

# THE CHICAGO REPORTER



## It is Hereby Ordered...

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Linda Parker's final paycheck came to the mailbox of her Bronzeville home a week after her 2004 accident. When her daughter retrieved it, she brought it upstairs into the bedroom where the then 47-year-old lay injured from her fall at work. A misstep on a ladder had dumped Parker on the ground, crushing three of her higher vertebrae, immobilizing her for a few weeks. The paycheck was her lifeline. The divorcee knew that for the foreseeable future—until she healed and found a new job—she would have to rely on her savings, investments and disability insurance.

Parker, whose name has been changed to protect her identity, has dark brown skin, full lips, prominent cheekbones and full moon eyes. Her gray hair is soft, wavy and often piled into a messy bun. A gap separates her front teeth. With her strong resume and excellent leadership skills, she seemed destined to rebound from her injury. She also had incredibly good luck.

The year after her fall, Illinois lawmakers amended the state law that allows judges to seal or expunge the criminal records of people with certain low-level felony or misdemeanor arrests or convictions. The amendment liberalized the then 74-year-old Criminal Identification Act by loosening its eligibility requirements. It was designed to help vastly more ex-offenders avoid further legal trouble by finding jobs and otherwise contributing to society.

Despite Parker's considerable professional talents, she needed this act of grace. In 1989, she was arrested and detained in Cook County Jail for about a week, after a financial dispute with her disabled daughter's home-health nurse erupted into a fistfight. Under the 2005 amendment, she returned to court in 2006 and convinced a judge to order the sealing of her arrest and conviction record.

Parker soon learned she would never fully heal from her injury. So after grieving her permanent disability, she decided in the fall of 2007 to make herself useful by becoming a foster parent. But on the brink of getting her foster care license, a new crisis emerged. When the hiring manager at the foster care agency ran her background check, he saw the two charges she had racked up in 1989. The manager showed up at her door demanding answers. Parker didn't have any. She naively believed, like her attorney and the thousands of Illinois ex-offenders who were requesting sealing and expungement every year, that whenever a judge ordered one, it actually happened. She called her attorney to find out what went wrong. "I went to his office, and he said, 'You're about the 50th person that has come into my office that they have did this to, and it's stopping everybody from doing one thing or another,'" she said.

Across the state, thousands of ex-offenders and their legal advocates have discovered a bitter truth: The sealing and expungement system that Illinois lawmakers patted themselves on the back for liberalizing in 2005 is defective. When a judge ordered the Illinois State Police to seal or expunge the records of an ex-offender, sometimes it happened; sometimes it didn't.

The police made the decisions using different criteria than the judges. They aren't sure when the policy began but provided The Chicago Reporter with data quantifying the practice on March 16.

The Reporter learned:

- Statewide, about 1,800 of the 21,000 sealing and expungement orders issued after the amendment, between 2006 and 2008, went unenforced.
- An additional 900 or so orders went unenforced before the amendment, starting in 1991, when some ex-offender advocates believe the practice began.
- Statewide, 5 percent of the 412 court orders issued in 2008 went unenforced.
- Orders issued by Paul P. Biebel Jr., presiding judge of the Circuit Court of Cook County Criminal Division, got ignored about 13 percent of the time in 2007.

The statistics differ from the numbers released by the Reporter on March 13, because the police retracted the data they issued on March 5. Lt. Scott Compton, the chief public information officer for the police, said his department miscalculated the earlier figures. Rather than counting the total number of court orders they received and denied, it tallied the number of criminal charges on each order, he said.

The police's practice is one reason Illinois ex-offenders still struggle finding jobs and otherwise re-entering society. Eight months after release, 65 percent of Illinois, Texas and Ohio ex-offenders who participated in an Urban Institute study published in October 2008 said they had been employed at some point since their incarceration, but less than half were currently employed. According to the Equal Employment Opportunity Commission, a federal agency that enforces fair hiring policy, this unemployment adversely and disparately affects African Americans and Latinos, who dominate the nation's ex-offender population.

In Illinois, African Americans bear the brunt. They made up 15 percent of Illinois' total population but 61 percent of Illinois parolees in 2007, according to the Illinois Department of Corrections. The respective statistics for white people were: 79 percent of total population and 30 percent of parolees. Latinos accounted for 15 percent of total population and 8.6 percent of parolees.

The sealing and expungement law is only as good as the people enforcing it, said Michael Sweig, a legal studies professor at Roosevelt University and public policy liaison at Safer Foundation, a Chicago nonprofit that helps ex-offenders re-enter society. "You can have all the legislation in the world, but if you're going to have an agency like the police that's going to second guess the court, I don't know how you're going to stop it and I don't know how you're going to guard against it," he said. "If you can't get the king to follow the court, that's a problem."

The police's reasons for refusing to follow certain orders is best explained by court briefs its attorneys filed defending the practice. The agency took its cue from this passage in the Criminal Identification Act, added in 1991: "Any court order contrary to the provisions of this Section is void." Police believed this so-called void-order provision mandated their defiance. "A void order may be attacked at any time and in any court—either directly or collaterally," said an October 2008 court brief.

Disputes between the police and judges increased after the 2005 amendment, in part, because the amendment is dense and complicated. It contains clauses that say, for instance, convictions are sealable when "at least 4 years have elapsed since the last such conviction or term of any sentence, probation, parole, or supervision, if any, whichever is last in time." Most judges interpreted this waiting period to mean that living crime-free for four years entitles ex-offenders to seal any eligible offense. Police said it meant eligible offenses could only be sealed if they are at least four years apart.

Disputes also existed over whether some misdemeanor and felony arrests that don't lead to conviction could be sealed. Judges said yes. Police said no.

From 2007 to 2008, 126 Chicago-area ex-offenders participated in litigation urging judges to subdue the police. Police were overstepping their authority, the ex-offenders' attorneys said. Only a judge can decide who deserves sealing and if police disagree with that judge, the law says they should file a notice in court, said Chris Wilmes, one of four ex-offender attorneys who worked on the litigation. That gives ex-offenders a chance to respond by pleading their case, their civil right. Ultimately, the only person who can void an order is a judge, said Wilmes, a staff attorney with the Legal Assistance Foundation of Metropolitan Chicago. "That's the way disputes get resolved in America, and I think it's a pretty good method," he said. "You don't want to have this executive or police state that gets to sort of decide whether or not to follow orders."

Cook County Circuit Court Judge Ronald C. Riley scolded the police too. He was one of two judges refereeing the Chicago-area litigation, until his January retirement. Police denied 6 percent, or 174, of his orders between 2004 and 2008. At a June 2008 court hearing, he condemned the police and threatened to find it in contempt of court, saying: "I've said this before, and you were here. I need my orders complied with ... I said that your organization was an arrogant organization ... I was not happy that my orders weren't being complied with ... I probably had 50 or 60 [orders at the time] where the Illinois State Police said, 'Screw Riley!' Somebody's got to be in control. That's me."

In January—after 18 months in court with judges Riley or Biebel—police acquiesced, renouncing its practice in a settlement approved by the court. The police now agree to follow judges' orders unequivocally. If officials disagree with orders, they'll file an objection in court and await the judges' decision.

But their newfound submissiveness only solves part of the problem. It does nothing for the thousands of ex-offenders

whom they've falsely denied sealing and expungement, possibly, since 1991. Wilmes and his legal partners have so far won sealing for only 121 of them.

By mid-March, new developments gave the attorneys reason to believe the matter would be resolved. After learning about the number of voided orders from the Reporter, Judge Biebel held the first in a series of meetings with representatives from the Office of the Illinois Attorney General and legal aid attorneys on March 16 to devise a plan for the police to comply with all outstanding court orders.

"I've been telling you from the beginning that this involved thousands of people," Wilmes said. "I tried to express the gravity of this situation. I'm happy that there is a flurry of activity, and that the attorney general is seeing the real injustice that's going on here, and that they seem willing to try and hold the Illinois State Police's feet to the fire.

"I'm disappointed that it took so long," Wilmes added.

From 1991 until 2007, no one challenged the Illinois State Police's void-order policy, some ex-offender advocates believe. Maybe no one knew about it. Legal aid clinics in Chicago rarely interacted with the police during that time because their clients didn't need to. Almost none of them qualified for sealing and expungement under the stringent requirements of the then applicable law. To get a record expunged or sealed under it, everything on your record had to qualify.

Chicago's legal aid attorneys only learned about the void-order policy after the 2005 amendment relaxed the eligibility requirements. From 2006 to 2007, annual applications for sealing and expungement jumped 68 percent statewide, forcing the attorneys into frequent police contact. That winter, strange letters started arriving from the police, denying all or part of a sealing order. The letters said, "THE RECORD IDENTIFIED BELOW IS NOT ELIGIBLE TO BE SEALED OR EXPUNGED," but did not supply a specific rationale, bewildering the attorneys. Until they understood police reasoning, they couldn't challenge it.

State Rep. Constance "Connie" Howard, a sponsor of the 2005 amendment, heard about the letters and began working to pass a law that would forestall the looming crisis. But the bill, HB1831, eventually died in the house.

Attorneys at Cabrini Green Legal Aid, widely recognized as Chicago's leading sealing and expungement advocate, initially tried to solve the problem without litigation or legislation. In the winter of 2006, they called the police's bureau of identification, which processed sealing petitions, to ask for help decoding them.

Beth Johnson—a tall, thin, red-faced, blonde with thick lips and a smoker's husky voice—worked for Cabrini Green Legal Aid Clinic and made some of the calls. The people who manned the phones didn't seem to understand the policy or the law, she said. They just regurgitated what they had been told about disputed clauses, such as waiting periods. "They would just be like, 'Oh, she got picked up within four years of that conviction,'" Johnson said. "And I would be like, 'Ok, but the statute reads this.'"

Their response: "Nope, she was picked up and she can't seal that record," Johnson said.

Going to court was unavoidable, Johnson and her legal partner, Marjie Nielsen, director of the ex-offender advocacy program at the Chicago Legal Clinic, decided. They approached Wilmes and another attorneys for help. Judges sympathized with their clients immediately. They had been hearing about the denial letters from ex-offenders who came to court complaining about them. At least two judges had required police officials to appear in court and explain themselves.

Between July 2007 and January 2009, litigation persuaded the police to seal 121 ex-offenders' records. Parker's was one of them. She had been one of the unlucky ones who never got a letter. "The whole thing was unfair," she said. "The judge told the [police] to expunge or seal the file, and they should have done what the courts ordered them to do."

Another client, also an African-American woman, was even unluckier than Parker. A subcontractor for the Chicago Public Schools had just hired her to drive busses, and her boss was ready to do her background check. She stalled him for awhile by withholding her permission, hoping the police would act soon to seal her dismissed misdemeanor assault charge. They eventually did. But the delay was too long. Her boss stopped waiting for her to sign off and fired her.

A few weeks after the settlement, in early February, Wilmes sat hunched over an egg salad sandwich and bag of Doritos, in a dimly lit and cavernous cafeteria near his downtown office. He is tall and lanky, with a broad, thin face, a crooked nose and bushy eyebrows. He mentally inventoried the pile of criminal records cases on his desk: some against employers who've refused to hire innocent arrestees, some against background-check companies who've falsified criminal records. He expected then that there would be more cases against the police. Any sealing orders submitted to the agency prior to Jan. 7, the day the settlement took effect, were still subject to police defiance at that point.

But by mid-March, the situation was rapidly changing. On March 16, legal aid attorneys and representatives from the attorney general's office met with Judge Biebel in an effort to compel the police "to take immediate action to address damage done by years of defiance of court ordered expungements and seal[ing] orders," said Robyn Zeigler, press secretary for the attorney general's office.

The parties also discussed conducting an audit to determine the number of orders at issue and devising a strategy to reach out to ex-offenders with voided orders, Zeigler said.

"There's still thousands of orders out there that are being ignored," Wilmes said. "It's a terrible problem. People are losing out on jobs, because the [police] think they don't have to follow what judges say."

In the 18 years since the void order provision became law, only one judge ever found the police in contempt of court or even invalidated its interpretation of the void-order provision. "We wanted a ruling saying that, 'No matter what you think about the substance of my orders, you cannot just ignore them,'" Nielsen said. "You cannot say that they're void." Judges also wanted that ruling, Johnson and Nielsen said. But whenever a judge threatened the police with contempt of court, they made sufficient incremental changes to avoid it.

The Reporter contacted all six current Cook County judges and to the now retired Riley seeking comments. Only one, Judge Marjorie Laws, Riley's replacement, responded on the record, saying in a voice mail she was too new to have any relevant insight.

The Illinois assembly could force the police to retroactively enforce the denied orders too, Johnson and Nielsen said. Resurrecting and enforcing all old sealing orders might require the police to buy new computer systems and hire new staff, they said. By now, the legislature could have passed a law financing and mandating this. Yet, it has no such plans.

The Reporter repeatedly called 21 legislators—including the 16 members of the committees responsible for such legislation, the house and senate judiciary committees—seeking comment. Five lawmakers who responded said they'd never heard of the problem and couldn't comment until they'd studied it.

The reason nothing has happened is that lawmakers think voters want them to be tough on crime, Nielsen said. "The general public needs to change their attitude or perception of ex-offenders," she said. "We're talking about people who have had to show that they've made changes in their lives, people who have families and who need to go to work."

Anyone with an unenforced sealing order can call a legal aid attorney for help, and, if necessary, face-off with the police in court. The ex-offender could also try visiting the police's Springfield office with the unenforced sealing order in hand and demanding that clerks in the bureau of identification enforce it. It worked for Johnson's client when he did it in December.

But Johnson and Nielsen want systemic justice. They are working with a Chicago law firm, Winston and Strawn, to get it. If the police are still refusing by summer to dig up and seal records en masse, the firm will take the matter directly to the Illinois Supreme Court or file a class action lawsuit. "We would still like the [police] to do the right thing without having to escalate this anymore," Nielsen said. "Really, nobody should have to litigate this."

*Contributing: Rolando Ithier. Jenaun Armstrong, Wade Askew and Jennifer Femicola helped research this article.*