

Expungement and Limiting Public Access to Alaska Criminal Case Records in the Digital Age

Barbara Armstrong and Deborah Periman

A criminal record results in a number of different barriers to reentry into the community for former offenders struggling to become productive members of society. Employment and safe housing are two of the most important factors in reducing the likelihood that such individuals will reoffend. Yet the existence of a criminal record is a formidable barrier to securing work and a safe place to live. Offenders often find it difficult to get a job or rent a home or apartment because their “record” makes them a poor risk in many people’s eyes for employment or tenancy. At both the state and federal level, these individuals are also at risk of losing public assistance and other government benefits, including the right to vote. (See “Collateral Consequences and Reentry in Alaska: An Update,” *Alaska Justice Forum*, Fall 2013/Winter 2014.) These barriers—also called collateral consequences—can be mitigated by reducing the extent to which criminal records are visible to employers, landlords, and others.

This article is a very brief overview of the complexity involved in limiting public access to criminal records, processes adopted in other states, and current options in Alaska. Issues include identifying the types of records that may be shielded from view and the mechanisms for limiting access. Although the process of limiting public access to criminal records is multilayered and poses challenges, abundant evidence demonstrates that it is a critical factor in assisting offender reentry.

Background

Historically the process of limiting public access to an individual’s criminal record has been termed *expungement* or *expunction* of record. *Black’s Law Dictionary* defines expungement as: “The removal of a conviction (esp. for a first offense) from a person’s criminal record.—Also termed *expunction of record*; *erasure of record*” [emphasis in original]. As traditionally used, expungement generally referred to:

the expurgation, extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person’s detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system by removal, deletion, erasing, sealing, destroying and other processes.

—*Expungements: Freedom from the Disability of a Legal Record* (3rd ed.) edited by J.D. Eastman (2005), p. 19.

In her article “Starting Over with a Clean Slate,” reentry expert Margaret Colgate Love recounts the development of the movement for expungement and the spirit of reform that accompanied it. Expungement or sealing of criminal records by states largely began in the 1940s and was first focused on youth offenders. These individuals were seen as impressionable persons, not necessarily prone to criminal behavior, who needed assistance in the rehabilitation process and

who should not be stigmatized by a criminal record. A decade later, the “clean slate” concept was applied to federal offenders between the ages of 18 and 26 years of age. The National Conference on Parole and the National Council on Crime and Delinquency were among the first groups in the 1950s to encourage expungement of criminal records “by which the individual will be deemed not to have been convicted.” In 1962, a “more nuanced way of dealing with restoration of rights and status” for offenders was proposed by the American Law Institute (ALI) as part of the Model Penal Code (MPC). The MPC section called for allowing the sentencing court to “reliev[e] ‘any disqualification or disability imposed by law because of the conviction.’ After an additional period of good behavior, the court could issue an order ‘vacating’ the judgment of conviction.” Love notes that, under the MPC approach, an offender whose rights had been restored or conviction vacated was not justified in stating that he had not been convicted of a crime “unless he also call[ed] attention to the order [of relief].” (See “The Model Penal Code,” below.)

This issue continued to be the focus of national commissions and professional organizations over the next two decades. Approximately 20 years after the MPC proposal, the American Bar Association (ABA) and the American Correctional Association (ACA) joined the call for reform. In 1981 both groups urged state and federal lawmakers to adopt “a judicial procedure for expunging criminal convictions, the effect of which would be to mitigate or avoid collateral disabilities.”

Despite widespread knowledge of the social costs of collateral consequences related to criminal convictions, Love notes that “during the 1980s and 1990s, new collateral sanctions and disqualifications were introduced into state and federal laws to augment and reinforce what remained of the old.” Unprecedented levels of incarceration in the United States due to the war on drugs and other “get tough on crime” policies made these barriers to reintegration—keeping millions unemployed and homeless or marginally housed—a national problem. As part of the newly coined *Smart Justice* movement of the post-millennium, lawmakers began looking at ways to reduce recidivism by easing known barriers to successful reentry. The expungement mechanisms recommended by the ALI, ABA, and ACA, and adopted by some states, became an important part of the discussion.

The Model Penal Code

The Model Penal Code (MPC) was developed to improve and promote uniformity in American criminal law. It was drafted by a committee of lawyers, judges, and law professors at the American Law Institute (ALI) in the early 1960s. The ALI was founded in 1923 in response to concerns about uncertainty and complexity in the law. The ALI website notes, “The Purpose of the Model Penal Code was to stimulate and assist legislatures in making a major effort to appraise the content of the penal law by contemporary reasoned judgement—the prohibitions it lays down, the excuses it admits, the sanctions it employs, and the range of authority it distributes and confers. Since its promulgation, the Code has played an important part in the widespread revision and codification of the substantive criminal law of the United States.” Legislatures and courts look to the MPC for guidance, but do not necessarily adopt all the recommendations. The American Law Institute continues to review the MPC and is currently looking at sentencing issues (another sentencing draft is due out in 2016), as well as revising provisions dealing with sexual assault and related offenses.

Reference

American Law Institute. (2015). “Model Penal Code.” (website). Retrieved 4 Jun 2015. (https://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=92).

As conceived in the twentieth century under the ALI, ABA, and ACA models, expungement involved removing a criminal record from view—erasing it, as it were. In some rare instances, the record could actually be physically destroyed. In practice, states used varying methods of handling records, and differing criteria for qualification to have records sealed or otherwise hidden from view. No standard process developed nationwide. (Alaska, as discussed below, does not provide any process for an offender to request that access to criminal records be limited, except in the instance of proven mistaken identity or a false accusation.) Nor has standard terminology developed to describe these processes. As one recent study noted, “the process of limiting disclosure of criminal records to the public may be referred to as ‘expungement,’ ‘expunction,’ ‘sealing,’ ‘setting aside,’ ‘destruction,’ ‘purging’ or ‘erasure’” (“Expungement and Post-Exoneration Offending” by Amy Schlosberg, et al.—see “Expungement Resources,” p. 8). Because the above terms used to signify expungement vary and their definitions differ depending on the jurisdiction, in this article we will use the terms *limiting access*, *limiting disclosure*, and *sealing* to refer to the process by which access to an offender’s records is restricted and the records made unavailable to the public, including employers and landlords.

Criminal Records in the Digital Age: National Overview

Challenges Associated with Electronic Dissemination and Storage

With the advent of the digital age and data being cached or stored by private companies, controlling access to information regarding a criminal record has become highly problematic. Although it is possible to identify which justice system agencies hold criminal records, and limit access to those digital and physical records, it is impossible to know where else the data may exist. Criminal history records may be stored on multiple databases or in different formats by various agencies and by private companies or individuals. Many employers routinely request background checks and receive criminal history records. If those records were retrieved and sent to an employer or cached in a commercial database before entry of an order to seal or limit access to the records, that data remains subject to electronic circulation. It is important to remember that it is only in rare cases that any state’s statute calls for the physical destruction of the record, and the data from the record may have been released prior to the instruction to destroy it.

Thus, even actual physical destruction will not necessarily prevent potential employers or landlords from accessing information already on the Internet or in privately held databases.

In addition, although a court case record may be designated as subject to limited access, sealed, or confidential (depending on the term used by a jurisdiction), and access to the court record consequently limited, the underlying arrest and other criminal history records held by a law enforcement agency may not be covered by that designation. In the article “When Cleansing Criminal History Clashes with the First Amendment and Online Journalism,” Calvert and Bruno underscore the complexity of these problems, including the fact that news stories containing arrest and charging information remain searchable on the Internet indefinitely. They also highlight some of the constitutional issues associated with controlling access to digital data. Although managing digital data is difficult, and measures to limit access to records of criminal cases may be imperfect, there is an emerging consensus that such measures—imperfect though they may be—are critically important as one step toward facilitating employment and safe housing for former offenders.

Processes and Criteria for Limiting Access

In most states, an individual seeking relief from the collateral consequences of a criminal record must file a request with the relevant court asking to have the case record designated for limited access or sealing—depending on the jurisdiction’s definition and requirements. The criteria under which such requests are evaluated vary considerably from state to state. The most common category of offenses that qualify for some type of protection from public access are misdemeanors, first-time low level offenses, nonviolent crimes, and offenses eligible for suspended imposition of sentence (SIS). (Congress has recently taken up this issue as well, and is presently considering legislation that would allow for expungement of certain nonviolent or juvenile federal offenses; see “Federal REDEEM Act of 2015,” p. 4.)

The point at which public access to a record is limited or prohibited is an important factor in the efficacy of relief. The longer a criminal record or court case record is available to the public, the less effective subsequent action limiting access will be for purposes of reducing collateral consequences. Recognizing that a delay in protecting records may vitiate the effect of subsequent action, eight states and the District of Columbia made changes between 2009–2014

that “eliminated, lowered, or changed the calculation for the waiting period before certain offenders are eligible for expungement or sealing [of criminal records],” according to the 2014 Vera Institute for Justice report *Relief in Sight? States Rethink the Collateral Consequences of Conviction, 2009–2014*. Some states have gone further, adopting mechanisms that make “expungement or sealing remedies automatically or presumptively available.”

Prohibition Against the Sale of Criminal Records

One of the greatest challenges to shielding criminal records from public view in the 21st century lies in the growth of “for profit” businesses engaged in the sale of arrest and conviction information. The background check industry retains vast repositories of such information in privately held databases, the owners of which have an economic incentive to promote review of criminal records by potential employers and landlords. In his *State of the Judiciary 2014* address, the chief judge of the New York State Unified Court System discussed proposed legislation “to make New York’s criminal history record policies fairer and more rational,” and announced a new court policy on the sale of criminal history information. Court information on “misdemeanor convictions of individuals who have no other previous criminal convictions and who have not been re-arrested within 10 years of the date of conviction” would no longer be disclosed as of April 2014.

Finding Best Practices: Resources for Analysis and Comparison

The Vera Institute has published a nationwide summary of the 2009–2014 legislative developments aimed at reducing the collateral consequences of convictions. The National Association of Criminal Defense Attorneys (NACDL) Restoration of Rights Resource Project has also reviewed national practices and produced an extensive chart showing the current policies in all the states on “Judicial Expungement, Sealing, and Set-Aside.” This chart provides a detailed statutory overview and allows comparisons among the states (see Table 1, p. 5). *The State of Sentencing 2014* study by The Sentencing Project provides additional information and focuses on actions by states regarding sentencing, probation and parole, collateral consequences, and juvenile justice. According to the study, Alabama, Illinois, Minnesota, and Ohio

Federal REDEEM Act of 2015

At the federal level, there is a bipartisan movement to implement expungement legislation that will facilitate employment for certain nonviolent or juvenile offenders. The proposed REDEEM (Record Expungement Designed to Enhance Employment) Act of 2015 would amend the federal criminal code to provide for the sealing or expungement of records relating to certain nonviolent criminal offenses or juvenile offenses. S. 675 was introduced in the Senate on March 9, 2015 by Senator Rand Paul (R-KY) and is pending in the Committee on the Judiciary as of this writing. An identical bill, H.R. 1672, sponsored by Representative Chaka Fattah (D-PA) was introduced in the House on March 26, 2015. Both bills are reintroductions of proposals (S. 2567 and H.R. 5158) that expired in committee during the prior Congress.

If passed, a key feature of the REDEEM Act would require a court reviewing a petition to seal a nonviolent offense to consider, among other factors, the extent to which the criminal record harms the ability of the petitioner to secure and maintain employment. It would also amend Department of Justice (DOJ) procedures for the release of records through the FBI's background check system. The Congressional Records Service bill summary notes

that the change would require DOJ to "(1) obtain the consent of an individual to whom a record pertains as a condition to exchanging records with an entity requesting the information for employment, housing, or credit application purposes; and (2) allow individuals to challenge the accuracy and completeness of their records." The Act would also prohibit background check "exchanges of records regarding: (1) an arrest more than two years before a record request if the record does not also include the disposition of that arrest; (2) non-serious offenses, such as drunkenness, vagrancy, loitering, disturbing the peace, or curfew violations; or (3) circumstances that are not clearly arrests or dispositions."

References

- U.S. Congress. (2015). H.R. 1672: REDEEM Act. U.S. House, 114th Congress. (Introduced 26 Mar 2015). (<https://www.congress.gov/bill/114th-congress/house-bill/1672>).
- . (2015). S. 675: REDEEM Act. U.S. Senate, 114th Congress. (Introduced 9 Mar 2015). (<https://www.congress.gov/bill/114th-congress/senate-bill/675>).

Recent Legislative Proposals on Criminal Records in Alaska

Within the last decade in Alaska, at least four different bills were introduced in the legislature dealing with access to criminal records. None of the bills proposed in past legislative sessions have been passed into law. One proposal is under consideration in the 29th Legislature.

The two earliest bills addressed actual expungement and destruction of records held by both the Alaska Department of Public Safety and the Alaska Court System relating to a criminal conviction.

HB 34, introduced in 2005, proposed "expungement of records relating to conviction set asides granted after suspended imposition of sentence." The bill states, "Upon discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect." An individual could then present this certificate to both the Alaska Department of Public Safety and the clerk of court, and "all records relating to the conviction, the suspended imposition of sentence, and the set aside, including records maintained under AS 12.62" were to be destroyed. Under this legislative proposal, designated records on file with both the Alaska Court System and the Alaska Department of Public Safety could have been destroyed and made permanently unavailable to the public.

In 2009, another bill addressing expungement, sealing, and destruction of records relating to conviction set asides was introduced—HB 203, "An Act relating to expungement and sealing of certain records and criminal history information." This bill was similar to the 2005 HB 34 proposal and would have provided a mechanism for destruction of records relating to suspended imposition of sentence and subsequent set aside convictions. Under this proposal, HB 203 would have expanded AS 12.62.180, authorizing sealing of records relating to false accusation and mistaken identity to establish a process for expungement and destruction of these records.

The two bills most recently proposed in Alaska—SB 108 (vetoed by the Governor in 2014) and HB 11 (moved to the Senate in 2015)—were more limited in scope.

Introduced in 2014, SB 108 sought to keep criminal case records confidential in instances where there was an acquittal of all charges, dismissal of all charges, or acquittal of some charges and dismissal of the remaining charges. The bill further stated that the case records to be made confidential could not include criminal charges "dismissed as part of a plea agreement in another case." Then-Governor Sean Parnell vetoed the bill in August 2014 citing concerns that the categories of cases were overly broad.

HB 11 was introduced in 2015. If passed into law, HB 11 would protect records of cases resulting in acquittal of all charges, dismissal of all charges when the charges were not dismissed as part of a plea agreement in another criminal case, or acquittal of some charges and dismissal of remaining charges—the same categories of cases that were the focus of SB 108. As outlined in this bill, the Alaska Court System may not publish court records of these protected cases on a publicly available website. HB 11 passed the House on April 9, 2015.

References

- Alaska State Legislature. (2005). House Bill 34: Expungement of Set Asides (HB 34). 24th Alaska Legislature. (Introduced 10 Jan 2005; not voted out of committee). (http://www.legis.state.ak.us/basis/get_bill.asp?session=24&bill=HB34).
- . (2009). House Bill 203: Expungement of Certain Criminal Records (HB 203). 26th Alaska Legislature. (Introduced 23 Mar 2009; not voted out of committee). (http://www.legis.state.ak.us/basis/get_bill.asp?session=26&bill=HB203).
- . (2014). Senate Bill 108: Confidentiality of Criminal Case Records (SB 108). 28th Alaska Legislature. (Introduced 22 Jan 2014; vetoed by Governor 28 Aug 2014). (http://www.legis.state.ak.us/basis/get_bill.asp?session=28&bill=SB108).
- . (2015). House Bill 11: No Internet Access to Some Criminal Cases (HB 11). 29th Alaska Legislature. (Introduced 21 Jan 2015; passed House 9 Apr 2015). (http://www.legis.state.ak.us/basis/get_bill.asp?session=29&bill=HB11).

Expungement
(continued from page 3)

have all recently modified or expanded their policies regarding public access to criminal records. The authors note that, “The policy changes highlighted in this report represent approaches that lawmakers can consider to address state sentencing policy and collateral consequences.”

In addition, the National Center for State Courts provides information on privacy policies for court records in all 50 states, as well as resources about court public access

web sites, rules on bulk data, online court records, and criminal background checks. According to the Center, the most common information that is excluded from public access in court records includes personal identifiers for witnesses, defendants, and jurors; address; phone number; social security number; date of birth; financial account information; and names of minor children.

Expungement and Criminal Records in Alaska

The traditional remedy of expungement does not exist in Alaska. Although, as dis-

cussed below, the Alaska legislature has looked at this issue several times in recent years, no Alaska statute, regulation, or rule of court establishes a procedure for erasing or destroying a criminal record. Whether the Alaska courts have inherent authority to expunge records, either through their power to preside over criminal trials and sentencing or through their power to enforce constitutional protections, remains an open question. (The federal courts have long exercised such power, as do a number of other

Please see Expungement, page 6

Table 1. Judicial Expungement, Sealing, and Set-aside in Five States

State	All or most offenses	First offenders	Probationary sentences (including deferred adjudication)	Misdemeanors only	Pardoned offenses	Non-conviction records
Alaska			Court may suspend imposition of sentence and “set aside” conviction after successful completion of probation for certain offenses (Alaska Stat. § 12.55.085), but no expungement. No predicate, but limited use for enhancement of sentence.			
Illinois	Courts authorized to remove employment and licensing bars through certificate of good conduct. 730 Ill. Comp. Stat. Ann. 5/5-5.5-55. In addition, consideration of conviction limited for certain licenses where court issues certificate of relief from disabilities. Id. at 5/5-5-5.		Deferred adjudication for first-time non-violent offenders may be expunged five years after successful completion of probation. Predicate offense if within five years. 20 Ill. Comp. Stat. Ann. 2630/5.2; 720 Ill. Comp. Stat. Ann. 570/410, 550/10, 5/5-6-3.4.	Sealing for misdemeanors and two minor felonies only (marijuana and prostitution). 20 Ill. Comp. Stat. Ann. 2630/5.2(c).	Pardon may provide for expungement, which results in destruction of record. 20 Ill. Comp. Stat. Ann. 2630/5.2(e); 2630/5.2(a)(1)(E).	Arrests that resulted in acquittal or dismissal may be expunged. 20 Ill. Comp. Stat. Ann. 2630/5.2(b). Effect of expungement is destruction of record. § 2630/5.2(a)(1)(E).
New Mexico		Expungement available for first offender drug possession if 18 or under at time of offense. N.M. Stat. Ann. § 30-31-28(D).	Deferred sentencing available except in first degree felony cases; rights restored but conviction remains. No expungement, and conviction has predicate effect. Does not qualify as “set-aside” for purposes of avoiding federal firearms restrictions. N.M. Stat. Ann. § 31-20-3.			Arrest information may be expunged completely (including law enforcement) if for misdemeanor (excluding moral turpitude offense) and no records of final outcome can be found. N.M. Stat. Ann. § 29-3-8.1.
Oregon	Less serious non-violent offenses may be “set aside” after waiting period of 1 to 20 years, no other conviction in past 10 years (or ever, if setting aside Class B felony), or arrest within 3 yrs. Order must issue unless court finds it would not be “in the best interests of justice.” May deny conviction, but counts as predicate. Or. Rev. Stat. § 137.225.					One year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court for entry of an order setting aside the record of such arrest. Or. Rev. Stat. § 137.225(1)(b).
Washington	All but most serious offenses may be “vacated” after waiting period of 5 to 10 yrs; conviction erased, limited predicate effect. Wash. Rev. Code § 9.94A.640. “Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed.” Id.		After conviction of “any crime,” court may suspend or defer sentence, and place defendant on probation; may petition to have record vacated and sealed after probation expired. § 9.94A.640. Wash. Rev. Code §§ 3.66.067, 9.95.200.	Most misdemeanors eligible to be vacated after 3-5 yr waiting period. Wash. Rev. Code § 9.96.060.	Pardon vacates conviction automatically, and seals record. Wash. Rev. Code § 9.94A.030 (11)(b).	Non-conviction records in criminal justice agency files may be sealed administratively two years after disposition favorable to defendant. Wash. Rev. Code § 10.97.060.

Note: Juvenile adjudications included in source are excluded from this excerpt.

Source of data: “Chart #4 — Judicial Expungement, Sealing, and Set-Aside,” Margaret Colgate Love, NACDL Restoration of Rights Project, (Feb 2015), (http://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/Judicial_Expungement_Sealing_and_Set-Aside.pdf) and Alaska Court System

Expungement (continued from page 5)

state courts.) The Alaska Supreme Court has refrained from deciding this question. It has made clear, however, most recently in *Farmer v. State* (2010), that if such judicial power exists it is appropriately exercised only in “exceptional or extraordinary” circumstances.

Record Collection and Availability

In Alaska, criminal records are maintained by the Alaska Court System and the Alaska Department of Public Safety (DPS). Both the Court System and the DPS store information in several different locations across the state, as well as in electronic databases. Court records with information on the disposition of a case—the final outcome—are held by the Court System and are available for free to the public on the court’s online database, CourtView. (See “Data on CourtView,” below. Information on cases filed before 1990 is available from the court where the case was originally filed.) Two administrative rules, Alaska Court Administrative Rules 37.8 and 40, protect certain kinds of information from publication on CourtView. Administrative Court Rule 37.8 outlines types of case information that cannot be made available to the public on CourtView or in electronic format, such as social security numbers and contact information for witnesses. Administrative Rule 40 lists categories of cases that are not available online such as cases designated as confidential, criminal cases dismissed for lack of probable cause, cases dismissed because of misidentification of a person, and cases involving a minor wrongly charged as an adult. (See “Alaska Court Rules of Administration,” p. 7, for excerpts from rules on types of cases and information excluded from CourtView.)

Also excluded from CourtView under Rule 40 are certain petitions for domestic violence, stalking, and sexual assault civil protective orders. In domestic violence protective order petitions, if the case was “dismissed at or before the hearing on an ex parte petition because there is not sufficient evidence that the petitioner” meets the statutory definition of victim of domestic violence or “there is not sufficient evidence that the petitioner is a household member” as defined by statute, the record is excluded from CourtView. Similarly, in stalking or sexual assault cases, if the case was dismissed at or before the ex parte hearing because of insufficient evidence that “the petitioner is a victim of stalking as defined by AS 11.41.270 or sexual assault as defined

in AS 18.66.990(9),” the record will not appear on CourtView.

Juvenile delinquency cases are confidential, as are certain other cases, and details from such cases are also excluded from CourtView. Cases dismissed for any other reason than those listed in Administrative Court Rule 40 remain on CourtView.

Except for those cases falling within the protection of Rule 40, data typically available on CourtView include the case number, names of the plaintiff and defendants, names of the attorneys for the parties, hearing dates, filings in the case, and case disposition. (Note that case records maintained in CourtView are distinct from the criminal justice information and records collected by DPS in the Alaska Public Safety Information Network (APSIN). APSIN is the primary source for criminal history record checks.) Until recently, sentencing information was also online. The Alaska Court System announced in April that due to budget constraints, lack of personnel, and training costs, sentencing information would no longer be entered into CourtView effective April 11, 2015. Court personnel had also monitored sentencing information on CourtView and noted any changes; the Alaska Court System will no longer be able to monitor sentencing changes, and has also announced that as of April 11, sentencing information on cases already entered online will be removed. Sentencing information can be requested from the court location in which the original case was filed.

A member of the public can also request to see the physical file of a case on CourtView by submitting a request to the court. For cases deemed *confidential*, only the attorneys of record, the parties, and court personnel can see the file. These confidential records are kept in color-coded folders.

Confidential records, or any court record normally not available to the public, can, however, be opened by an order from the court authorizing access.

In addition to criminal case records held by the Court System, DPS also maintains a repository of criminal history information, as noted above. DPS records are electronically stored in the APSIN database. Certain data in the repository are available to the public upon submission of a written request and permission of the subject of the record. State criminal history record information is available with the submission of the record subject’s fingerprints and specific statutory authority to obtain the information. Fees are charged for all requests. The data in APSIN are not available online directly to the public.

The background report on an offender that is available upon request and after meeting the above requirements includes current/open criminal charges and charges that resulted in conviction, excluding sealed records. Background checks requested by entities and individuals that license, employ or permit a person to have “supervisory or disciplinary power over a minor or a dependent adult” exclude sealed records, but include current/open criminal charges, as well as all other charges regardless of conviction status (AS 12.62.900). Individuals can request information on their own records and sealed records will be included. Information on background check requests is available on the Department of Public Safety website.

Information in the APSIN database that remains in a person’s criminal record history includes:

- arrests and criminal charges, even if the charge was later dismissed or declined for prosecution; and

Data on CourtView

Below is the information that is typically available on CourtView at <http://www.courtrecords.alaska.gov/>.

Case number.

Case type, status date, case judge, next event, case status (open or closed), file date.

Party information: Names of plaintiff and defendant (or petitioner and respondent) and attorneys for each.

Party charge information. Information about offense charged including statute violated and charge level (misdemeanor, felony, etc.).

Events. Hearing dates, locations, and judges.

Docket information. Filings in the case, sentencing information (if any). As of April 11, 2015, sentencing information will no longer be entered into Courtview. Auditing of sentencing information will no longer be done and therefore sentencing information in cases already entered into Courtview will be removed. Sentencing information will be available at the court location where the case was filed.

Receipts. Receipts for court fees.

Case disposition. Outcome of the case.

- criminal convictions, even if the conviction resulted in a Suspended Imposition of Sentence (SIS) and the conviction was “set aside,” and the judge imposed probation or other conditions instead of jail time.

If there is an error in the criminal history report, a Request to Correct Criminal Justice Information can be filed. Categories of errors for which a request for correction may be made are listed as “Mistaken Identity/Falsely Accused,” “Charge Information in Error,” “Missing Court or Prosecutor Disposition,” “Wrong Court or Prosecutor Disposition Information,” and “Set Aside Information Is Missing.”

Under certain circumstances, individuals may also submit a Request to Seal Criminal Justice Information to the DPS Criminal Records and Identification Bureau. Subsection (b) of AS 12.62.180, “Sealing of criminal justice information,” provides that a request may be made for sealing information in a record that “**beyond a reasonable doubt, resulted from mistaken identity or false accusation**” [emphasis in original].

Nascent Efforts to Reduce Barriers to Employment

Recidivism rates in Alaska are high. It is projected that by 2016, the state’s prisons will be overcrowded and the state will be required to spend millions of dollars building new correctional facilities. (The Goose Creek Correctional Center opened in 2012 at a cost of \$250 million for construction and has an annual operating budget of \$50 million.) Based on these projections, the Alaska legislature has established reducing recidivism through improving access to employment and safe housing as a state priority. (Note also that Alaska’s U.S. District Court is currently working to implement a new federal reentry court aimed at reducing recidivism in the state.)

In 2014, then-Governor Sean Parnell signed into Alaska law an omnibus crime bill, SB 64. This new law focuses on the urgent need to review criminal sentencing law and practices and initiate more cost-effective approaches. (See “Senate Bill 64—Omnibus Crime Bill,” *Alaska Justice*

Forum, Spring/Summer 2014.) The new law also established the Alaska Criminal Justice Commission (ACJC) which is tasked with evaluating and recommending improvements in “criminal sentencing practices and criminal justice practices, including rehabilitation and restitution.” (See “The Alaska Criminal Justice Commission: A Legislative Call for Action,” *Alaska Justice Forum*, Spring/Summer 2014.)

During the same legislative session that produced the ACJC, the legislature passed a bill, SB 108, that would have limited access to some criminal case records. However, this bill was vetoed by the Governor amidst concern that it was overly broad in making several categories of cases “confidential” and unavailable to the public. As noted above, only parties and certain other people have access to cases designated as confidential.

At about the same time that the legislature was discussing access to case records on CourtView, the Alaska Court System, in an unrelated effort, was also debating a

Please see Expungement, page 9

Alaska Court Rules of Administration—Case Information

Rule 37.8 Electronic Case Information (Excerpt)

(a) **Availability:** The following case-related information maintained in the court system’s electronic case management systems will not be published on the court system’s website or otherwise made available to the public in electronic form:

- (1) addresses, phone numbers, and other contact information for parties, witnesses, and third-party custodians;
- (2) names, initials, addresses, phone numbers, and other contact and identifying information for victims in criminal cases;
- (3) social security numbers;
- (4) driver and vehicle license numbers;
- (5) account numbers of specific assets, liabilities, accounts, credit cards, and PINs (Personal Identification Numbers);
- (6) names, addresses, phone numbers, and other contact information for minor children in domestic relations cases, paternity actions, domestic violence cases, emancipation cases, and minor settlements under Civil Rule 90.2;
- (7) juror information;
- (8) party names protected under Administrative Rule 40(b) and (c); and
- (9) information that is confidential or sealed in its written form.

Rule 40. Index to Cases (Excerpt)

(a) The court system shall maintain an index by last name of every party named in every case filed, regardless of whether a party’s true name is protected in the public index under paragraphs (b) or (c) of this rule. The index must show the party’s name, the case number, the case caption or title, the filing date, the case type, and other information required for that case type by court rule. The index may show the party’s date of birth. The court system shall publish a public version of the index, which

excludes only

- (1) cases designated as confidential or sealed by statute or court rule, unless the index to those cases is public under court rules;
- (2) foreign domestic violence protective orders filed under AS 18.66.140;
- (3) criminal cases dismissed because the prosecuting authority declined to file a charging document;
- (4) criminal cases dismissed for lack of probable cause under Criminal Rule 4(a)(1) or Criminal Rule 5(d);
- (5) criminal cases dismissed for an identity error under Criminal Rule 43(d);
- (6) criminal cases dismissed because the named defendant is a minor wrongly charged in adult court with an offense within the jurisdiction for delinquency proceedings under AS 47.12.020;
- (7) minor offense cases dismissed because the prosecuting authority declined to file a charging document;
- (8) minor offense cases dismissed for an identity error under Minor Offense Rule 11(c);
- (9) domestic violence protective order cases dismissed at or before the hearing on an ex parte petition because there is not sufficient evidence that the petitioner is a victim of domestic violence as defined by AS 18.66.990(3) or there is not sufficient evidence that the petitioner is a household member as defined by AS 18.66.990(5);
- (10) stalking or sexual assault protective order cases dismissed at or before the hearing on an ex parte petition because there is not sufficient evidence that the petitioner is a victim of stalking as defined by AS 11.41.270 or sexual assault as defined in AS 18.66.990(9); and
- (11) party names protected under paragraphs (b) or (c) of this rule.

Expungement Resources

- Alaska Administrative Code. (2014). 13 AAC 68.300. Procedures for requesting and disseminating information. (<http://www.legis.state.ak.us/basis/aac.asp#13.68.300>).
- Alaska Court System. (2015). "Courtview." (website). Alaska Court System. (<http://www.courtrecords.alaska.gov/>).
- _____. (2015). "Rule 37. Records Retention." Rules Governing the Administration of All Courts (Alaska Rules of Administration) (website). Anchorage, AK: Alaska Court System. (<http://courts.alaska.gov/rules/adm.htm#37>).
- _____. (2015). "Rule 40. Index to Cases." Rules Governing the Administration of All Courts (Alaska Rules of Administration) (website). Anchorage, AK: Alaska Court System. (<http://courts.alaska.gov/rules/adm.htm#40>).
- Alaska Department of Corrections. (2015). *The Alaska Department of Corrections Recidivism Reduction Plan: Safer Neighborhoods, Better Citizens—Providing Tools and Resources to Alaska's Returning Citizens—Reducing Crime and Averting the Need for Additional Prison Construction*. Report to Governor William M. Walker: Alaska Department of Corrections.
- Alaska Department of Public Safety. (2015). "Background Check Requests." (website). Alaska Department of Public Safety. (<http://www.dps.state.ak.us/statewide/background/default.aspx>).
- _____. (2015). "Background Check Requests: Frequently Asked Questions." (website). Alaska Department of Public Safety. (<http://www.dps.state.ak.us/statewide/background/faq.aspx>).
- Alaska State Legislature. (2014). Senate Bill 64: Omnibus Crime/Corrections/Recidivism Bill (SB 64). 28th Alaska Legislature. Chapter 83 SLA 14 (signed into law 16 Jul 2014). (http://www.legis.state.ak.us/basis/get_bill.asp?session=28&bill=SB64).
- _____. (2014). Senate Bill 108: Confidentiality of Criminal Case Records (SB 108). 28th Alaska Legislature. (Introduced 22 Jan 2014; vetoed by Governor 28 Aug 2014). (http://www.legis.state.ak.us/basis/get_bill.asp?session=28&bill=SB108).
- _____. (2015). House Bill 11: No Internet Access to Some Criminal Cases (HB 11). 29th Alaska Legislature. (Introduced 21 Jan 2015; passed House 9 Apr 2015). (http://www.legis.state.ak.us/basis/get_bill.asp?session=29&bill=HB11).
- Alaska Statutes. (2014). AS 12.62. Criminal justice information and records checks. (<http://www.legis.state.ak.us/basis/statutes.asp#12.62.010>).
- _____. (2014). AS 40.25.120. Public records; exceptions, certified copies. (<http://www.legis.state.ak.us/basis/statutes.asp#40.25.120>).
- Calvert, Clay; & Bruno, Jerry. (2011). "When Cleansing Criminal History Clashes with the First Amendment and Online Journalism: Are Expungement Statutes Irrelevant in the Digital Age?" *CommLaw Conspectus* 19(1): 123–147. (<http://scholarship.law.edu/commlaw/vol19/iss1/5/>).
- Eastman, J.D. (ed.). (2005). *Expungements: Freedom from the Disability of a Legal Record* (3rd ed.). Sparta, NJ: U.S. Law Books.
- Farmer v. State, Department of Law, Office of the Attorney General*, 235 P.3d 1012. (Alaska Supreme Court 2010). (https://scholar.google.com/scholar_case?case=2906909148677203138&q=235+P.3d+1012&hl=en&as_sdt=406).
- Garner, Bryan A. (ed.). (1999). *Black's Law Dictionary* (7th ed.). St. Paul, MN: West Group.
- Geddes, Mary. (2014). "The Alaska Criminal Justice Commission: A Legislative Call for Action." *Alaska Justice Forum* 31(1–2): 11–12 (Spring/Summer 2014). (http://justice.uaa.alaska.edu/forum/31/1-2springsummer2014/c_crimjust_commission.html).
- Gutierrez, Carmen. (2015). *2015 Recidivism Reduction Plan: Cost-Effective Solutions to Slow Prison Population Growth and Reduce Recidivism*. Alaska Department of Corrections. (<http://www.correct.state.ak.us/commish/docs/HB266%20-%20Recidivism%20Reduction%20Plan%20Report%20%282015%29.pdf>).
- Kogon, Bernard; & Loughery, Donald L., Jr. (1971). "Sealing and Expungement of Criminal Records—The Big Lie." *Journal of Criminal Law and Criminology* 61(3): 378–392. (<http://scholarlycommons.law.northwestern.edu/jclc/vol61/iss3/4/>).
- Lippman, Jonathan. (2014). "The State of the Judiciary 2014: Vision and Action in Our Modern Courts." Address presented at Court of Appeals Hall, Albany, NY, 11 Feb 2014. New York State Unified Court System. (<https://www.nycourts.gov/whatsnew/pdf/2014-SOJ.pdf>).
- Love, Margaret Colgate. (2002). "Starting Over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code." *Fordham Urban Law Journal* 30(5): 1705–1741. (<http://ir.lawnet.fordham.edu/ulj/vol30/iss5/8/>).
- National Association of Criminal Defense Lawyers. (2015). "Jurisdiction Profiles—Alaska." Restoration of Rights Project (website). (<http://www.nacdl.org/ResourceCenter.aspx?id=25091#AK>).
- National Center for State Courts. (2015). "Privacy/Public Access to Court Records: State Links." (website). Retrieved 24 Apr 2015. (<http://www.ncsc.org/Topics/Access-and-Fairness/Privacy-Public-Access-to-Court-Records/State-Links.aspx?cat=Privacy%20Policies%20for%20Court%20Records>).
- Periman, Deborah. (2014). "Collateral Consequences and Reentry in Alaska: An Update." *Alaska Justice Forum* 30(3–4): 1, 7–10 (Fall 2013/Winter 2014). (http://justice.uaa.alaska.edu/forum/30/3-4fall2013winter2014/a_collateral.html).
- Porter, Nicole. (2014). *The State of Sentencing 2014: Developments in Policy and Practice*. Washington, DC: The Sentencing Project. (http://www.sentencingproject.org/detail/news.cfm?news_id=1909).
- Shlosberg, Amy; Mandery, Evan J.; West, Valerie; & Callaghan, Bennett. (2014). "Expungement and Post-Exoneration Offending." *Journal of Criminal Law and Criminology* 104(2): 353–388 (Spring 2014). (<http://scholarlycommons.law.northwestern.edu/jclc/vol104/iss2/3/>).
- Subramanian, Ram; Moreno, Rebecka; & Gebreselassie, Sophia. (2014). *Relief in Sight? States Rethink the Collateral Consequences of Conviction, 2009–2014*. New York: Center of Sentencing and Corrections, Vera Institute of Justice. (<http://www.vera.org/pubs/states-rethink-collateral-consequences>).
- UAA Justice Center. (2014). "Senate Bill 64—Omnibus Crime Bill." *Alaska Justice Forum* 31(1–2): 12 (Spring/Summer 2014). (http://justice.uaa.alaska.edu/forum/31/1-2springsummer2014/c_crimjust_commission.html#sidebar1).

Expungement (continued from page 7)

court rule change in response to concerns about certain categories of information on the court's publicly available website. As a result, Administrative Rule 40 was amended in May 2014 to exclude certain types of records from public availability on CourtView. (See "Alaska Court Rules of Administration," p. 7.)

In accord with the legislative priorities established in 2014, the Alaska Department of Corrections submitted a report to the governor in March 2015 recommending a multifaceted approach to reducing recidivism in Alaska. A key feature of this report, *The Alaska Department of Corrections Recidivism Reduction Plan*, is a plan to improve the state's offender management and accountability planning process (OMP). The report recommends the plan be implemented "with an emphasis on **safe, affordable housing and employment**" [emphasis added].

The current Alaska legislature is fully cognizant of the role a criminal record plays in impeding access to employment and housing. As of this writing, HB 11, "An Act restricting the publication of certain records of criminal cases on a publicly available Internet website; and providing for an effective date," has been passed by the Alaska House and moved to the Senate. It follows several recent efforts by the Alaska Legislature to address issues involving public access to criminal records. (See "Recent Legislative Proposals on Criminal Records in Alaska," p. 4.) HB 11 includes a statement of legislative intent specifying that:

to the extent practicable, the Alaska Court System remove from its public Internet website records of criminal cases that were disposed of before the effective date of this Act by acquittal of all charges, by dismissal of all charges, or by acquittal of some charges and dismissal of the remaining charges, to the extent that AS.22.35.030, enacted by sec. 2 of this Act, requires that the records may not be published.

The bill reads:

The Alaska Court System may not publish a court record of a criminal case on a publicly available website if 60 days have elapsed from the date of acquittal or dismissal and

(1) the defendant was acquitted of all

charges filed in the case;

- (2) all criminal charges against the defendant in the case have been dismissed and were not dismissed as part of a plea agreement in another criminal case under Rule 11, Alaska Rules of Criminal Procedure; or
- (3) the defendant was acquitted of some of the criminal charges in the case and the remaining charges were dismissed.

Although certain cases would not appear on CourtView under the terms of this proposed legislation, the public would have the option of seeing a physical copy of the case file by submitting a request to the court.

As noted above, Alaska does not currently have a process for requesting that access to a criminal record be limited other than to request that a record in APSIN be corrected or sealed if it contains misinformation. The request is submitted to the Alaska Department of Public Safety. In the Alaska Court System online database, if there is erroneous information on a record in CourtView, an individual may submit a request to the Alaska Court System to correct the information. In CourtView, shielding of records that are designated as "confidential" according to statute, order, or court administrative rule is automatic, and access is limited. Administrative Court Rule 40 also addresses other instances in which names of parties may be shielded from public view, usually at the discretion of a presiding judge.

If HB 11 is ultimately signed into law, cases ending in dismissal of all charges or acquittal, will not be published on the Court System's "publicly available website if 60 days have elapsed from the date of acquittal or dismissal..." and if other criteria in the bill are met.

Going Forward

Local, state, federal, and private agencies are coming together across the country to explore ways to assist offenders with transitioning back into their communities. These efforts have far-reaching social and economic ramifications, and are part of the Smart Justice and Justice Reinvestment movement aimed at finding more cost-effective ways to deal with offenders and the problem of high recidivism and ballooning incarceration rates. Housing and employment for released offenders are critical issues in this effort. Inability to access these essentials can result in offenders

cycling in and out of the justice system.

Resistance to legislation designed to facilitate reentry by limiting public availability of criminal records, such as Alaska's 2014 SB 108, typically rests on one or more of four frequently voiced concerns. These are summarized by Margaret Colgate Love in her article "Starting Over With a Clean Slate"—they include concern that erasing a criminal record "rewrites history," that limiting access to records may impair public safety, that government measures to limit access will be ineffective in the digital age, and that society is not ready to "change its views toward former offenders." All of these need to be taken into account when considering ways to limit access to criminal records. While challenging, the accompanying tables illustrate that many states have already looked at or implemented various solutions to the problem.

In Alaska, the Court System and the legislature have both recently made efforts to address the reentry barriers caused by widespread public access to criminal records. The Alaska Court System has amended Court Administrative Rule 40 and expanded the types of cases that are not published online. Currently, HB 11, as noted above, has been sent to the Alaska Senate for consideration. The Alaska Criminal Justice Commission is also proceeding with its work, and has requested information on what other states are doing to limit disclosure of criminal record information to the public. The issue will be under consideration by the commission during its three-year tenure.

Notwithstanding changes to the way information is disseminated by the Alaska Court System, criminal history records available in the Alaska Public Safety Information Network (APSIN) administered by the Alaska Department of Public Safety may continue to pose reentry barriers. The current proposed legislation addresses only case records in the Alaska Court System online database, CourtView. In the coming months, this and the concerns above will be part of the ongoing conversation about limiting public access to criminal records. As states across the nation grapple with this issue and come to their own solutions, Alaska has the opportunity to review those efforts and craft a policy that best balances the need to facilitate employment and safe housing for former offenders with the public interest in open records and access to government documents.

Barbara Armstrong is the editor of the Alaska Justice Forum. Deb Periman, J.D., is a member of the Justice Center Legal Studies faculty and coordinator of the Legal Studies Program.