Your Right to Know / April Barker

Don’t purge records of expunged cases

Wisconsin legislators are looking to reform current law governing the expungement of criminal records.

Among other things, [SB-39](https://docs.legis.wisconsin.gov/2019/proposals/sb39) would allow those convicted of crimes for which the maximum term of imprisonment is six years or less (including some felonies) to ask a judge to expunge their convictions even if they fail to do so at the time of sentencing, as is currently required.

It would also allow those older than age 25 at the time of anoffense to request expungement, and expressly provide that an expunged record cannot be considered a conviction for purposes of employment. The standard under present law would be carried forward,which lets judges grant expungement if they determine “that the person will benefit and society will not be harmed.”

The rationale for the bill, which has broad bipartisan support, is to give those who have made minor mistakes a fresh start, including supposedly enhanced employment opportunities. It is one of several current proposals to expand the availability of expungement. Gov. Tony Evers has [called](https://madison.com/wsj/news/local/govt-and-politics/tony-evers-says-marijuana-decriminalization-plan-targets-racial-disparities-assembly/article_b9335164-f501-583f-9d0b-0004bc702396.html) for expunging convictions for individuals convicted of possessing small amounts of marijuana, and legislators [are](https://docs.legis.wisconsin.gov/2019/proposals/sb9) [looking](https://www.channel3000.com/news/politics/gop-bill-allows-expungement-for-first-time-drunken-drivers/1060438568) to allow expungement for first-offense drunken driving.

Currently, when a case is expunged, the court file is sealed and the record removed from the state’s online court records system, Wisconsin Circuit Court Access program. Supporters of these bills consider this removal of records an essential component of expungement. (Last year, in a similar vein, the director of state courts [implemented](https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=10&Issue=3&ArticleID=26182) a policy removing, after two years, dismissed criminal cases from WCCA.)

While the goal of assisting people in moving past their pasts is laudable, we would do well to remember the words of thelate U.S. Supreme Court Justice Louis D. Brandeis, who [wrote](https://www.goodreads.com/quotes/26449-experience-should-teach-us-to-be-most-on-our-guard), “Experience teaches us to be most on our guard . . . when the government's purposes are beneficent.”

Wisconsin’s open records law [declares](https://docs.legis.wisconsin.gov/statutes/statutes/19/II/31?view=section) that denying access to information about the actions of government is generally contrary to the public interest. That may be especially true when the information being removed involves the actions of law enforcement agencies and courts, both of whom are entrusted with great powers that are subject to abuse.

The goalof erasing criminal convictions for those who are deserving can be accomplished without removing records from public view. Employers already may not legally discriminate in hiring unless the circumstances of the conviction “substantially relate to the circumstances” of the job, or in other similarly limited instances.

Proponents of removing information assert that people are frequently denied employment because of minor or long-ago criminal convictions. But in fact, the vast majority of people with criminal convictions do manage to find work. The state has [1.4 million people](https://publicpolicyforum.org/sites/default/files/FreshStart_FullReport.pdf) with criminal pasts, according to one group pushing for expungement reform; the state’s unemployment rate is 3 percent, or about 94,000 workers.

Ceding the right to know what our government is doing is a slippery slope that has no identifiable stopping point. The denial of access to information about government activity unquestionably undermines our ability to know what our government is doing and has done.

In this case, there is little empirical evidence supporting the reasons for limiting access, however honorable the government actors’ intentions may be.

*Your Right to Know is a monthly column distributed by the* [*Wisconsin Freedom of Information Council*](http://www.wisfoic.org/) *(wisfoic.org), a group dedicated to open government. April Barker, the Council’s co-vice president, is an attorney with Schott, Bublitz & Engel of Brookfield.*