

## “Good Moral Character”: A Prerequisite to Barbering in NYS

Glenn Martin

During conversations with various stakeholders around the country, I often mention the Marc La Cloche case, to which they typically respond, “Who?” I follow-up with, “The person who was trained to be a barber in a New York State prison and subsequently denied a barber’s license due to an appeal by the NYS Secretary of State, forcing him to spend years on public assistance instead of working.” This is often enough to inspire a response that points out the inherent contradictions behind spending taxpayer resources to train a person for a trade that the state will eventually deny them the opportunity to practice, and how these decisions threaten public safety. After all, when the fear of poverty outweighs the fear of being caught for a crime, public safety is compromised.

[continued on page 2](#)

## Relief from the Collateral Consequences of Conviction: Judicial Expungement, Sealing and Set-Aside

By Margaret Colgate Love, Esq.

*Editor’s note: This is the second in a series of four articles describing the author’s recent study of how a person can seek to overcome or mitigate the collateral consequences of conviction in each U.S. jurisdiction. The first article, published in the November newsletter, dealt with laws limiting consideration of conviction in hiring and licensure. In coming months, articles will deal with executive pardon, and with the special problems faced by people with out-of-state convictions.*

More than half the states authorize their courts to expunge or seal at least some adult felony records. The ostensible purpose of this relief is to remove the legal disabilities associated with a felony conviction after a sentence has been fully served, and to help overcome the prejudice displayed toward people with a criminal record. It remains to be seen whether expungement actually works to accomplish the goal of allowing convicted persons to put their convictions behind them.

First of all, it is important to understand what it means to have your record expunged. Here terminology can be something of a trap. Some states (like Arkansas) use the terms “expunge” and “seal” interchangeably, while others draw a sharp distinction between the two. In Illinois, for example, sealing is a more modest remedy than expungement, limiting access to records but not modifying their legal effect. New Hampshire uses the term “annulment” to describe its judicial expungement orders, while Arizona and Washington authorize their court to “vacate” a conviction. Still other states provide for the conviction to be “set aside.” Some of these terms are functionally interchangeable. Differences in terminology aside, not all judicial relief mechanisms have the same effect.

[continued on page 2](#)

### INSIDE THIS ISSUE

- 1 “Good Moral Character”: A Prerequisite to Barbering in NYS
- 1 Relief from the Collateral Consequences of Conviction: Judicial Expungement, Sealing and Set-Aside
- 3 H.I.R.E. on the Hill
- 6 Funding Opportunities
- 6 Hot Off the Press
- 8 Upcoming Conferences
- 8 Message to the National HIRE Network Advisory Board

I couldn't help but think about this reality while I sat at Marc's funeral last week. Marc died from a disease he was fighting, one that was surely exacerbated by his licensure dilemma. Although I became aware of his case through a 2003 NY Times article ([Ex Inmate Denied Chair-And Clippers](#)), I only met Marc two months before his death, when he was preparing to be the lunchtime speaker at a National HIRE Network conference on the “Crisis of Black Male Unemployment in New York City.” However, our few encounters forced me to recognize that Marc was more than just the summary of his quagmire with the State; he was an individual who could easily have been any one of the 650,000 individuals who come home from state and federal prison in the U.S. each year seeking employment. After hearing Marc speak at the conference, I realized that if he would have been able to practice barbering, many more people would have been personally touched by Marc's commitment to give back to society.

Marc spent 11 years in prison on a 9 ½ - 16 ½ year sentence for armed robbery. And while he didn't enter the system with any viable labor market skills, he used his time in state prison to learn how to cut hair. However, Marc not only strived to be a licensed barber when he was released, he saw this calling as an opportunity to warn at-risk youth about the perils of getting caught up in the criminal justice system. As he matter-of-factly, yet so succinctly, stated at the conference, “I just want to work and help keep the youth out of prison.” Instead, Marc spent his 4 ½ years of freedom fighting for the right to do what he loved, while navigating New York State's public benefits system in order to support himself.

At Marc's funeral, I had the opportunity to speak with Clyde Haberman and Jennifer Gonnerman of the NY Times and Village Voice newspapers, respectively. Both of these accomplished journalists wrote articles exposing the inherent contradictions in the New York Secretary of State's decision to appeal to an administrative law judge to revoke Marc's license on the grounds that he lacked “good moral character,” due to his criminal history. Mr. Haberman's wrote in his [article](#) that Marc's case is a “Catch 22 absurdity,” while Ms. Gonnerman commented in her [article](#) that Marc was a “battler for civil rights.” They both afforded the public an opportunity to rethink a policy that seems counterintuitive on many levels, especially in a state that maintains a law promoting the employment of qualified people with criminal records. I thanked them both for succinctly articulating the ramifications resulting from the denial of licensure and I

*continued on page 3*

In most (though not all) states, a conviction that has been expunged (or sealed, or annulled) remains accessible to law enforcement, and may be used to enhance a penalty in subsequent criminal proceedings. People whose convictions have been expunged are usually (though not always) allowed to deny having been convicted in the first place, and criminal penalties may be imposed for dissemination of expunged records. For example, in Utah and Washington, a person whose conviction has been expunged or vacated may respond to any inquiry “as though the conviction did not occur.” Arkansas law goes even further, in defining “sealing” to mean that the underlying conduct “shall be deemed as a matter of law never to have occurred, and the individual may state that no such conduct ever occurred and that no such records exist.”

But in other jurisdictions the effect of expungement is more limited. For example, in New Jersey an expunged conviction must be reported when a person is applying for a job in the judicial branch or in law enforcement, and in Kansas an expunged conviction must be reported to all licensing boards. In Ohio, employers and licensing boards may question a person about a sealed conviction, as long as the question “bears a direct and substantial relationship to the position for which the person is being considered.” In Arizona, the fact that a conviction record has been “vacated” does not relieve the person at all from an obligation to report it, if asked.

In most jurisdictions, expungement orders (however denominated) are available only to first offenders, to minor offenders sentenced to probation, or to misdemeanants. In the few states that offer expungement more broadly, serious and violent offenses are still ineligible, as are sex offenses. States impose eligibility waiting periods of from one to 10 years, and sometimes longer, depending upon the gravity of the offense.

A chart available on The Sentencing Project's website shows what each U.S. jurisdiction provides by way of judicial relief from collateral penalties and disabilities. See [Chart #5](#). There are eight jurisdictions that have general judicial sealing or expungement schemes that apply to most adult felony convictions (Arizona, Kansas, Massachusetts, Nevada, New Hampshire, Puerto Rico, Utah, Washington).

*continued on page 3*

told them I was mostly thankful for their willingness to humanize Marc’s case.

Had anyone taken the time to conduct an individualized assessment of Marc’s case, they would have realized that he was not only qualified to take his place amongst the rest of us tax-paying citizens, but that he had more than enough ‘good moral character’ to cut hair and help at-risk youth. Perhaps the greatest tragedy here is that society may have to make this decision again when the youth Marc was unable to help ends up coming home from prison with a trade that he or she won’t be able to apply due to society’s archaic perpetual punishment approach to criminal justice.



## H.I.R.E. on the Hill

Alexa Eggleston and Gabrielle de la Gueronniere

### **Department of Justice Spending Bill Includes Funding for the Mentally Ill Offender Treatment and Crime Reduction Act; House and Senate Appropriations Conferees Approve Initial Funds for the Program**

On November 4th, conferees for the FY 2006 spending bill for programs in the Departments of Science, State, and Justice Appropriations Bill (H.R. 2862) approved \$5 million to be allocated for the Mentally Ill Offender Treatment and Crime Reduction Act. During the conference process, members of the House and Senate met to reconcile the differences in funding amounts between the FY 2006 spending bills, Senator Mike DeWine (R-OH) and Congressman Frank Wolf (R-VA) advocated for funding for the newly authorized program.

The Mentally Ill Offender Treatment and Crime Reduction Act was signed into law by President Bush in October of 2004. Public Law 108-414 authorizes resources to states and local areas to foster collaborations within the criminal and juvenile justice system for nonviolent adults or juveniles who have a mental illness or co-occurring mental illness and substance abuse disorder and face criminal charges that are the product of the person's illness.

Funds could be used for: creating or expanding mental health courts or other court-based programs for such individuals; programs that offer specialized training to criminal or juvenile justice agency officers and employees and mental health personnel to be able to identify and

[continued on page 4](#)

Puerto Rico has by far the broadest expungement statute, authorizing “elimination” of all offenses from the criminal records after a waiting period ranging from one to 20 years in the case of violent felonies, upon a showing of “a good moral reputation in the community.” Kansas and Utah also have broad statutory expungement schemes, presuming expungement for most felonies after a waiting period. Minnesota appears to be the only state whose courts have generally applicable common law expungement authority, but it is exercised quite conservatively. Indiana has a general sealing statute that is administered by the state police. Oregon’s expungement remedy applies only to minor (Class C) felonies. Nevada provides for automatic sealing of the record of a probationary sentence three years after discharge, and also after successful completion of reentry program and for minor drug possession cases. Missouri also provides for sealing where a prison sentence is suspended.

Four states (Michigan, New Jersey, Ohio, and Rhode Island) make some form of expungement or sealing available to some or all first offenders upon completion of their sentence, including those sentenced to prison. Rhode Island’s expungement provisions are widely used, with 4,201 misdemeanors and 490 felonies expunged in 2004 alone. Ohio’s sealing statute is also widely used, but it applies only to non-violent offenses that are not subject to a mandatory prison term. Georgia provides for first offender “exoneration” following completion of sentence (including a prison sentence), which restores all rights but does not expunge or seal the record. Arkansas’s first offender law applies only to persons placed on probation.

Sometimes expungement and sealing of the record are authorized in the context of a deferred adjudication or diversion scheme. Typically, after an eligible individual pleads guilty the adjudication of guilt (or sentencing) is withheld, subject to the satisfactory completion of a period of probation with conditions. If the conditions are satisfied, the charges are dismissed and the record of conviction is “set aside,” “nullified,” or “vacated,” so that the defendant can truthfully say that he or she has no record of conviction. These preemptive front-end schemes are aimed at keeping certain types of offenders from incurring a criminal record in the first place, and hold great promise for ameliorating the situation created by the growing number of people

[continued on page 4](#)

respond appropriately to individuals with mental illnesses; programs that support cooperative efforts by criminal, juvenile justice, and mental health agencies to promote public safety by offering mental health and substance abuse treatment services; and programs that support intergovernmental cooperation between State and local governments with respect to the mentally ill offender.

The full House approved H.R. 2862, which included the \$5 million appropriation for the Mentally Ill Offender Treatment and Crime Reduction Act, on November 9th. The Senate is expected to vote on the spending bill later this week and the legislation will then be presented to President Bush for his approval. More about H.R. 2862 and P.L. 108-414 can be found at: <http://thomas.loc.gov>.

### **Legislation to Assist People in Reentering Society from the Criminal Justice System Introduced in Congress**

On November 2nd, Congressman John Conyers (D-MI) introduced H.R. 4202, the "Reentry Enhancement Act." H.R.4202 would provide demonstration grants to States and local areas to begin to address the need for drug and mental health treatment, job training and education opportunities, and housing for individuals when they return to the community from incarceration. This legislation would also provide resources for the formation of a task force on federal programs and activities relating to the reentry of individuals into the community and for research on reentry issues, including the impact of incarceration on families.

H.R. 4202 would also provide support for the review of various federal and state barriers that bar individuals with criminal records from having access to employment opportunities, welfare benefits and housing. Additionally, the Re-Entry Enhancement Act would modify the ban on federal financial aid for individuals with drug convictions by clarifying that only individuals who receive a drug conviction while enrolled will lose their eligibility for the specified period of time as opposed to the current law that delays or denies aid to individuals with past, as well as current drug convictions.

### **Other key provisions of this legislation include:**

- \* Improving opportunities for residential substance abuse treatment and aftercare for individuals under the supervision of the State and Federal prison systems;
- \* Requiring the Director of the Bureau of Prisons to establish pre-release planning procedures for federal prisoners to ensure that a prisoner's eligibility for federal or State benefits is established prior to release;

*continued on page 5*

whose criminal records are effectively relegating them to the margins of society. Access to deferred adjudication is generally controlled by prosecutors, which suggests the need to reach out to that community to persuade prosecutors of the benefits of expanding use of these programs.

Fourteen states have statutory deferred adjudication schemes that lead to eventual expungement or sealing of the court record after successful completion of a period of probation: Arkansas, Connecticut, Hawaii, Iowa, Louisiana, Maryland, Mississippi, Missouri, Montana, Oklahoma, Pennsylvania, South Dakota, Vermont, Washington. In many of these states, only non-violent first offenders are eligible for deferred adjudication. Other states permit certain types of minor convictions to be "set aside" upon successful completion of a period of probation, but make no provision for expungement or sealing of the record (e.g., Alaska, Florida, Georgia, Idaho, Kentucky, Nebraska, and New Mexico). California, Minnesota and North Dakota authorize courts to "knock down" a felony conviction to a misdemeanor upon successful completion of probation, thus avoiding imposition of legal disabilities, but do not authorize expungement or sealing of the record. North Carolina and South Carolina permit deferred adjudication only for minor drug offenses, and authorize expungement of records only for youthful offenders. The District of Columbia Code authorizes deferred adjudication and expungement only for persons charged with drug use or possession.

In a number of states, recipients of an executive pardon are entitled to have the court record expunged or sealed. In Massachusetts, South Dakota, and Washington, this happens automatically upon the governor's action. In Arkansas, Connecticut, Indiana, Pennsylvania, Texas, and Maryland, the recipient of a pardon must file a petition with the court to expunge, sometimes after a waiting period. In Oklahoma and West Virginia, only nonviolent pardon recipients may have their records expunged. In Minnesota a "pardon extraordinary" has the effect of "setting aside and nullifying" the conviction, but it does not authorize expungement of the court record.

There is no general federal expungement authority (the set-aside provision in the federal Youth Corrections Act was repealed in 1984). The only provision for expunging a federal criminal record is the very narrow authority in 18 U.S.C. § 3607 relating to minor marijuana possession offenses.

*continued on page 5*

- \* Requiring that the National Institute of Justice research offender reentry including studying children who have had a parent incarcerated and the likelihood that these children will later become involved in the criminal justice system;
- \* Authorizing grant monies for state and local courts to create reentry courts;
- \* Establishing a vocational assessment and training demonstration project for federal prisoners to provide enhanced skills development;
- \* Restoring the right to vote in federal elections to non-incarcerated ex-offenders;
- \* Prohibiting unwarranted employment discrimination on the basis of an individual's criminal history;
- \* Allowing certain incarcerated individuals to receive Pell Grants for student financial assistance;
- \* Reforming Federal housing policies on evicting individuals or denying applications for tenancy in public housing facilities; and
- \* Removing the current restriction that prohibits individuals with felony drug convictions from receiving TANF benefits and food stamps.

The Re-Entry Enhancement Act is co-sponsored by Representatives Charles Rangel (D-NY), Sheila Jackson-Lee (D-TX), and Robert Scott (D-VA). After being introduced, the bill was referred to the House Judiciary, Ways and Means, Education and Workforce, Financial Services, Ways and Means, Energy and Commerce, and Agriculture Committees where it awaits review. More information about H.R. 4202 can be found at: <http://thomas.loc.gov>.

### **House Judiciary Committee Approves Legislation Aimed At Curbing Methamphetamine Trafficking; Provisions to Increase Certain Methamphetamine-Related Penalties Removed from Legislation**

On November 9th, the House Judiciary Committee met to mark-up (review) H.R. 3889, "The Meth Epidemic Elimination Act of 2005." House Judiciary Committee Chairman James Sensenbrenner (R-WI) offered the amended legislation to the Committee, which, as amended, did not contain provisions in the original legislation that would have lowered the amount of methamphetamine

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Based on a random sampling of state jurisdictions, expungement appears to be more easily attainable than pardon, and widely sought after in jurisdictions where it is available. Insofar as it offers the possibility of

*continued on page 6*

required to trigger mandatory minimum sentences. During this legislation's mark-up by the Judiciary Subcommittee on Crime, Terrorism and Homeland Security, a number of Committee Democrats had expressed their opposition to H.R. 3889 due to these enhanced sentencing provisions. The Committee voted to approve the amended legislation with a 31 to 0 vote.

Although an amendment offered by Congresswoman Sheila Jackson-Lee (D-TX) to require a Department of Justice study on increased sentences, their cost and impact on people in prison failed, Chairman Sensenbrenner did commit to working with Congresswoman Jackson-Lee to possibly include language in H.R. 3889 to authorize additional funding to help pregnant women and mothers who were addicted to methamphetamine. In addition, Chairman Sensenbrenner also expressed that he would work with Congressman Bobby Scott (D-VA) to increase authorizations for drug courts before the bill is reviewed by the full House.

Introduced in September by Congressman Mark Souder (R-IN), H.R. 3889 would also increase regulations over pseudoephedrine, used to manufacture methamphetamine, as it is sold internationally. The legislation now awaits review by the House Energy and Commerce, International Relations, and Transportation and Infrastructure Committees. More information about this legislation can be found at: <http://thomas.loc.gov/>.

[Click here](#) to view the latest federal funding amounts for programs serving people with criminal records, including the finalized FY 2006 appropriations for the Department of Justice. ❖

**Are you interested in submitting an article to H.I.R.E. Network News? Do you have a conference scheduled? Is your agency about to release an important study? We are always looking for input from our membership! We invite guest writers on a range of subjects. Please email Glenn Martin at [gmartin@hirenetwork.org](mailto:gmartin@hirenetwork.org) if you are interested in contributing to our newsletter. We look forward to hearing from you. ❖**

hiding from public view the fact of a prior conviction, expungement seems to offer the best possibility of true reintegration. At least until there is a sea change in public attitudes, denial seems unfortunately to be the most expedient way of dealing with a criminal record. Certainly the fear generated in employers and others by a criminal record makes it convenient to indulge the fiction that it does not exist. And, the courts as decision-makers offer the necessary respectability to make their relief at least as effective as an executive pardon.

On the negative side, it is likely to be more expensive for persons with criminal histories to hire a lawyer to go to court to seek expungement, than it is to file an application for administrative restoration or pardon, which can generally be done pro se. Moreover, the limited and/or uncertain legal effect of expungement in some jurisdictions, the general unreliability of criminal record systems and the additional uncertainties introduced by new information-sharing technologies, and the anxiety necessarily produced by a system built upon denial, all combine to raise questions about the usefulness of expungement as a restoration device. In short, in an age where it is difficult to control access to information of any kind, such an old-fashioned effort to un-ring the bell seems fraught with peril.

Expungement seems most useful where it is accompanied by a judicial set-aside or dismissal of charges, as in deferred adjudication schemes. When a guilty plea is set aside or vacated by a court before conviction becomes final, and if the police and court records are then sealed or expunged, a person can truthfully claim to have never been convicted and to have no criminal record. Even if a conviction becomes final before it is set aside, a person can still attest that he or she has no record of conviction. On balance, at least as long as pardon remains such an unreliable and inaccessible relief mechanism, judicial expungement and sealing seem to offer the best hope for convicted persons seeking to put their criminal record behind them and start over with a clean slate. ❖



## Funding Opportunities!



### **Funds Available for Sex Offender Management Programs**

BJA is accepting applications to help jurisdictions effectively manage sex offenders in the community by implementing new programs, enhancing existing programs, or developing training programs. The program focuses on increasing public safety and reducing victimization by using a multidisciplinary, collaborative team. For more information, [click here](#).

### **Proposals on Crime and Justice Research Requested**

Proposals should address social and behavioral research on crime prevention, policing, juvenile and criminal justice systems improvement, corrections, alcohol- and drug-related crime, criminal behavior, and practice and policy in justice operations. Deadline: January 24, 2006. For more information, [click here](#).

### **Research and Evaluation in Community Corrections Sought**

NIJ seeks proposals that focus on the effects of caseload size in management of high-risk offenders in general probation populations. Topics of interest include supervision, links between length of supervision and outcome, relationships between staff and outcome measures, and effects of swift sanctions or rewards in enforcing probation rules. Deadline: February 9, 2006. For more information, [click here](#).

### **Studying Administration of Justice in Indian Country**

NIJ seeks proposals to study conditions of confinement in Indian Country detention facilities, focusing on factors affecting conditions of confinement by describing the operation of the criminal justice system within the unique context of Indian Country, how it varies by jurisdiction, and how different structures and systems affect administration of justice. Deadline: January 18, 2006. For more information, [click here](#).

### **CLASP Summer 2006 Internship**

CLASP may hire two or more interns for the summer of 2006. Applicants must be in law school, graduate school or in a public policy master's degree program. College students are not eligible. Interns will research and assist in studies undertaken in one or more of our project areas: child care and early education; disconnected youth; welfare reform; workforce development and job training; access to post-secondary education; work-life balance; child support; child welfare; couples and marriage policy; prisoner reentry; teen parents and abstinence education. Applicants must provide materials by February 1, 2006. For more information, [click here](#).



## *Hot Off the Press: Recent Reports*

### **Incarceration and Crime: A Complex Relationship**

, by Ryan S. King (Research Associate), Marc Mauer (Executive Director) and Malcolm C. Young (Executive Director, 1986–2005) of The Sentencing Project (November 2005). This report provides a comprehensive analysis of research conducted on the relationship between incarceration and crime, and concludes that assertions of the impact of prison on the reduction of criminal offending have been overstated. As policymakers continue to struggle with the legacy of a prison population that has been growing steadily for more than three decades, this report suggests an urgent need for the reconsideration of the current sentencing and parole policies. To view this report, [click here](#). ❖

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# Upcoming Conferences of Interest

January 9–13, 2006

Coordinating Council on Juvenile Justice and Delinquency Prevention and the Office of Juvenile Justice and Delinquency Prevention are sponsoring "Building on Success: Providing Today's Youth With Opportunities for a Better Tomorrow"

Hilton Washington Hotel

Washington, DC

Contact: <http://www.juvenilecouncil.gov/>

Email: [nationalconference@jjrc.org](mailto:nationalconference@jjrc.org)

February 25-28, 2006

National Association of Workforce Boards Forum 2006

Renaissance Hotel

Washington, DC

Website: [www.nawb.org](http://www.nawb.org)

March 26-29, 2006

33rd Annual National Conference on Juvenile Justice

Hyatt Denver Convention Center

Denver, CO

Website: <http://www.ndaa-apri.org/events/index.html>

April 5-7, 2006

2006 Women Work! National Conference: "Policies, Programs, & Partnerships: Building for the Future"

Hilton Crystal City

Arlington, VA

Website: <http://www.womenwork.org/>

May 14-16, 2006

17th Annual National Association of Workforce Development Professionals Conference

Sheraton New Orleans

New Orleans, LA

Website: <http://www.nawdp.org/conference.htm>

July 11-13, 2006

Workforce Innovations 2006

Anaheim Convention Center

Anaheim, CA

Save the Date! ❖



*The staff of the National H.I.R.E. Network wishes all of our members a very happy and healthy holiday season. We are very proud to collaborate with all of you and look forward to the coming year as we continue to work to promote the economic self-sufficiency of people with criminal records and their families.*

## *Happy New Year!*

### Message to the National HIRE Network Advisory Board:

The National HIRE Network staff would like to extend a well-deserved 'thank you' for your participation at the recent Advisory Board meeting at the JEHT Foundation in New York. Your professional insight, guidance and perspectives continue to serve a much-needed purpose for HIRE staff.

We would like to welcome Tani Mills, Chief Program Officer at the Center for Employment Opportunities (CEO) to the National HIRE Network Advisory Board. Please [click here](#) to see Ms. Mills' bio.

Minutes of the AB meeting will be distributed soon. We hope you all have a wonderful and healthy holiday season!

To view a list of National HIRE Network Advisory Board members, please [click here](#). ❖