

TO: Member, SEARCH Membership Group
FROM: Eric Johnson
DATE: March 9, 2010
SUBJECT: Survey of state criminal record sealing and expungement practices

In response to an inquiry we received from a member, we are conducting a brief survey of state practices regarding the sealing or expungement of criminal history record information.

Record sealing and record expungement definitions and practices vary across the states. Essentially these practices are usually authorized by statute and most commonly initiated by court order. Generally, sealing involves restricting access to record information to very limited circumstances and may involve the purging of arrest fingerprints. There are often differences in sealing triggers between juvenile, youthful offender and adult adjudications. Expungement most often is triggered by a court order requiring the removal/deletion of arrest fingerprint and associated information although state law may allow the retention of select information for disclosure in limited circumstances.

Please copy the completed survey below in a reply email to eric@search.org, or complete the attached version of the survey and return it as an attachment. Thank you for your assistance and your cooperation in promptly providing the information requested below.

Once compiled the survey results will be made available to the SEARCH Membership.

State: _____

Please check all processes below that apply to your state:

- 1. Record sealing is authorized for state and FBI adult arrest fingerprints.
- 1A. The repository is required to retain some information when fingerprints are sealed for an adult arrest event.
- 1B. The repository is not authorized to retain any information when an adult arrest event is sealed.

Under what circumstances/for what purposes can sealed information be disclosed?

- 2. Record expungement is authorized for state and FBI adult arrest fingerprints.
- 2A. The repository is required to retain some information when fingerprints are expunged for an adult arrest event.
- 2B. The repository is not authorized to retain any information when an adult arrest event is expunged.
- 3. Fingerprints may be purged after a prescribed period of time; e.g., adjournment in contemplation of dismissal if record subject is not arrested again within one year.
- 3A. Some information may be retained by the repository and disclosed under authorized circumstances.
- 4. Expungements are allowed for felony conviction records.
- 5. Expungements are allowed for misdemeanor conviction records.
- 6. Expungements are allowed only for those records from an arrest that did not result in a conviction.
- 7. Record sealing is not authorized in my state.
- 8. Expungement is not authorized in my state.
- 9. If known, number of arrest events sealed during 2009: _____
- 9a. Number of individuals who had arrest events sealed in 2009: _____
- 10. If known, number of arrest events expunged during 2009: _____
- 10a. Number of individuals who had arrest events expunged in 2009: _____

Any other pertinent information?

Survey respondent information:

Name: _____

Division: _____

Agency: _____

Email: _____

Response Tables 040510, Sealing/Expungement Survey

State	1	1A	1B	2	2A	2B	3	3A	4	5	6	7	8	9	9A	10	10A
Alabama	X	X		X		X					X ³⁶			N/A	N/A	N/A	N/A
Alaska																	
Arizona			1	X		X ²			2	2	2		2	Unknown		5	
Arkansas																	
California	X		X		33			X	X	X				10,726	(³⁴)	36,989	(³⁵)
Colorado		X ¹⁴		X ¹⁵	X ¹⁶	X ¹⁷	X ¹⁸		X ¹⁹	X ²⁰	X ²¹			Approx. 2,617		Approx. 490	
Connecticut																	
Delaware				X	X			X			X	X		1,317			
Dist. Columbia																	
Florida	X	X		X	X			X			X			5,776	4,423	7,767	7,507
Georgia	X ²²	X		X ²³	X ²⁴	X ²⁵					X ²⁶					12,536(²⁷)	(²⁸)
Hawaii				X	X ³⁷	³⁸	³⁹	X	⁴⁰	⁴¹	X	X		N/A	N/A	4,377 charges	1,143
Idaho-See below																	
Illinois																	
Indiana				X		X					X			10			
Iowa				7	X ⁸			X ⁹			X	X		None	None	24,459	5,542
Kansas				X	X			X	X	X		X				3,198	
Kentucky				X		X				X				None sealed; all expunged	None sealed; all expunged	12,103	42
Louisiana																	
Maine	X	X											X	1	1	N/A	N/A

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State	1	1A	1B	2	2A	2B	3	3A	4	5	6	7	8	9	9A	10	10A
Maryland				X		X					X	X				46,388	Unknown
Massachusetts																	
Michigan	X	X		X	X	X					X			2,858	2,858	8,630	8,630(29)
Minnesota	X	X		X		X					X			3,780	Unknown	1,455	Unknown
Mississippi																	
Missouri				X		X					X	X		0	0	231	231+(3)
Montana																	
Nebraska													X ⁴⁴				
Nevada																	
New Hampshire				X					X	X		X		N/A		4,372	
New Jersey				X	X			X	X	X		X					5,691
New Mexico	X ⁴		X ⁵	X		X					X ⁶			4 or 5	4 or 5	10 to 12	10 to 12
New York	X	X					X	X					X	273,268	231,074	2,816(43)	2,816(43)
North Carolina																	
North Dakota												X	X				
Ohio	X	X		X		X			X	X	X			16,000		8,500	
Oklahoma	X	X		X	X				X	X							1,112(11)
Oregon	X		X										X ⁽³⁰⁾	Unknown	3,877	N/A Adults Unknown juveniles	N/A Adults 2,592 juv.
Pennsylvania		X		X		X			X ⁽³¹⁾	X ⁽³²⁾	X			20,956		40,501	
Puerto Rico																	
Rhode Island																	

Response Tables 040510, Sealing/Expungement Survey

State	1	1A	1B	2	2A	2B	3	3A	4	5	6	7	8	9	9A	10	10A
South Carolina																	
South Dakota	X	X		X		X	X		X	X							
Tennessee																	
Texas																	
Utah				X		X		X	X	X		X				4,075	Unknown
Vermont	X	X		X		X			X	X				Not available	1,398	Not available	939
Virgin Islands																	
Virginia	X	X		X	X						X					2,427	
Washington				X		X					X			1,047	674	1,582(12)	1,134(13)
West Virginia	X			X						X					621		621
Wisconsin				X		X					X	X				964	686
Wyoming																	
TOTALS	16	14	3	27	11	18	2	9	11	13	18	11	5				

Under what circumstances/for what purposes can sealed information be disclosed?

AL: Generally speaking, sealed youthful offender records may be disclosed for the purposes of sentence enhancement under the Habitual Felony Offender Act, and they may be considered when completing the sentencing worksheets for compliance with Alabama’s voluntary sentencing standards. They may also be considered by the sentencing judge when making a determination as to whether or not to grant an offender youthful offender status.

CA: Sealing information can only be disclosed if the sealing order is unsealed by a judge.

CO: Colorado Revised Statute (CRS) 24-72-308 informs who would have access to any sealed record.

FL: FL: Florida Statute 943.059 (4) (a) Court-ordered sealing of criminal history records states:

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(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;
7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or
8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

GA: First offender probation and discharge is disclosed for law enforcement or P.O.S.T. certified positions. Discharge for certain crimes is also disclosed for applicants for certain types of employment (children, elderly and mentally ill). O.C.G.A. § 35-3-34.1

IN: Only juvenile criminal history can be sealed.

MI: Per statute a person can only have a record sealed one time. If an individual attempts to utilize the statute again the request is denied. The repository keeps track of this and is the one to review the application before it goes to court. In addition anyone who is going to be in the Criminal Justice field is subject to the disclosure that a record has been sealed.

MN: For purposes of a criminal investigation, prosecution or sentencing the fact that sealed data exists may be disclosed. The requester must obtain a court order to get the data. For purposes of criminal justice employment, sealed *convictions* may be disclosed without a court order. To access other sealed data a court order is required.

NY: The purposes for which sealed information can be disclosed are set forth in NYS CPL 160.50(1)(d); 160.55(1)(d); 160.58(6).

OH: 109.57.2 and 2953.32 allow for the State of Ohio to release sealed information on anyone working with children and or elderly and certain record checks by a law enforcement agency or prosecutor.

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OK: Petition to the court and court order for unsealing and disclosure. Additionally, basic identification information is maintained unsealed, but all arrest-related information is sealed.

OR: Upon motion of any prosecutor or defendant in a case involving sealed records, supported by an affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed for the limited purpose of assisting the investigation of the movant. The order has no other effect on the orders setting aside the conviction or arrest record.

PA: Adults completing Accelerated Rehabilitative Disposition (ARD) or other types of approved diversionary programs may be authorized to receive an expungement of their arrest. The ARD expungement is retained offline solely for the purpose of determining future program eligibility and is only disclosed to the courts and prosecuting attorney upon request. Additionally, adults receiving a Conditional Pardon by the Governor of PA also have their records retained offline. If they are ever arrested again, the arrest for which they received the Conditional Pardon is reinstated.

SD: Law enforcement purposes. Specific fingerprint-based background checks.

VT: sealed records can be reopened at court request but access to the sealed files themselves is limited to the Director of the Vermont Criminal Information Center and his designee.

VA: Expunged records can only be unsealed by the court that ordered the record sealed. A new court order is required to unseal the record.

WA: juvenile arrests may be sealed. (RCW 13.50.050). The repository may retain identifying information including photographs, fingerprints, palmprints, footprints, and any other data that identifies a person by physical characteristics such as name, date of birth or address. Any criminal history record information (CHRI) may not be retained on a sealed record.

WV: Through a court order outlining the reason for the requested sealed information.

Is there any other pertinent information?

FL: The following is the number of juvenile records that were automatically expunged (purged) when the subject turns 24 or 26 if they do not have a forcible felony arrest after they turn 18 per Florida Statute 943.0515:

Number of arrest events expunged (purged) during 2009: 59,287

Number of individuals who had arrest events expunged (purged) during 2009: 32,598

GA: Pursuant to O.C.G.A. § 15-11-83, access to juvenile felony arrest records shall be limited to the administration of criminal justice; prohibiting the use of these records to make employment or licensing decisions. O.C.G.A. § 15-11-79.2(c) allows the juvenile offender to petition the court to seal juvenile records. Upon receipt of a court order, GCIC will further conceal juvenile felony records from criminal justice officials who then can only inspect these records by approval of a judge.

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ID: In Idaho, there is only one authorized expungement. It is when a person is found innocent or is not charged within one year. They person may submit the request to the repository. There are no other expungements authorized in statute. However, we from time to time receive them from the courts. We honor them, but our attorney writes to the prosecutor and defense attorney explaining the order was issued in error. Sometimes they get reversed, but most of them time they stand.

IA: When a record is expunged, the information related to the expungement is retained but it not made available outside of the repository.

ME: Maine does not expunge records. Records are sealed only by court order and that hardly ever happens.

MN: Seal and Expunge are used somewhat interchangeably in Minnesota. However, in completing this survey, Seal means to “seal from view” while retaining the data, and Expunge means to “purge or delete.”

ND: The only records that may be removed are any arrests that are found by a court to be lacking probable cause for arrest.

OR: A defendant can apply for an order setting aside a conviction if three years has lapsed from the date of judgment and the defendant has fully complied with the sentence of the court or after one year if no accusatory instrument was filed or the charge was acquitted or dismissed. Convictions for Class “A” or “B” felonies, traffic convictions, and DUII diversion cases that have been dismissed cannot be set aside. A juvenile record can be expunged after 5 years if certain criteria are met. Juvenile courts can direct that records concerning a subject be destroyed after 3 years.

SD: SDCL 23-6-8.1.

UT: A new expungement statute was passed during this legislative session (2010) and will take effect later this year. This may change the number of arrest events expunged. We anticipate there will be more as the new statute allows more expungements.

End Notes

- 1 – A record may be sealed by the court. Requirements of this order do not extend to the Central State Repository.
- 2 – AZ does not have an “expungement” law. However, ARS 13-4051 has the effect of what is commonly held as an expungement. Upon receipt of a court order issued in accordance with ARS 13-4051, the arrest record will be removed from the Central State Repository.
- 3 – MO: In response to 10A, some courts within the state allow for more than one arrest event to be expunged on a petition. Other courts make the individual file a petition for each event. MO does not have a tracking mechanism in place to track anything above the number of petitions that are filed and the subsequent court orders for expungement for those petitions.
- 4 – NM: Sealing is limited to juveniles only under New Mexico’s Children’s Code.
- 5 – NM: Statute is unclear. Repository retains the sealed record.

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- 6 – Expungement also allowed for misdemeanor and petty misdemeanor, crimes that are not considered “moral turpitude,” and if no disposition exists; i.e., dismissal, etc.
- 7 – Iowa does not seal criminal records at the repository.
- 7 – FBI records are removed. Iowa arrest information is removed, but the fingerprints are retained.
- 8 – Fingerprints are retained.
- 9 – Fingerprints are retained and available to law enforcement in an identification database.
- 10 – ISP received 1108 petitions for expungement in 2009 and approximately 400 of these are on adults. We opposed 55 of the 400, because the requests didn’t meet the criteria in the law. The remaining petitions were for juvenile arrests and in most of those cases the Repository never received an arrest card on the individual.
- 11 – Combined sealed and expunged records for 2009.
- 12 – This is the number of arrest expungements. There may be multiple arrests per record with some of them being expunged and others not expunged. There were 575 total record expungements in 2009 (these records may have had multiple arrest events expunged).
- 13 – This is the number of individuals who had at least one arrest expunged.
- 14 – Colorado retains all information.
- 15 – Expungements are for juvenile arrests.
- 16 – Expungement as used in CRS 19-1-306 means the designation of juvenile delinquency records whereby such records are deemed never to have existed. Expungement shall be effectuated by physically sealing or conspicuously indicating on the face of the record or at the beginning of the computerized file of the record that said record has been designated as expunged.
- 17 – Basic identification information on the juvenile and a list of any state and local agencies and officials having contact with the juvenile, as they appear from the records, shall not be open to the public but shall be available to a district attorney, local law enforcement agency, and the department of human services; except that such information shall not be available to an agency of the military forces of the United States.
- 18 – Fingerprints are only removed by court order or by request of the law enforcement agency.
- 19 – Courts have expunged felony convictions.
- 20 – Courts have expunged misdemeanor convictions.
- 21 – Convictions are also expunged.

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- 22 – O.C.G.A. § 42-8-60 et seq. authorizes “First Offender Probation,” a type of deferred adjudication. When an individual who successfully completes their term of first offender probation and receives a court order of Discharge, GCIC “may not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1.” O.C.G.A. § 35-3-34(a)(1)(B).
- 23 – There are two kinds of record expungement in Georgia: a court-ordered expungement which depending on the particulars of the order may result in the deletion of all information including fingerprints from the Computerized Criminal History Record; and an expungement approved by the prosecuting attorney which results in the sealing/restricting access to the arrest/disposition information other than for purposes of criminal justice employment.
- 24 – Prosecutor-approved expungement (O.C.G.A. § 35-3-37(d)).
- 25 – Some court-approved expungements depending on the direction of the court (O.C.G.A. § 35-3-37 (c)).
- 26 – O.C.G.A. § 35-3-37(d) permits expungement when the case is dismissed prior to indictment and after indictment when the charges are nolle prossed, dead docketed, or otherwise dismissed unless certain circumstances are present.
- 27 – Prosecutor-approved expungements.
- 28 – This number may be less than 12,536 because GCIC tracks the expungements by arrests so an individual may have had more than one arrest expunged in 2009.
- 29 – Please note that per Michigan law the arrest fingerprints of a person with no prior convictions that is found not guilty of an offense that is not of a Criminal Sexual nature that is brought before a Circuit Court, a Domestic Abuse or a Driving Offense has that arrest offense removed from the Criminal History Record system. That accounts for the 8630 records above. There were a small amount of court ordered expungements throughout the year.
- 30 – For adults.
- 31 – While the general rule is that expungements are only for arrests that did not result in convictions, recent court decisions have allowed expungements of felony convictions for individuals that are over the age of 70 and have been crime free for 10 years.
- 32 – While the general rule is that expungements are only for arrests that did not result in convictions, recent court decisions have allowed expungements of misdemeanor convictions.
- 33 – CA penal code does not specify to retain or not to retain information when fingerprints are expunged for an adult arrest event. However, the department does retain some information but includes a caveat on the record that reads, “Conviction Set Aside and Dismissed.”
- 34 – The Department of Justice does not track the number of individuals who had arrest events sealed during 2009. It is tracked by the type of sealing order.

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- 35 – The Department of Justice does not track the number of individuals who had arrest events expunged. There can be numerous expungements on one individual record.
- 36 – Note: there are very limited circumstances where arrests not resulting in a conviction can be expunged. Expungements are Only allowed: If a person was erroneously arrested due to mistaken identity and no charges were filed or intended by the arresting law enforcement agency; there is a finding of “not-guilty” by a court (e.g. arrests where the case is subsequently “nol prossed,” dismissed or no-billed cases may not be expunged); or a person’s record is inaccurate due to identity theft by another.
- 37 – Arrest and disposition data is retained and may be disseminated for law enforcement, pre-sentence investigation, national and state security purposes.
- 38 – Fingerprints are not automatically purged. Upon application, most non-convictions are eligible for immediate expungement. In cases where the defendant is granted a deferral and then the case is dismissed, the defendant must wait 1-4 years before applying for an expungement.
- 39 – See 2A.
- 40 – Except for the rare court order, we will expunge our records but will not send an order to the police department to expunge mug photos and fingerprints.
- 41 – See 4.
- 42 – Do not track "individuals who had arrest events expunged," only track arrest events.
- 43 – Juvenile delinquent records that DCJS destroyed based on Family Court Destruction Orders.
- 44 – Nebraska does not expunge records.