

Going One Step Further: Forgiveness

By Minnesota State Senator Julianne Ortman

Our response to crime should be to arrest, charge, convict, and punish. But in some very limited cases our response can and should go one step further: some people have earned society's forgiveness and a fresh start in life.

Our response to crime should be to arrest, charge, convict, and punish. That's what we do in Minnesota, and our law enforcement officers and criminal justice agencies work hard every day in accomplishing these goals. I am thankful for their sense of duty and their service and commitment to keeping our communities safe. But in some very limited cases our response can and should go one step further: some people have earned society's forgiveness and a fresh start in life.

The idea of "expungement," or sealing (not destroying) someone's criminal record for such a purpose is not new in Minnesota. Our current law is a mishmash and requires our immediate attention. We have given the courts limited statutory authority to grant expungements, but in such a restrictive fashion that many courts, out of frustration, have decided to take matters into their own hands and grant them even when the legal authority to do so is question-

able. The result is very inconsistent and lacking in public accountability because some courts grant them freely, others not at all. In these cases there are no standards for consideration and no process that ensures and protects the public's interest.

The bill working its way through the Senate creates a process for our courts to determine whether an expungement applicant has fully rehabilitated him/herself and has earned society's forgiveness. The judges must consider the applicant's criminal record, employment background and chemical dependency

treatment efforts, the severity of the crime(s) and the length of time that has elapsed, whether there is a continuing risk to public safety, the concerns of victim(s) and the objections of the County Attorney and law enforcement, if any. If the public's interest in keeping the records available to the public outweighs the interests of the applicant, the Court would be required to deny the request.

These hearings will be public, with opportunity for notice to the public as well as media. The orders are appealable. But once an order is granted, then all government agen-



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cies will be required to seal records from the public (law enforcement agencies will always have complete access). Then the applicants and prospective employers and landlords will be able to rely on the orders, and the applicants will be given a fresh start.

The proposed legislation has additional protections: you cannot apply if you are on probation or if you have charges pending. Sex offenders and violent offenders may not apply. I propose further protections that will allow only one expungement per offender, and a trigger that the entire criminal record becomes fully public again in the event of a subsequent felony conviction.

Because of advances in technology, criminal records are now available at a moments notice and for any reason. For Minnesotans with a criminal record, it is next to impossible to find a job or rent an apart-

ment; the criminal record itself often becomes an obstacle to rehabilitation. If you can't find a job or a home, where will you go and how will you support yourself or your family? We are preventing so many people from engaging in the very positive behavior we are trying to encourage!

When we sentence these offenders to a life without stable employment and a home, we sentence ourselves to providing homeless shelters, extended welfare benefits, health care, foster care programs, and high rates of recidivism. Instead we should be intervening in people's lives with vigorous re-entry programs, chemical dependency programs, training and education, and the opportunity to earn a fresh start.

Our judges are capable of determining on a case-by-case basis whether someone has rehabilitated himself and earned a fresh start. With the

new process being proposed, our judges will have the opportunity to hear from correctional supervisors, treatment counselors, employers, members of the public, victims, law enforcement and prosecutors. If there are risks to society, they will be identified and considered.

The only just way to determine whether society is ready to forgive must be on a case-by-case basis. Forever is a very long time to be unforgiving, and it is a very long time to sentence offenders and our society to lives without hope.

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