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Expunged Criminal Records Live to Tell Tales

By [ADAM LIPTAK](#)

In 41 states, people accused or convicted of crimes have the legal right to rewrite history. They can have their criminal records expunged, and in theory that means that all traces of their encounters with the justice system will disappear.

But enormous commercial databases are fast undoing the societal bargain of expungement, one that used to give people who had committed minor crimes a clean slate and a fresh start.

Most states seal at least some records of juvenile offenses. Many states also allow adults arrested for or convicted of minor crimes like possessing marijuana, shoplifting or disorderly conduct to ask a judge, sometimes after a certain amount of time has passed without further trouble, to expunge their records. If the judge agrees, the records are destroyed or sealed.

But real expungement is becoming significantly harder to accomplish in the electronic age. Records once held only in paper form by law enforcement agencies, courts and corrections departments are now routinely digitized and sold in bulk to the private sector. Some commercial databases now contain more than 100 million criminal records. They are updated only fitfully, and expunged records now often turn up in criminal background checks ordered by employers and landlords.

Thomas A. Wilder, the district clerk for Tarrant County in Fort Worth, said he had received harsh criticism for refusing, on principle, to sell criminal history records in bulk.

“How the hell do I expunge anything,” Mr. Wilder asked, “if I sell tapes and disks all over the country?”

Private database companies say they are diligent in updating their records to reflect the later expungement of criminal records. But lawyers, judges and experts in criminal justice say it is common for people to lose jobs and housing over information in databases that courts have ordered expunged.

These critics say that even the biggest vendors do not always update their records promptly and thoroughly and that many smaller ones use outdated, incomplete and sometimes inaccurate data.

Lida Rodriguez-Taseff, a lawyer in Miami, tells her clients that expungement is a waste of time. “To tell someone their record is gone is essentially to lie to them,” Ms. Rodriguez-Taseff said. “In an electronic age, people should understand that once they have been convicted or arrested that will never go away.”

Judge Stanford Blake, whose court often enters expungement orders, said his inability to make them effective had left him feeling frustrated and helpless.

“It’s a horrible situation,” said Judge Blake, the administrative judge of the criminal division of the Eleventh Circuit Court in Miami. “It’s the ultimate Big Brother, always watching you.”

The rise in the availability of criminal histories has been accompanied by a surge in demand for them. Since the attacks of Sept. 11, 2001, criminal background checks have become routine in many employment applications.

“Something like 80 percent of large- or medium-sized employers now do background checks,” said Debbie A. Mukamal, the director of the Prisoner Reentry Institute at [John Jay College of Criminal Justice](#) in New York. “Employers need to know about job-related convictions to make a nuanced, responsible decision so that they can protect themselves and the public and give people a fair shot at employment.”

But the current system, Ms. Mukamal added, is not working. “It’s unfettered,” she said. “It’s not regulated. There’s misinformation.”

ChoicePoint, one of the larger database companies, performed nine million background checks last year, said Matt Furman, a spokesman. The company’s error rate is very small, Mr. Furman said. “One out of every thousand background checks has led to a consumer contact” disputing or complaining about the information provided, he said, “and one of a thousand contacts results in a change.”

There have been only a few lawsuits taking issue with the information provided to employers in background checks.

In one, filed in June in federal court in Brooklyn, Victor Guevaras sued a company that had offered him a job and a database company that he says caused the offer to be withdrawn.

Mr. Guevaras, now 33, was convicted of disorderly conduct more than a decade ago. New York considers that a violation like a traffic infraction rather than a crime and bars database companies from reporting such offenses to employers.

But Acxiom, a database company, reported the disorderly conduct charges to the Tyco Healthcare Group, which had offered Mr. Guevaras a job in 2004. Tyco promptly withdrew the offer, one that would have doubled Mr. Guevaras’s salary, to \$46,000. It based its decision, his lawsuit says, on its mistaken understanding that he had committed a misdemeanor and had lied on his application about whether he had ever been “convicted of any crime which was not expunged or sealed by a court.”

Mr. Guevaras, a gregarious man with a shaved head and big brown eyes, said that losing the job, which would have propelled his family into the middle class, devastated him. “I’ve never been arrested,” he said. “I’ve never been locked up. I’ve never done jail time.”

In court papers, both companies denied wrongdoing, and Tyco has sued Acxiom for breach of contract.

Catherine H. O’Neill, a lawyer with the Legal Action Center, which represents Mr. Guevaras, said Acxiom deserved much of the blame.

“They should not have been vacuuming up this information in the first place,” Ms. O’Neill said.

A lawyer for Acxiom and a spokesman for Tyco declined to comment.

There is often plenty of fault to go around. Even within the government, various agencies often fail to coordinate their records.

“The problem often arises,” said Ms. Rodriguez-Taseff, the Miami lawyer, “because so many agencies have access to criminal records — the department of corrections, the police, the Florida Department of Law Enforcement and the courts. Even though you have an expunged record, oftentimes a policing agency or a corrections facility allows private entities to gain access to it.”

Some state laws place the burden on employers, on the apparent theory that the problem is not the availability of information but the use to which it is put. Illinois, for instance, prohibits prospective employers from asking about or making decisions based on expunged or sealed criminal histories.

A Minnesota man who agreed to talk about his experiences in exchange for anonymity said an expunged 1992 felony conviction — he declined to say for what — and erroneous information about a crime he did not commit have kept him from obtaining work for six months.

He said the database companies he contacted had been responsive if not especially fast in clearing up the problem. Some told him they updated their records annually. “I don’t think the consumer reporting agencies mean to be” reporting inaccurate or sealed information, he said. “They just need to get new CD’s.”

In November 2005, a Florida woman obtained a court order expunging records concerning her arrest in a domestic dispute the previous spring. The judge ordered the state and local police, the county sheriff and the court clerk to “expunge all information concerning indicia of arrest or criminal history.”

But when the woman tried to buy a condominium this summer, the arrest nonetheless popped up in a routine background check. The deal fell through.

“It’s going to haunt her for the rest of her life,” said a relative of the woman, who shared court and Internet search records in exchange for a promise not to identify her or her family. “They’re using public records at a given point in time and they’re not updating them, and they’re ruining people’s lives.”

Margaret Colgate Love, the nation’s pardon attorney for most of the 1990’s and the author of a new book called “Relief from the Collateral Consequences of a Criminal Conviction,” said problems like these were rooted in the nature of expungement.

“It does reveal,” Ms. Love said, “how perilous it is to build a public policy on a lie.”