



# WISCONSIN POLICY FORUM

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## **Wisconsin Differs from Other States in Treatment of Ex-Offenders Seeking a Clean Slate 'Atypical' Law Allows Expungement Only in Limited Cases**

MILWAUKEE and MADISON—For ex-offenders seeking a “clean slate” as they look for jobs, Wisconsin’s criminal expungement law creates several hurdles that don’t exist in other states, according to a new report from the nonpartisan, independent Wisconsin Policy Forum.

The report, “A Fresh Start: Wisconsin’s Atypical Expungement Law and Options for Reform” notes Wisconsin is the only state that requires a judge to decide at sentencing whether an offender’s record can be expunged, or sealed from public access unless there is a court order to unseal it. All other states that permit expungement allow judges to decide once an offender has completed his or her sentence.

Wisconsin also is among a handful of states that limit expungement only to young offenders (under age 25) and that do not expunge cases that end in acquittals or dismissed charges. Overall, the study found, Wisconsin appears to have a stricter expungement law than all of its neighbors except Iowa.

In recent years, state lawmakers have considered changing Wisconsin’s expungement law. In the 2017-18 session, both houses of the legislature passed expungement bills by wide margins but failed to agree on a final proposal.

The report also analyzes court-related data and finds that bringing Wisconsin’s law into line with other states could substantially increase the number of cases eligible for expungement. In Milwaukee County, which as the state’s largest county has the highest number of criminal cases, the change with

the biggest short-term impact would be to allow individuals to petition for expungement of closed (past) cases. Depending on the time frame for such a change, up to 30,000 closed cases between 2006 and 2017 could be eligible for expungement under this option.

Allowing ex-offenders who committed crimes when they were 25 or older to seek expungement could yield a significant increase as well. The report projects that nearly 4,000 cases could become eligible in 2019 if such a change were made. Expanding the list of offenses eligible for expungement to include additional non-violent felonies would have a slight impact; under current law, only felonies that carry a penalty of less than six years are eligible for expungement.

Additionally, allowing individuals who are charged but not convicted to have their records expunged could add about 1,600 eligible cases in Milwaukee County in 2019. The state has begun removing such cases from its online Wisconsin Circuit Court Access (WCCA) website after two years, but there is no provision for non-convictions in the state statute, so cases that are dismissed or that result in acquittals cannot be expunged fully and immediately as some convictions can.

The report notes that the actual impact of the options may vary significantly. Expungement is relatively rare in Wisconsin; according to one study, only 506 cases were expunged in Milwaukee County between 2010 and 2016, an average of less than 100 cases per year. The report also notes that some repeat offenders may not be able to completely clear their records.

Any changes to current law “would have workload and fiscal implications for state and county governments in Wisconsin that would have to be carefully managed,” the report cautions, adding that the effects could be felt by state courts, clerks of courts, and other parts of the criminal justice system.

“Lawmakers will have to grapple with legitimate policy questions regarding whether employers and the public *should* have access to information about the criminal backgrounds of individuals. But our analysis shows reforming Wisconsin’s expungement law could reduce a common barrier among the state’s shrinking pool of jobseekers,” the report concludes.

The full report can be downloaded at [www.publicpolicyforum.org](http://www.publicpolicyforum.org).

*The Wisconsin Policy Forum was created on January 1, 2018 by the merger of the Madison-based Wisconsin Taxpayers Alliance and the Milwaukee-based Public Policy Forum. The Wisconsin Policy Forum remains committed to their legacy of nonpartisan, independent research and civic education.*