

May 5, 2013

## Wrongfully Convicted Often Find Their Record, Unexpunged, Haunts Them

By JACK HEALY

In Wisconsin, [Audrey Edmunds](#) served 11 years in prison in the shaking death of an infant girl for whom she had been baby-sitting. In 2008, a mountain of new medical evidence cast so much doubt on the case that a higher court overturned her conviction and set her free. Leaving prison, Ms. Edmunds hoped that would be the end of it.

But a few months later, as she applied for a secretarial job with an office-supply company, her conviction for first-degree reckless homicide popped up in a background check. Sorry, she was told. She tried to get work with an airline, but heard a similar rejection.

“I hate it,” said Ms. Edmunds, 52, who now lives in northern Wisconsin. “They put us through enough to begin with. They don’t give us any assistance. I’m glad to be out, but there’s got to be more support. I don’t like having this awful nightmare of a cloud hanging over me.”

Across much of the country, sealing or clearing a criminal record after a wrongful conviction is a tangled and expensive process, advocates and former prisoners say. It can take years of appeals to courts and pleas to governors to wipe the slate clean. Even then, many felony convictions remain on federal databases and pop up during background checks or at traffic stops.

Aside from the practical challenges — a criminal record can impede big things like finding housing and employment, and smaller things like getting a hunting license — people who have been exonerated say they feel unfairly marked, branded with a scarlet letter from a justice system that should not have locked them up in the first place.

“It was destroying my life,” said [Sabrina Butler](#), who was sentenced to die in Mississippi for the 1989 death of her infant son, then exonerated in 1995. “It’s always there.”

Clearing a criminal record can take years and cost thousands of dollars in legal fees, and differs widely state to state. Many require that defendants return to court to prove their innocence, a higher hurdle than showing that charges were dismissed or a conviction was overturned. In some states, a governor’s pardon is needed. It can be a complex process, which advocates say is made even more difficult by a lack of support services for the exonerated.

Ms. Butler said she realized her arrest was still on the books after she failed a criminal-background check while trying to buy a shotgun. She said she applied for jobs at restaurants and retailers, and was turned down every time. After she petitioned the state, her record was expunged last July — 17 years after she was released.

With hundreds of men and women now freed from prison by exculpatory DNA tests or successful appeals by advocacy organizations, more states are grappling with questions of what they owe the wrongfully convicted, and how to prevent former prisoners from slipping into poverty or back into prison.

A study of 118 exonerated inmates led by Evan Mandery and Amy Shlosberg, two criminal-justice researchers, found that one-third still had criminal records, sometimes more than a decade after their release. They found that former convicts with clean records were less likely to return to prison than those whose records had not been expunged.

Some states, including New York and Illinois, have a straightforward process for erasing or sealing criminal records after a wrongful conviction. But legal researchers say that most state laws are out of date with the recent waves of exonerations, and require onetime convicts already declared not guilty to once again prove their innocence.

“Even in the best case, it is difficult to move beyond a prison sentence,” Mr. Mandery and Ms. Shlosberg wrote in their study, which is now under review at *The Journal of Criminal Law and Criminology*. “The wrongful conviction serves as a permanent, undeserved stigma.”

Of course, blotting out a criminal record does not solve everything. Researchers have found that high percentages of the wrongfully convicted slide into poverty or substance abuse as they struggle to rebuild a life outside prison. How do you explain a 10-year gap on a résumé? How do you answer a yes-or-no question from a prospective employer asking whether you have ever been convicted of a felony?

“Employers, if they see a homicide conviction, dismissed or not, they’re not going to get past that,” said Sandra Westervelt, an associate professor of sociology at the University of North Carolina at Greensboro, who has written extensively about exonerated death-row inmates. “The conviction is still there. You’re stuck.”

In Alabama, [Gary Wayne Drinkard](#) said he was pulled over for a routine traffic stop after being released from prison. His 1995 murder conviction had been overturned, and a second jury trial found him not guilty. But, he said, the charges popped up when the officer ran a background check. Mr. Drinkard said he was held in the squad car for 30 minutes while the police checked out his story.

“They knew I’d done something wrong,” he said. “And here I was on the street.”

So far, he has not tried to have his record expunged. "I don't even know how to file the petition," he said.

Sometimes, the lingering record reflects a court system that views exonerated defendants as not guilty, but not innocent. In Philadelphia, [Vincent Moto](#) spent a decade behind bars on charges that he and another man had dragged a woman into a car at gunpoint, robbed her and raped her repeatedly. He was convicted after the victim identified him as one of her attackers, but DNA testing later showed that none of the samples from the crime scene had come from Mr. Moto. In 1995 his conviction was vacated and he was freed in 1996.

In the 17 years since, he said the charges have trailed him like a shadow, frustrating his efforts to get work. He is unemployed and lives on a monthly disability check from the federal government. But he is behind on property taxes on his Philadelphia home, and worries that a foreclosure is coming. He does not sleep much these days.

"It's still on your record," he said. "Who wants to take a chance on someone who was locked up for 10 and a half years?"

In 2007, he filed a petition asking that his record be expunged, but Pennsylvania fought the effort, arguing that based on the victim's testimony, the state still viewed Mr. Moto as the assailant, even though prosecutors did not believe they could convict him again. After conflicting rulings from lower courts, the Pennsylvania Supreme Court ruled that the charges should stay on Mr. Moto's record.