Have You Ever Been Arrested? Check Here

hands handcuffed

***Read about Kansas** expungement laws and how to expunge your record.*

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In the United States, only those who are convicted of the most serious crimes get life sentences. But everyone who enters the criminal justice system can be marked for life. Even the briefest minor interaction with the justice system can leave someone with a criminal record — and a permanent barrier to a job, housing, education or an occupational license.

A publicly available criminal record can include much more than felony convictions. It might also include:

• Your arrest for swinging a punch in a bar fight at age 20. But the record might not say that you were released without charges.

• The warrant issued when you were late paying traffic tickets, even if it was dismissed upon payment.

• Your misdemeanor conviction for possessing a small bag of marijuana.

• Your guilty plea to a minor charge — even though you didn't commit a crime — just to get out of jail and put the process behind you.

• A not-guilty verdict from a trial.

According to the National Employment Law Project, half the arrest records in the F.B.I.'s database carry no information about the case's disposition. Your record might list an arrest for a serious crime — but omit the information that the case was dropped.

How do you keep a criminal record from poisoning your future? One way is to keep the information private.

At least 70 million Americans have a criminal record — that's the same number of Americans who have college degrees. Roughly 20 million of those have a felony conviction. The rest were either convicted of misdemeanors (often without a lawyer present) or never convicted of anything; they were never charged, had charges dropped or were found not guilty. But they still have a record.

America's growing, bipartisan movement for a fairer, more evidence-based and less punitive criminal justice system — a movement with supporters ranging from Bernie Sanders to Charles Koch — is bringing new attention to the aftereffects of arrest and incarceration.

States are passing laws allowing people with felony convictions to vote. And there is the "Ban the Box" campaign, which seeks to remove the "check here if you have a felony conviction" box (or sometimes "check if you've ever been arrested" or "if you have a criminal record") from initial job applications. The question would move to the job interview or later, so the job seeker can be judged on other merits first.

Like everything related to criminal justice, this is a race issue. If a white man and a black man commit the same crime, the black man is far more likely to be arrested and convicted. African-Americans make up 12 percent of drug users, for example — but 32 percent of people arrested for drug possession. A criminal record allows these biases to last forever.

The bias is greatest in arrests that do not lead to conviction or even charges. In many cities, arrests are used in predominantly black and Latino neighborhoods as a means of intimidation and social control. "Move along," the police say, and those who don't are brought in for loitering or disorderly conduct.

In Baltimore in 2005, under Mayor Martin O'Malley, the Zero Tolerance campaign included 108,000 arrests — in a city of only 640,000. Tens of thousands of young minority men were arrested for simply hanging around or littering. The vast majority were either never charged with a crime, or released once they saw a judge.

There's a word for people who aren't convicted of a crime: innocent.

So why should an arrest record hurt? One reason is ignorance. In Maryland, when prosecutors drop a case, it's listed as "nolle prosequi." Do you know what that means? Many employers don't.

"They don't understand that a particular charge did not result in conviction," said Michael Pinard, professor and a director of the Clinical Law Program at the University of Maryland Francis King Carey School of Law. "Or they know, but find that this particular charge is offensive — they might look more at the charge than at the result. Others think that if a person has interacted with the criminal justice system, he must have done something wrong."

Then add race to the mix. "A record might confirm a stereotype about an applicant based on race and socioeconomic status," said Pinard. "Given all we know about bias, stereotype, notions of criminality, it's really important for many employers and landlords to look beyond a criminal record when dealing with a person of color."

Employment is the single most important factor in the rehabilitation of someone with a prison record. Yet it is far harder to get a job with a prison record — in one influential study published in 2009, having served time for possessing drugs with intent to distribute reduced callbacks for entry-level jobs by 50 percent for white applicants and by 64 percent for blacks.

Other researchers tested the most benign criminal history: a single arrest (no conviction) for disorderly conduct. That, too, depressed job offers, although to a much lesser extent.

It's not just jobs. Having a record affects a credit rating.

Federal housing law grants local authorities wide discretion, and many use it to keep people with a single arrest — no convictions — out of public housing or the Section 8 Housing Choice Voucher Program. (Update: Last month, the Department of Housing and Urban Development announced that such blanket bans were illegal, and that private landlords who use them violate the Fair Housing Act and can be sued or face penalties.) It affects education, too; two-thirds of colleges ask about criminal history in applications.

Many professional licenses are closed to people with a criminal record — including those for cosmetologist, plumber and funeral director. In Oklahoma, anyone with two convictions for possessing any amount of marijuana can be barred from working as an interior designer, physical therapist or land surveyor.

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Maryland is one of a small number of states that puts all criminal records into a database — here called Case Search — that anyone can access free of charge. “When I started at the Public Defender, there was no Case Search, said Mary-Denise Davis, a public defender in Baltimore. “The employer had to go and get an actual rap sheet, or had to go to the courthouse and manually search for cases. Now with Case Search, you click on a button and it’s available.”

And increasingly, employers do use it. When something like Case Search doesn’t exist, employers buy background checks from companies that sell them. According to a 2012 survey by the Society for Human Resource Management, 87 percent of managers said they perform background checks on at least some hires (up from 51 percent in 1996), and 69 percent used them for all hires.

Expunging these records is far from a perfect solution. It’s impractical — some cases make it to the Internet, where they cannot be erased. And official expungement doesn’t necessarily expunge the records held by companies that do background checks.

It’s also uncomfortable. Should I be able to sue someone who discloses my expunged record? Alabama just arrested a blogger for publishing expunged information. If your record is completely expunged, you may legally answer “no” to the question of whether you’ve ever been arrested or convicted. So you can legally lie.

“It is a very dangerous precedent to start destroying records,” said James B. Jacobs, professor of constitutional law and the courts and director of the Center for Research in Crime and Justice at N.Y.U. School of Law. He is the author of the book “The Eternal Criminal Record.”

“It is a step against open government,” he said. “Our records have always been available for scrutiny, to tell whether there is discrimination, corruption or unfairness.” Indeed, Case Search was a transparency move by the Maryland courts some 20 years ago. It’s helpful to lawyers and defendants, who can easily track cases. And if records contain mistakes, which they often do — a huge problem with companies that assemble court data to do background checks — people can catch them only if they can see them.

There’s an awakening that we continue to punish people over and over.

Despite expungement’s problems, Jacobs’s view that it is the greater evil is clearly a minority opinion. “The movement to expunge or shield criminal records has been growing over the last couple of years,” said Inimai M. Chettiar, the director of the justice program at the Brennan Center for Justice at N.Y.U. School of Law. “There’s an awakening that we continue to punish people over and over. This has a lot more appeal to politicians than letting people out of prison — it’s getting people back into the community and on the job.”

Chettiar said that almost all states offer the opportunity for people with nonconvictions or some misdemeanor convictions to expunge or shield them after a waiting period.

But the rules are restrictive enough that few people take advantage. For example, before last year, the only convictions Maryland residents could expunge were those for nine misdemeanors related to homelessness, such as panhandling and public urination. The state also had a law called the subsequent conviction rule: no nonconviction could be expunged if the individual had a later conviction, even for a completely unrelated change.

Caryn York, senior policy advocate for the Baltimore-based nonprofit Job Opportunity Task Force, said that the group had been pushing Maryland legislators to expand expungements for more than a decade, with little result until last year. It was the uprising in Baltimore after the death of Freddie Gray at the hands of the police that finally caught legislators' attention, she said.

The 2015 Maryland Second Chance Act, which went into effect in October, allowed shielding for 12 types of nonviolent misdemeanors, including prostitution and low levels of drug possession.

Another law repealed the subsequent conviction rule. "Repeal of that alone saw thousands of Marylanders able to have their records expunged," said York.

And last week, Gov. Larry Hogan signed the massive Justice Reinvestment Act, a sweeping criminal justice reform bill, which, among many other things, provides drug treatment instead of jail for addicts. It expands expungement to misdemeanor theft and assault convictions.

The move toward expungement and shielding has broad support in Maryland. "I haven't seen anyone oppose it," John P. Morrissey, chief judge of the district court of Maryland, said in an interview. "Our challenge is dealing with the uptick in how many we have to process."

There is more Maryland could do, especially to remove the noxious effects of nonconvictions. The state could, for example, simply stop putting them on Case Search. It could make expunging a nonconviction automatic — the courts take care of it, with no action necessary from the defendant. (New Jersey, among other states, now does this.) Branching out, the state could review occupational licensing: a ban on people holding felony convictions might make sense for child care workers, but not for barbers.

The state already has a "ban the box" rule for government agencies, but the rest of the state could follow Baltimore in applying it to large and medium-size private employers. Twenty-three states have banned the box in hiring by government agencies — almost all of them in the last six years. Eight states apply the prohibition to private employers as well. Many cities, do, too — Baltimore requires employers to wait until a conditional job offer is extended before asking people about criminal histories or requesting criminal records. Earlier this month, President Obama proposed a rulerequiring federal agencies do the same.

"People are led to believe if they resolve a case in a certain way, their troubles are behind them," said Pinard, the law professor. "So they plead guilty right away on some low-level charge. Later the true weight, the enormity of that interaction will suddenly come into their life. They don't know what they have just gotten themselves into."

Fortunately, Kansas has fairly liberal expungement laws, making it easier and quicker to get records expunged. Read about Kansas.

One major obstacle to expungement is that it's been hard to do without lawyers — and lawyers are expensive and in short supply. Technology solutions are often overhyped, but this is one area where they actually work. Kansas Legal Services has a free interactive form that can help you expunge your record, **Expungement of Criminal Records**

(This article was updated to include information provided by the Department of Housing and Urban Development on bans that violate the Fair Housing Act.)

Tina Rosenberg won a Pulitzer Prize for her book "The Haunted Land: Facing Europe's Ghosts After Communism."

Last updated on September 06, 2025.

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