2013 Smart Justice Symposium: “Creating Safer Communities”

“MAKING THE MOST OF A SECOND CHANCE IN LIFE”
EXPUNGEMENT/SEALING

Presentation by
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It is vitally important for county officials to share their experiences and knowledge regarding public safety in order for us to learn the best practices currently available.

Therefore, I am eager to participate in this workshop: “Employing Ex-Offenders and Developing Your Workforce,” and share information on how citizens who have been arrested for and/or convicted of criminal offenses may utilize Expungement/Sealing and other related legal processes to enhance their ability to reintegrate into society and secure employment.

My presentation is titled: “Making the Most of a Second Chance in Life.”
Clerk’s Office Hosts Community-based Expungement Summits

For the past eight years, the Office of the Clerk of the Circuit Court of Cook County, Illinois, has hosted community-based expungement summits at various locations throughout the county. Each year more than 3,000 individuals are attracted to these full-service summits.
Community-based Expungement Summits

The Clerk’s Office partners with the Offices of the Cook County State’s Attorney and the Public Defender, and several other governmental justice/law enforcement agencies and the Illinois Prisoner Review Board. Other partners are religious and social service agencies.

We offer participants legal counseling with trained, volunteer attorneys and we process petitions for expungement and sealing on site.
The Issue
• Collateral Consequences

There are collateral consequences of criminal arrests/convictions: civil disabilities imposed on the defendant, which produce barriers to long-term self-sufficiency.

These collateral consequences may be the inability to obtain:
• Welfare
• Student loans
• Loss of voting privileges
• Restrictions of many occupations
• Collateral Consequences

Having a criminal record can exclude many individuals from several resources and opportunities needed to effectively function within a community.

• May be restricted from becoming licensed for several professions and occupations in Illinois.
• Employers can legally ask her if he/she has ever been convicted of an offense and consider her conviction(s) when making hiring decisions.
• Public housing agencies can deny access to people with certain convictions, and landlords can completely deny access to individuals with criminal records.
• Under federal law, people with certain drug-related felonies can be barred from receiving cash assistance and food stamps. In Illinois, the bar is only imposed on cash assistance.
• Barriers have been imposed on obtaining academic credits and student aid.
• Collateral Consequences

  o “Obtaining education and/employment” was the highest ranked (76%) “Self-defined Need” given by respondents in interviews in 2009 of 50 women convicted of a criminal offense in Wayne County, MI.

    (Michigan Coalition Against Domestic and Sexual Violence Open Doors Project)

  o According to a 2008 labor study, “two thirds of employers will not hire someone with a criminal record.”

    “I found a job, but was then fired after one day, due to my background.”

    (quote from a woman with a criminal history)
Another obstacle facing many ex-offenders is felony disenfranchisement. More than 5.85 million adults who’ve been convicted of a felony aren’t welcome at polling places. About a quarter are in prison, but the vast majority of these disenfranchised adults cannot cast a ballot because they’re on probation or parole, or live in a state that withholds the right to vote from all ex-felons.

Only Maine and Vermont impose no voting restrictions on felons or ex-felons. The other states impose various restrictions. These limits are seriously counterproductive. Former offenders who are allowed to vote are less likely to return to prison and more likely to become re-integrated into society.
A Fresh Start

• With increased limitations on their opportunities for employment, housing and even education, there’s little wonder how some formerly incarcerated individuals get ensnared in a cycle of unemployment and jail.

• True justice is not only punitive; it is also restorative. To really break the cycle for incarcerated individuals, we must be concerned about what happens to them once they’ve paid their debt to society and proven that they want to change their lives.

• It is a win-win situation for both our communities and the ex-offenders when we allow them to become employable, self-supporting, stable individuals.

• A first step in helping a formerly incarcerated individual gain employment is to see if an arrest record or conviction record can be expunged or sealed. These processes can lessen the extent of disclosure to employers, thereby increasing employment opportunities.
State of Illinois Law

Under specific circumstances, Illinois law allows felony, misdemeanor, or municipal ordinance violation records in Criminal and Traffic cases to be expunged or sealed.

- **Expungement** is when the arresting agency and/or the Illinois State Police physically destroys an individual’s criminal records or returns the records the individual. Additionally, the Clerk’s Office erases the individual’s name from the Clerk’s Office’s electronic docket from that day forward.

- **Sealing** is when an individual’s records are physically and electronically maintained, yet are unavailable without a court order, except that the law allows police agencies and prosecutors certain access to the individual’s record. If a person’s record is sealed, his or her name will also be erased from the Clerk’s Office electronic docket system from that day forward.
State of Illinois Law
Juvenile Expungement

• At 17 years of age or when all juvenile court proceedings against you have been terminated, whichever is later, you can expunge the following:
  ▪ Arrest without a petition for delinquency for an incident occurring before your 17th birthday
  ▪ Not delinquent finding for an incident occurring before your 17th birthday
  ▪ Successful completion of supervision for a crime committed before your 17th birthday
  ▪ Adjudication for an offense committed before your 17th birthday that would be a Class B Misdemeanor, Class C misdemeanor, or a petty business offense if committed by an adult

Or

• At 21 years of age or when 5 years have elapsed since all juvenile proceedings have been terminated or commitment to juvenile Department of Corrections has been terminated, whichever is later, you can expunge the following, as long as you have not been convicted of any crime since your 17th birthday:
  ▪ A juvenile incident occurring before your 17th birthday that did not result in a proceeding in criminal court.
  ▪ Adjudication of your juvenile record that was not based upon first-degree murder or a sex offense, which would be a felony if committed by an adult.
Reasons For Expungement

There are several reasons why individuals file expungement or sealing petitions, including:

• To obtain an apartment or housing
• To join the Armed Forces, such as the Army, Navy or Air Force
• To open any child development center that is facilitated by the State of Illinois Departments
• To obtain employment
• To attain certification for occupations, such as those in the medical or legal fields
• To immigrate
• To adopt
• For marital reasons
Employment Law Facts

Understand the Employment Law:

• Information about a criminal history should not be disclosed unless it is directly asked.
• Pay attention to the wording on the application or during the interview. If an employer asks about felonies, information on misdemeanors should not be disclosed.
• Some states, including Illinois, prohibit employers from asking employment candidates about arrests that did not lead to a conviction during the hiring process.
• In Illinois it is against the law for employers or potential employers (except law enforcement, state’s attorneys and other prosecutors, the State Police, and the Department of Corrections) to ask an individual if he or she ever had any records expunged or sealed. And you are not required to disclose this information on employment applications.
• The Recommendations

• Increase public awareness of the expungement/sealing processes
  • Provide funding to produce an easy-to-read expungement/sealing information hand-out to be given to each defendant upon release from incarceration.
  • Produce posters/pamphlets about expungement/sealing to be posted at relevant public places, such as: high schools, police headquarters, bail bond rooms, drug rehabilitation facilities, men and women’s shelters and the county jail.
  • Encourage county judges to inform defendants if their cases qualify for expungement/sealing.

• Make the expungement/sealing process more accessible
  • Keep filing costs as low as possible; advise about indigent fee waiver.
  • Educate interested persons about how to obtain their criminal histories (rap sheets) and file for expungement/sealing pro se (without attorney); provide referrals to free or low-cost legal assistance.
  • Sponsor community-based expungement summits and seminars, and seminars in jails.
  • Promote the availability of expungement/sealing information online (at Court Clerk’s Office website/cookcountyclerkofcourt.org).
The Recommendations

- Promote the availability of other remedies when expungement/sealing is not an option
  - Certificate of Good Conduct
  - Certificate of Relief from Disabilities
  - Pardon
  - Certificate of Innocence

- Educate businesses about citizens’ rights regarding expunged/sealed records
  - It is against the law for employers or potential employers (except law enforcement, state’s attorneys and other prosecutors, the State Police, and the Department of Corrections) to ask an individual whether he or she ever had any records expunged or sealed. (20ILCS 2630/12)
  - It is a civil rights violation if the potential employer uses the fact that you had a criminal record expunged or sealed as the reason to refuse to hire you, as a reason to fire you, or as a reason to affect the terms, conditions or privileges of your employment, among other things. (775 ILCS 5/2-103)
• The Recommendations

• Encourage County vendors to hire ex-offenders

• Allocate a specific number of County jobs for ex-offenders

• Urge Governor to speed process of review of State Prisoner Review Board recommendations, and grant pardons where appropriate
Conclusion

To bar a formerly incarcerated person’s ability to make a living only increases the chance that he or she will be a repeat offender. To break the cycle, we must help remove the additional obstacles created by the arrest or conviction that hinders a successful reintegration in society after incarceration.

In Cook County, Illinois, we have found that providing increased access to expungement/sealing services and raising public awareness about the many options of dealing effectively with records of a criminal past, are helping thousands of our citizens improve their employability.

Hopefully, the NACO “Smart Justice” symposium will bring us all greater understanding of how all county governments can work with each other, and with other governmental agencies, to help ease the transition back to work for citizens who have paid their debt to society and are seeking a second chance in life.
Questions?