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THE ILLUSION OF A SECOND CHANCE: EXPUNCTIONS VERSUS THE LAW SCHOOL AND STATE BAR APPLICATION PROCESSES

*Lydia Johnson**

INTRODUCTION

For some prospective law students, the most daunting part of the application process is not their personal statement, LSAT Score, or GPA requirement. It is the disclosure question that requires students to disclose their criminal record.¹ The old adage, “you don’t get a second chance to make a first impression”² takes on a whole new meaning for an aspiring attorney whose criminal history has been expunged, yet continues to be subjected to scrutiny by state bar character and fitness divisions.

The law school application process is fraught with confusion for the aspiring student who is unaware of the interconnected relationship between the various legal institutions responsible for educating, certifying, and affirming decisions in reference to lawyers. The association between law school officials, character and fitness divisions, and state supreme courts appears independent, but these entities are partners complicit in requiring applicants to disclose an expunged criminal history.³ The law school application requests disclosure of expunged offenses followed by the identical demand on the bar application from character and fitness divisions that is sanctioned by the respective su-

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1. See generally Elizabeth Gepford McCulley, *School Sharks? Bar Fitness Requirements of Good Moral Character and the Role of Law Schools*, 14 GEO. J. LEGAL ETHICS 839 (2001).

2. Will Rogers, FORBES.COM, <http://thoughts.forbes.com/thoughts/business-will-rogers-you-never-get> (last visited Aug. 6, 2013).

3. *JD Application Disclosure*, THOMAS COOLEY LAW SCHOOL, <http://www.cooley.edu/prospective/disclosure.html> (last visited June 7, 2013).

preme courts.⁴ Each state has a board of law examiners whose authority to assess the character and fitness of applicants is derived from rules established by its respective supreme court.⁵ The American Bar Association (“ABA”) drafted the ethical rules and created the Model Rules of Professional Conduct as a guide for states to use to establish their own rules regarding character and fitness.⁶ The highest court in each state is responsible for regulating lawyers and is the ultimate arbiter of any dispute whether it involves law school applicants or complaints against practicing attorneys.⁷ Law school officials make it clear that character and fitness divisions routinely compare responses on applications to verify consistency or any modifications.⁸ The depth of the association is reinforced in law school orientation programs when character and fitness representatives are invited to emphasize the consequences for failure to include a criminal history on law school and bar applications.⁹ While this type of confirmation bias may be accepted in legal academia as standard operating procedure, it does not take into account an applicant’s legal dilemma.¹⁰ The uncertainty of whether to rely on an expungement order is because the same state supreme courts that oversee bar admissions also validate the expunction denial as a legitimate tool to rewrite one’s criminal history.¹¹ This judicial sleight of hand is akin to a police officer advising a suspect of his *Miranda* right to remain silent, and then arresting him

4. Letter from State Board of Law Examiners [MD] to First Year Law Students (May 18, 2009), available at http://law.ubalt.edu/downloads/law_downloads/Admiss_MSBE_Bar_Letter.pdf.

5. E.g. Julie Vaughan, *Addressing Law Students Dishonesty: The View of One Bar Admission Official*, 45 S. TEX. L. REV. 1009 (2003).

6. AMERICAN BAR ASSOCIATION, CLIENT REPRESENTATION IN THE 21ST CENTURY: REPORT OF THE COMMISSION ON MULTIJURISDICTIONAL PRACTICE 8 (2002) (available at http://www.americanbar.org/content/dam/aba/migrated/final_mjp_rpt_121702_2.authcheckdam.pdf).

7. LISA G. LERMAN & PHILIP G. SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 75 (2008).

8. Gregory Henning, THE IVEY FILES, *Dealing With Your Past: Disclosing Criminal Issues on Law School Applications*, (June 26, 2009), http://www.annaivey.com/iveyfiles/2009/06/dealing_with_your_past_disclosing_criminal_issues_on_law_school_applications.

9. See generally Patricia A. Sexton, *When Character and Fitness Disclosures Collide: The Dilemma of Inconsistent Law School and Bar Admission Applications*, 21 PROF. LAW., no. 2, at 1 (2012).

10. David G. Jensen, *Expunged Does Not Necessarily Mean Completely Erased*, California Association of Marriage & Family Therapists, (Jul./Aug. 2009), <http://www.camft.org/AM/Template.cfm?Section=Home&template=/CM/ContentDisplay.cfm&ContentID=10468>.

11. *Miranda v. Arizona*, 384 U.S. 436, 442 (1966).

because he refused to answer any questions.¹² The state supreme courts' failure to prohibit bar admissions from asking applicants to reveal expunged offenses or consider any inadvertent discovery will continue the pattern of erratic outcomes in varying jurisdictions.¹³ It is a disservice to the constituents who rely on the expunction as a tool for a second chance and puts them at odds with the administrators who are following the edict of the Supreme Court.¹⁴ The chaos in various jurisdictions will continue until the Supreme Court prohibits bar admissions from asking applicants to reveal expunged offenses.

Without clear-cut guidelines from an ultimate arbiter, many applicants struggle to reconcile the legal right to deny the existence of a criminal history with the need to know by law school and state bar admissions and risk being denied approval to practice law. A National uniform standard should be adopted by the American Bar Association and National Conference of Bar Examiners ("NCB") to advise that expunged offenses should not be listed in accordance with the laws of the respective state, nor considered if discovered later by the certifying agencies.

The first part of this article will examine the disclosure question on law school applications and how it directly contradicts the purpose of expunctions. In particular, this section will discuss the Texas expunction statute, and then highlight those differences with a non-disclosure statute. Part II provides the many reasons as to why a disclosure requirement as part of the bar application contravenes long-standing policy and the rights of the applicants. Particularly this section will highlight the dilemma created by state supreme courts with respect to admission to the bar and recommend the implementation of a national policy regulating bar admission.

The law school and bar admissions' penchant for holding law students responsible for the expunction confusion, and not the state supreme courts, is unacceptable. The current trend advocating preapproval is treating the symptom and ignoring the problem state supreme courts created by exercising dual jurisdiction over the validity of the expunction process while conferring authority on the legal academy to interrogate applicants about exercising the use of it.¹⁵

12. John Dzienkowski, *Character and Fitness Inquiries in Law School Admissions*, 45 S. TEX. L. REV. 921, 948 (2004).

13. *Id.*

14. Barry H. Grodsky, *Character and Fitness*, 56 LA. B.J. 125, 145 (2008).

15. Andrew Pearlman, *Character and Fitness Testing for Law School Applicants*, LEGAL ETHICS FORUM (Apr. 28, 2008, 10:45 PM), <http://legaethicsforum.typepad.com/2008/04>.

I. THE DISCLOSURE REQUIREMENT

Nearly every law school application requires an applicant to disclose their criminal record.¹⁶ This disclosure requirement can include, but is not limited to, whether the applicant was ever subject to an indictment, cited, taken into custody, arrested, charged, placed on probation, deferred adjudication or received a conviction.¹⁷ Is it fair to require a law school applicant to disclose information about a criminal offense that has been sealed and made unavailable in accord with state legislation? This article maintains that the disclosure requirement is inherently unfair and circumvents the legislative intent of the expunction statutes.¹⁸ This legal loophole creates a conflict among law school applicants, state bar admissions character and fitness divisions, as well as law school deans.¹⁹ Many law school deans are caught in the middle and are compelled to advise applicants to disclose the information despite acknowledging a valid court order to the contrary.¹⁹ The disclosure requirement presents a direct conflict with state expunction statutes that seek to remove certain criminal offenses from general review in order to provide individuals who meet specific criteria a second chance.²⁰

Many state bar associations will compare responses to the disclosure question with the responses given during law school admission.²¹ The goal is to identify any acts of dishonesty.²² Both questions generally will request expunged records.²³ The idea behind requesting expunged records is to create a profession of honest lawyers.²⁴ Courts and state bar authorities work to safeguard the justice system.²⁵ The purpose of the disclosure statement is to provide, "security of knowing that a lawyer will act in a professional manner or suffer disciplinary consequences."²⁶

16. John Dzienkowski, *Character and Fitness Inquiries in Law School Admissions*, 45 S. TEX. L. REV. 921, 923 (2004).

17. Kurt L. Schmoke, *Gone But Not Forgotten*, LEGAL AFF., Jan./Feb. 2006, at 27.

18. Carol Needham, *The Professional Responsibilities of Law Professor: The Scope of the Duty of Confidentiality, Character and Fitness Questionnaires, and Engagement in Governance*, 56 J. LEGAL EDUC. 106 (2006).

19. See generally Schmoke, *supra* note 17.

20. *Id.*

21. Dzienkowski, *supra* note 12, at 955.

22. *Id.*

23. *Id.*

24. Gepford McCulley, *supra* note 1.

25. *Id.* at 844.

26. *Id.*

With the disclosure requirement present in most state bar application processes, there is no second chance afforded to aspiring lawyers. Expunction statutes were designed to allow offenders of certain offenses meeting specific criterion to have such offenses removed from public record.²⁷ This would provide offenders with the opportunity to have a second chance and turn over a new leaf without negative impacts from their criminal record. As a result, expunction statutes generally permit offenders to legally deny the occurrence of an offense that has been expunged.²⁸ However, law school applications require applicants to admit or disclose expunged crimes. Criminal records yield an inference that the applicant has a pattern of bad behavior.²⁹

Law school admissions processes have completely disregarded the principles supporting expunction statutes by requiring applicants to disclose their entire criminal record.³⁰ The information obtained in the law school application is typically reported to the character and fitness division of the state bar.³¹ Similarly, character and fitness divisions routinely review law school applications to determine if the disclosure questions have been answered uniformly.³² This convergence of information can be an influential factor in determining whether an applicant will be permitted to attend law school and eventually practice law. Even character and fitness divisions that do not require expunged records be disclosed intimidate applicants into compliance by asserting their admission to the bar will be jeopardized if a criminal record is later discovered.³³

II. EXPUNGEMENT PRINCIPLES

Expunction statutes were initially created to grant offenders a second chance and facilitate their re-integration into society. It is difficult to have a criminal record expunged, and such privilege is only

27. *T.C.R. v. Bell Cnty. Dist. Attorney's Office*, 305 S.W.3d 661, 663 (Tex. Ct. App. 2009).

28. 1B-42 CRIMINAL DEFENSE TECHNIQUES § 42.03 (1) (c).

29. George L. Blum, Annotation, *Criminal Record as Affecting Applicant's Moral Character for Purposes of Admission to the Bar*, 3 A.L.R.6th 49 (2005).

30. Robert Schuwerk, *"Inadvertent" Failure to disclose Negative Information on Law School Applications: One Institutions's Approach to a Chronic Problem*, BAR EXAMINER, September 2011, at 25.

31. Timothy P. Chinaris, *We Are Who We Admit: The Need to Harmonize Law School Admission and Professionalism Processes With Bar Admission Standards*, 31 MISS. C.L. REV. 43, 47 (2012).

32. Linda McGuire, *Lawyering or Lying?: When Law School Applicants Hide their Criminal Histories and Other Misconduct*, 45 S. TEX. L. REV. 709, 710 (2004).

33. Schmoke, *supra* note 17.

granted to those who have met statutory requisites established by state legislation. Expunction statutes typically apply to a narrow class of offenders.

All of the states have some version of an expunction statute with varying degrees of eligibility and application. Various terms characterize this objective: seal, vacate, erase, concealment, or purge.³⁴ While the terms are used interchangeably in some jurisdictions the Texas legislature clarifies that an expunction erases a criminal history, while a petition for nondisclosure seals the record but allows certain entities to view it.³⁵

Procedurally, expunction statutes were designed to allow offenders of certain offenses, meeting specific criteria, to have such offenses removed from public record. Each state's legislature has designated a specific set of offenses and procedures that will remove or seal a criminal history from review.³⁶ Different state courts have described the objective in similar terms.³⁷ The legal significance of the statute allows an individual to deny the occurrence of an offense.³⁸ Some have characterized this result as giving an individual a clean slate, rewriting history, redefinition of status or even legislating untruth.³⁹ The expunction principle has been applied to victims of identity theft and related forms of bankruptcy fraud who would be permitted to deny filing an application and prevent creditors from obtaining financial background about an individual.⁴⁰ Practicing lawyers can expunge complaints terminated by dismissals in grievance proceedings.⁴¹ Prosecutors opine the statute "attempts to create a broadly applicable set of rules that balance the competing interests of a wrongly arrested person wanting to get a fresh start without the stigma of a criminal history,

34. Alaska uses the term "purge" (see ALASKA STAT. § 12.62.190 (2013)); Connecticut uses the term "erasure" (see CONN. STAT. § 54-142 (a) (2013)); New Hampshire uses the term "annulment" (see N.H. REV. STAT. § 651:5 (2013)); the District of Columbia uses the term "seal" (see D.C. CODE §§ 16-802 & 803(2013)).

35. *Bergin v. State*, No. 06-06-00089-CV, 2006 WL 2456302, at *1 (Tex. Crim. App. Aug. 25, 2006).

36. See *Expungement of Criminal Records*, US LEGAL, <http://expungement.uslegal.com/expungement-of-criminal-records/> (last visited Aug. 6, 2013).

37. See *Basics on Criminal Expungement*, MINNESOTA JUDICIAL BRANCH, <http://www.mncourts.gov/selfhelp/?page=328> (last visited Aug. 6, 2013).

38. *Id.*

39. *People v. Mgebrov*, 82 Cal. Rptr. 3d 778, 781 (Cal. Ct. App. 2008).

40. Peter Alexander, *Identity Theft and Bankruptcy Expungement*, 77 AM. BANKR. L.J. 409, 409-414 (2003).

41. MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT 4(B)(12) (2002).

the State's need to preserve records for future use, and the public's right to information."⁴²

In enacting the expunction statute, legislatures intended to cure the evils attendant to wrongful arrests.⁴³ An expunction is granted in limited circumstances where the offenses and standards have been established by legislatures, and in most instances, approved by law enforcement and the district attorneys.⁴⁴ This system of checks and balances validates the expunction process and sanctions the right to deny the existence of a criminal history. This would provide offenders with the opportunity to have a second chance and turn over a new leaf without negative impact from their criminal records.

A. *Expunctions in Texas*

An expunction is the strongest, most-limited remedy, governed by Chapter 55 of the Texas Code of Criminal Procedure.⁴⁵ An expunction allows a criminal record to be removed from a person's reported criminal history.⁴⁶ If an expunction order is granted, the subject of the order may thereafter deny the arrest or related offense.⁴⁷ The petitioner possesses the burden of proof to prove up the contents of the expunction petition.⁴⁸ Expunctions are deemed a civil matter handled in district court.⁴⁹ Therefore, if an expunction order is denied, it may be appealed to the Court of Appeals.⁵⁰ An expunction is a potential remedy for adults.⁵¹ In Texas an adult is an individual seventeen years or older.⁵² An individual is entitled to an expunction in the following incidents: (1) the person is acquitted of an offense in the trial court;⁵³

42. Andrea L Westerfield, *Advanced Expunction Law*, 42 TEX. PROSECUTOR J., Sept.-Oct. 2012, at 32.

43. *Bargas v. Texas*, 164 S.W.3d 763, 769 (Tex. Crim. App. 2005).

44. TEX. CODE CRIM. PROC. ANN. art. 55.02 (West 2013).

45. See generally Fred Dahr, *Clearing Up the Juvenile Criminal Record*, 69 TEX. B.J. 258, (2006); STATE BAR OF TEXAS, SPECIAL EDUCATION ISSUES AND THE JUVENILE JUSTICE SYSTEM IN TEXAS 2 (June 25, 2010); TEX. CRIM. PROC. CODE ANN. art. 55.01 (2011); TEX. CRIM. PROC. CODE ANN. art. 55.02 (2011).

46. *Id.*

47. Natasha Brooks, *Texas Step Up To The Plate And Compensate: Face To Face With Joyce Ann Brown, Wrongfully Convicted Never To Receive Compensation*, 4 SCHOLAR 45, 67 (2001).

48. *Id.*

49. Dahr, *supra* note 45, at 260.

50. *Id.*

51. *Id.* at 259.

52. *Id.*

53. Art. 55.01(a)(1)(A).

(2) the person is pardoned of offense;⁵⁴ (3) the charging instrument was dismissed or quashed because the person completed a pretrial intervention program or there was an absence of probable cause at the time of the dismissal;⁵⁵ (4) prosecution of the person is not possible because the statute of limitations expired;⁵⁶ or (5) the person has been arrested, released, and the charging instrument – indictment or information – has not been presented yet regardless of whether a statute of limitations exists as long as the applicable waiting periods are satisfied,⁵⁷ or the attorney representing the State certifies the arrest records and files are not needed in any other criminal investigation or prosecution.⁵⁸ There is a 180 day waiting period from the arrest date of a Class C Misdemeanor where the charging instrument has not been presented.⁵⁹ Additionally there is a ; one year waiting period from the arrest date for Class A or B misdemeanors;⁶⁰ and three years from the arrest date for felonies.⁶¹ All records and files pertaining to the arrest are entitled to be expunged if the requisite requirements are met.⁶² Another situation entitling one to expunction occurs when an individual is a victim of identity theft where another person was arrested and used their identity without consent.⁶³ On the other hand, an individual is not eligible for expunction of records if the offense arose out of a criminal episode defined by the Penal Code and the person was convicted of one other offense in the criminal episode or charges are still pending on one other offense.⁶⁴

Many revisions have been made to the expunction statute to improve and ensure the language is concise and clear as well as to make approved changes. In 1999, the Texas legislature made a few gender-neutral amendments to recognize that a petitioner could be male or female.⁶⁵ In addition, the clause prohibiting a person from getting records expunged if the person is acquitted for an offense arising out of a criminal episode where for another offense was added.⁶⁶ Further-

54. *Id.*; art. 55.01(a)(1)(B).

55. Art. 55.01(a)(2)(A)(ii).

56. Art. 55.01(a)(2)(B).

57. Art. 55.01(a)(2)(A).

58. Art. 55.01(a)(2)(A)(i)(d).

59. Art. 55.01(a)(2)(A)(i)(a).

60. Art. 55.01(a)(2)(A)(i)(b).

61. Art. 55.01(a)(2)(A)(i)(c).

62. Art. 55.01(a).

63. Art. 55.01(d)(1).

64. Art. 55.01(c).

65. Act of Aug. 30, 1999, ch. 1236, 1999 Tex. Sess. Law Serv. (West).

66. *Id.*

more, it was added in Article 55.02 that a petition for expunction may be filed in the county where the offense was alleged to have occurred or where the arrest occurred.⁶⁷ Later in 2003, the Code was amended to say the Code applied to a person placed under custodial or noncustodial arrest rather than just “arrested”.⁶⁸ Subsequently in 2005, the legislature determined that a person’s conviction of a felony in the five years preceding the date of arrest does not affect eligibility if a petition is filed on behalf of a person by the Department of Public Safety.⁶⁹ In the Eighty-First Legislative Session, individuals who completed a pre-trial intervention program were added to the list of those eligible for expunction pursuant to the statute.⁷⁰ Recently, the clause affirming the existence of statute of limitations or expiration of statute of limitations was not a determining factor added to the expunction statute.⁷¹ Also, the necessary waiting periods to be eligible for an expunction were defined as 180 days for Class C misdemeanor, one year for Class A or Class B misdemeanor, three years for felony, and no waiting period if the prosecution certifies that the records are not needed for another criminal investigation or prosecution.⁷² Prior to this amendment, a person with dismissed charges had to wait for the statute of limitations to expire to be eligible to have an expunction order granted.⁷³ This posed a serious debate amongst practitioners on how long a person had to wait for an offense that did not carry a statute of limitations. One of the most significant amendments during the Eighty-Second Legislative Session was the removal of the requirement that petitioner not have a felony conviction in the five years preceding the arrest date for the offense for which expunction is sought.⁷⁴ This clause was detrimental to many individuals prior to this amendment, particularly those with an extensive criminal record. Therefore, the amendment allowed more individuals to be eligible, but for it to make a difference attorneys must be aware of the amendment. It is essential for attorneys to stay apprised of legislative updates.

67. *Id.*

68. 2003 Tex. Sess. Law Serv. Ch. 1236 (S.B. 1477).

69. 2005 Tex. Sess. Law Serv. Ch. 1309 (H.B. 3093).

70. 2009 Tex. Sess. Law Serv. Ch. 1103 (H.B. 4833).

71. 2011 Tex. Sess. Law Serv. Ch. 894 (S.B. 462).

72. *Id.*

73. Kristin Etter, David Gonzalez & Allen D. Place, Jr., *Criminal Law*, 74 TEX. B.J. 724, 724 (2011).

74. 2011 Tex. Sess. Law Serv. Ch. 894 (West).

B. Comparison to Non-Disclosure Statute

Non-disclosure differs from expunction because it is applicable to adults who have successfully completed a deferred adjudication (“DADJ”) only.⁷⁵ Unlike “straight” probation, DADJ is a unique probation where the charges are “dismissed” if the person satisfactorily completes the terms of probation.⁷⁶ While an expunction is considered a right, granting a non-disclosure is within the judge’s discretion.⁷⁷ After the court determines that a petitioner meets the necessary requirements pursuant to the statute, the judge can rule based on the “best interest of justice.”⁷⁸ Many individuals are misinformed or under the misconception that their record will be expunged upon completion of the DADJ since charges are “dismissed,” but that misconception is *far* from the truth.⁷⁹ The dismissal after a successful completion of DADJ just means that the person will not have a final conviction, but the charges and arrest will still appear on a person’s criminal record during a background check.⁸⁰ Unlike expunction, non-disclosure merely hides the records from the public and many agencies, but certain government agencies and professional licensing boards will remain able to see the records.⁸¹

The non-disclosure statute has a restriction which prohibits an individual from being granted an order if the person has ever had a conviction or been placed on DADJ for particular offenses including murder, injury to a child, aggravated kidnapping, violation of protective order, offenses involving family violence, and stalking.⁸² Non-disclosures also employ waiting periods for certain offenses, and if a waiting period exists, the petitioner is not eligible if the person receives a conviction or gets placed on another DADJ during that time period.⁸³ Most misdemeanors are eligible for non-disclosure immediately after the DADJ is successfully terminated.⁸⁴ Some offenses such as assault, deadly conduct, disorderly conduct, and the unlawful carrying of a

75. Dahr, *supra* note 45, at 260.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 261; TEX. GOV’T CODE ANN. § 411.081(i) (West 2011).

82. Dahr, *supra* note 45, at 261.

83. *Id.*; TEX. GOV’T CODE ANN. § 411.081(e) (West 2011).

84. Dahr, *supra*, at 261; TEX. GOV’T CODE ANN. § 411.081(d)(1) (West 2011).

weapon require a two-year waiting period.⁸⁵⁸⁶ Every felony requires a five-year waiting period⁸⁷ from the date of discharge of successful termination of DADJ.⁸⁸ Each waiting period is measured from the date of discharge of a successfully terminated DADJ.

During the Seventy-Eighth Legislative Session the legislature added subsection (d) through (h) making particular misdemeanors require a five-year waiting period from date of discharge and dismissal and a ten-year period for felony offenses.⁸⁹ The clause prohibiting eligibility of an individual who was subsequently convicted of another offense or placed under DADJ for another offense during the waiting period was added.⁹⁰ Two years later in 2005, the legislature revised the waiting period of the designated misdemeanors from five years to two years and felonies from ten years to five years.⁹¹ Additionally, it was mandated that no later than ten days after receipt of the order the Department of Public Safety must seal any criminal record maintained by the department subject to the order and send a copy of the order to all the necessary agencies.⁹² Then the entities receiving the order shall seal any of their maintained records no later than 30 days after receipt of the order.⁹³ The Code also noted that a person whose record was sealed was not required to disclose information regarding the offense, but the Code also acknowledged that a Criminal Justice agency could disclose information to a specified list of entities.⁹⁴ The list of entities that could receive the information was detailed in the Code in these amendments as well including: licensing boards for professionals, Texas Youth Commission, Texas Juvenile Probation Commission, Department of Aging and Disability Services, and others specified in the Code.⁹⁵ In 2007, the Texas Education Agency was added to the list.⁹⁶ Subsequently, the Texas Department of Insurance was added in 2009,⁹⁷ along with the Court Reporters Certification Board.⁹⁸ It is up

85. The time period was shortened from five years to two years in 2005. 2005 Tex. Sess. Law Serv. Ch. 1309 (H.B. 3093).

86. Dahr, *supra*, at 261; TEX. GOV'T CODE ANN. § 411.081(d)(2) (West 2011).

87. The waiting period was shortened from ten years to five years in 2005. 2005 Tex. Sess. Law Serv. Ch. 1309 (H.B. 3093).

88. Dahr, *supra*, at 260; TEX. GOV'T CODE ANN. § 411.081(d)(3) (West 2011).

89. 2003 Tex. Sess. Law Serv. Ch. 1236 (S.B. 1477).

90. *Id.*

91. 2005 Tex. Sess. Law Serv. Ch.1309 (H.B. 3093).

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. 2007 Tex. Sess. Law Serv. Ch. 1372 (S.B. 9).

97. 2009 Tex. Sess. Law Serv. Ch. 1027 (H.B. 4343).

to each particular agency to determine how much weight to give the criminal record of a successfully terminated DADJ that is available for them to see despite a non-disclosure. It is important for a petitioner to know which agencies can still see the criminal record so that they may honestly disclose the information or make an informed decision of whether or not to apply to such an agency. Therefore, it is critical for an attorney to inform his or her client of all the agencies listed in the Code that may have access to the criminal record even if a non-disclosure order is granted.

C. *Obstacles in Obtaining an Expunction*

Expunction statutes were initially created to grant offenders a second chance and facilitate their re-integration into society.⁹⁹ It is difficult to have a criminal record expunged and such privilege is only granted to those who deserve it.¹⁰⁰ The goal is to eliminate at least some of the collateral consequences associated with criminal convictions and to facilitate reintegration into society for certain individuals by essentially granting them a clean slate.¹⁰¹ However, with advances in technology and the invention of the Internet, expunged records have become more readily accessible.¹⁰² There are dozens of data-broker companies that sell individuals' private information on the Internet.¹⁰³ This information generally includes criminal records.¹⁰⁴ These companies are not regulated and therefore are not required to regularly update their information.¹⁰⁵ As a result, expunged records are often made available on the Internet.¹⁰⁶ Prior to that time, obtaining information from public records was very much a localized operation.¹⁰⁷ Generally, the person, company, or investigative agency for hire seeking information would obtain records on a case-by-case basis directly from whatever state or local agency maintained such records.¹⁰⁸ Essentially, prior to the invention of the Internet and "the creation of the

98. 2009 Tex. Sess. Law Serv. Ch. 816 (S.B. 1599).

99. Logan Danielle Wayne, *The Data Broker Threat: Proposing Federal Legislation to Protect Post-Expungement Privacy*, 102 J. CRIM. L. & CRIMINOLOGY 253 (2012).

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. Wayne, *supra* note 99.

106. *Id.*

107. *Id.*

108. *Id.*

private data-broker industry, the primary—if not singular—way of obtaining information about an individual’s criminal record for the purpose of employment or housing was by obtaining information directly from a state agency.”¹⁰⁹

This creates a major problem. The information is not always correct or up to date. Sometimes these records have been sealed or expunged.¹¹⁰ Data broker companies are not required to update their records.¹¹¹ Consequently, sealed and expunged information is getting out.¹¹² There are dozens of data-broker companies that produce this information. Examples include, Intelius, Zabasearch, Archives, PeopleLookup, US Search, PeopleFinders, PeekYou, PublicRecordsNow, USA People Search, Epsilon, White Pages, MyLife, PIPL, PeopleSmart.¹¹³ These companies are essentially unregulated. The only federal legislation that involves data brokers is the Fair Credit Reporting Act.¹¹⁴ However, this statute does not provide specific guidelines with regard to post-expunction privacy.¹¹⁵ This is evidence of the need to create federal legislation regulating private data brokers. The legislation should specifically address selling expunged records. The only way to remove an expunged conviction from a data broker’s records is to personally request that the information be removed. This process is arduous and involves the submission of several documents including court dispositions and expungement orders.¹¹⁶ In fact, some data brokers even require that one submit along with this request a copy of the information as it appears on the report from their websites.¹¹⁷ This requirement is particularly troubling because it forces individuals to purchase their own consumer reports before finding out whether any one database contains an expunged conviction. Even with a system that would easily allow an individual to remove his or her own information, individual enforcement is still ineffective at fixing the problem for more than just that one individual. As discussed above, by the time most individuals are made aware of the information in these

109. *Id.*

110. *SEARCH Report*, *supra* note 10, at 7-9 (listing the key players in the data-broker industry); *See also* BEST BACKGROUND CHECKS, <http://www.bestbackgroundchecks.com> (last visited Nov. 11, 2011) (providing a directory of recommended data brokers in each state).

111. *Id.*

112. Wayne, *supra* note 99, at 253.

113. *Id.*

114. H.R. 5794, 2011 Leg., 112th Sess. (Tex. 2011).

115. 102 *J. Crim. L. & Criminology* 253, 268.

116. 70 *A.L.R.6th* 1, 1.

117. *Id.*

databases, the information has likely already been released and the individuals have already suffered the negative consequences.

Data broker companies are creating yet another obstacle for bar applicants by making them take additional steps to have their expunged records removed. Essentially, the State Supreme Courts are granting expunctions, but the bar application process is prohibiting applicants from reaping the benefits. This simply is not fair to students who have taken the steps to have their records expunged.

D. *Expunction Process: The Flaws in the Process*

Expunging a record requires filing the appropriate documents with the courts. A lawyer is recommended, but not required. The fear that a criminal conviction could impair one's ability to secure employment has led many to seek ways to clear or minimize their criminal background.¹¹⁸ The extent of the criminal background check can vary depending on the organization and industry.¹¹⁹ Issues can arise when employers conduct background checks using third party reporting agencies because such agencies can include arrest and conviction records.¹²⁰ A recent compilation of the number of criminal background checks conducted by the FBI were woefully inadequate and had the potential to undermine opportunities for employment and licensing.¹²¹ Second chance programs have partnered with volunteer lawyers as a resource to provide information on eligibility and the cost of clearing ones background.¹²²

The marketing to clear ones name has exploded as a potential source of revenue for lawyers seeking to generate income. Lawyers advertising their services vary in cost depending on the jurisdiction.¹²³ A recent survey of Harris County criminal defense bar indicated that 70% of the lawyers charge \$1500.00 to \$2500.00 plus the filing fee.¹²⁴

118. Hamilton Nolan, *Do Criminal Background Checks Hurt More Than They Help?*, <http://gawker.com/do-criminal-background-checks-hurt-more-than-they-help-512858897> (last visited Aug. 6, 2013).

119. Roberto Conception, Jr., *Need Not Apply: The Racial Disparate Impact Of Pre-Employment Criminal Background Checks*, 19 GEO. J. POVERTY L. & POLICY 231, 233 (2012).

120. EEOC ENFORCEMENT GUIDE, http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm (last visited October 8, 2013).

121. Madeline Neighly & Maurice Emsellem, *WANTED Accurate FBI Background Checks for Employment REWARD: Good Jobs*, NAT'L EMP. LAW PROJECT, Jul. 2013, at 5.

122. Fallbrook Church Second Chance Ministry Channel 11-KHOU, YouTube (Aug. 2011) www.youtube.com/watch?v=MM27tns-OLc.

123. The Clifford Division, <http://www.ccolawyers.com/what-we-do/expungements;> <http://www.williamkent.com/Sealing%20of%20Criminal%20Records%20in%20Florida.htm>.

124. Survey responses are on file with author.

In Harris County, if all of the conditions are met, the procedure for securing an expunction requires the applicant to pay a filing fee of \$217.00 and an additional \$8.50 for each defendant served with a hardcopy for the former and \$250.00 (misdemeanor), \$255.00 (felony) for the latter.¹²⁵

E. Proposed Solutions

The court system can simplify the expunction process by creating checklist forms made available to the public in the clerk's office for an individual to determine their eligibility. The Harris County District Attorney's Office is ahead of the curve and has a sample petition available on their website, but it only applies to victims of identity theft.¹²⁶ Implementation of the checklist can save petitioners money from seeking legal advice to determine eligibility and having to pay a consultation fee. While revisions to the statutes and procedures are being made each legislative session, it is far from being adequate for the everyday citizen to navigate without a lawyer's assistance.

III. LAW SCHOOL APPLICATION QUESTIONS CIRCUMVENT PURPOSE OF EXPUNCTION STATUTES

Within the past 20 years, law schools have begun asking more in depth questions in regards to an applicant's criminal history.¹²⁷ The questions have evolved from inquiries into academic dishonesty to inquiries regarding criminal records.¹²⁸ These types of questions have been expanded by the National Conference of Bar Examiners and implemented by state bar associations' character and fitness divisions.¹²⁹ In fact, most character and fitness divisions rely on a "catchall" question in the event any aspect of an applicant's contact with the Criminal Justice system has eluded their scrutiny.¹³⁰

125. *Post Trial-Expunctions*, OFFICE OF HARRIS COUNTY DISTRICT CLERK, <http://www.hcdistrictclerk.com/Common/faq/faq.aspx> (last visited August 6, 2013).

126. *Id.*

127. *Id.*

128. *In re Application of Burch*, 975 N.E.2d 1001 (Ohio 2012).

129. Anthony J. Graniere & Hilary McHugh, *Are You In Or Are You Out? The Effect of a Prior Criminal Conviction on Bar Admission & a Proposed National Uniform Standard*, 264 HOFSTRA LAB. & EMP. L.J. 223 (2008).

130. Matt Shinnors, *To Disclose or Not Disclose: A Pre-Law Conundrum*, BLUEPRINT TEST PREPARATION, <http://blueprintprep.com/lsatblog/law-school-admissions-6/to-disclose-or-not-to-disclose-%E2%80%94-a-pre-law-conundrum/> (last visited Aug. 6, 2013).

No one disputes that criminal convictions should be disclosed and are relevant in determining an applicant's fitness to practice law.¹³¹ The dispute centers on whether criminal offenses that have been expunged should be a part of the evaluation process.¹³² Law school applicants who rely on a valid court order giving them the legal right to deny an offense are in direct conflict with law schools as well as character and fitness divisions that request the information.¹³³ Applicants who fail to disclose the information risk being disciplined by both institutions. Recently, a St. John's University School of Law student ranked third in his class was expelled and deemed to have willfully withheld information because he failed to disclose an expunged offense.¹³⁴ Retroactive withdrawal is one of several sanctions that can be imposed on applicants.¹³⁵ The student is suing St. John's claiming it did not have the right to dismiss him because he expunged his record in accordance with state law.¹³⁶ It appears that St. John's University School of Law's Dean's refusal to provide a letter of support, claiming he failed to tell them about the conviction instigated the inquiry into the disclosure of information with the character and fitness division in that state.¹³⁷

Most law school deans err on the side of caution, recommending students disclose an expunged offense despite being puzzled by the state bars position and leery of its impact on African American students who are more likely to have a negative encounter with the police. The collaboration between law schools and character and fitness divisions is not a working partnership to complement the process to becoming a lawyer, but a collusion to deny applicants who have the audacity to demand these organizations follow the law. They conspire

131. Lori E. Shaw, *Professionalism: What Does It Take To Satisfy Character & Fitness Requirements*, 37 STUDENT LAWYER (2008).

132. Richard Arnold Jr., *Presumptive Disqualification And Prior Unlawful Conduct: The Danger Of Unpredictable Character Standards*, 1997 UTAH L. REV. 63 (1997).

133. Danny Jacobs, *Court Denies Lawyer Admission to Bar*, THE DAILY RECORD, (January 4, 2009) <http://www.lawschool.com/admissiondenied.htm>.

134. ETHICS ALARMS, *The Sad Saga of the Ex-Drug Dealing Law Student* (Feb. 4, 2011), <http://ethicsalarms.com/2011/02/04/the-sad-saga-of-the-ex-drug-dealing-law-student>.

135. Stephen Gillers, *Powers v. St Johns Law: Can This Be Right*, LEGAL ETHICS FORUM (Feb. 4, 2011), <http://www.legalethicsforum.com/blog/2011/02/powers-v-st-johns-law-can-this-be-right.html>.

136. Christina Carrega, *Ex-Student Sues St. John's After Law School Denies Readmission*, N.Y. POST (Feb. 2, 2011), http://www.nypost.com/p/news/local/ex_student_sues_st_john_after_law_sBraHBRPs8ZDvpQBF9ZsM.

137. Thomas Zambito, *St. John's University Law Student: I Was Dropped Because Of A 10 Year Old LSD Charge*, N.Y. DAILY NEWS (Feb. 3, 2011), <http://www.nydailynews.com/new-york/st-john-university-law-school-student-dropped-10-year-old-lsd-charge-article-1.133117>.

to verify whether answers to disclosure questions on law school applications are answered consistently with character and fitness responses. All the while, these institutions contend candor is the basis for the justification and ignore the unseemly position of requiring that an applicants' first act as an honest lawyer is to ignore a valid court order.¹³⁸

Some state bar associations do not require expunged offenses be revealed which creates an inconsistency in treatment of lawyers.¹³⁹ It creates an atmosphere of intimidation when applicants are advised they do not have to reveal expunged offenses, but are held accountable if offenses are discovered. Penalizing those who rightfully fail to disclose expunged records is the equivalent of institutionalized bullying by state bar associations because they hold all the cards.

IV. POLICY CONSIDERATIONS

Determining whether law school applicants should be required to disclose expunged records obliges an analysis of the competing policy interests. State bar and law schools have an interest in finding individuals who are fit to practice law in the respective state.¹⁴⁰ Applicants have an interest in having their application assessed fairly and in accord with state and federal laws. Balancing these interests requires the examination of a number of public policy considerations.

Law school admissions programs proactively act on behalf of the state bar in assessing whether an applicant will be able to practice law.¹⁴¹ Understandably, admission offices in every state look at an applicant's criminal record as a factor in the applicant's fitness to practice law.¹⁴² Criminal records are viewed as an illustration of an individual's ability to make good moral choices. This information is also "relevant to predicting the future conduct of an applicant to the bar."¹⁴³ Law school admission applications vary greatly in their style and wording

138. Letter, *supra* note 4, at 1.

139. UNIVERSITY OF TEXAS SCHOOL OF LAW JURIS DOCTOR PROGRAM: 2013 APPLICATION 6, http://www.utexas.edu/law/admissions/apps/jd_app.pdf.

140. Carol M. Langford, *Barbarians at the Bar: Regulation of the Legal Profession through the Admissions Process*, 36 HOFSTRA L. REV. 1193.

141. Matthew A. Ritter, *The Ethics of Moral Determination: An Indeterminate Ethical Reflection upon Bar Admissions*, 39 CA. W.L. REV. 1, 4 (2002).

142. ABA/BNA Lawyers' Manual on Professional Conduct P 21:701 (Kirk A. Swanson et al. eds., 2002).

143. John Dzienkowski, *Character and Fitness Inquiries in Law School Admissions*, 45 S. TEX. L. REV. 921 (2004).

for questions regarding criminal history.¹⁴⁴ However, every law school maintains the same objective. That objective is to determine whether the particular individual will be fit to practice law. Considering this objective begs the question as to how in depth a law school application should look into an applicant's past criminal history in order to determine the individuals' fitness to practice. Law school admissions questions regarding criminal history should be nationally uniform, consistent with state and federal laws, and in accord with state bar admission requirements.

There is an expectation that law school admission offices will assess applications fairly and students will not be penalized for acting as a law-abiding citizen. After all, the objective of admission offices and the State Bar is to only admit individuals who are fit to practice law and thus, are law-abiding. Where an applicant has followed all state laws in having their criminal records expunged, it is logical to expect that those applicants would not be penalized contrary to state expunction laws during the admission process.

A. *Inherently Unjust*

First, requesting a law student to furnish a record that has been expunged or sealed is inherently unfair. When a record becomes expunged it is supposed to be "sealed from all wandering eyes."¹⁴⁵ To expunge means "to strike out, obliterate, or mark for deletion."¹⁴⁶ Many states' expunction statutes explain that individuals with expunged or sealed records need not disclose them for any reason.¹⁴⁷ Essentially, the statute permits the individual to operate as if the offense does not exist.¹⁴⁸ State laws also forbid an individual from using such information found in an expunged record negatively against an applicant.¹⁴⁹

Expunction statutes were created to allow a particular class of individuals a second chance. Studies show millions of Americans suffer a life-long handicap as a result of a one-time lapse in judgment.¹⁵⁰ Expunction legislation was intended to enable citizens who had been

144. *Minimizing the Risks*, <http://www.deloggio.com/admproc/risks.html> (last visited Aug. 6, 2013).

145. Fruqan Mouzon, *Forgive Us Our Trespasses: The Need for Federal Expungement Legislation*, 39 U. Mem. L. Rev. 1, 44 (2008).

146. "Expunge", MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 6 (10th ed. 1998).

147. *Kentucky Bar Ass'n v. Guidugli*, 967 S.W.2d 587 (Ky. 1998).

148. 27A TEX. JUR. 3D *Criminal Procedure: Post-Trial Proceedings* § 1189 (2013).

149. Dzienkowski, *supra* note 143, n. 77.

150. Wayne, *supra* note 99, n. 78.

charged or convicted of certain crimes to have a “true second chance to live a productive and law-abiding life”.¹⁵¹ Expunction statutes are designed to ensure that a mere transgression with law will not be an obstacle to someone’s future.

Lawyers and judges generally advise prospective students not to provide records that have been expunged or sealed to anyone.¹⁵² Courts have upheld this advice where the applicant has acted in good faith. In *Kentucky Bar Association v. Guidugli*, an applicant was advised by counsel not to disclose information regarding a sealed record.¹⁵³ The attorney acted based on statute finding that a sealed conviction should be treated as if it never occurred.¹⁵⁴ The applicant was later penalized for failure to disclose the record.¹⁵⁵ The Kentucky Supreme Court found that the student had acted in good faith in the attempt to ascertain whether to disclose the record.¹⁵⁶ Thus, the student was not penalized for not disclosing the expunged record.¹⁵⁷ Any denial for an applicant with an expunged record violates their right to due process.¹⁵⁸

It is logical to believe that a person who has had a record expunged will not be required to discuss the record further. Any mandate to disclose a record that has been sealed in compliance with a state statute is inherently unjust.

B. *Constitutional Right to Privacy and Disclosure of Expunged Records*

A number of people believe law schools should be able to require disclosure of expunged records because it does not violate the right to privacy. It is true that the courts have been consistent in finding mandating disclosure of expunged/sealed records is not a violation of the right to privacy. Although not explicitly stated in the Constitution, the right to privacy is an implicit right that has been granted by the courts.¹⁵⁹ Among the safeguards under the umbrella of the right to privacy, is a protection from public disclosure of private facts. Generally,

151. *Id.*

152. Dzienkowski, *supra* note 143 at 948.

153. *Kentucky Bar Ass’n v. Guidugli*, 967 S.W.2d 587 (Ky. 1998).

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. Amendments to the Rules of the Supreme Court Relating to Admissions to the Bar, 695 So. 2d 312 (Fla. 1997).

159. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

courts have discussed this aspect of the right to privacy with respect to exposure of private facts in the media or workplace.¹⁶⁰ It even has been extended to public officials.¹⁶¹ In *Eagle v. Morgan*, the court held an expungement order does not privatize criminal activity.¹⁶² Although an expunction removes a conviction/arrest from the individual's criminal record, "the underlying object of the expungement remains public."¹⁶³ This means that public official positions and government searches will continue to reveal expunged records.

While requiring disclosure of sealed records does not violate privacy interest, it does present other constitutional problems. Requesting sealed and expunged records raises concerns regarding notice and due process.

Allowing admission of expunged records presents a fundamental problem. Generally, evidence of criminal records will encourage negative inferences about a candidate.¹⁶⁴ Unfortunately, it is difficult to draw a positive inference based on criminal records.¹⁶⁵ State bar admissions do not consider the positive aspects of expunged records. The underlying message of criminal behavior lingers and creates a negative image.¹⁶⁶

C. *The Varying Definitions of "Good Moral Character"*

There are variances among jurisdictions as to what constitutes good moral character.¹⁶⁷ Generally, lack of good moral character is associated with,

[M]aking false statements or affidavits in support of the application for admission, criminal activity, unethical or questionable business practices, failure to disclose nonpublic ethical complaints filed against the applicant by the attorney grievance committee of another state, pleading *nolo contendere* to a charge that the applicant failed to file federal income tax returns, and use of judicial processes in a way inconsistent with the standard to be expected of a lawyer.¹⁶⁸

160. *Eagle v. Morgan*, 88 F.3d 620 (8th Cir. 1996).

161. *Bainbridge Island Police Guild v. City of Puyallup*, 259 P.3d 190 (Wash. 2011).

162. 88 F.3d at 624.

163. *Id.*

164. Blum, *supra* note 28 at §4.

165. *Id.*

166. *See generally* Blum, *supra* note 28.

167. *Id.*

168. *Id.*

Bar admission offices claim that misconduct can be offset by rehabilitation.¹⁶⁹ However, state bars continuously deny students based on expunged records. Some bar associations will admit students with expunged records, while others will deny them.¹⁷⁰

The fundamental problem is the discrepancies among courts as to what constitutes good moral character.¹⁷¹ The definition of good moral character varies among courts. Some courts refer to past character.¹⁷² Other courts focus their analysis on an applicant's present characters. This discrepancy is unfair to state bar applicants.¹⁷³

With respect to bar admissions, one court has said, "on the record presented, a reasonable person could fairly find that there are substantial doubts about the prospective applicant's honesty, fairness, and respect for the rights of others and for the laws of the state and nation."¹⁷⁴ Another court only denied applicants based on lack of good moral character where they were involved in a crime of moral turpitude.¹⁷⁵ In Florida however, an applicant was denied solely for failure to file income taxes.¹⁷⁶ It is obvious courts and state bar admission offices have been inconsistent in defining good moral character. Absent a national standard, applicants will continue to be unfairly burdened when applying for admission to the bar.

D. *The Conundrum of Lying*

The proponents who support disclosing expunged offenses on law school and bar applications assert it is important to get an overall assessment of the type of person applying to become a lawyer.¹⁷⁷ The disclosure question isn't meant to circumvent a court order but provide context to a procedural tactic that allows one to legally lie about their potential culpability. These officials are aware that an expunged offense may be the result of actual innocence or shrewd maneuvering by a skilled lawyer. The application process requesting disclosure gives

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Reese v. Board of Com'rs of Alabama State Bar*, 379 So. 2d 564, 577 (Ala. 1980).

175. *In re Menna*, 905 P.2d 944, 991 (Cal. 1995).

176. *In re Florida Bd. of Bar Examiners*, 373 So. 2d 890, 890 (Fla. 1979).

177. Letter from Anne Lukingbeal & John DeRosa to Students re Law Student Registration with State Bar Authorities, Registration to Sit for July 2012 Bar Exams, and Character and Fitness Issues (Aug. 2011) (available at http://support.law.cornell.edu/students/forms/Deans_Notice_Registration_State_Bar.pdf).

the applicant an opportunity to address the circumstances surrounding the offense.¹⁷⁸ The cautionary advisory to applicants is that those who choose not to disclose the expunged offense and ignore this safety net risk leaving the board with a skewed impression if the offense is discovered.¹⁷⁹ The boards' objective is to determine whether the applicant can appreciate the responsibility that comes with being a lawyer and trusted not to injure future clients and abide by the rules of professional conduct.¹⁸⁰ George Zimmerman's interest in attending law school after his recent acquittal for murder is the type of situation that highlights why a comprehensive evaluation of an expunged offense is necessary in order to get an accurate representation of an applicant.¹⁸¹ The acquittal by the Florida jury meets the criteria for an expunction in all jurisdictions and allows him to deny on most law school applications any connection to any criminal offense such as being cited, taken into custody, arrested or charged.¹⁸² The concept of using prior offenses that didn't result in a conviction is routinely introduced in the punishment phase of a trial and juries are asked to determine whether the best indicator of future behavior is past behavior.¹⁸³

V. CONCLUSION

A law school applicant is required to disclose a criminal record to the character and fitness division of a state bar even if it has been expunged or sealed. As a result, confused applicants risk being penalized for failing to provide information the law specifically allows them to deny exists. Because of the negative impact this conflict can have on an applicant, a national standard is necessary to balance the competing interests of an applicant wanting to get a fresh start without the stigma of a criminal history and ensure the goal of the character and fitness standard is fulfilled. All of the states have some version of an expunction statute with varying degrees of eligibility and application. The statewide variance also applies to the criteria for assessing an applicant's good moral character. Predictably significant inconsistencies in admission would result for applicants denying the existence of an arrest as permitted by law but discovered by the certifying agency.

178. Gepford McCulley, *supra* note 1, at 851.

179. Letter, *supra* note 177.

180. *Id.*

181. *Id.*

182. Jessica Chasmar, *George Zimmerman, Now a Free Man, Wants to Go to Law School*, WASH. TIMES (July 15, 2013, 2:30PM), available at <http://www.washingtontimes.com/news/2013/jul/15/george-zimmerman-now-free-man-wants-go-law-school/>.

183. FLA. STAT. §§ 943.0585 & 943.059 (2012).

This perceived discrepancy in being truthful would require mini-trials within the confirmation process to clarify responses. Potential outcomes range from an outright rejection of an applicant to conditional licensing for a probationary period of time. As a result, a national uniform standard is necessary to ensure that law school applicants are not disciplined by state bar admissions for following the law. In order to remedy the problem of conflicting and random outcomes, a proposal has been created for all state bar admissions to adopt a uniform standard that coincides with the expunction laws in the particular state. This assessment permits each legislature to determine the offenses that merit expungement and precludes state bar admissions from peering behind mandated court orders. As a result, applicants can answer without fear of reprisal and no longer have to speculate when it is proper to disclose criminal history information. This does not diminish state bar admissions' ability to evaluate each applicant; it merely aligns the criteria used to evaluate the applicant with the prevailing law of each state. Therefore, a national standard is necessary to ensure the intent of the law is upheld and not circumvented by the agency responsible for certifying the applicant will follow the law.
