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Memorandum

TO: Representative Kyle Johansen
FROM: Chuck Burnham, Legislative Analyst
DATE: February 17, 2012
RE: States' Laws: Expungement of Court Records of Criminal Charges Ending with Dismissals or Not Guilty Verdicts
LRS Report 12.200

You asked whether any states' laws provide for expungement of court records related to criminal cases that are dismissed, end in a not guilty verdict, or otherwise conclude without a conviction.[1]

States vary widely in their treatment of expungement of criminal records. Indeed, the very definition of the term "expungement" differs substantially among the states. In general, when a record is expunged it becomes unavailable for inspection; however, a number of states do not actually destroy or discard those records but rather seal them in archives, barring access in all circumstances not involving a court order for their release.

According to the National Conference of State Legislatures (NCSL), "most" states provide for the expungement of criminal records of cases that do not result in a conviction or that exist as the result of clerical error or stolen identity. Even if state statutes do not specifically allow for the expungement of records, courts typically have the authority to seal records in the interest of justice.[2]

States' laws specific to court records vary with regard to whether expungement occurs automatically or requires the subject of those records to petition the court in the event of a dismissal or not guilty verdict. Laws further differ in the timeframe in which records must be expunged; the fees involved, if any; the circumstances under which records may be sealed or destroyed, and other factors. The attached table provides excerpts from relevant statutes of selected states as examples of the approaches used in expungement regimes.

We hope this is helpful. If you have questions or need additional information, please let us know.

[1] This report does not consider criminal records held by law enforcement or other agencies. Although your request was specific to records held by trial courts, we include, as Attachment A, a report by this agency that provides more detail on the general topic of expungement of criminal records.

[2] Blake Harrison, "State Criminal Records," National Conference of State Legislatures, NCSL State Legislative Report, Vol. 27, No., 16, September 2002. A copy of this document is included in Attachment A.

Selected States' Laws: Expungement of Court Records of Criminal Charges Ending with Dismissals or Not Guilty Verdicts		
State	**Citation**	**Relevant Text**
Arkansas	A.C.A. Tit. 16, Court Rules, Sec. 26	After three years, the [Court Committee on Professional Conduct] shall expunge all records or other evidence of the existence of complaints terminated by dismissals or referrals to alternative programs pursuant to Section 5(C)(2), except that, upon the Executive Director's application, notice to respondent, and a showing of good cause, the Committee may permit the Executive Director to retain such records for one additional period of time not to exceed three years. A. Notice to Respondent. If the respondent was contacted by the Executive Director or Committee concerning the complaint, or the Executive Director or Committee otherwise knows that the respondent is aware of the existence of the complaint, the respondent shall be given prompt written notice of the expungement. B. Effect of Expungement. After a file has been expunged, any response by the Executive Director or Committee to an inquiry requiring a reference to the matter shall state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that no complaint was made.
Delaware	11 Del. C. § 4372	(a) If a person is charged with the commission of a crime or crimes and the case is terminated in favor of the accused, the person may request the expungement of the police records and the court records relating to the charge pursuant to the provisions of this subchapter. (b) For the purposes of this subchapter, a case shall be deemed to be "terminated in favor of the accused" only if: (1) The accused is acquitted of all charges related to the case; or (2) A nolle prosequi is entered on all charges related to the case, or all charges related to the case are otherwise dismissed. (c) For the purposes of this subchapter, "case" means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.
Georgia	O.C.G.A. § 35-3-37	(d) (1) An individual who was: (A) Arrested for an offense under the laws of this state but subsequent to such arrest is released by the arresting agency without such offense being referred to the prosecuting attorney for prosecution; or (B) After such offense referred to the proper prosecuting attorney, and the prosecuting attorney dismisses the charges without seeking an indictment or filing an accusation may request the original agency in writing to expunge the records of such arrest, including any fingerprints or photographs of the individual taken in conjunction with such arrest, from the agency files. Such request shall be in such form as the center shall prescribe. Reasonable fees shall be charged by the original agency and the center for the actual costs of the purging of such records, provided that such fees shall not exceed $50.00.

Selected States' Laws: Expungement of Court Records of Criminal Charges Ending with Dismissals or Not Guilty Verdicts (Continued)		
State	**Citation**	**Relevant Text**
Illinois	410 ILCS 513/15	(c) If the subject of the information requested by law enforcement is found innocent of the offense or otherwise not criminally penalized, then the court records shall be expunged by the court within 30 days after the final legal proceeding. The court shall notify the subject of the information of the expungement of the records in writing.
Maryland	Md. CRIMINAL PROCEDURE Code Ann. § 10-105	(a) Petition for expungement. -- A person who has been charged with the commission of a crime, including a violation of the Transportation Article for which a term of imprisonment may be imposed, or who has been charged with a civil offense or infraction, except a juvenile offense, as a substitute for a criminal charge may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State if: (1) the person is acquitted; (2) the charge is otherwise dismissed . . .
Virginia	Va. Code Ann. § 19.2-392.2	A. If a person is charged with the commission of a crime or any offense defined in Title 18.2, and 1. Is acquitted, or 2. A nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.
Notes: The statutes in this table are examples of provisions allowing for the expungement of court records for criminal cases that have been dismissed, where a not guilty verdict was found, or where a conviction was not otherwise achieved. Expungement of criminal records in circumstances where a conviction is reached, or of records held by law enforcement or other agencies outside of courts, are not considered in this report. **Source:** *Lexis* database of state statutes.		

Attachment A

Chuck Burnham, "State' Laws on Expungement of Criminal Records," Legislative Research Services Report 05.080, January 11, 2005

LEGISLATIVE RESEARCH REPORT

JANUARY 11, 2005

REPORT NUMBER 05.080

STATES' LAWS ON EXPUNGEMENT OF CRIMINAL RECORDS

PREPARED FOR SENATOR KIM ELTON

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

You asked about states' laws on the expungement of criminal records. Specifically, you asked if Alaska is the only state that does not provide for the expungement of criminal records. Further, you wanted to know the circumstances under which other states expunge criminal records.

States' laws vary widely in their approaches to the expungement of criminal records. Most states allow some level of expugement, but often limit such action to records of arrests that do not lead to a conviction, minor offenses, or those of juveniles. Juvenile records are commonly either sealed or destroyed after the defendants reach adulthood provided they have met all other legal requirements of their sentences.[1] Twenty-five states, however, prohibit sealing the records of juveniles involved in serious or violent crimes.[2] Expungement of the criminal records of adults is less common than for records of juveniles and usually requires the offender to petition the court.

According to the U.S. Department of Justice, Bureau of Justice Statistics, laws in 24 states provide for the expungement of some felony convictions.[3] Although there exists wide variation among these states in the specific crimes for which records may be expunged, there is general uniformity in that expungement is negatively correlated with the severity of an offense; that is, the more serious the crime, the less likely it becomes that the records of that crime will qualify for expungement. For example, Arizona forbids expungement of any criminal records involving serious physical injury or the use of a deadly weapon; Oregon allows convictions to be "annulled," including those for some drug offenses, but, like many other states, disallows expungement for

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[1] As you know, there is no statutory authority for expungement of criminal records in Alaska. Pursuant to AS 47.10.090, however, the court may seal records of a minor within thirty days of that minor reaching the age of eighteen, but it must retain all such records. Sealed records may be made available or unsealed upon a showing of good cause.

[2] Blake Harrison, "State Criminal Records," *NCSL State Legislative Report: Analysis of State Actions on Important Issues*, National Conference of State Legislators, Volume 27, Number 16, September 2002. Mr. Harrison can be reached at (303) 856-1424. We include a copy of his report as Attachment A.

[3] U.S. Department of Justice, Bureau of Justice Statistics, "Survey of State Criminal History Information Systems, 2001," *Criminal Justice Information Policy,* August 2003; available online at *www.ojp.usdoj.gov/bjs/pub/pdf/sschis01.pdf.* We include a copy of relevant excerpts of this report as Attachment B.

crimes against children or sex-related offenses. Examples of other conditions states have promulgated for the expungement of criminal records are as follows:[4]

- California allows defendants to petition for expungement upon fulfillment or discharge of probation or in any other case in which a court finds that such action is in the interest of justice. Those records, however, may be reinstated in any subsequent prosecution. For misdemeanors, California allows expungement for defendants who have fully complied with their sentences, have not been charged with another crime, and have "lived an honest and upright life."
- Idaho law provides for expungement of, among other records, DNA information from state databases on the grounds that the conviction upon which the authority for recording the defendant's DNA profile was based has been reversed and the case dismissed.
- Oklahoma allows expungement only for convictions that have been reversed.
- Pennsylvania allows expungement of criminal information when the petitioner reaches age 70 and has been free of arrest or prosecution for ten years.
- Rhode Island allows conviction records to be expunged five years and ten years after sentence completion, for misdemeanors and felonies, respectively, if the petitioner has not again been convicted or arrested, there are no criminal proceedings pending against the person, and expungement is consistent with the public interest.
- Washington criminal records may be sealed by court order when a conviction is vacated or for other compelling reasons in the interest of justice. Those convicted of felonies may request that the conviction be vacated only if their sentence has been completed, the offense was non-violent, and a specified number of years, which varies according to the seriousness of the crime, has passed.

We include, as Attachment C, the expungement laws of four Western states—California, Idaho, Oregon, and Washington—and those of Rhode Island, which Mr. Harrison indicated provide a good example of an expugement system. Due to potential constitutional conflicts, however, it is unclear which system, if any, would be applicable to Alaska. Article III, § 21 of the Alaska Constitution provides the following:

> Executive Clemency. Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

Although expungement—the removal of a conviction from a person's criminal record—is not the same as a pardon—officially nullifying punishment or other legal consequences of a crime—whether expungement would, nonetheless, infringe upon executive power is unclear.[5] On this matter, you may wish to consult with Legal Services.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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[4] Information from Oklahoma, Pennsylvania, and Rhode Island from Blake Harrison's "State Criminal Records," p. 6. All other information on specific laws is from our search of the Lexis database of states' laws.

[5] Definitions of "expungement" and "pardon" are summarized from Black's Law Dictionary, 8th ed..

Attachment A

Blake Harrison, "State Criminal Records," *NCSL State Legislative Report: Analysis of State Actions on Important Issues*, National Conference of State Legislators, Volume 27, Number 16, September 2002.

NCSL
STATE LEGISLATIVE REPORT
Analysis of State Actions on Important Issues

September 2002 Volume 27, Number 16

State Criminal Records

By Blake Harrison, *Policy Specialist*

Sharing criminal justice information across jurisdictions can improve public safety. Efforts that enable justice departments to receive critical data from different agencies throughout the country have proliferated in recent years. The private sector and non-justice government agencies also have received greater access to states' criminal history records. Legislation in many states requires schoolteachers, nurses, day care providers and others to undergo criminal background checks prior to hiring.

Although increased access to criminal records improves the screening process for such employees, it also raises concerns regarding privacy expectations of individuals. In crafting policies, states must balance rights to privacy and the public good realized by better information.

This report explores the access policies of state crime records by detailing what information is available to the public, under what circumstances it is available, and which states have procedures for the expungement of criminal records. The report also examines how two interstate compacts may improve information sharing between states, at the same time complying with and respecting the laws of participating states. The National Crime Prevention and Privacy Compact sets guidelines for sharing criminal justice records for non-criminal justice purposes. The Interstate Compact for Adult Offender Supervision helps monitor and track offenders who are under community correctional supervision who travel to different states.

State Dissemination and Privacy Policies

The Supreme Court has ruled that constitutional privacy principles do not limit dissemination of arrest information by criminal justice agencies.[1] Thus, state and federal laws have established privacy standards almost exclusively. In 1976, the U.S. Department of Justice Law Enforcement Assistance Administration (LEAA) issued regulations that dictate standards for criminal history records data quality.[2] Individual states, however, retain wide discretion to set their own standards for dissemination.

Dissemination of criminal records for criminal justice purposes is largely noncontroversial. Indeed, the main purpose for creating a criminal history is to inform future decision makers about the offender. Increasingly, states are requiring decision makers to take criminal histories into account. Twenty-four states either require or permit criminal records to be considered in bail decisions, and 32 states have statutes authorizing consideration of criminal histories in corrections classification and supervision.[3] Dissemination of criminal records for noncriminal justice purposes is becoming popular, but is more problematic. Sensitive information often is included in criminal histories, and critics argue that easy access to records may lead to invasion of privacy but may fail to protect the public. Policymakers will want to determine who should have access to what information and for what purpose. Two-thirds of all states require criminal background checks for school employees,[4] and a majority of states have laws authorizing national criminal history checks for people who work with children, the elderly or individuals with disabilities.[5] This trend will likely continue as states look for ways to protect vulnerable populations and governments improve their ability to track dangerous offenders and share that information with the public. In fact, some employers have been sued for negligent hiring where the information was available but a background check was not performed. Still, the public is not entirely comfortable with completely open record policies.

Private entities can obtain criminal history information in 32 states.

According to a 2000 survey conducted by the Bureau of Justice Statistics, a substantial majority of the public favors some access to conviction records for private organizations such as the Boy Scouts (88 percent) and for insurance companies investigating fraud (76 percent). However, this support drops to 38 percent if access is used by individuals who want to learn if a neighbor has any criminal record and even lower (23 percent) if the information is limited to arrest information without a conviction.[6]

Access to Criminal Records

Although some states retain strict control over crime records, a majority of states now permit access to criminal records for some compelling noncriminal justice purposes.[7] Private entities can obtain criminal history information in 32 states.[8] The process is facilitated by a large number of private companies that provide this service for a modest fee. Typically, states require that a name and date of birth be submitted in order to obtain the information, but some states require more information such as a social security number, a signed release form, or fingerprints.

Although this information is available to the private sector, it is often limited to certain types of data, and specific requirements must be met before the data is released. Twelve states limit the dissemination of criminal record information to individuals or organizations authorized by statute.[9] Many statutes also limit what is released; for example, 19 states limit the information to convictions, and Alaska provides information only on convictions within the past 10 years. Fifteen states notify the subject when there has been a request for his or her record.[10]

Some states have determined that the right to have criminal histories available to the public outweighs any privacy concern. They typically censor personal information, but make the information easily accessible. Colorado, for example, makes the information available to anyone, but omits social security numbers, street addresses, and the names of victims, judges, police officers and jurors.

Some states have determined that the right to have criminal histories available to the public outweighs any privacy concern.

Internet Access

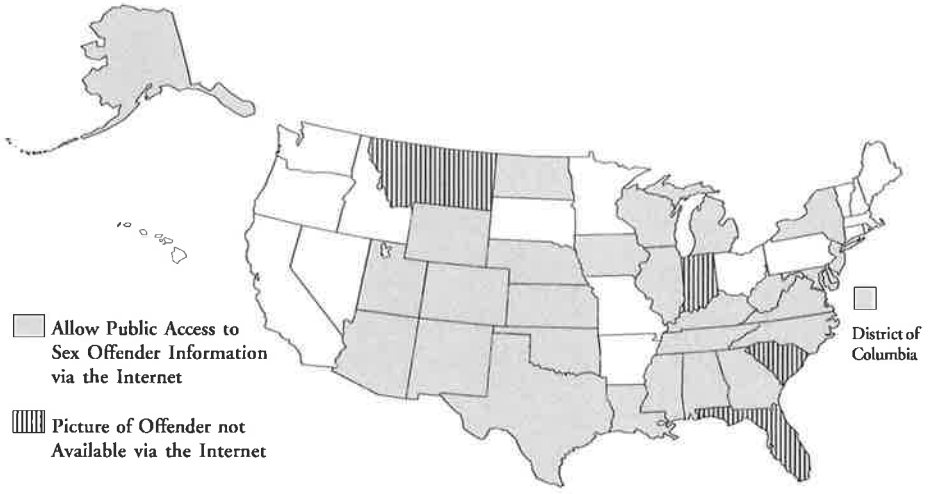
Increasingly, criminal records are being made available to the public on the Internet. Thirteen states now provide direct access[11] for a nominal fee. Wisconsin, for example, provides public access to criminal records via the Internet for a $15 fee. It charges nongovernmental agencies $5 and charges nonprofit organizations $2. Full conviction and arrest information is provided and is updated every 24 hours. Colorado provides court records to the public for $5 per search. Sealed records and probate, mental health and juvenile records are not available.

Other states restrict the dissemination of criminal records over the Internet. Virginia law specifically prohibits the availability of criminal records on the Internet. Tennessee prohibits noncriminal justice access except for limited purposes specifically authorized by statute. Tennessee law also creates a criminal offense for releasing criminal records for unauthorized purposes.[12]

Sex offenders are among those about whom public notification often is allowed under state law. Some states, however, limit the amount and type of information available in order to avoid vigilante action and to make sure information that may be useful to law enforcement agencies is not used by offenders to mislead police. Obviously, errors in the system can be devastating. Yet, being able to search for sex offenders by name, picture or geographic area is popular with the public, particularly parents who want information about their children's

proximity to danger. Currently, 32 states and the District of Columbia have Internet sites that contain searchable information about individual sex offenders (figure 1).[13]

Figure 1. States and Jurisdictions that Allow Public Access to Sex Offender Information via the Internet



Note: Recent court rulings in Connecticut and Hawaii prevent public access to sex offender information via the Internet.
Source: NCSL, 2002.

Once information is available to the public, private companies compile it in their databases and sell it either over the Internet or as a paper document. Although many states have long allowed public access to these records, they have been relatively inaccessible; obtaining them has required a trip to the police station or courthouse.

Crime records may include private information about the arresting officer or the victim. Reassessing the public nature of these records has taken on a new meaning now that the Internet facilitates access to many records. The ease with which the public can obtain records via the Internet or through private data collection companies accelerates the need to edit or expunge records before they are made public. If lawmakers are concerned about the integrity and wide dissemination of court records, these issues should be addressed before the information is made available to the public.

Expungement of Criminal Records

The information contained in criminal history records affects individual and public interests. The presence of an arrest or conviction record can be a barrier to future employment,

and research shows that a job is an important factor in assisting offenders to avoid crime. Access to criminal data also can have adverse effects on the victim or on the offender's family, which can be the unexpected recipient of discrimination simply by their relation to the offender. Further, criminal data sometimes contains inaccuracies—it can be incomplete, outdated, or simply entered incorrectly.

What public record information should be retained and what should be expunged is, therefore, important not only to individuals, but also to society at large, which has an interest in encouraging employment and avoiding unnecessary discrimination. Policymakers face the challenge of crafting laws that balance public safety and individual privacy. Juvenile records, arrests that do not lead to a conviction and non-serious offenses have been the focus of most state statutes that allow record expungement.

Allowing criminal data access can adversely affect the victim or the offender's family.

Most states have laws that provide for the disposal of a juvenile's criminal record. Typically, statutes stipulate the method of record deposition—either by sealing, expunging or destroying the record—and the conditions that must be met (e.g., no new offenses) to do so. Statutes usually provide for the sealing of records for a given period of time and then, when that time ends, for the destruction of those records.[14] Virginia law, for example, calls for the automatic, annual expungement of all court records for juveniles who are age 19, provided they meet certain requirements.[15] Illinois permits relatively minor and isolated acts of juvenile delinquency to be expunged but maintains records of other, more significant, juvenile crimes. Wisconsin gives judges virtually unbounded discretion to decide what should be expunged from a juvenile's record. In all, half of the states prohibit sealing juvenile records of offenders who are involved in serious or violent crime.[16]

Adult Expungement

Expungement of adult records is less common and usually requires the offender to petition the court to have the information sealed or expunged. The expungement of criminal records is an important consideration when dealing with criminal histories. Most states provide for the expungement of criminal records that do not result in a conviction or that exist as the result of clerical error or stolen identity. Even if state statutes do not specifically allow for the expungement of records, courts may purge certain records in the interest of justice.

Arrest records are afforded greater protection than conviction records because arrest information could lead to discrimination based on unfounded charges. Still, some states con-

sider arrest records to be public information. Using arrest records as a basis for denying employment without checking the actual disposition of the case may be in violation of some state statutes and the Federal Fair Credit Reporting Act.

Twenty-one states and two territories provide procedures for the expungement of a felony conviction.[17] Even if a record is expunged, the information still can be accessible to government agencies and the public. Since the advent of the Internet and improvements in electronic storage, even if a record is expunged it may be obtained by a private entity before it is expunged. Before information is made public, the dissemination of crime records should be reviewed.

Twenty-one states and two territories provide procedures for the expungement of a felony conviction.

To strengthen the effect of sealed records, some states allow an offender to state in a job application or other documents that no such criminal action has ever occurred if a record is sealed.[18] This rule allows someone to assert that they do not have a criminal record under some circumstances, even if one exists, without fear of retribution. Records can be destroyed in only 10 states.[19] In the remaining states that provide for expungement, the records are retained but can be accessed only under certain conditions, such as for judicial proceeding.[20]

Public opinion is split on whether conviction records should be sealed if an offender has successfully completed a sentence and has not re-offended for a certain period of time (such as five years). Fifty-two percent favor keeping conviction records available to employers and licensing agencies, regardless of the length of time that has passed since the individual's conviction or release.[21]

States that allow convictions to be expunged often set conditions that limit relief. The conditions vary greatly in the states. Oklahoma allows a conviction to be expunged only if it is later reversed, and Pennsylvania allows expungement of criminal information when the petitioner reaches age 70 and "has been free of arrest or prosecution for 10 years."[22] Rhode Island allows a conviction record to be expunged 10 years after sentence completion (five years for a misdemeanor) if the petitioner has not been convicted or arrested for a felony or misdemeanor, there are no criminal proceedings pending against the person, and expungement is consistent with the public interest.

Many states specifically retain information about convictions of sex crimes or crimes involving children. Arizona forbids expungement of any crime involving serious physical injury

or use of a deadly weapon, and Oregon allows convictions of listed crimes to be annulled, including some drug offenses and crimes that do not involve children or sex crimes.[23]

Because privacy policy differs greatly among states, sharing information between states is complicated. To address these concerns, a number of states have adopted interstate compacts that are designed to facilitate information sharing but, at the same time, that respect different state laws and comply with their dissemination rules.

National Crime Prevention and Privacy Compact

In some states, requests for non-criminal-justice criminal history checks outnumber requests for criminal justice requests. This increased need for background checks has sparked an interest in establishing uniform standards to govern the interstate dissemination of criminal history records. The National Crime Prevention and Privacy Compact establishes these procedures. The compact went into effect in 1999 when Montana and Georgia became the first two states to ratify it. To date, 16 states have ratified the compact (figure 2).[24]

Figure 2. States that Have Ratified the National Crime Prevention and Privacy Compact

Source: NCSL, 2002.

The compact allows an authorized entity that seeks a subject's criminal history in another state to contact the FBI electronically. The FBI then directs the inquiring party to the appropriate state or federal database, using a federal-interstate computer network known as

the Interstate Identification Index (III). The III is designed to tie together state criminal record databases and the FBI, providing the means to conduct national searches of criminal records anywhere in the country. Once a state receives the information, it follows its own guidelines to determine how to disseminate it.

Some states are concerned that they may lose control of their information in other states, but 43 states that participate in the FBI's III already release substantially the same information to the FBI. The compact simply standardizes what information is made available. Still, some control over the records is sacrificed in exchange for more complete background checks.

States' Role

States need assurances that they will have a voice sufficient to protect their interests as the III evolves. The FBI will maintain the III and will, therefore, be in a strong position to influence the system's development. Nevertheless, the records available through the system will continue to be predominantly state-maintained, and states need to be assured that use of those records will be consistent with their policy concerns in areas such as individual privacy, system security and data quality. The compact addresses states' concerns by establishing a policymaking council with authority to oversee the use of the III for noncriminal justice purposes. A majority of the members of the council must be state officials selected by the participating states.

States are required to make available all unsealed criminal history records, as authorized by each state's statutes for noncriminal justice requests.

To participate in the compact, states are required to make available all unsealed criminal history records, as authorized by each state's statutes for noncriminal justice requests. Increased participation in the compact may allow states and the federal government to eventually eliminate costly maintenance of duplicate sets of criminal history records. The FBI and the participating states have agreed to maintain detailed databases of their respective criminal history records, including arrests and dispositions. The FBI manages the primary data infrastructure for the system. Participating states are relieved of the burden and the cost of submitting arrest fingerprints and disposition data to the FBI for all arrests for felonies and serious misdemeanors. Instead, they submit only fingerprints and textual identification data for each person's first arrest.

In states that already have efficient automated systems, the compact adds no significant new burdens and produces overall cost savings. For example, the fiscal impact statement prepared by Colorado Legislative Council staff determined that it would have no fiscal impact.

Interstate Compact for Adult Offender Supervision

The importance of crime records for post-release supervision has received greater attention in recent years, in part because of policies dealing with registration and movement of sex offenders. Probation and parole officers must be able to track and locate offenders to smoothly transfer supervision authority when necessary. The Interstate Compact for Adult Offender Supervision facilitates tracking the estimated 250,000 probationers and parolees who are expected to cross state lines each year.

Interstate supervision is complex. Three thousand local parole and probation offices, operating within 830 different agencies, currently oversee those parolees and probationers who are traveling to another state. This fragmented system makes it difficult to account for all offenders. Offenders who live in other states frequently return home following their sentence. However, they remain under the supervision of the state in which they were convicted. As a condition of release, probationers and parolees must adhere to numerous court orders, such as drug treatment, community service and restitution.

The Interstate Compact for Adult Offender Supervision facilitates tracking of the estimated 250,000 probationers and parolees who are expected to cross state lines each year.

The compact has developed an Interstate Commission (composed of commissioners from its member states) to establish uniform procedures to manage the movement between states of adults who are placed under community supervision. The commission is instituting a system of uniform data collection to provide access to information to authorized criminal justice officials and to coordinate regular reporting of compact activities to state executive, judicial and legislative branches and to criminal justice administrators.

The compact is estimated to cost each member state between $18,000 and $46,000 annually, depending on state population and the amount of offender traffic within each state. Other costs may be incurred by the state, depending on how they decided to classify probationers, but the advantages of the system could outweigh any additional cost. It is anticipated that automation will reduce the per-case work-effort required.[25] More important, states will improve public safety and avoid civil liability by properly supervising dangerous parolees and probationers. Maryland, for example, recently settled a civil lawsuit with the mother of a Colorado murder victim because the state had failed to notify Colorado about a dangerous parolee it sent to Denver for treatment.

The Interstate Compact for Adult Offender Supervision went into effect on June 19, 2002, when Pennsylvania became the 35th state to ratify the compact. As of July 17, 2002, 38 states were parties to the agreement.

Conclusion

Efforts to enable information sharing among agencies and with the public have proliferated in recent years. New technologies and greater access to criminal records can improve the administration of justice and enhance public safety; however, lawmakers will want to address the unintended consequences of readily available information. Easy access to crime records can diminish individual privacy and can hamper rehabilitation efforts.

States may want to readdress their expungement and dissemination policies in light of advancements in information sharing and data collection.

States may want to readdress their expungement and dissemination policies in light of advancements in information sharing and data collection. Cooperation among states through the National Crime Prevention and Privacy Compact may improve the quality of a background check by increasing the pool of information. Adoption of the Interstate Compact for Adult Offender Supervision may provide the standards that some lawmakers are looking for in tracking probationers and parolees. Regardless of whether policymakers want to adopt these compacts, deciding what information should be provided to whom and for what purpose should set information policy.

Notes

1. *Paul vs. Davis*, 424 U.S. 693,713 (1976).

2. 28 C.F.R. §20.21(a)(1).

3. *Use and Management of Criminal History Record Information: A Comprehensive Report, 2001*; *Update: A report prepared by SEARCH for the Bureau of Justice Statistics* (appendix 2, table 2; appendix 6, table 8) (Washington, D.C.: Bureau of Justice Statistics, December 2001).

4. National Association of State Directors of Teacher Education and Certification, *1998-1999 Manual* (Mashpee, Mass.: NASDTEC, 1998).

5. U.S. Department of Justice (OJJDP), *Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support* 9 (Washington, D.C.: OJJDP, April 1998).

6. Bureau of Justice Statistics, *Public Attitudes Toward Uses of Criminal History Information Summary of Survey Findings, A report prepared by SEARCH* (Washington, D.C.: Bureau of Justice Statistics, July 2001), 36.

7. Bureau of Justice Statistics, *Use and Management of Criminal History Record Information,* 47.

8. Research conducted by Bruce Meyer, National Conference of State Legislatures staff, July 2002.

9. SEARCH, Survey of states that provide some level of "open" access to their criminal history records, March 27, 2001, 1.

10. Ibid.

11. SEARCH, survey of which states provide public access to their criminal history records through the Internet, April 9, 2001, 1.

12. Bureau of Justice Statistics, *Compendium of State Privacy and Security Legislation: 1999 Overview*, a report prepared by SEARCH, July 2000, 9.

13. Research conducted by Bruce Meyer, National Conference of State Legislatures staff, July 2002.

14. Bureau of Justice Statistics (OJJDP), "State Legislative Responses to Violent Juvenile Crime 1996-97 Update" (Washington, D.C.: OJJDP, November 1998).

15. Va. Code Ann. §16.1-306.

16. Bureau of Justice Statistics (OJJDP), *Responses to Violent Juvenile Crime* (Washington, D.C.: OJJDP, November 1998).

17. Bureau of Justice Statistics, *Survey of State Criminal History Information Systems*, (Washington, D.C.: Bureau of Justice Statistics, October 2000), Table 9, 31.

18. Colo. Rev. Stat. §24-72-308; see also Utah 77-18-10(7) (Supp. 1997) (allowing individual with expunged arrest record to deny its existence) and 77-18-13(3) (1997) (providing that individual receiving expungement of conviction may deny its existence).

19. Bureau of Justice Statistics, *Survey of State Criminal History Information Systems*, 1999, Table 9, 31.

20. Ibid.

21. Bureau of Justice Statistics, *Public Attitudes*, 42.

22. 18 Pa. Cons. Stat. Ann. §9122(b)(1).

23. Or. Rev. Stat. §137.225.

24. Montana, April 8, 1999; Georgia, April 28, 1999; Nevada, May 14, 1999; Florida, June 8, 1999; Colorado, March 10, 2000; Iowa, April 7, 2000; Connecticut, June 1, 2000; South Carolina, June 22, 2000; Arkansas, Feb. 21, 2001; Kansas, April 10, 2001;

Alaska, May 7, 2001; Oklahoma, May 24, 2001; Maine, June 8, 2001; New Jersey, Jan. 3, 2002; Minnesota, March 25, 2002; Arizona, April 29, 2002.

25. Council of State Governments, *Frequently Asked Questions Vol. 2*, January 2001, obtained from http://www.statesnews.org/clip/policy/faq.pdf; Internet.

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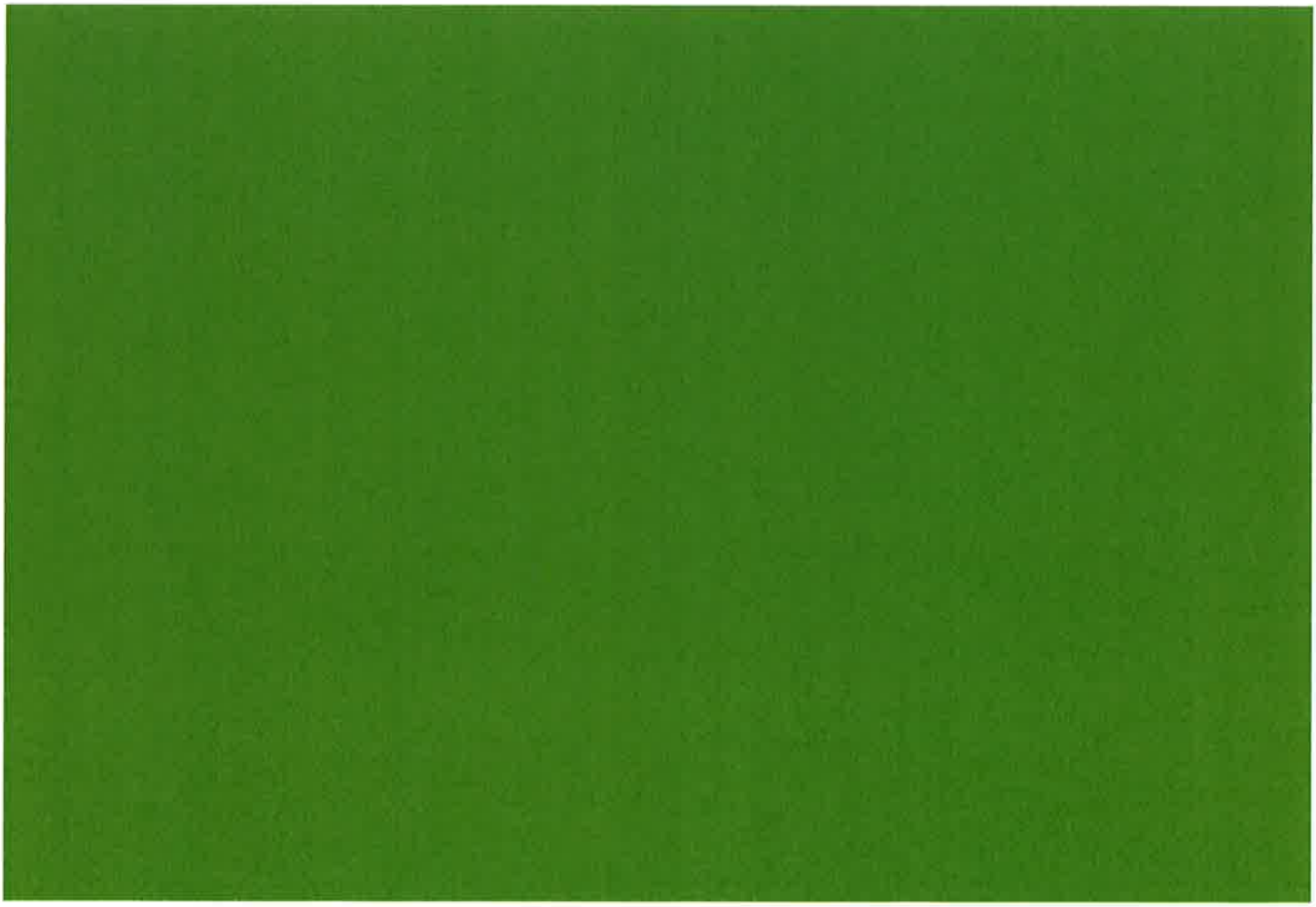
Attachment B

U.S. Department of Justice, Bureau of Justice Statistics, "Survey of State Criminal History Information Systems, 2001," *Criminal Justice Information Policy,* August 2003; available online at *www.ojp.usdoj.gov/bjs/pub/pdf/sschis01.pdf.*

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics

Survey of State Criminal History Information Systems, 2001



Criminal Justice Information Policy

Completeness of data in State criminal history repository

Notice to State criminal history repository of release of arrested persons without charging, 2001 (Table 7):

• Thirty-five States and the District of Columbia require law enforcement agencies to notify the State criminal history repository when an arrested person is released without formal charging but after the fingerprints have been submitted to the repository.

Disposition data

Completeness of prosecutor and court disposition reporting to State criminal history repository, 2001 (Table 8):

• Eighteen States (Arkansas, Colorado, Connecticut, Georgia, Idaho, Iowa, Maine, Maryland, Minnesota, Nebraska, New Jersey, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah and Vermont) and Puerto Rico report that criminal history repositories receive final felony trial court depositions for 80% or more of the cases.

Ten States (Colorado, Connecticut, Maine, Maryland, Minnesota, New Jersey, Oregon, Rhode Island, South Carolina and Utah) estimate that they receive notice in 100% of the cases.

A. A total of 20 States, or 2 additional States (California and Hawaii) and Puerto Rico report that dispositions in 70% or more of the cases are received by the State criminal history repositories.

B. A total of 23 States, or 3 additional States (Delaware, Montana and Wisconsin) and Puerto Rico report that dispositions in at least 57% of the cases in their States are received by the State criminal history repositories.

• Of the respondents indicating that there is a legal requirement for prosecutors to notify the State criminal history record repository of declinations to prosecute, 5 States (Delaware, Maryland, New Jersey, Oklahoma and Rhode Island) estimate that notice is received in 100% of the cases.

• Thirteen States were able to estimate the number of prosecutor declinations received. The number of declinations received range from 1 in Mississippi to 197,500 in California.

Policies/practices of State criminal history repository regarding modification of felony convictions, 2001 (Table 9):

• Expungements: Twenty-four States, the District of Columbia, Puerto Rico and the Virgin Islands have statutes that provide for the expungement of felony convictions. In 11 States, Puerto Rico and the Virgin Islands, the record is destroyed by the State criminal history repository. In Minnesota, although State law does not provide for destroying conviction data, the State does get orders issued pursuant to the inherent authority of the courts. In 11 States, the record is retained with the action noted on the record. Three States seal the record. In Virginia, although the State law does not provide for expungement of convictions, if expungement orders are received, the files are sealed. In Mississippi, records that are expunged are deleted from the database; however, the State criminal history repository is authorized to maintain an internal record of action in some cases.

• Setting aside of convictions: Thirty-eight jurisdictions have statutes that provide for setting aside felony convictions. In 2 States, South Dakota and Tennessee, the record is destroyed. In 33 jurisdictions (31 States, the District of Columbia and Puerto Rico), the record is retained with the action noted. In Nevada and Michigan, the record is sealed. In Mississippi, records are deleted from the database; however, the State criminal history repository is authorized to maintain an internal record of action in some cases.

• Pardons: All reporting jurisdictions (50 States, the District of Columbia, Puerto Rico and the Virgin Islands) have statutes that provide for the granting of a pardon. In 45 States and the District of Columbia, the criminal history record is retained with the action noted. In 6 jurisdictions (4 States, Puerto Rico and the Virgin Islands), the record is destroyed. In Mississippi, records are deleted from the database; however, the State criminal history repository is authorized to maintain an internal record of action in some cases.

Explanatory Notes for Table 9

The notes below expand on the data in Table 9. The information was provided by the respondent.

... Not available.

= 1 Record is destroyed by State criminal history repository.
2 Record is retained with action noted.
3 Record is sealed.
4 No action is taken.
5 Other.

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[a] Restoration of civil rights is not reported to the repository.

[b] Records for pardons and expungements are removed from the criminal history record system only upon written request for a return of fingerprints. If requested, the record is removed from both the electronic and manual files.

[c] Or delivered to the record subject.

[d] Restoration of civil rights is not a reportable event in Maryland.

[e] Although the State does not provide for destroying conviction data, the State repository does get orders issued pursuant to the inherent authority of the courts.

[f] All records are deleted from the database, however the Mississippi Justice Information Center is authorized to maintain an internal record of action in some cases.

[g] Expungements are deleted from the automated files and physical files, but maintained in a file cabinet for five years.

[h] Only for the conviction of the offense of felony possession of less than one gram of cocaine.

[i] Law provides for expungements in very limited cases.

[j] Unless expunged.

[k] Although State law does not provide for expungement of convictions, if expungement orders are received, the files are sealed.

Table 9: Policies/practices of State criminal history repository regarding modification of felony convictions, 2001

State	Expungements		Set-asides		Pardons		Restoration of civil rights	
	State law provides for expungement of felony convictions	How records are treated by State criminal history repository=	State law provides for set-asides of felony convictions	How records are treated by State criminal history repository=	State law provides for pardons of felons	How records are treated by State criminal history repository=	State law provides for restoration of felons' civil rights	How records are treated by State criminal history repository=
Alabama	Yes	1	Yes	2	Yes	2	Yes	2
Alaska			Yes	2	Yes	2	Yes	5[a]
Arizona			Yes	2	Yes	2	Yes	2
Arkansas	Yes	2	Yes	2	Yes	2	Yes	2
California	Yes	2	Yes	2	Yes	2	Yes	2
Colorado	Yes	2			Yes	2	Yes	2
Connecticut	Yes	2			Yes[b]	2		
Delaware	Yes	2			Yes	2		
District of Columbia	Yes	2	Yes	2	Yes	2	Yes	2
Florida			Yes	2	Yes	2	Yes	2
Georgia	Yes	1	Yes	2	Yes	2	Yes	2
Hawaii			Yes	2	Yes	2	Yes	2
Idaho			Yes	2	Yes	2	Yes	2
Illinois					Yes	2	Yes	2
Indiana	Yes	1[c]			Yes	2		
Iowa			Yes	2	Yes	2	Yes	2
Kansas	Yes	2	Yes	2	Yes	2	Yes	2
Kentucky			Yes	2	Yes	2	Yes	2
Louisiana	Yes	3	Yes	2	Yes	2	Yes	2
Maine					Yes	2		
Maryland			Yes	2	Yes	2	Yes	5[d]
Massachusetts			Yes	2	Yes	2	Yes	2
Michigan			Yes	3	Yes	1	Yes	3
Minnesota		1[e]	Yes	2	Yes	2	Yes	2
Mississippi	Yes	5[f]	Yes	5[f]	Yes	5[f]	Yes	5[f]
Missouri			Yes	2	Yes	2	Yes	4
Montana	Yes	1[g]			Yes	2	Yes	2
Nebraska					Yes	2	Yes	2
Nevada			Yes	3	Yes	2	Yes	2
New Hampshire	Yes	1	Yes	2	Yes	2	Yes	2
New Jersey	Yes	2	Yes	2	Yes	2	Yes	2
New Mexico					Yes	2	Yes	2
New York			Yes	2	Yes	2	Yes	2
North Carolina	Yes[h]	1	Yes	2	Yes	2	Yes	2
North Dakota			Yes	2	Yes	2	Yes	2
Ohio	Yes	2	Yes	2	Yes	2		
Oklahoma	Yes	1	Yes	2	Yes	2	Yes	2
Oregon	Yes	1	Yes	2	Yes	2	Yes	2
Pennsylvania	Yes[i]	1	Yes	2[j]	Yes	2[h]		
Puerto Rico	Yes	1	Yes	2	Yes	1		
Rhode Island	Yes	2			Yes	2	Yes	2
South Carolina					Yes	2		
South Dakota	Yes	2	Yes	1	Yes	1	Yes	1
Tennessee	Yes	1	Yes	1	Yes	1	Yes	2
Texas			Yes	2	Yes	2	Yes	2
Utah	Yes	3			Yes	2		
Vermont	Yes	1			Yes	1	Yes	1
Virgin Islands	Yes	1			Yes	1		
Virginia		3[k]	Yes	2	Yes	2	Yes	2
Washington			Yes	2	Yes	2	Yes	2
West Virginia					Yes	2	Yes	2
Wisconsin			Yes	2	Yes	2	Yes	2
Wyoming			Yes	2	Yes	2	Yes	2

Attachment C

California Penal Code § 1203.4—1203.4a (2004)

Idaho Code § 18-8310 (2004)
Idaho Code § 19-2604 (2004)
Idaho Code § 19-5513 (2004)
Idaho Code § 67-3004 (2004)

Oregon Revised Statute § 137.225 (2003)

General Laws of Rhode Island § 12-1.3-1—12-1.3-4 (2004)

Revised Code of Washington § 9.94A.637—9.94A.640 (2004)
Revised Code of Washington § 9.96.060 (2004)

California

Cal Pen Code § 1203.4 (2004)

§ 1203.4. Change of plea and dismissal of charges after termination of probation; Release from penalties and disabilities; Subsequent prosecutions; Possession of firearm; Reimbursement to county or city; Notice to prosecuting attorney

(a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of 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 accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in *Section 13555 of the Vehicle Code*. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Section 12021.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of subdivision (b) of *Section 42001 of the Vehicle Code*, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars ($ 120), and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred twenty dollars ($ 120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) No relief shall be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(e) If, after receiving notice pursuant to subdivision (d), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(f) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

Cal Pen Code § 1203.4a (2004)

§ 1203.4a. Change of plea and dismissal of charges against nonprobationed misdemeanant after performance of sentence; Release from penalties and disabilities; Subsequent offenses

(a) 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 the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 12021.1 of this code or *Section 13555 of the Vehicle Code*. The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make an application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

This subdivision applies to convictions which occurred before as well as those occurring after, the effective date of this section.

(b) Subdivision (a) does not apply to any misdemeanor falling within the provisions of subdivision (b) of *Section 42001 of the Vehicle Code*, or to any infraction.

(c) A person who petitions for a dismissal of a charge under this section may be required to reimburse the county and the court for the cost of services rendered at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed sixty dollars ($ 60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars ($ 60). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (f) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) Any determination of amount made by a court under this section shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

Idaho

Idaho Code § 18-8310 (2004)

§ 18-8310. Release from registration requirements -- Expungement

(1) Any person, other than a recidivist, an offender who has been convicted of an aggravated offense, or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the person was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the person shall be exempted from the duty to register as a sexual offender. In the petition the petitioner shall:

(a) Provide clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or crime identified in *section 18-8304, Idaho Code*;

(b) Provide an affidavit indicating that the petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any violent crime or crime identified in *section 18-8304, Idaho Code*;

(c) Provide proof of service of such petition upon the county prosecuting attorney for the county in which the application is made; and

(d) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender.

The district court may grant a hearing if it finds that the petition is sufficient. The court shall provide at least sixty (60) days' prior notice of the hearing to the petitioner and the county prosecuting attorney.

The court may exempt the petitioner from the reporting requirement only after a hearing on the petition in open court and only upon proof by clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or crime identified in *section 18-8304, Idaho Code*.

(2) Concurrent with the entry of any order exempting the petitioner from the reporting requirement, the court may further order that any information regarding the petitioner be expunged from the central registry.

Idaho Code § 19-2604 (2004)

§ 19-2604. Discharge of defendant -- Amendment of judgment

1. If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation, the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant; and this shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

2. If sentence has been imposed but suspended during the first one hundred and eighty (180) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in subsection 4 of *section 19-2601, Idaho Code*, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that the defendant has at all times complied with the terms and conditions of his probation, the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

3. Subsection 2 of this section shall not apply to any judgment of conviction for a violation of the provisions of sections 18-1506, 18-1507 or 18-1508, Idaho Code. A judgment of conviction for a violation of the provisions of any section listed in this subsection shall not be expunged from a person's criminal record.

Idaho Code § 19-5513 (2004)

§ 19-5513. Expungement of information

(1) A person whose DNA profile has been included in the database and databank pursuant to this chapter may make a written request for expungement of materials from the database and databank on the grounds that the conviction upon which the authority for including the DNA profile was based has been reversed and the case dismissed.

(2) The person requesting expungement must send a copy of his request, with proof of service on all parties to the following: the trial court which entered the conviction or rendered disposition in the case; the bureau of forensic services; and the prosecuting attorney of the county in which he was convicted. The court has the discretion to grant or deny the request for expungement. A trial court's denial of a request for expungement is an order not subject to appeal.

(3) Except as provided below, the Idaho state police shall expunge the DNA sample and all identifiable information in the database and databank relating to the subject of the conviction upon receipt of a court order which verifies that the applicant has made the necessary showing at a noticed hearing, and which includes the following documents:

(a) Written request for expungement pursuant to this section;

(b) A certified copy of the court order reversing and dismissing the conviction;

(c) Proof of written notice to the prosecuting attorney and the bureau of forensic services that such expungement is being sought; and

(d) A court order finding that no retrial or appeal of the case is pending and verifying that at least sixty (60) days have passed since the defendant has notified the prosecuting attorney and the bureau of forensic services of the expungement request and that the court finds no reason, based on the interests of justice, to deny expungement.

(4) Upon order of the court, the Idaho state police shall destroy the DNA sample relating to the subject of conviction, unless the state police determines that the person has otherwise become obligated to submit to DNA sample and thumbprint impression as a result of a separate conviction subject to the terms of this chapter.

(5) The bureau of forensic services is not required to destroy an item of physical evidence obtained from the DNA sample if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed. Notwithstanding this subsection, no sample, physical evidence or identifiable information is affected by an order to set aside a conviction.

Idaho Code § 67-3004 (2004)

§ 67-3004. Fingerprinting and identification

(1) The bureau shall:

(a) Obtain and file fingerprints, physical descriptions and any other available identifying data on persons who have been arrested or served a criminal summons in this state for a retainable offense;

(b) Accept fingerprints and other identifying data taken by a law enforcement agency for the purpose of identification or conducting a records review for criminal justice purposes; and

(c) Have the capacity to conduct crime scene investigations for the detection and identification of latent fingerprints.

(2) The bureau shall establish policy regarding an arrest fingerprint card and procedures for the taking of fingerprints under this section.

(3) When a person is arrested for a retainable offense, with or without a warrant, fingerprints of the person shall be taken by the law enforcement agency making the arrest. A law enforcement agency may contract or make arrangements with a jail or correctional facility or other criminal justice agency to take the required fingerprints from a person who is arrested by the law enforcement agency.

(4) If a person was arrested and is in the custody of a law enforcement agency, jail or correctional facility and a felony summons or information is filed for an offense separate from the offense for which the person is in custody, the agency, jail or correctional facility shall take the fingerprints of the person in connection with the new offense.

(5) At the initial court appearance or arraignment of a person for an offense pursuant to a felony summons or information, the court, upon notice from the prosecuting attorney, shall order a law enforcement agency to fingerprint the person if he has not been previously fingerprinted for the same offense.

(6) When a defendant is convicted or otherwise adjudicated for a felony offense for which the defendant has not been previously fingerprinted, the court shall order, upon notice from the prosecuting attorney, a law enforcement agency to fingerprint the defendant as a condition of sentence, probation or release.

(7) When a person is received by a state correctional facility, the department of correction shall ensure that legible fingerprints of the person are taken and submitted to the bureau.

(8) When the bureau receives fingerprints of a person in connection with an arrest or incarceration, the bureau shall make a reasonable effort to confirm within five (5) working days the identity of the person fingerprinted. In an emergency situation when an immediate positive identification is needed, a criminal justice agency may request the department to provide immediate identification service.

(9) If the arresting officer, the law enforcement agency that employs the officer, or the jail or correctional facility where fingerprints were taken is notified by the bureau that fingerprints taken under this section are not legible, the officer, agency or facility shall make a reasonable effort to obtain a legible set of fingerprints. If legible fingerprints cannot be obtained within a reasonable period of time, and if illegible fingerprints were taken under a court order, the officer or agency shall inform the court, which shall order the defendant to submit to fingerprinting again.

(10) Any person who was arrested or served a criminal summons and who subsequently was not charged by indictment or information within one (1) year of the arrest or summons and any person who was acquitted of all offenses arising from an arrest or criminal summons may have the fingerprint and criminal history record taken in connection with the incident expunged pursuant to the person's written request directed to the department.

Oregon

ORS § 137.225 (2003)

137.225. Order setting aside conviction or record of arrest; fees; prerequisites; limitations.

(1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court wherein that conviction was entered for entry of an order setting aside the conviction; or

(b) At any time after the lapse of 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 which would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of such arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without the state shall not be included.

(2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction" or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department of State Police Bureau of Criminal Identification. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the victim's last-known address.(c) When a person makes a motion under subsection (1)(a) of this section, the person must pay a fee of $ 80. The person shall attach a certified check payable to the Department of State Police in the amount of $ 80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police Bureau of Criminal Identification.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (11) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, it shall enter an appropriate order which shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the bureau and further identified as to state bureau number or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of such an order, such conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

(5) The provisions of subsection (1)(a) of this section apply to a conviction of:

(a) A Class C felony, except for criminal mistreatment in the first degree under *ORS 163.205* when it would constitute child abuse, as defined in *ORS 419B.005*, or any sex crime.

(b) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for:

(A) Any sex crime; and

(B) The following crimes when they would constitute child abuse as defined in *ORS 419B.005*:

(i) Criminal mistreatment in the first degree under *ORS 163.205*; and

(ii) Endangering the welfare of a minor under *ORS 163.575 (1)(a)*.

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for Yendangering the welfare of a minor under *ORS 163.575 (1)(a)* when it would constitute child abuse, as defined in *ORS 419B.005*, or any sex crime.

(e) A violation, whether under state law or local ordinance.

(f) An offense committed before January 1, 1972, which if committed after that date would be:

(A) A Class C felony, except for any sex crime or for the following crimes when they would constitute child abuse as defined in *ORS 419B.005*:

(i) Criminal mistreatment in the first degree under *ORS 163.205*; and

(ii) Endangering the welfare of a minor under *ORS 163.575 (1)(a)*.

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for any sex crime or for the following crimes when they would constitute child abuse as defined in *ORS 419B.005*:

(i) Criminal mistreatment in the first degree under *ORS 163.205*; and

(ii) Endangering the welfare of a minor under *ORS 163.575 (1)(a)*.

(C) A misdemeanor, except for endangering the welfare of a minor under *ORS 163.575 (1)(a)* when it would constitute child abuse, as defined in *ORS 419B.005*, or any sex crime.

(D) A violation.

(6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:

(a) A person convicted of, or arrested for, a state or municipal traffic offense;

(b) A person convicted, within the 10-year period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with the same criminal episode that caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this section, a conviction which has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable; or

(c) A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.

(7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated with the same criminal episode that caused the arrest that is sought to be set aside.

(8) The provisions of subsection (1) of this section apply to convictions and arrests which occurred before, as well as those which occurred after, September 9, 1971. There shall be no time limit for making such application.

(9) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred shall not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

(10) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order shall have no other effect on the orders setting aside the conviction or the arrest record.

(11) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in subsection (3) of this section if the defendant has been convicted of one of the following crimes and is otherwise eligible for relief under this section:

(a) Abandonment of a child, *ORS 163.535*.

(b) Attempted assault in the second degree, *ORS 163.175*.

(c) Assault in the third degree, *ORS 163.165*.

(d) Coercion, *ORS 163.275*.

(e) Criminal mistreatment in the first degree, *ORS 163.205*.

(f) Attempted escape in the first degree, *ORS 162.165*.

(g) Incest, *ORS 163.525*, if the victim was at least 18 years of age.

(h) Intimidation in the first degree, *ORS 166.165*.

(i) Attempted kidnapping in the second degree, *ORS 163.225*.

(j) Criminally negligent homicide, *ORS 163.145*.

(k) Attempted robbery in the second degree, *ORS 164.405*.

(L) Robbery in the third degree, *ORS 164.395*.

(m) Supplying contraband, *ORS 162.185*.

(n) Unlawful use of a weapon, *ORS 166.220*.

(12) As used in this section, "sex crime" has the meaning given that term in *ORS 181.594*.

Rhode Island

R.I. Gen. Laws § 12-1.3-1 (2004)

§ 12-1.3-1. Definitions

For purposes of this chapter only, the following definitions apply:

(1) "Crime of violence" includes murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual assault, first and second degree child molestation, assault with intent to murder, assault with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

(2) "Expungement of records and records of conviction" means the sealing and retention of all records of a conviction and/or probation and the removal from active files of all records and information relating to conviction and/or probation.

(3) "First offender" means a person who has been convicted of a felony offense or a misdemeanor offense, and who has not been previously convicted of or placed on probation for a felony or a misdemeanor and against whom there is no criminal proceeding pending in any court.

(4) "Law enforcement agency" means a state police organization of this or any other state, the enforcement division of the department of environmental management, the office of the state fire marshal, the capitol police, a law enforcement agency of the federal government, and any agency, department, or bureau of the United States government which has as one of its functions the gathering of intelligence data.

(5) "Records" and "records of conviction and/or probation" include all court records, all records in the possession of any state or local police department, the bureau of criminal identification and the probation department, including, but not limited to, any fingerprints, photographs, physical measurements, or other records of identification. The terms "records" and "records of conviction, and/or probation" do not include the records and files of the department of attorney general which are not kept by the bureau of criminal identification in the ordinary course of the bureau's business.

R.I. Gen. Laws § 12-1.3-2 (2004)

§ 12-1.3-2. Motion for expungement

(a) Any person who is a first offender may file a motion for the expungement of all records and records of conviction for a felony or misdemeanor by filing a motion in the court in which the conviction took place, provided that no person who has been convicted of a crime of violence shall have his or her records and records of conviction expunged.

(b) Subject to subsection (a) of this section, a person may file a motion for the expungement of records relating to a misdemeanor conviction after five (5) years from the date of the completion of his or her sentence.

(c) Subject to subsection (a) of this section, a person may file a motion for the expungement of records relating to a felony conviction after ten (10) years from the date of the completion of his or her sentence.

R.I. Gen. Laws § 12-1.3-3 (2004)

§ 12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting

(a) Any person filing a motion for expungement of the records of his or her conviction pursuant to § 12-1.3-2 shall give notice of the hearing date set by the court to the department of the attorney general and the police department which originally brought the charge against the person at least ten (10) days prior to that date.

(b) The court, after the hearing at which all relevant testimony and information shall be considered, may in its discretion order the expungement of the records of conviction of the person filing the motion if it finds:

(1) That in the five (5) years preceding the filing of the motion, if the conviction was for a misdemeanor, or in the ten (10) years preceding the filing of the motion if the conviction was for a felony, the petitioner has not been convicted nor arrested for any felony or misdemeanor, there are no criminal proceedings pending against the person, and he or she has exhibited good moral character;

(2) That the petitioner's rehabilitation has been attained to the court's satisfaction and the expungement of the records of his or her conviction is consistent with the public interest.

(c) If the court grants the motion, it shall order all records and records of conviction relating to the conviction expunged and all index and other references to it deleted. A copy of the order of the court shall be sent to any law enforcement agency and other agency known by either the petitioner, the department of the attorney general, or the court to have possession of the records. Compliance with the order shall be according to the terms specified by the court.

R.I. Gen. Laws § 12-1.3-4 (2004)

§ 12-1.3-4. Effect of expungement of records -- Access to expunged records -- Wrongful disclosure

(a) Any person having his or her record expunged shall be released from all penalties and disabilities resulting from the crime of which he or she had been convicted, except, upon conviction of any subsequent crime, the expunged conviction may be considered as a prior conviction in determining the sentence to be imposed.

(b) In any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged pursuant to this chapter may state that he or she has never been convicted of the crime; provided, that if the person is an applicant for a law enforcement agency position, for admission to the bar of any court, an applicant for a teaching certificate, under chapter 11 of title 16, a coaching certificate under § 16-11.1-1, or the operator or employee of an early childhood education facility pursuant to chapter 48.1 of title 16, the person shall disclose the fact of a conviction.

(c) Whenever the records of any conviction and/or probation of an individual for the commission of a crime have been expunged under the provisions of this chapter, any custodian of the records of conviction relating to that crime shall not disclose the existence of the records upon inquiry from any source unless the inquiry is that of the individual whose record was expunged, that of a sentencing court following the conviction of the individual for the commission of a crime, or that of a bar admission, character and fitness, or disciplinary committee, board, or agency, or court which is considering a bar admission, character and fitness, or disciplinary matter, or that of the commissioner of elementary and secondary education, or that of any law enforcement agency when the nature and character of the offense with which an individual is to be charged would be affected by virtue of the person having been previously convicted of the same offense.

(d) The custodian of any records which have been expunged pursuant to the provisions of this chapter shall only release or allow access to those records for the purposes specified in subsections (b) or (c) of this section or by order of a court. Any agency and/or person who willfully refuses to carry out the expungement of the records of conviction pursuant to § 12-1.3-2, or this section or willfully releases or willfully allows access to records of conviction, knowing them to have been expunged, shall be civilly liable.

Washington

Rev. Code Wash. (ARCW) § 9.94A.637 (2004)

§ 9.94A.637. Discharge upon completion of sentence -- Certificate of discharge -- Obligations, counseling after discharge

(1) (a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b) (i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2) The court shall send a copy of every signed certificate of discharge to the auditor for the county in which the court resides and to the department. The department shall create and maintain a data base containing the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(3) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(4) Except as provided in subsection (5) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(5) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(6) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody.

Rev. Code Wash. (ARCW) § 9.94A.640 (2004)

§ 9.94A.640. Vacation of offender's record of conviction

(1) Every offender who has been discharged under *RCW 9.94A.637* may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in *RCW 9.94A.030*; (c) the offense was a crime against persons as defined in *RCW 43.43.830*; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under *RCW 9.94A.637*; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under *RCW 9.94A.637*; and (f) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under *RCW 9.94A.637*.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

Rev. Code Wash. (ARCW) § 9.96.060 (2004)

§ 9.96.060. Misdemeanor offenses -- Vacating records

(1) Every person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence for the misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the tests prescribed in subsection (2) of this section, the court may in its discretion vacate the record of conviction by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) An applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;

(b) The offense was a violent offense as defined in *RCW 9.94A.030* or an attempt to commit a violent offense;

(c) The offense was a violation of *RCW 46.61.502* (driving while under the influence), 46.61.504 (actual physical control while under the influence), or 9.91.020 (operating a railroad, etc. while intoxicated);

(d) The offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses);

(e) The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in *RCW 10.99.020*, or the court determines after a review of the court file that the offense was committed by one family member or household member against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in *RCW 10.99.020*, or for comparable offenses in another state or in federal court, and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense involved domestic violence, and any one of the following factors exist:

(i) The applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought, or has not provided that notification to the court;

(ii) The applicant has previously had a conviction for domestic violence. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;

(iii) The applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or

(iv) Less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing;

(f) For any offense other than those described in (e) of this subsection, less than three years have passed since the person completed the terms of the sentence, including any financial obligations;

(g) The offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;

(h) The applicant has ever had the record of another conviction vacated; or

(i) The applicant is currently restrained, or has been restrained within five years prior to the vacation application, by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under subsection (1) of this section may state that he or she has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(4) All costs incurred by the court and probation services shall be paid by the person making the motion to vacate the record unless a determination is made pursuant to chapter 10.101 RCW that the person making the motion is indigent, at the time the motion is brought.

(5) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.