

Criminal Justice Reform



Expungement

In Wisconsin, nearly 1.4 million adults have a criminal record, including 42% of Milwaukee's job seekers.¹

Too often, instead of punishment ending with the successful completion of a sentence, ex-offenders find themselves punished for a lifetime. Research has shown that the collateral consequences of a criminal record can be a life-long barrier to success, presenting obstacles to employment, housing, and education. Though it is illegal for employers and landlords to discriminate based on a criminal record, it still happens regularly.

Having the opportunity for a judge to expunge a criminal record can help alleviate workforce shortages, prevent re-offending, and increase personal income, keeping individuals and families financially secure and free from government assistance.² Employers and workforce leaders recognize that criminal justice reform can reduce overall taxpayer costs and dramatically improve the labor market and life outcomes for people with criminal records.

To get there, Wisconsin's laws need major reform. Wisconsin's system is unique and overly restrictive compared to the rest of the nation (Wis. Statutes Sec. 973.015).

Ours is the only state in the nation that:

- Requires judges to determine eligibility when someone is sentenced, instead of when they are released.
- Does not permit expungement for closed cases even if they meet all other criteria.

Wisconsin is one of few states that:

- Limits expungement eligibility to offenses that occur before age 25.



There is broad, bipartisan support for common-sense reforms to Wisconsin's expungement system, especially for one-time, non-violent, ex-offenders. In the last two legislative cycles, expungement reform bills have made strong inroads, but there is still a long way to go.

The State Bar of Wisconsin supports legislative efforts to expand the ability of certain persons to expunge court records. It is time to reform our state's outdated laws on expungement and give people the ability to clear their record of a single, lower level, non-violent criminal offense if they haven't had any other run-ins with the law. But to make legislative change happen, lawmakers need to hear the voices of their constituents in the legal community.

Without expungement, every sentence can be a life sentence.

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¹ Wisconsin Policy Forum. "A Fresh Start: Wisconsin's Atypical Expungement Law and Options for Reform" June 2018

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Juvenile Jurisdiction

Any parent knows that teenagers make mistakes. Sometimes, those mistakes are crimes that require the justice system to intervene.

The juvenile justice system handles criminal offenses for minors and is distinct from adult courts. It provides specialized services tailored to youth that require restitution and/or community service, offer victims the opportunity to participate in victim-offender dialogue if they choose, and require youth to participate in treatment services that reduce the likelihood of reoffending.

Studies¹ repeatedly show that youth placed in an adult prison reoffend after release at higher rates than young people placed in a juvenile institution. If treated as juveniles, teens have a better chance to learn from the situation and take steps to find success in the future.

Since 1996, Wisconsin courts have considered all 17-year-olds adults for the purposes of criminal prosecution – with no ability to waive them into juvenile court. Since then, most other states have revised this process after recognizing the benefits of reducing recidivism in young offenders. Wisconsin is one of only three remaining states to set the age of criminal responsibility at 17 years.

- By keeping 17-year-olds in adult court, we are preventing them from getting the treatment they need to reduce the risk they will reoffend.
- The adult criminal justice system is neither adequately equipped nor designed to handle juveniles.



The State Bar of Wisconsin supports returning original jurisdiction of 17-year-old juveniles to the juvenile justice system. The State Bar is not advocating for the elimination of trying 17-year olds in adult court when appropriate for the individual and the charges, but believes that as a matter of course, 17-year-old offenders would be better served in juvenile court.

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¹Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention. Juvenile Transfer Laws: An Effective Deterrent to Delinquency? June 2010. <https://ojjdp.ojp.gov/library/publications/juvenile-transfer-laws-effective-deterrent-delinquency>

²National Research Council. Reforming Juvenile Justice: A Developmental Approach. 2013. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>

Criminal Justice Reform



Other Criminal Justice Reform Issues

Lawyers are an important part of the justice system, and as stewards of the rule of law, we must take collective action to help right wrongs. The State Bar of Wisconsin, with more than 25,000 lawyers, must play a strong role in addressing systemic racism and implicit bias in the legal system. The State Bar believes that the following policies will help address disparities throughout the justice system:

Exoneree Compensation

The State Bar of Wisconsin believes exonerees deserve appropriate compensation for the injustice suffered and the years of freedom lost.

Wisconsin was once a leader in providing a statutory mechanism for compensating wrongly convicted individuals who are able to prove that they were innocent of the offense. However, Wisconsin's statute is decades old. Now, it sits among the most inadequate of any such statute in the nation, compounding the injustices already suffered.

Driver's License Suspensions, Warrants, or Incarceration for Debt Collection

The State Bar supports efforts to end the practice of allowing courts to order driver's license suspensions, warrants, or incarceration for the purpose of collecting debt for tickets, forfeitures, court costs, or criminal fines.

Recognizing the unjust, compounding harms created by these debt collection mechanisms, Wisconsin courts must stop using driver's license suspensions, warrants, or incarceration to collect debt for tickets, forfeitures, court costs, or criminal fines.

Courts have a wide range of other options for resolving nonpayment of debt. Judges can and should provide statutory options such



as community service, affordable payment arrangements, debt modification, and permanent stays.

Law Enforcement Reform

The State Bar supports efforts to address racial injustice and improve the justice system, including through policing reforms and citizen engagement with law enforcement.

The State Bar supports increased training for law enforcement on the appropriate use of force including de-escalation and preservation of life; a statewide model for use of force standards and their enforcement; annual reporting of use of force incidents; and the public posting of use of force policies by law enforcement agencies.

The State Bar supports additional funding for communities to establish community-policing efforts to improve police interactions and to mediate conflicts between citizens and law enforcement.

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Criminal Justice Reform



Bail Reform

Overview

An individual who has been charged with a crime but not yet convicted, should, under existing law and normal circumstances, be released while awaiting a decision in their case. Current Wisconsin law recognizes that persons accused of crimes are presumed innocent until proven guilty and embraces a “policy against unnecessary detention of the defendant pending trial.” However, it permits the court to require a cash payment as a condition for pretrial release.

On one hand, there are times when public safety would be best served by holding a high-risk defendant in jail. The Wisconsin constitution indicates that all those accused of a crime have a right to conditional release before trial, with an exception for certain violent crimes where limited pretrial detention may be imposed by a circuit court. High-dollar cash bail can be used as a mechanism to keep perceived dangerous defendants in jail. In some instances, however, even high amounts of cash bail are met by individuals with the financial means themselves or by others who have an interest in their case.

On the other hand, a person’s ability to pay is too often the determining factor in whether they are held prior to the adjudication of their case. Even relatively low bail amounts of a few hundred dollars are beyond the reach of many defendants and their families. Unnecessary pretrial jailing of low-risk defendants can lead to job loss, enhanced financial distress for defendant’s families, and increased risk of recidivism, among other indirect impacts on the justice system and society as a whole.

Research shows that unnecessary pretrial detention is associated with worse case outcomes. Detention impairs a defendant’s ability to develop meritorious defenses and increases the pressure to plead guilty quickly, regardless of guilt.

In effect, the use of routine cash bail makes pre-trial liberty depend on economic resources, rather than a fair assessment of the risk for flight or danger to the public.

Our Role

The State Bar of Wisconsin supports reform of pretrial release and detention laws that move away from the use of cash bail toward policies that consider the safety of the community, and reduce disparities based on poverty and race.

Continuing to use cash bail alone as the basis for public safety is contrary to the State Bar’s philosophy. Rather, courts should use facts and evidence to evaluate each defendant’s risk. This can help determine the appropriate mechanism to both guarantee a return for court proceedings and protect the public from further harm.

The goal of pretrial release and detention policies should be to maximize public safety and ensure court appearances. Depending on risk, the accused should be allowed to get back to work or to family and be productive through the trial process, or alternatively be detained to protect the public from imminent harm. **The State Bar of Wisconsin recognizes the need for a clear pretrial process that protects public safety and ensures that dangerous individuals are detained until they face trial.**

Many State Bar members have served and participated in numerous study committees created by the court, the Department of Justice, and the legislature. The 2018 Study Committee proposed a number of reforms that would have dramatically improved the pretrial process and additional consideration of that committee’s good work should be reviewed.

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Justice System Funding



Justice System Funding

Wisconsin's courts have constitutional functions and obligations that require sufficient funding to meet those responsibilities. The judiciary is dependent on the other branches of government, especially the legislature, to provide adequate funding to perform its constitutional duties.

Adequate funding of the judicial branch of government is of critical importance to a system of justice fairly administered and impartial to all people, regardless of financial circumstance.

Prosecutor and State Public Defender Funding

The State Bar of Wisconsin supports adequate funding, compensation, and benefit packages that can attract and retain experienced and talented prosecutors and public defenders.

The integrity of the justice system requires that litigants have effective representation regardless of economic resources.

Prosecutor and State Public Defender Caseload Standards

The State Bar supports caseload standards for attorneys based upon the objective standards recognized by the American Bar Association.

Overworked prosecutors and public defenders facing too-high caseloads cannot fulfill their ethical requirements of effective and thorough representation of the public or their clients.

Judicial Compensation

The State Bar of Wisconsin supports adequate funding, compensation, and benefit packages that can attract and retain judges capable of administering justice fairly and efficiently.

The Judicial Branch is a co-equal branch of government and should have the ability



through an independent Judicial Compensation Commission to set judicial salaries at an equitable level that properly compensates the work of the judiciary.

Compensation for State Attorneys

The State Bar supports compensation adequate to attract and retain experienced and qualified attorneys employed by the State of Wisconsin.

Court Operations

The State Bar of Wisconsin supports funding through sum-sufficient general-purpose revenue for all areas of court operations and court personnel.

This includes law libraries, deputy and assistant clerks of court, secretaries, law clerks, court interpreters, and court commissioners.

The State Bar believes filing fee increases should be minimal, but revenue from said fees must go to support the justice system.

Increasing fees make access to justice difficult, so courts should not rely on this manner of funding. However, any necessary increases should go directly to supporting and furthering access to the justice system.

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Justice System Funding



New Circuit Court Branches

The State Bar of Wisconsin supports increases in Circuit Court branches.

An analysis of current caseloads and recommended caseload standards demonstrates that the Circuit Court needs a new branch.

Department of Justice Funding

The State Bar of Wisconsin supports adequate funding for the Wisconsin Department of Justice.

Without sufficient funds, it cannot maintain its responsibilities to support the legal community and the justice system in order to ensure the protection of Wisconsin's citizens.

Judicial Council Funding

The State Bar of Wisconsin supports the funding of the Judicial Council.

The 21-member statutory body studies and makes recommendations relating to:

- (1) court pleading, practice and procedure and
- (2) organization, jurisdiction and methods of administration and operation of Wisconsin courts.

In order to carry out these statutory responsibilities the Judicial Council needs state support to assist these important functions to advance our judicial system.

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Justice System Funding



Private Bar Compensation

The Sixth Amendment of the U.S. Constitution and Article I, Section 7 of the Wisconsin Constitution guarantee that all criminal defendants have a right to effective assistance of counsel. States must provide a lawyer to indigent defendants who can't afford one.

All states have some form of public defender system to handle these appointments. The State Public Defender Office (SPD) is a state agency with full-time staff attorneys in 40 offices throughout Wisconsin.

Private bar appointments are necessary when SPD attorneys are overloaded or conflicts exist. But for too long, the SPD has been underfunded, leading to a severe shortage of private bar attorneys willing to take public defense cases.

The lack of private bar attorneys in certain areas of the state has caused case delays and postponements, inconveniencing victims and police officers and increasing county jail stays and local expenses. Coupled with the rate of inflation, the low reimbursement rate continues to push more private bar attorneys away from taking cases, forcing the SPD to make hundreds of calls per case to try to find attorneys.¹

Beginning January 2020, for the first time since 1995, the private bar rate was increased from \$40 to \$70 per hour, plus \$25 per hour for travel time. This was a substantial investment that raised the rate from the lowest in the nation, but more investment is still needed. For many attorneys in solo or small firms, a \$70/hour and \$25/hour travel rate is still not enough to cover the operating costs of their practice.

To stave off another constitutional crisis and give defendants the representation they both need and deserve:



- **State Bar of Wisconsin strongly supports increasing compensation for private practice lawyers taking defense appointments.** The rate should fairly compensate lawyers for their time, travel, and any other costs associated with providing quality representation to their clients.
- **Rates of compensation should be at least as much as those set by the Wisconsin Supreme Court for court-appointed attorneys.**
- **Reimbursements should be timely** to ensure a more efficient and effective criminal justice system.

The State Bar believes that if the state invests in private bar rates to an acceptable and adequate level, the pool of qualified attorneys willing to take private bar cases would increase and the efficiency in appointing cases would also improve. Delays in our court system would decrease, costly appeals might be avoided and fewer victims would be re-victimized by drawn out legal proceedings.

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¹ Copy of Testimony by State Public Defender Kelli S. Thompson, Wisconsin Supreme Court, Petition 17-06

Civil Legal Funding



Civil Legal Aid Funding

Some people assume they have a constitutional “right to an attorney” but that right only applies to criminal matters. Many Wisconsin citizens struggle to find legal representation for housing, employment, family, or other matters in civil court.

Without legal assistance, thousands of Wisconsin families face a very real barrier to accessing justice, falling into the “justice gap.” Civil legal aid funding helps ensure fairness for all within the justice system, regardless of how much money an individual has.

Civil legal aid funding also has a far-reaching impact on the judicial system as a whole. When individuals have legal representation or receive proper legal advice about the legal process and their rights, it increases courtroom efficiency, reduces court crowding, and improves public confidence in our system of fair and impartial justice.

Investing in civil legal aid avoids higher costs later, making it a wise investment for Wisconsin. For every \$1 invested, Wisconsin’s civil legal aid providers obtain \$10 for their low-income clients in the form of child support, security deposits, jobs obtained, and more. Investing in civil legal aid:

- Results in fewer emergency room visits, shelter stays, and police calls for domestic abuse victims.
- Increases child support payments that reduce the need for public benefits.
- Increases job readiness and reduces unemployment claims, leading to higher tax revenue and greater self-sufficiency.
- Provides safe, stable families and homes for children so they can focus on learning.

Civil legal aid has long enjoyed broad bipartisan support for a reason: Wisconsinites believe equal justice under the law is a right, not a privilege. It



helps people of all backgrounds and ages, saving taxpayers money while ensuring equal access to justice for all.

Federal Funding

At the federal level, funding for the [Legal Services Corporation \(LSC\)](#) provides the largest single source of funding for civil legal aid programs in Wisconsin. It allows our two Wisconsin LSC grantees, [Legal Action](#) and [Judicare](#), to serve over 10,000 low-income clients each year. Other federal agencies that provide key sources of funding for civil legal aid include the Justice Department, HUD, and the VA. Together, these funds help eligible individuals and families solve civil legal problems that help them stabilize their families, maintain safe housing, and get and keep gainful employment.

State Funding

In the last four biennial state budgets, the Wisconsin legislature has allocated \$1 million in Temporary Assistance to Needy Families (TANF) funds for legal services to TANF-eligible survivors of domestic violence and sexual abuse. In March of 2022, Governor Tony Evers announced a historic, one-time grant of \$8 million from federal

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Civil Legal Funding



coronavirus relief funds to help address the massive increase in unmet civil legal needs of Wisconsin residents resulting from the pandemic. The State Bar recognizes the potential positive impacts of this investment, but continues to advocate for future funding on a more permanent basis.

The State Bar believes that the best way to fund civil legal needs is through sustainable, long-term budget allocations.

Wisconsin funding for civil legal needs lags far behind our neighboring states. Commitment to regular funding for civil legal services ensures access to justice is not dependent upon one-time infusions of funds.

The State Bar of Wisconsin supports funding for civil legal assistance to low-income individuals, providing them access to the legal system to improve economic success and stability.

The civil legal needs of low-income individuals go largely unmet. Access to legal services removes obstacles for low-income individuals and provides full access to the courts and advocacy that is available to others in our society.

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Supporting the Legal Profession



Student Debt

The cost of a law school education isn't what it used to be. [According to the non-profit Law School Transparency](#), the rising costs of a law degree have significantly outpaced inflation over the last three decades.

- In 1990, the average public law school tuition was \$3,236 for residents.
- In 2019, the average public law school tuition was \$28,186 for residents.
- When adjusted for inflation, public school was *four and a half times as expensive* in 2019 as it was in 1990.

The costs are even higher for non-resident public school students and private law schools.

Growing tuition costs = increased debt loads

Today, the average debt for law school graduates who borrow for tuition is [around \\$118,000](#). The impact this level of debt has on the overall legal system and the public's access to justice is not well understood by the general public.

Loan repayment assistance programs (LRAP) and loan forgiveness programs provide one solution to the growing problem of law school tuition debts. LRAPs provide loan repayment or lower loan payment options to graduates entering specific types of employment, usually law-related public interest jobs, civil legal aid, or public defense. There are various types of LRAPs administered by law schools, state bar associations and foundations, and federal and state governments providing debt relief to some law graduates. As of 2022, the state of Wisconsin does not have a LRAP program available to attorneys, but other states do. The ABA provides a comprehensive list of [statewide LRAP programs on its website](#).

Public Service Loan Forgiveness programs, whether from the federal, state, or local governments or private sources, are a tool to support government and nonprofit service



providers who ensure the delivery of vital services to the public, especially in rural and/or underserved communities where legal resources are scarce. They also serve as a recruitment and retention tool that helps reduce student loan debt obligations for those that choose potentially less lucrative legal careers in public service.

The State Bar of Wisconsin recognizes the long-term financial constraint mortgage-sized tuition debt can impose. The median starting public interest attorney salary in civil legal aid is less than \$50,000, and averages less than \$60,000 for public defenders and prosecutors. Despite a deep commitment to ensure access to justice for all citizens, many attorneys find that the rising costs of legal education forces them to forego any form of public service or to practice in fields or settings that result in substantially lower loan repayment opportunities, leave for a higher earning wage out of state or in a large city, or take a second job.

The State Bar of Wisconsin supports legislative efforts to reduce the overall cost of a legal education and to provide loan repayment assistance programs ("LRAPs") where appropriate.

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Supporting the Legal Profession



Other Issues

The State Bar of Wisconsin is committed to the important role it plays in positively impacting the legislative process on issues of importance to the courts, the legal profession, and the public. It adopts policy positions that affect the regulation of the practice of law, delivery of legal services, administration of justice, funding of the justice system, criminal practice and procedure, and civil practice and procedure.

Among those topics, the following are issues that are priorities or issues that have recently been considered or taken up by the legislature:

Broadband Access

The State Bar supports efforts to expand broadband access, meeting the minimum criteria defined by the FCC* to all parts of Wisconsin. This helps ensure attorneys can conduct business statewide, and Wisconsin residents have access to online research, legal forms, and self-help programs.

The State Bar supports state and federal funding and grants for broadband statewide to ensure more uniform coverage across Wisconsin. This support extends to the expansion of broadband in any capital or infrastructure legislation.

**Current FCC standards are 25 megabits per second (Mbps) download speed and 3 Mbps upload speed, the minimum speeds necessary to stream video or conduct normal business activities.*

Prosecutor Board

The State Bar of Wisconsin supports the creation of an independent prosecutor board and creation of the State Prosecutors Office. The independent board will serve to protect the interests and funding for elected District Attorneys and assistant district attorneys in Wisconsin.



Ghostwriting

The State Bar of Wisconsin supports policies which encourage or enhance the quality and availability of legal services to the public. This includes the use of “ghostwriting” that provides for the vital participation of legal counsel, without disclosure of the attorney’s name or bar number, in assisting pro se individuals in preparing documents for use within the legal system. This limited legal assistance can benefit parties and the court by focusing the legal issues and more clearly stating the facts and therefore promoting the effective administration of justice. Lawyers, as an essential component of the state’s justice system, have a responsibility to work for an efficient and effective justice system.

Tax on Legal Services

The State Bar of Wisconsin opposes a professional tax on legal services.

Access to legal services is essential to the operation of an ordered society, and a tax on legal services would further increase legal fees and decrease low-income and moderate-income individuals’ access to justice.

[For a complete, up-to-date list of all State Bar of Wisconsin policy positions, see the State Bar Policy Positions Handbook.](#)

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