, how can the court determine who those persons are. It will end up being a person who can afford a lawyer. Employers should make the call to give someone a chance
- It depends of course on what the multiple convictions are for
- Non-violent priors, such as DUS, should not bar an expungement
- For rehabilitation to be established more than a minimum period of time of good conduct should be required
- There needs to be some limits i.e. 3 convictions in 10 year period – max
- However, employers have a right to know
- This would be situational for me
- Bad question – has conclusions
- But it depends on the conviction
- There is an exception to every rule and justice should not be stymied by technical road blocks
- Emphasis on certain persons & strong look at amount of time
- Depends on the circumstances – number of priors – types of priors etc We should not make it "too easy" to "forget the past"
- Also, an OVI conviction should not prevent expungement of a 1st offenders criminal case
- Some crimes should not be expunged
- It would depend on the type and number of multiple convictions
- There should be a mandatory expungement after time and good behavior. Also any entity that downloads or copies public records should be required to seal upon court order
- Much more information would be necessary. (Certain convicted persons even with multiple convictions – much too vague)
- 'Minimal' being a relative term, I would agree if a multiple convicted Defendant must wait longer than 1 year (say, 2 years)
- Need discretion some are age 18/19 & wild – could mature & be haunted by problems when he is 40 – married & working, etc
- Would suggest perhaps a 5 year period of good conduct & perhaps some community involvement of good deeds for an expungement opportunity if multiple convictions
- Perhaps after a "significant" time of good conduct
- Difficult for me to state a general rule on this one. Maybe some specific instances
- If minor offenses and no objection from victim

- To get past the multiple conviction question it should take 10 years and some state jurisdiction
- It depends on the type of crimes and the criteria for concluding that they have been rehabilitated – not an easy task. It also depends on how recent and the gravity of the crime – this is a complicated area that should not be dealt with lightly. How many multiple convictions are we referring to?
- Statute is restrictive as it currently stands
- Although there is the power of a Governor's pardon which few people take advantage of - has same result
- Especially compelling are the cases where someone has a long period (e.g. 20 years) between convictions
- The issue concerns a "minimal time of good conduct" Minimal time" needs to be defined. True rehabilitation needs to be defined over a time period that is not minimal.

Appendix 17

HIGHLIGHTS OF HOUSE BILL 317
EXPUNGEMENT REFORM LEGISLATION

The National Restoration Movement U.S.A., Inc.

Then God said, "Behold, I am going to make a covenant. Before all your people I will perform miracles which have not been produced in all the earth, not among any of the nations; and all the people among whom you live will see the working of the Lord, for it is a fearful thing that I am going to perform with you. Exodus 34:10 NASB

Mission Statement: Willing to go the Distance to make a Difference

HOUSE BILL 317

The following declarations are highlights of the Expungement Reform Legislation as introduced in House Bill 317 in the 126th General Assembly Regular Session 2005-2006 Representatives S. Smith, Barrett, S. Patton, Williams, Yuko, Allen, Brown and Key.

1. Prior to accepting a plea of guilty or a plea of no contest, the court shall inform the defendant of the circumstances under which official records may be sealed.

2. If a court denies an application for sealing of records, the applicant may file a new application at any time after one year from the date of the denial.

3. Persons convicted of multiple misdemeanor offenses may apply to each court for the sealing of records after seven years of clear conduct.

4. Persons convicted of multiple felony offenses (offenses cannot include murder, sex crimes or kidnapping) may apply to each court for the sealing of records after seven years of clear conduct.

5. Persons convicted of a driving under the influence (dui) may apply for sealing of records after five years of clear conduct from the last conviction.

6. Within thirty days after the entry of an order sealing officials records any private individual, business organization, or other non-governmental entity shall delete the information from their records or destroy the records, releasing sealed records shall result in a two hundred fifty thousand dollar fine.

7. Any private individual, business organization, or other non-governmental entity knowingly release or otherwise disseminate or make available official records that have been ordered sealed shall be fined five hundred thousand dollars.

8. Any private individual, business organization, or other non-governmental entity knowingly releasing or otherwise disseminating or making available sealed information over the internet shall be fined one million dollars.

The National Restoration Movement U.S.A., Inc.
11470 Euclid Avenue, PMB 214
Cleveland, Ohio 44106
Tel. 440.498.0021
Email: markcolds2004@yahoo.com
Web Site: www.restorationmovement.citymax.com

The National Restoration Movement U.S.A., Inc.

Appendix 18

American Bar Association (ABA)
Criminal Justice Standards on Sentencing (Selected Sections)

Standard 19-1.2 Objectives

(a) With respect to collateral sanctions, the objectives of this chapter are to:
(i) limit collateral sanctions imposed upon conviction to those that are specifically warranted by the conduct constituting a particular offense;
(ii) prohibit certain collateral sanctions that, without justification, infringe on fundamental rights, or frustrate a convicted person's chances of successfully reentering society;
(iii) provide the means by which information concerning the collateral sanctions that are applicable to a particular offense is readily available;
(iv) require that the defendant is fully informed, before pleading guilty and at sentencing, of the collateral sanctions applicable to the offense(s) charged;
(v) include collateral sanctions as a factor in determining the appropriate sentence; and
(vi) provide a judicial or administrative mechanism for obtaining relief from collateral sanctions.

Standard 19 – 2.1 Codification of collateral sanctions

The legislature should collect, set out or reference all collateral sanctions in single chapter or section of the jurisdiction's criminal code. The chapter or section should identify with particularity the type, severity and duration of collateral sanctions applicable to each offense or to a group of offenses specifically identified by name, section number, severity level, or other easily determinable means.

Standard 19 – 2.2 Limitation on collateral sanctions

The legislature should not impose a collateral sanction on a person convicted of an offense unless it determines that the conduct constituting that particular offense provides so substantial a basis for imposing the sanction that the legislature cannot reasonably contemplate any circumstances in which imposing the sanction would not be justified.

Sanction 19 – 2.3 Notification of collateral sanctions before plea of guilty

(a) The rules of procedure should require a court to ensure, before accepting a plea of guilty, that the defendant has been informed of collateral sanctions made applicable to the offense or offenses of conviction under the law of the state or territory where the prosecution is pending, and under federal law. Except where notification by the court itself is otherwise required by law or rules of procedure, this requirement may be satisfied by confirming on the record that defense counsel's duty of advisement under Standard 14-3.2(f) has been discharged.

(b) Failure of the court or counsel to inform the defendant of applicable collateral sanctions should not be a basis for withdrawing the plea of guilty, except where otherwise provided by law or rules of procedure, or where the failure renders the plea constitutionally valid.

Standard 19 – 2.4 Consideration of collateral sanctions at sentencing

(a)The legislature should authorize the sentencing court to take into account, and the court should consider, applicable collateral sanctions in determining an offender's overall sentence.

(b)The rules of procedure should require the court to ensure at the time of sentencing that the defendant has been informed of collateral sanctions made applicable to the offense or offenses of conviction under the law of state or territory where the prosecution is pending, and under federal law. Except where notification by the court itself is otherwise required by law or rules of procedure, this requirement may be satisfied by confirming on the record that defense counsel has so advised the defendant.

(c)Failure of the court or counsel to inform the defendant of applicable collateral sanctions should not be a basis for challenging the sentence, except where otherwise provided by law or rules of procedure.

Standard 19 – 2.5 Waiver, modification, relief

(a) The legislature should authorize a court, a specified administrative body, or both, to enter an order waiving, modifying, or granting timely and effective relief from any collateral sanction imposed by the law of that jurisdiction.

(b) Where the collateral sanction is imposed by one jurisdiction based upon a conviction in another jurisdiction, the legislature in the jurisdiction imposing the collateral sanction should authorize a court, a specified administrative body, or both, to enter an order waiving, modifying, or granting timely and effective relief from the collateral sanction.

(c) The legislature should establish a process by which a convicted person may obtain a order relieving the person of all collateral sanctions imposed by the law of that jurisdiction.

(d) An order entered under this Standard should:

(i) have only prospective operation and not require the restoration of the convicted person to any office, employment or position forfeited or lost because of the conviction.

(ii) be in writing, and a copy provided to the convicted person: and

(iii)be subject to review in the same manner as other orders entered by that court or administrative body.

Standard 19 – 3.1 Prohibited discretionary disqualification

The legislature should prohibit discretionary disqualification of a convicted person from benefits or opportunities, including housing, employment, insurance, and occupational and professional licenses, permits and certifications, on grounds related to the conviction, unless engaging in the conduct underlying the conviction would provide a substantial basis for disqualification even if the person had not been convicted.

Standard 19 – 3.3 Unreasonable discrimination

Each jurisdiction should encourage the employment of convicted persons by legislative and executive mandate, through financial incentives and otherwise. In addition, each jurisdiction should enact legislation prohibiting the denial of insurance, or a private professional or occupational license, permit or certification to a convicted person on grounds related to the conviction, unless engaging in the conduct underlying the conviction would provide a substantial basis for denial even if the person had not been convicted.