

## READER VIEWPOINT

*(The views expressed here do not necessarily reflect those of the Idaho State Bar or of the Advocate Editorial Advisory Board.)*

### IS MY RECORD CLEAR NOW?

Idaho does not mollycoddle criminals. However, sound public policy suggests that those who fully and completely rehabilitate themselves, particularly for minor offenses, should not forever be haunted by a single indiscretion.

I live in a college town. Over the last several years, law enforcement has become more and more aggressive in charging university students with beer, driving, and minor marijuana charges. Only a few decades ago, the student's beer was poured out, a police lecture ensued and everybody went on their way.

Today, when a student is charged with a crime, even for our lowliest of misdemeanors, police and court digital files are opened to create a record of the event. Once the digital record is created, even if the case is reduced to a non-jailable infraction, Idaho has no uniform procedure to extract from the digital netherworld the charging event or subsequent court action. Similarly, when a person fully rehabilitates there is no uniform way to expunge the records. The haunting from youthful indiscretions will continue until a comprehensive expungement procedure is enacted.

But what about a withheld judgment? I represent an outstanding college student who never did anything wrong in his life: great grades; Dean's list; an athlete; found a wonderful job working after graduation at an oil company. He did screw up once about six months ago and got a DUI. He went to an alcohol class, received a withheld judgment and was scheduled to have his license back before his new job began after graduation. He emailed me this today:

*This is [your client], just to let you know, [the company] retracted their offer to me today because of the DUI they found on my background check. I was wondering after we get the withheld judgment taken off next year, will companies still be able to see it on a background check or only if I disclose it can they find out about it?*

I have no good answer for this young man. We can get the guilty plea withdrawn and the case dismissed after the probation ends, but many judges conclude that they are impotent to "expunge" a record, if expungement means causing all public records of the event to be removed as though it never occurred. Long story short: We have numerous methods to open public databases to add information but no comprehensive method to extract the information.

I appreciate the idea that offenders must be held accountable. However, our present system which lacks an expungement scheme is antithetical to rehabilitation. We would be wise to encourage accountability with an expungement carrot.

We need not look far for a state that has enacted a workable, fair and comprehensive expungement scheme: Utah. In Utah a lay person can get a case fully expunged without the need to hire a lawyer. You can examine the Utah expungement scheme by searching: "Utah State Courts" (<http://www.utcourts.gov/>). Once you are on that website, in the "search" box in the upper right corner, search for "expungement."

In Utah, child molesters can never get their records expunged. For DUIs and other offenses, the enhancement period must run before any expungement is allowed. Utah has recognized that public policy benefits from a comprehensive, user-friendly expungement scheme. Idaho should do the same.

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