

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 It is time to reform our state's outdated laws on expungement and give people the ability to clear their record of a single, lower level, non-violent criminal offense if they haven't had any other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.

Contact Info



Devin Martin, Grassroots Outreach Coordinator
(608) 250-6145 | (608) 712-5509 (cell)
dmartin@wisbar.org

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

² 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.

Contact Info



Lisa Roys, Director

(608) 250-6128 | lroys@wisbar.org

Cale Battles, Government Relations Coordinator

(608) 695-5686 (cell) | cbattles@wisbar.org

Lynne Davis, Government Relations Coordinator

(608) 852-3603 (cell) | ldavis@wisbar.org

Devin Martin, Grassroots Outreach Coordinator

(608) 250-6145 | (608) 712-5509 (cell)
dmartin@wisbar.org

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>

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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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dmartin@wisbar.org

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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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