



## INTER-OFFICE COMMUNICATION

**DATE:** June 21, 2018

**TO:** Theo Lipscomb, Sr., Chairman, Board of Supervisors

**FROM:** Nicole M. Brookshire, Executive Director, Office on African American Affairs

**SUBJECT:** Informational Report on the Wisconsin Policy Forum report "A Fresh Start: Wisconsin's Atypical Expungement Law and Options for Reform"

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### REQUEST

At this time, no request is being made by the Office on African American Affairs, this report is informational only.

### BACKGROUND

In 2015, then Supervisor Khalif Rainey proposed and the Milwaukee County Board passed resolution 15-637 requesting the Wisconsin State Legislature reform and expand current law on the expungement of criminal records. The resolution further stated that:

*Milwaukee County supports efforts to give certain rehabilitated individuals a second chance by reforming and expanding the current expungement law including, but not limited to,*

- *clearly defining what expungement means;*
- *disallowing the use of expunged records in housing and employment matters;*
- *ending the age limit on expungement requests;*
- *allowing expungement requests to be made at any time – not just at sentencing;*
- *and*
- *disallowing disclosure of the expunged record by the Wisconsin Department of Justice to any unauthorized person, except as otherwise required by state or federal law.*

In the fall of 2017, Milwaukee County's Office on African American Affairs and the Milwaukee Community Justice Council collaborated to provide the Wisconsin Policy Forum access to the Wisconsin Court System's Circuit Court Access database (CCAP) for research and analysis on both current and possible expungement laws, and its impact on the Milwaukee County population.

Specifically, Wisconsin Policy Forum proposed to analyze the CCAP data to:

1. Identify how many individuals in Milwaukee County are currently eligible for expungement but have not cleared their records;
2. Determine the size of the population that could be affected by potential changes to state expungement policy; and
3. Propose what changes, if any, might be considered by state lawmakers to reduce the issue as a workforce barrier for those actively seeking employment.

## REPORT SUMMARY

The report, “A Fresh Start: Wisconsin’s Atypical Expungement Law and Options for Reform” notes that 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. All other states that permit expungement allow judges to decide once an offender has completed his or her sentence.

The report analyzes court-related data, provided by the Office on African American Affairs, and finds that bringing Wisconsin’s law into line with other states could substantially increase the number of cases eligible for expungement. Milwaukee County, which is the state’s largest county, has the highest number of criminal cases, the proposed change (mentioned above) has the biggest short-term impact and would 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.

Wisconsin is one of only three states with laws that do not permit expungement of cases resulting in non-convictions. Permitting individuals to automatically and fully expunge all non-conviction records could address a fairness issue, as some individuals convicted of crimes are able to expunge their records, while some who are not convicted are unable to do so. Non-convictions account for 33,818 of the 150,087 Milwaukee County cases (22.5%) on the WCCA website during the 2006-2017 timeframe.

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 as other 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.

## **RECOMMENDATION**

This report is informational only, there is no request at this time.



Nicole Brookshire  
Executive Director, Office on African American Affairs

Attachments: Wisconsin Policy Forum Report – *A Fresh Start: Wisconsin’s Atypical Expungement Law and Options for Reform*  
Wisconsin Policy Forum Executive Summary – *A Fresh Start: Wisconsin’s Atypical Expungement Law and Options for Reform*