

# TECHNICAL AND OPERATIONAL CHALLENGES OF IMPLEMENTING CLEAN SLATE

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*Research Findings*



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## *Research Findings*

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## Executive Summary

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The consequences of a criminal conviction extend well beyond the immediate sentence authorized by statute and imposed by a judge. A legion of collateral consequences accompanies a criminal conviction and function to reduce, restrict, or exclude a person convicted of a felony from civic duties and benefits beyond mere reputational damage. Many states have recently adopted, or are considering, Clean Slate legislation, which expands records clearance provisions in an effort to reduce or eliminate collateral consequences associated with having a criminal record. Rather than requiring all records subjects to file a petition, Clean Slate efforts *shift the burden to the state to initiate the process* and can provide immediate relief for those who have successfully completed their sentence and met other qualifying conditions. Based on its review of practices in 11 states, SEARCH summarized state records relief practices and highlights the technical, logistical, and operational challenges faced by states in implementing and automating these practices.

States generally take two different approaches to clearing criminal records. Records can be *expunged* (i.e., deleted or destroyed) or they can be *sealed* (which restricts public access to the record while retaining it for authorized criminal justice purposes). The terms *sealing* and *expungement* vary from state to state, however, and are often used interchangeably.

Eligibility criteria for both petition-based and state-initiated records clearance includes such factors as (a) the nature and seriousness of the offense, (b) successful completion of the sentence, which often includes the payment of court-ordered fines, fees, and restitution, and (c) completion of a crime-free waiting period following successful completion of the sentence. Determining eligibility is a complex, complicated, and labor-intensive process. It has traditionally required considerable time and expense on the part of the applicant in completing a detailed petition seeking relief and payment of fees to obtain copies of official records, certifications for relief, and filing fees associated with the petition. Additional expenses may be incurred in attending hearings regarding the petition or obtaining the assistance of legal counsel.

Even with Clean Slate provisions, jurisdictions routinely must access and review multiple sources of data to determine whether candidates meet strict eligibility criteria. States seeking to automate records relief to support Clean Slate policies are encumbered by information systems that are often independent and siloed within numerous state agencies, including courts, corrections, prosecutors, criminal history repositories, and financial systems tracking payment of fine, fees, and restitution. Moreover, data quality and accessibility are significant issues given missing, incomplete, or manual records that are not well structured or tightly linked across systems.

As states implement Clean Slate, several have relaxed some eligibility criteria in order to expand records relief opportunities and address equity concerns. Since the state initiates the records clearance process, no petition must be filed and filing fees are no longer required. Some states have eliminated out-of-state background checks to determine whether the individual has outstanding charges or disqualifying subsequent convictions, relying instead on in-state checks alone, and at least one state has waived payment of fines and fees in order to qualify for relief.

## Introduction

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The primary focus of this research project was to assess the design, scope, implementation, and costs of record clearance through clean slate initiatives in eleven (11) states,<sup>1</sup> selected in consultation with the Clean Slate Initiative. Program staff documented the legal, policy, operational, and technical challenges that the states confront in planning and implementing the record clearance objectives of clean slate legislation.

To assess the implications of adopting clean slate legislation, the project team reviewed existing statutes in each state to assess current provisions for sealing and/or expungement of criminal records, including eligibility criteria, access to records, notice (if any) to eligible individuals, filing requirements, costs, and other factors. The team assessed changes that may be needed to accommodate the automatic record clearance provisions of Clean Slate legislation. Accommodating automatic sealing and/or expungement of records will require substantive changes in current business practices and potentially significant redesign, upgrades, and complex enhancements to automated record and case management systems of multiple agencies in the criminal justice enterprise.

## Background

### *The criminal history record*

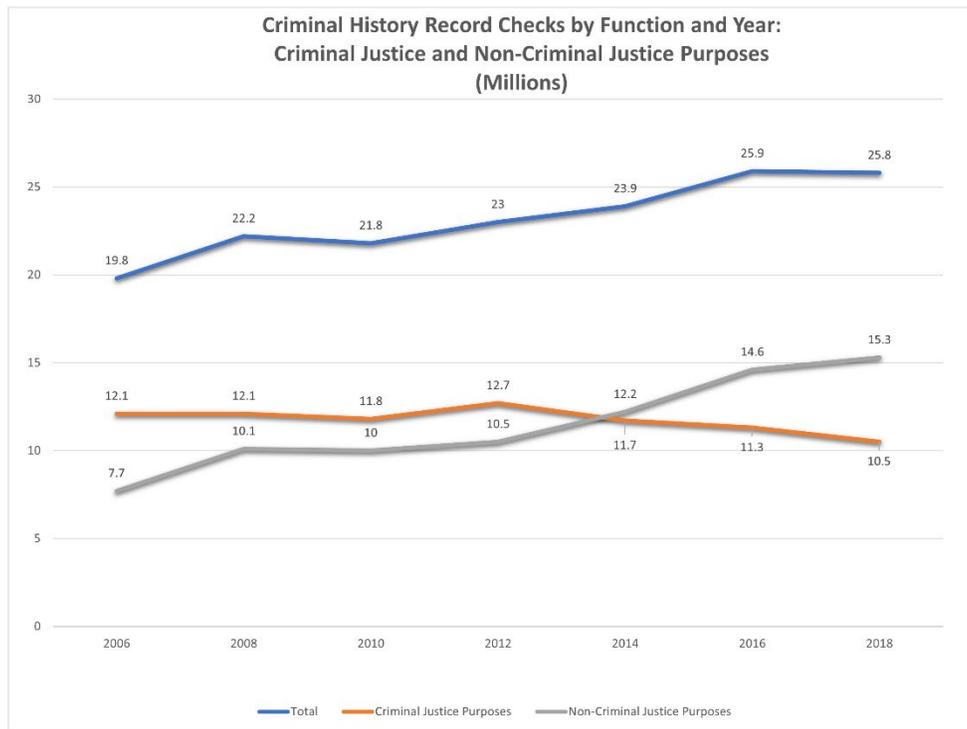
The criminal history record is a biometrically based, longitudinal history of a person's involvement in the criminal justice system, from arrest through disposition, sentencing, correctional and community supervision, and discharge. State and local law enforcement agencies created and maintained the first such criminal history records, colloquially referred to as "RAP Sheets,"<sup>2</sup> primarily for investigative and identification purposes. Those records resided within the originating agency, varied in content and structure, and were not generally shared with other jurisdictions.

As police departments grew larger, they required a better way to identify individuals, and record, curate, and share this compiled information with one another. Computer and communications technologies have enabled the electronic storage, retrieval, and exchange of criminal history records across state lines.<sup>3</sup> Over the past 50 years, states have greatly expanded their automation of criminal history records.<sup>4</sup> As of 2018, state repositories held records for over 112.5 million subjects (an increase of 22 percent over 2008); 97.2 percent of those records were automated.<sup>5</sup>

### *Growing non-criminal justice use of criminal history data*

Historically, most users of criminal history records have been criminal justice practitioners – police, prosecutors, judges, and others who were investigating crime, making charging decisions, or assessing a defendant's risk to the community at bail or their culpability at sentencing decisions. Over the past several decades, we have witnessed a vast expansion in the use of criminal records for non-criminal justice purposes. The adoption of the Gun Control Act of 1968<sup>6</sup> and Brady Act in 1993,<sup>7</sup> in particular – both restricting firearms purchases – substantially increased demand for criminal records checks. Although firearms purchases have represented the single largest monthly volume of non-criminal justice transactions using criminal history records, they are not the only, or perhaps not even the most consequential, civil uses of criminal records.

State repositories have seen a material shift in primary uses of criminal history records, with non-criminal justice queries increasing dramatically. From 2006 to 2018, the total number of fingerprint-based record checks increased 30.3 percent (from 19.8 million to 25.8 million). Also, by 2018 the number of civil fingerprint-based searches outstripped the number of criminal fingerprint searches by nearly 50 percent (15.3 million compared to 10.5 million), accelerating a trend first observed in 2014.<sup>8</sup>



Source: Becki R. Goggins and Dennis DeBacco, *Survey of State Information 2020*.<sup>9</sup>

These figures only reflect background checks administered by state criminal history records repositories. Commercial backgrounding service providers are able to compile a significant range of personal data on people from a host of public sources, including court records, police and correctional facility records (often including mug shots), driving records, property and tax records, and social networking sites. Consequently, commercial providers are often able to assemble a robust and exhaustive history of a person’s life.

### Collateral consequences of criminal records

Imposing a sentence following a criminal conviction is a complex and multifaceted endeavor. The sentencing judge typically has a vast array of options that can be imposed individually or blended into a single sentence, including fines, restitution to a victim, payment of court and other administrative costs, community service, home confinement, compulsory participation in treatment programs, probation (and compliance with a sweeping variety of conditions), confinement in a jail or a penitentiary, and subsequent parole and compliance with conditions of release. Depending on the crime of conviction, the subject may also face lifetime registration and community notification of one’s irrevocable status as a sex offender.<sup>10</sup>

The consequences of a criminal conviction extend well beyond the immediate sentence authorized by statute and imposed by a judge.<sup>11</sup> A legion of *invisible punishments*<sup>12</sup> or collateral consequences accompany a criminal conviction and function to significantly reduce, restrict, or exclude the felon from civic duties and benefits beyond mere reputational damage including loss of the right to vote,<sup>13</sup> to serve on a jury,<sup>14</sup> to access public housing,<sup>15</sup> to be admitted to college or graduate school,<sup>16</sup> to obtain gainful employment,<sup>17</sup> the ability to obtain a professional license for any of a variety of careers,<sup>18</sup> and other disabilities.

Recent research has confirmed the many positive results when persons are able to seal or expunge their records. Prescott and Starr concluded that persons who were able to expunge their criminal records were able to obtain gainful employment and their wages went up by 22 percent within one year.<sup>19</sup>

### *Research on redemption supports efforts to limit collateral consequences*

A growing volume of contemporary research on risk and recidivism has focused on what Blumstein and Nakamura have termed *redemption*, i.e., the point in time where an offender's risk of committing future crime has diminished to the same probability as the general population.<sup>20</sup> The critical finding in recent scholarship is that the risk of reoffending generally declines over time. "Although past wrongdoings are a useful sign of future trouble, this information has decreasing value over time because the risk of recidivism decreases monotonically with time clean."<sup>21</sup> As a consequence, excluding all persons with criminal records from voting, gaining meaningful employment, accessing low-income housing, education, and other opportunities represents a significant burden, while not making the community measurably safer.<sup>22</sup>

Research by RAND confirms that the risk of recidivism is not immutable,<sup>23</sup> concluding that the majority of individuals with a conviction do not have a subsequent conviction; a person's likelihood of reoffending declines rapidly as more time passes without a conviction; and, after a sufficient period without a new conviction, even people initially deemed to be at the highest risk for reoffending (people with a more extensive criminal background) transition to risk levels that appear similar to those who were initially deemed to be at the lowest risk.<sup>24</sup>

Given mounting empirical evidence that the level of reoffending does not justify the myriad collateral consequences that accompany a criminal record, compounded by a growing consensus that the breadth of legal and civil disabilities for persons who have effectively "paid their debt to society" by successfully completing their sentence is unnecessarily punitive, we have seen mounting efforts in recent years for a variety of records relief programs.<sup>25</sup>

Initiatives have included *Ban the Box*<sup>26</sup> (to prohibit employers from asking about a person's criminal record on the job application), and a *Certificate of Rehabilitation*<sup>27</sup> (for persons who have completed their sentence and remained crime-free for a set period of time). Love and Schlüssel report that "In 2019, 43 states, the District of Columbia, and the federal government enacted an extraordinary 153 laws aimed at reducing barriers faced by people with criminal records in the workplace, at the ballot box, and in many other areas of daily life."<sup>28</sup> The statutes addressed sealing and expungement of criminal records, restoration of voting and civil rights, and a host of other reforms designed to remove or neutralize the legal, economic, and social consequences associated with a criminal history record.

## Records Relief Practices Generally

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The growing interest in records relief reform has contributed to the rise of Clean Slate. Clean Slate has led to the creation of records clearance initiatives at the state level that facilitate the process of records clearance through simplification and automation.<sup>29</sup> Rather than requiring all records subjects to file a petition, Clean Slate efforts *shift the burden to the state to initiate the process*. Clean Slate initiatives are often referred to as “automatically” clearing criminal records for eligible cases and individuals; the process is not automatic *per se*, but rather *automated* at least to some degree.<sup>30</sup> The state assumes responsibility for identifying eligible persons and cases based on statutory requirements and initiates records clearance processes on their behalf. The state does not file a petition for records clearance to initiate the process but completes research identifying eligible candidates based on detailed analyses and review of established court case management records, state criminal history records, and other systems and data to confirm eligibility.

States generally take two different approaches in clearing criminal records, and the two are not mutually exclusive. Records may be *expunged* or they may be *sealed*. The terms *sealing* and *expungement* vary from state to state, however, and are often used interchangeably. The National Conference of State Legislatures (NCSL) references seven different terms that state legislatures have used to describe different forms of records relief: 1) annulment, 2) dismissal, 3) erasure, 4) expungement, 5) sealing, 6) set-aside, and 7) vacatur.<sup>31</sup>

Historically, to *expunge* meant “to destroy or obliterate; it implies not a legal act, but a physical annihilation.”<sup>32</sup> Expungement effectively destroys, obliterates, or otherwise excises the adjudication and the criminal record.

*Sealing* a criminal record, in contrast, generally means retaining the record, but effectively closing it for public inspection and largely excluding it from use for many of the collateral consequences previously discussed. State statutes frequently restrict access of the sealed record to the defendant, some criminal justice agencies, and other select agencies, and for limited purposes. States refer to records relief that effectively result in a sealing with various terms: Texas has *nondisclosure*, Connecticut uses the term *erasure*, and Pennsylvania also refers to it as *limited access*.<sup>33</sup>

Records relief in Michigan is referred to as *set aside* or *expungement*.<sup>34</sup> Set aside convictions are effectively sealed, i.e., they are no longer accessible as public records, but they are still available to criminal justice agencies (law enforcement, prosecutors, courts). Setting aside a conviction does not relieve an obligation to pay restitution and the set aside conviction may still be used for purposes of charging a crime as a second or subsequent offense and for sentencing enhancements.<sup>35</sup>

The State of Washington provides for *vacatur* of criminal convictions, which has the same effect as sealing in most other jurisdictions.<sup>36</sup> In granting an order for vacation of a criminal conviction, the court clears the record of conviction by a) permitting the offender to withdraw their plea of guilty and enter a plea of not guilty, or b) the court setting aside the verdict of guilty for defendants who originally pleaded not guilty, or c) dismissing the information or indictment against the offender. Records may still be used by criminal justice agencies and for certain sentencing purposes.<sup>37</sup>

## Records Relief Varies Depending on the Nature of the Adjudication

The form of records relief generally varies depending on the nature of the adjudication (e.g., non-convictions vs. convictions), and special circumstances associated with certain offenses, such as decriminalized offenses and victims of human trafficking.

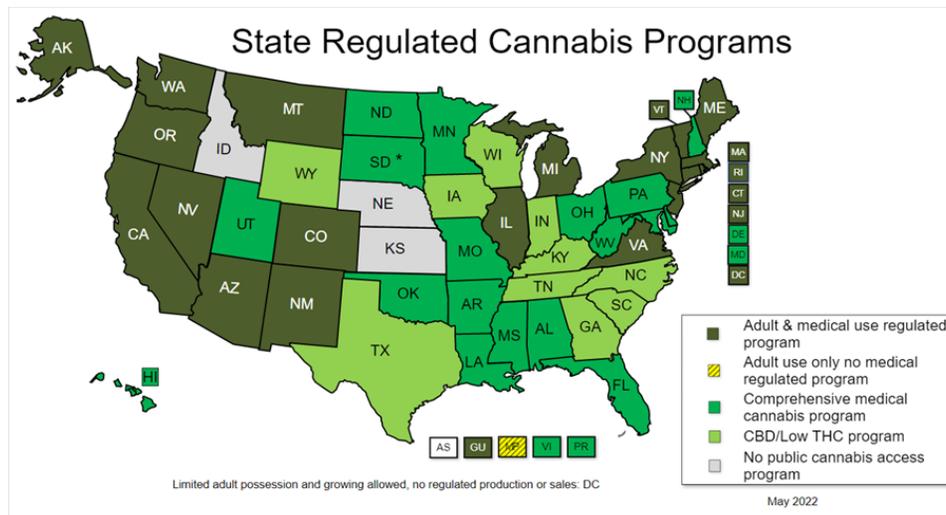
### *Non-convictions*

Many states generally authorize expungement (i.e., deletion/destruction) of criminal records for non-conviction adjudications and dispositions favorable to the defendant, i.e., adjudications of acquittal, dismissal, *nolle prosequi*, or when the charge is no-billed by a grand jury. South Carolina, for example, calls for the destruction of arrest and booking records, bench warrants, mug shots, and fingerprints by municipal, county and state agencies when charges are dismissed, or the defendant is found not guilty. Law enforcement may retain a sealed copy of the information for three years and 120 days, or indefinitely for ongoing or future investigations.<sup>38</sup> Delaware allows for expungement when a criminal case is terminated in favor of an individual.<sup>39</sup> Montana requires the repository to return photographs and fingerprints to the originating agency, which shall expunge all copies for individuals released without the filing of charges, if the charges did not result in a conviction, or if a conviction is later invalidated.<sup>40</sup> Connecticut calls for the *erasure* (i.e., expungement) of criminal records if the accused is found not guilty or the charge is dismissed<sup>41</sup> or when the case has been *nolled* (short for *nolle prosequi*).<sup>42</sup>

Among the study states, non-conviction records are eligible for petition-based relief in nine states, the effect being either sealing or expungement. The two states that do not offer relief for non-convictions by petition—Connecticut and New York—instead route all qualifying non-conviction records through a state-initiated process. With the advent of Clean Slate, other states are making these records eligible for state-initiated relief: for example, in Pennsylvania, all non-conviction records, which include dismissed or withdrawn charges and findings of not guilty, are eligible 30 days after the court entered the disposition. These same non-conviction records may also be considered by petition.

### *Decriminalized offenses*

The past two decades have witnessed significant shifts in drug policy throughout in the United States.<sup>43</sup> California passed legislation in 1996 legalizing the use of marijuana for medical purposes, and more than 35 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have since followed suit.<sup>44</sup> Colorado and Washington were the first states to legalize recreational use of marijuana for adults in 2012,<sup>45</sup> followed by Alaska, Oregon, and the District of Columbia in 2014. NCSL reports that 19 States, two Territories, and the District of Columbia have legalized recreational use of small quantities of marijuana for adults.<sup>46</sup>



Source: National Conference of State Legislatures, *Cannabis Overview*, May 31, 2022

In addition to legalizing marijuana for medical or recreational use, 41 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have passed records clearance laws that *may* apply to prior marijuana convictions. Ten of the states specifically address marijuana offenses: California, Illinois, Maryland, Missouri, New Hampshire, New Jersey, New York, North Dakota, Oregon, and Rhode Island.<sup>47</sup> As Ahrens notes:

California’s approach to conviction clearance is the most extensive. In 2018, California adopted legislation that requires the expungement of certain marijuana convictions; the state adopted this legislation at the same time that it legalized recreational marijuana, highlighting how inextricable the issues of past conviction and present legalization have become. The legislation does not require individuals who have past convictions to initiate the ordinary expungement process in order to clear their records. Instead, the legislation requires the California Department of Justice to review criminal records in order to identify eligible convictions; misdemeanor possession convictions (where the amount in personal possession would be legal now under California law) are generally automatically expunged, while felony convictions may be reduced to misdemeanor convictions. This provision applies to persons currently serving sentences for those felony convictions, which means some persons convicted of marijuana offenses may become eligible for release.<sup>48</sup>

Rather than automatic expungement of low-level marijuana convictions, Washington Governor Jay Inslee initially planned to pardon prior convictions.<sup>49</sup> The Governor subsequently signed legislation authorizing adults to apply to sentencing courts to vacate their conviction for a series of misdemeanors and gross misdemeanors, including misdemeanor marijuana offenses.<sup>50</sup>

### *Victims of human trafficking*

A growing number of states are enacting special records relief efforts to clear the records of victims of human trafficking who were convicted of crimes they were forced to commit by their traffickers. New York is credited as having enacted the first law to vacate, or set aside, convictions of prostitution and related offenses for victims of human trafficking arising from their experience.<sup>51</sup> Many other states have followed suit and enacted laws – among them are Washington, Missouri, Georgia, Hawaii, Nevada, Maryland, and Kansas.<sup>52</sup> Victims of human trafficking generally carry the burden of proof in establishing that they were the victims of human trafficking when committing the crime.<sup>53</sup>

### *Convictions*

Records relief stemming from conviction offenses is fundamentally different from non-convictions, in that the defendant has been formally convicted of the offense. Every study state includes provisions for receiving relief from certain misdemeanors, and all but one state (Pennsylvania) includes a provision for select felonies. Eligible misdemeanors tend to include more minor offenses, and generally exclude domestic violence. Only a limited number of felonies are eligible for records relief: charges involving violent acts, domestic abuse, vulnerable populations, or involving acts that require sex offender registration are generally excluded in most states. Misdemeanors generally have a shorter post-sentence completion waiting period (2-5 years) for relief eligibility, whereas felonies, if eligible at all for relief, have a lengthier wait (5-10 years).

State statutes define strict eligibility criteria to qualify persons who have been convicted of a crime when seeking records relief. The eligibility criteria can include limiting the number of offenses or cases which may be cleared.

In Michigan, up to two felony convictions may be set aside 10 years after the person has been released from custody and four misdemeanor convictions can be set aside seven years after sentencing starting April 2023.<sup>54</sup> Convictions for assaultive offenses, serious misdemeanors, offenses punishable by 10 or more years of imprisonment, those involving a minor, vulnerable adult, injury, or serious impairment of a person, or death, and human trafficking cannot be set aside. Michigan has also enacted the “one bad night” provision which combines multiple separate, but related, offenses into one offense for purposes of counting convictions.<sup>55</sup> Assaultive crimes, those involving use or possession of a dangerous weapon, crime with a maximum penalty of 10 or more years of confinement are excluded from set aside.

## Eligibility Criteria

### *Nature and seriousness of the offense*

Every state restricts records relief for individuals convicted of specific offenses, such as violent and sex crimes, those that are committed against children or other vulnerable populations, and those that require the offender to register as a sex offender. Many also exclude convictions for driving under the influence (DUI) or limit the number of such convictions to a single adjudication.<sup>56</sup> Most jurisdictions also require an eligibility waiting period following the full and successful completion of a sentence (including payment of fines, restitution, court costs, etc.), which often varies by seriousness of the offense.<sup>57</sup>

In Missouri, for example, Class A felony offenses, “dangerous felonies”<sup>58</sup> (forcible rape and sodomy; kidnapping; first degree offenses of arson, assault, assault of a law enforcement officer, domestic assault, elder abuse, robbery, statutory rape and sodomy;), any offense that requires registration as a sex offender, any felony offense where death is an element of the offense, any felony offense of assault, domestic assault, and kidnapping, and a host of other specified offenses are ineligible for sealing, as defined above, although the statute, itself, uses the term expungement.<sup>59</sup> The petition for expungement must name all law enforcement agencies, courts, prosecuting and circuit attorneys, prosecuting attorneys, state repositories, and others who may have records related to the case, and provide identification information (name, race, sex, driver license number, etc.), and for each offense for which the petitioner is seeking expungement, the offense, date and locations of convictions, and the case number and name of the court. A \$250 surcharge will be assessed when the petition is filed, though the court may waive the costs for petitioners who are indigent or unable to pay.<sup>60</sup> The court may consider the time since conviction, with at least three years for felony and one year for a misdemeanor, municipal offense or infraction with no subsequent conviction or traffic violations, no charges pending, and details demonstrating that the petitioner is not a threat to public safety. The term “expungement” is also used to define the destruction of certain arrest records, as well as to restrict access to certain conviction records by both the courts, which use the term “confidential,”<sup>61</sup> and the repository which uses the term “closed.”<sup>62</sup>

### *Successful completion of sentence*

The purpose of providing records relief is to acknowledge that when a person has satisfactorily completed their sentence, paid his/her debt to society, and demonstrated that they have changed their pattern of offending, they should be able to return to society and no longer be penalized with consequences resulting from a conviction. Satisfactory completion of their sentence is a universal requirement for records relief, but states vary in how they define it and attest to its achievement. Two states, Utah and Washington, have formalized this requirement with a Certificate of Expungement Eligibility (UT) or Certificate of Discharge (WA). These documents attest to satisfactory sentence completion as the individual navigates a petition process. Under Clean Slate legislation (in Utah only, since Clean Slate is not law in Washington), one’s satisfactory completion of the sentence remains;<sup>63</sup> however, the requirement to produce a Certificate is no longer necessary since the state will make the determination that an individual qualifies.

### *Payment of fines, fees, and restitution*

Individuals who are convicted of crimes are frequently required to pay court ordered fees, fines, and restitution as one component of the successful completion of their sentence. Research has shown that requiring fulfillment of these payments may limit the number individuals who seek or successfully obtain records relief.<sup>64</sup> As Cohn, et al., note, “In almost every jurisdiction... outstanding court debt is a barrier to record clearing in at least some cases, either rendering a person entirely ineligible for record relief or making it difficult for them to qualify.”<sup>65</sup>

Seven states reviewed in this research have a standard expectation or requirement that some combination of fines, fees, and restitution be paid as a component of sentence completion (Delaware, Missouri, Oklahoma,<sup>66</sup> Pennsylvania, Texas, Utah, Washington). In 2020, Pennsylvania amended its Clean Slate law to eliminate the requirement that fines and fees be paid before a person was eligible to clear their record, which resulted in an additional 9.2 million records becoming eligible for sealing through Clean Slate.<sup>67</sup> Restitution must still be paid in order to qualify for records clearance and if the individual owes fines, fees, *and* restitution, they remain ineligible until all are paid.

Other states do not assess payment of fines, fees, or restitution to determine eligibility for petition-based or state-initiated records relief. Michigan is one example, although its law allows a court to reinstate a conviction that was set aside if the record subject fails to make a good-faith effort to pay court-ordered restitution.<sup>68</sup>

### *Completion of crime-free waiting period*

Records relief initiatives generally require that candidates serve a mandatory crime-free waiting period following successful completion of their sentence of 1 – 10 years, depending on the nature and seriousness of their conviction offense.<sup>69</sup> Research on recidivism and redemption demonstrates that the majority of individuals with a conviction do not have a subsequent conviction, and that their risk of reoffending declines as crime-free time in the community tolls.<sup>70</sup> The crime-free waiting period is designed to serve as “recognition of successful rehabilitation and reason to terminate legal disqualifications and disabilities.”<sup>71</sup>

The crime-free waiting period actually contains two distinct elements: 1) determining the length of time served following successful completion of a sentence, and 2) an assessment of whether the individual has charges pending or was subsequently arrested and/or convicted of a crime during the waiting period.

As noted, waiting periods vary in length depending on the nature and seriousness of the conviction offense. Utah, for example, has waiting periods of 3-5 years for misdemeanors and infractions, and 7–10 years for eligible felonies and serious misdemeanors.

The second element relates to whether an individual has pending charges, or was arrested and/or convicted of a new offense during their waiting period. Most states have historically considered outstanding criminal cases pending within the state, and in some cases in other states and at federal levels, as part of their records relief eligibility. In Washington, for example, state law specifies that people convicted of felonies and misdemeanors are ineligible for vacatur of their conviction if there are any pending charges *in any state or federal court*.<sup>72</sup>

## Challenges Associated with Petition-based Relief

Because of the costs involved in filing a petition, the time and effort required to draft the petition, obtain court records and copies of state criminal history records and fingerprints, limited ability to access online resources, and the fact those eligible may not even be aware that they qualify for expungement, there are often relatively few petitions filed by eligible parties. In Utah, for example, a petitioner must apply for and receive a Certificate of Expungement Eligibility to demonstrate that the individual and offense meet the state’s eligibility criteria. The individual then files a petition with the court and serves the prosecutor who oversaw the case, within 180 days of having received the Certificate. Thereafter, the prosecutor may conduct his/her own fitness assessment which may prompt a hearing (if there is an objection or no action). If a court approves a petition, certified copies of the order are thereafter sent to government agencies holding records related to the arrest or conviction.

Prescott and Starr identified six factors that contribute to the relative dearth of applications for sealing and expungement, including 1) lack of information, 2) administrative hassle and time constraints, 3) fees and costs, 4) distrust and fear of the criminal justice system, 5) lack of access to counsel, 6) insufficient motivation to pursue expungement.<sup>73</sup> This paucity of filings for records relief has been referred to as the “uptake gap,” also known as the “‘second chance gap’—the difference between eligibility and delivery of second chances....”<sup>74</sup>

The issue might be more complicated, however, when a person has a more extensive criminal history record with other convictions for unrelated offenses. If a person has other misdemeanor or felony convictions that are not subject to relief, filing a petition for sealing or expungement of the marijuana possession offense may provide little practical relief. As Quinton notes, “Some people may just decide that hiding their conviction from view isn’t worth the hassle. If someone has another crime on his record that can’t be wiped away, say an unrelated felony, he might not bother to eliminate a minor marijuana conviction.”<sup>75</sup>

## Data Outside the Criminal Justice Enterprise

In many states, court systems sell copies of their publicly available case management data to commercial data aggregators, also known as consumer reporting agencies (CRAs). CRAs plumb public records to compile dossiers on people to assess their credit worthiness and to assign credit ratings, which can be used by banks and other financial institutions in making decisions regarding loans and other financial matters. Publicly available court records revealing loan defaults, bankruptcies, lawsuits, and criminal convictions provide insight on a person’s credit worthiness. CRAs have expanded their portfolios to provide background checks for employment and other screening services on behalf of an expanding array of clients. While there are three primary CRAs in the United States (Experian, TransUnion, and Equifax), private investigators, detective agencies, collection agencies, inspection bureaus, companies that sell information to insurance companies and assist in performing background checks, and college placement offices have been deemed to be CRAs under Federal law.<sup>76</sup> A survey by the Society for Human Resource Management (SHRM) found that 87 percent of surveyed employers conduct employment background screening at the pre-employment stage.<sup>77</sup> Broad scale records relief efforts, which are designed to ameliorate collateral consequences of a criminal conviction, recognize that both government *and* industry need to address sealing, expungement, and records vacation efforts.

Some states (such as Missouri and New York) conduct transactional data sharing, whereas other states, such as Pennsylvania, allow for batch downloads. The Courts may sell its case data to CRAs in at least 6 states (Colorado, Connecticut, New York, Pennsylvania, Washington), and the criminal history repository may do the same, to a limited degree, in at least 3 states (New York, Oklahoma, Pennsylvania). How often sales occur is beyond the scope of this document but could be an area for additional research.

In Pennsylvania, the Administrative Office of the Pennsylvania Courts (AOPC) handles all sales and sharing of court case management data through its *LifeCycle File*, which carries its own contractual requirements for appropriate use and was established prior to the state's Clean Slate legislation.<sup>78</sup> These stipulations include weekly batch updates of the Common Pleas Criminal Court Case Management System (CPCMS) to notify CRAs when records have been sealed so they can be removed from commercial databases. Pennsylvania also has auditing provisions where it periodically tests to ensure that CRAs are in full compliance with this requirement. States that regularly sell records to CRAs should ensure that requisite state agencies are following appropriate auditing procedures to maintain the integrity of the records, especially those that should be removed from public view.

Meanwhile, some states may ban the sale of court records or creatively ban its re-constitution. Delaware, for example, has a policy whereby no court record data may be sold to CRAs. To circumvent this, some CRAs employ assistants to visit court clerks' offices to copy publicly available individual court records. CRAs then use these data to approximate the court database. Missouri, meanwhile, takes it one step further: the state criminal history repository may not sell its data to third-party vendors, and its courts, as a general rule, do not sell batch court records. Rather, the state prohibits third-party vendors from compiling, storing, and reselling the data, designating the act a misdemeanor.<sup>79</sup>

The continued endurance of an aging arrest or conviction is not only a concern with official criminal history records and court case records, but also in the mainstream media. Some media organizations have allowed individuals to request that news articles mentioning a previous arrest or conviction be removed or delisted from its online archive, names anonymized, and/or information about them removed from or redeeming details added to old news stories. The [Boston Globe](#), [Atlanta Journal-Constitution](#), and [Cleveland Plain Dealer](#)<sup>80</sup> are among the newsrooms that have created processes to consider such requests.

## Clean Slate Initiative

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The Clean Slate movement has led many states to reconsider their established state-initiated and petition-based records relief and, in some cases, expand it. As of November 2022, at least two study states (Pennsylvania, Utah) are actively implementing Clean Slate legislation, while five other study states (Colorado, Connecticut, Delaware, Michigan, Oklahoma) and one additional state (California) have passed and are contemplating how to implement their legislation. Another study state (Washington) passed legislation in 2020 to streamline the vacatur of criminal convictions, but the bill was later vetoed by its governor due to uncertainty over its fiscal impact.

Most states that have passed Clean Slate legislation are implementing, or planning to implement, *sealing* provisions (Colorado, Connecticut, Oklahoma, Pennsylvania, Utah). Michigan also seals Clean Slate-related records (although uses the term *set aside*), and one state is planning to implement *expungement* (Delaware).

### Automating the Records Clearance Process

Several states have attempted to apply similar eligibility requirements for petition-based relief to their state-initiated relief through Clean Slate. Under Clean Slate, the “crime-free” eligibility requirement has evolved for several states. Criminal history data is easy to access within one’s home state but suffers a number of technical challenges and policy restrictions<sup>81</sup> in its access outside of the state (other states, federal, tribal). Colorado, Michigan, Pennsylvania, and Utah have each decided to only consider subsequent charges that occurred *within* the state, which was a change from current practice for Michigan and Utah. More recent Clean Slate adopters -- Connecticut, Delaware, and Oklahoma -- may encounter similar obstacles.

### People, Arrests, and Cases

Criminal history records are structured in a manner that provides different levels of detail. First, records exist at the “person” level. There is one record per person containing descriptive information about the person – e.g., name, address, date of birth, social security number, age, hair and eye color, scars, marks, tattoos, etc. – and all data regarding arrests, prosecutions, court dispositions and supervision (probation/incarceration) status. Next, criminal history records are divided into arrest “cycles” where each arrest event (i.e., cycle) contains the outcome of each arrest – namely any court cases and/or adjudications resulting from the arrest charge(s). A single arrest event may involve one or multiple charges reported by the arresting agency and one or multiple charges and/or dispositions once a case is referred for prosecution and disposed by the court. Each arrest cycle includes all associated charges and case outcomes.

Many years ago, it was common to only seal or expunge records at the person level, and records relief was “all or nothing:” either a person’s record was completely sealed/expunged, or the record was fully available to authorized entities. Information systems evolved to clear records at the arrest cycle level, meaning that a record could be partially cleared, but only if all events related to a given arrest cycle were subject to records clearance. Modern state criminal history repositories and the FBI have the capability to seal individual charges within an arrest cycle, which means that if a person has one charge or conviction that is eligible for sealing within an individual arrest cycle, only the qualified information will be shielded from disclosure. All of the Clean Slate study states require records clearance (sealing or expungement) at the individual charge level.

## Notifying Record Holders

Many states seeking to establish Clean Slate state-initiated programs want to alert justice-involved individuals that their records have been sealed or otherwise cleared, and that they may no longer need to acknowledge that they have had a disqualifying conviction in seeking employment, education, housing, or other benefits. Under petition-based programs, the petitioner typically provides contact information as part of the formal papers filed with the court, and (with some exceptions) they are generally notified when their record has been sealed. With Clean Slate initiatives, the state may not have current contact information for the record holder and be unable to notify them when their record has been cleared. In fact, if the courts were to reach out to those individuals, they may unwittingly reveal the presence of a sealed criminal record to unauthorized individuals.

To address this issue, some states have established online portals where an individual may proactively check their own public criminal history record. In addition, every state allows citizens to query the criminal history repository to examine their record. An individual's own criminal history record may also be accessed by providing a fingerprint and paying a fee<sup>82</sup> to the state's criminal history repository.

## Challenges with *Automatic Clearance*

References to “automatic sealing” of criminal records in Clean Slate initiatives have raised questions about whether the provisions fit the definition of a sealed record for purposes of the National Crime Prevention and Privacy Compact.<sup>83</sup> The National Crime Prevention and Privacy Compact “organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.”<sup>84</sup> Thirty-four states have ratified the Compact and are members of the Compact Council, a policy-making body providing oversight on how interstate criminal history records are shared for non-criminal justice purposes.<sup>85</sup> These purposes include all civil background checks, including those for employment, housing, and educational opportunities.

Policy provisions of the Compact specifically address Sealed Record Information.

“(21) Sealed Record Information. Article IV, paragraph (b), permits the FBI and state criminal history record repositories to delete sealed record information when responding to an interstate record request pursuant to the Compact. Thus, the definition of “sealed” becomes important, particularly since state sealing laws vary considerably, ranging from laws that are quite restrictive in their application to others that are very broad. The definition set out here is intended to be a narrow one in keeping with a basic tenet of the Compact—that state repositories shall release as much information as possible for interstate exchange purposes, with issues concerning the use of particular information for particular purposes to be decided under the laws of the receiving states. Consistent with the definition, an adult record, or a portion of it, may be considered sealed only if its release for noncriminal justice purposes has been prohibited by a court order or by action of a designated official or board, such as a State Attorney General or a Criminal Record Privacy Board, acting pursuant to a federal or state law. Further, to qualify under the definition, a court order, whether issued in response to a petition or on the court’s own motion, must apply only to a particular record subject or subjects referred to by name in the order. So-called “blanket” court

orders applicable to multiple unnamed record subjects who fall into particular classifications or circumstances, such as first-time non-serious drug offenders, do not fit the definition. Similarly, sealing orders issued by designated officials or boards acting pursuant to statutory authority meet the definition only if such orders are issued in response to petitions filed by individual record subjects who are referred to by name in the orders. So-called “automatic” sealing laws, which restrict the noncriminal justice use of the records of certain defined classes of individuals, such as first-time offenders who successfully complete probation terms, do not satisfy the definition, because they do not require the filing of individual petitions and the issuance of individualized sealing orders.” [emphasis added]<sup>86</sup>

What Clean Slate initiatives are actually doing, however, is shifting from *petition-based* to *state-initiated* sealing provisions. Rather than requiring all potentially eligible persons to file a petition requesting sealing (or expungement, set aside, or vacatur) of their criminal records, states are initiating the records relief on their behalf. It is important to note that:

1. Record subjects must still meet strict eligibility standards
  - a. Only certain offenses (typically misdemeanor and low-level) felonies are eligible for clearance.
  - b. All conditions of records relief must be met, which usually includes the following:
    - i. No pending charges or subsequent convictions,
    - ii. Payment of all fines, fees, and restitution,
    - iii. The prosecutor, law enforcement, and even victims may object to the records relief, and
    - iv. The offender must have completed crime-free waiting periods specific in statute before they are eligible.
  - c. Clearance of records occurs at both the adjudication (case) level as well as at the record level.
  - d. Courts must order or authorize individual orders identifying every person, case, and charge that is to be sealed/expunged/set aside/vacated.

Research indicates that no Clean Slate initiatives studied are issuing blanket sealing provisions. In every case, the court must identify or validate the identification of specific people, charges, cases, and adjudications that will be cleared.

### *Data quality issues*

Identifying candidates for automated records relief requires complete, accurate, and timely criminal history data from state repositories and court records. Nationally, state criminal history information systems reported that as of year-end 2018, only 68 percent of all arrests have final dispositions. The rates vary from 50 percent or less in eight states, to over 90 percent in 10 states.<sup>87</sup> There are numerous reasons that arrests may be missing dispositions, including situations where a disposition is simply not available because a court case is actively in process and a final adjudication has not yet been rendered. Criminal case processing from arrest through final adjudication can often take weeks, months, or even years for complicated cases. Other factors may also impact disposition reporting, including incomplete reporting by all courts throughout the state, inaccuracies in reporting transaction control numbers and other data that enable linking court dispositions to arrest records, and inaccuracies in reporting court disposition information.

It is important to note that court records are organized around the case (case-based), while criminal history records are organized around an individual (person-based). A single individual can have multiple records depending on how many times they have been charged with a crime. Since cases are tracked rather than people, a person can have multiple representations of their name, date of birth and other descriptors depending on how the data were entered each time a person has an arrest resulting in charges being referred to court. So, a disposition may be available at the courts, but data quality issues prevent the case outcome from being associated with a corresponding arrest. Most commonly, this is a result of missing transaction control numbers (TCNs) issued at the time of arrest that can be used to quickly and accurately link court cases to people and arrests within the state criminal history repository. While other identifiers such as defendant name and date of birth can be combined to match an arrest record to a disposition record, they are not nearly as reliable or efficient as a TCN. If the name and date of birth are not entered exactly as they appear within a person's record maintained by the state repository, then they cannot be matched by machine algorithms. In some cases, arrests may be missing dispositions because it was not provided by the prosecutor.

While courts are the most common source of dispositions, prosecutors can be an important source of information as well. For one thing, many arrests referred for prosecution never make it to court. The prosecutor may determine that there is insufficient evidence to pursue the case prior to filing charges. In these circumstances, the court never knows about the arrest charges since no case ever originated from the arrest charges. If the prosecutor fails to report declinations to prosecute, then the arrest can remain "open" at the state repository even though charges will never proceed through the courts.

Aside from missing data, data quality issues can also negatively impact a state's ability to implement Clean Slate legislation. Data gathered by prosecutors and courts may also be unstructured, i.e., free-form narrative text subject to human error and making interpretation difficult or impossible. While humans can often process unstructured information, it is challenging for computer algorithms to accurately interpret and classify free-form text data, which can hinder the process of determining if a person qualifies to have their record sealed under Clean Slate.

Just as dispositions can be missing from the repository, arrests can also be missing. While this too may be a case of an agency's failure to report (in this case a law enforcement agency), more commonly it is due to the expanding practice of citation in lieu of release, also known as "cite and release." Cite and release gives officers discretion in deciding when to formally cite a suspect (i.e., issue a court summons) in lieu of a custodial arrest, which involves taking an individual into physical custody and fingerprinting them in order to establish or verify their identity. While there are many benefits to cite and release, the failure to obtain fingerprints during a conventional arrest booking often results in missing arrests at the repository since all repository records must be biometrically supported. The emergence of COVID-19, combined with concerns about police use of force, has led law enforcement to make policy changes to reduce the number of people who are physically engaged with the criminal justice system. Reduced physical interaction has been evidenced in the decline of fingerprinting for both civil and criminal offenses, the accelerated release of low-level offenders over concerns for their health, as well as the expansion of policies where arrestees receive a citation in lieu of arrest.<sup>88</sup>

### *Lack of integration*

The greatest challenge many states face in managing records relief programs is the lack of integration between information systems across the whole of the criminal justice enterprise. Police, prosecutors, courts, correctional agencies, probation and parole, and state criminal history repositories all have their own information and case management systems. Each is designed to meet the operational and business needs of the hosting organization. While links do exist that enable, for example, online sharing of arrest, charging, and disposition reporting between agencies, these systems are separate and distinct: in other words, siloed. Complicating this technological environment, each law enforcement agency typically selects and operates one of many different data systems that captures and processes data associated with crime and arrest reporting. Law enforcement data systems are often event (incident)-centric, while prosecutor and court case management systems are largely case-based, criminal history repositories are typically person-based, while corrections systems may be cell- or person-based.<sup>89</sup>

States with unified court systems often host statewide case management systems that all state courts use, while, in non-unified states, individual case management systems can be implemented by individual local courts throughout the state, compounding the challenges of sharing uniform data statewide. Most states also have municipal courts that may handle Clean Slate eligible cases, but these systems are rarely integrated with the larger state court systems, regardless of whether they are unified.

Siloed criminal justice data renders establishing records relief eligibility a shared responsibility, primarily between the state repository and the courts. A compounding factor is that policies in some states limit what is reported to, and therefore maintained in, a state's criminal history repository. Only felonies and serious misdemeanors are typically reportable to criminal history repositories. Therefore, the criminal history repository record may be accurate but incomplete since not all offenses are reported. Most notably, arrests missing fingerprints and their associated dispositions are typically not included in criminal history repository records. Most repositories only allow records to be created based on the submission of a fingerprint record to establish the individual's identity, although there are some exceptions where states make a probabilistic match to an individual's record. In this latter case, these records are typically not shared outside of the state.

### *Difficulty in calculating waiting periods*

Every study state will need to compute mandatory waiting periods. These calculations may be based on when a person was released from incarceration, or when a person was sentenced or convicted. Dates for conviction and sentencing are generally available from court case management systems but the more typical measure, release from incarceration, is generally only available from a supervising agency and is not readily available from the courts or repository. In many states, intake and discharge from prison are not reported to the state criminal history repository or, if this information is captured, the release event is not associated with a specific court case and/or arrest event.<sup>90</sup> Without reliable prison discharge information, a state cannot accurately compute how long a person has been released into the community for the purposes of eligibility determination.

### *Difficulty in determining when a person has a pending charge or disqualifying conviction in home state, as well as in other states, federal government, and/or tribes*

Under the petition-based process, it is common to require an individual to have remained crime-free in the community for a prescribed period of time following completion of sentence or discharge from incarceration. As noted above, multiple study states require that an individual have no pending criminal charges *in any state* to be eligible for consideration for record clearance under the state's petition-based process. Determining whether charges are pending in other states and at the federal level requires the consent of the record subject, submission of fingerprints, and payment of processing fees in order to query the interstate and federal databases of the Interstate Identification Index (III) and the National Crime Information Center (NCIC).<sup>91</sup> Given the complexity of querying III and NCIC systems (each of which have their own governance structure), this can only be achieved through a petition-based process.

The same existing laws and policies make it difficult to conduct national criminal background checks for the anticipated volume of individuals who stand to benefit from state-initiated records clearance schemes. It is relatively straightforward to conduct *in-state* background checks to determine if individuals have outstanding arrest charges (i.e., charges without a court disposition) and/or pending charges in other criminal court actions. Since arrest and charging information is recorded in state criminal history repositories and court databases, which can be searched using computer programs, most states have opted to consider only *in-state* criminal charges when determining eligibility under Clean Slate. Colorado, Pennsylvania, Utah and Michigan limit the scope of criminal records checks to only those occurring within their home state (i.e., they will not check out-of-state charges for Clean Slate relief). States with newly-passed Clean Slate legislation (for example, Oklahoma) are expected to encounter similar challenges.

Previous research has shown that 20-25% of individuals have records in multiple states,<sup>92</sup> which implies that states that elect to only consider in-state charges may miss (inadvertently determine to be eligible) some individuals with either previous or pending out-of-state charges. Research has shown that 11% of prisoners are re-arrested in the 5-year period following release,<sup>93</sup> but it has not been able to provide any count on the number of *individuals who receive records relief* (but who may not all have served a period of confinement) that later commit a crime.

### *Difficulty with determining when a person has successfully paid fines, fees, and restitution*

It can be equally challenging to determine successful payment of court-order financial obligations when payments are recorded in an accounting system that is separate from the criminal case management system maintained by the courts. In some states, payments may also be collected and recorded by community supervision personnel, or the prosecuting attorney's office. In any case, these entities have databases that are typically maintained separately, so that the court may not have direct access to these accounting records.

### *Responsibility for managing the Clean Slate process*

Given the number of different agencies that maintain data, states must identify the primary agency responsible for starting and managing the Clean Slate eligibility process. To begin the eligibility determination process, two states (Utah, Pennsylvania) vest this responsibility with the Courts. Two additional states (Connecticut, Delaware) expect to follow this model. In these

states, the list of cases identified by the courts is thereafter sent to the State Criminal History Repository for additional eligibility verification.

The opposite approach has been adopted in Michigan and Oklahoma:<sup>94</sup> both states start the process with the State Criminal History Repository making the initial eligibility determination. Thereafter, the courts would identify eligible case records. Another state that recently passed Clean Slate legislation, Colorado, is developing a hybrid approach: the courts will initially identify eligible conviction records, while the Repository is responsible for initially identifying non-conviction records.

### *Agency coordination*

Qualified records relief requires a significant amount of coordination among all relevant parties. A state's existing levels of automation and integration among the courts, prosecutors, repository, and other criminal justice agencies, affect the amount of time it can be expected to take to implement Clean Slate. Several states have set their timeframe for implementation at 12 months from the effective date of records clearance legislation, though this timeline appears ambitious, based on the experience of other states. States that have recently implemented Clean Slate programs, such as Michigan and Utah, have either mentioned or discovered through experience, that taking 2-3 years to fully implement such a program may be a more realistic, achievable timetable.

## Lessons for States

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States considering records relief can learn from each other about what challenges they have faced, and how some states have addressed or overcome them.

1. Records relief processes vary considerably from state-to-state reflecting legal requirements, policy, and practice. The terminology used in records relief also varies between jurisdictions and can be a source of confusion and misunderstanding. States may use terms such as expungement, sealing, erasure, set aside, vacatur, and nondisclosure in defining their records relief options. While expungement in some jurisdictions means deletion, destruction, or obliteration of all criminal justice records, it may also mean limiting public access to records that are retained for legitimate criminal justice and special licensing purposes in other jurisdictions. States should clearly define the meaning of the various terms used for sealing and expunging (destroying) records to minimize confusion by the public in pursuing these remedies.
2. Determining records relief eligibility is a complex, complicated, and labor-intensive process. Jurisdictions routinely must access and review multiple sources of data to determine whether candidates meet detailed eligibility criteria. States are best positioned to do so when their case and records management systems are tightly aligned and integrated across the whole of the criminal justice enterprise. The systematic adoption and use of universal transaction control numbers enables agencies to effectively track cases, cycles, and people throughout the justice system. Centralized, unified court case management systems also greatly improve disposition reporting to the criminal history repository and in identifying eligible offenses, cases, and individuals.
3. As states shift from traditional *petition-based* records relief programs to Clean Slate *state-initiated* schemes, many are also relaxing stringent eligibility requirements that limit the ability to obtain relief. Jurisdictions adopting state-initiated records relief programs are eliminating requirements that individuals seeking records relief pay filing fees, and complete detailed petitions. Additionally, jurisdictions are increasingly waiving the requirement that fines and fees be paid before the individual is eligible for records relief, though payment of court-ordered victim restitution is often still required. Some states have also eliminated out-of-state background checks as part of its crime-free waiting period eligibility criteria in their Clean Slate state-initiated process.
4. Implementation of Clean Slate often requires two – three years of intensive planning, programming modifications of multiple complex agency case management information systems, upgrades in technology, and changes in business practices and workflow. Legislative initiatives must recognize the size, scale, and complexity of these implementation challenges and establish realistic timeframes for full and effective implementation.

## Further Research

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Further research in this area could provide insights and inform policy decisions.

1. Additional research is needed to assess the impact of expanding records relief on the lives of justice-involved individuals. It should focus on assessing the impact of Clean Slate on a) expanding the rate at which people seek and obtain records relief, and narrowing the gap between those who are eligible for records relief and those who actually obtain relief, b) assessing improvements in employment, education, housing, and access to benefits, and c) reducing the risk of recidivism for those who have cleared their records. Its impact on traditionally-marginalized populations should also be considered.
2. Research could also provide a better understanding of how industry and CRAs are accessing individual criminal history data, both within and outside of official channels such as the criminal history repository and the courts. It would also be beneficial to understand how states may be restricting data access or its compilation for commercial purposes, and/or auditing the management of batch files. This area of research is particularly timely given the increased use of criminal history data for non-criminal justice purposes, coupled with its potential enduring impact on justice-involved individuals.
3. Research may also explore evidence-based waiting periods based on analysis of data underlining constructs of recidivism risk and redemption. These findings could help state policies to set an appropriate length of time for crime-free waiting periods. The research could build on recent findings and provide an empirical foundation about the duration of crime-free waiting periods, and the criteria on which it should be based.
4. It may also assess how states are auditing the follow-through of sealing, expunging, or setting aside/vacating records within the state and local criminal justice system – law enforcement agencies, the courts, and other entities – to ensure compliance.
5. Conduct public surveys to measure the knowledge, attitudes and beliefs of the general public about Clean Slate-type records relief efforts. These findings would provide helpful context about the level of support, or conditional support, of the general public for these efforts. It could be valuable in identifying, and designing a means to overcome, potential obstacles.

## End Notes

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<sup>1</sup> The 11 states under study include Colorado, Connecticut, Delaware, Michigan, Missouri, New York, Oklahoma, Pennsylvania, Texas, Utah, and Washington. Profiles of each of the 11 study states are included in a Technical Appendix accompanying this report.

<sup>2</sup> Criminal history records are often referred to as *rap sheets*, thought to be an acronym for “record of arrest and prosecution.” See, *Criminal Records Basics*, at New York State Unified Court System, <https://www.nycourts.gov/courthelp/criminal/recordsBasics.shtml>. Elizabeth G. Thornburg observed that the term was used more generally dating from at least 1947, when it was used in the oral history of a California shipyard during World War II. “When discussing hiring practices, the Employment Manager noted that ‘from the F.B.I. offices in Washington, D.C. we used to secure a ‘rap sheet’—that is, an individual’s criminal record.’” James E. Clapp, Elizabeth G. Thornburg, Marc Galanter, and Fred R. Shapiro, *LAWTALK: THE UNKNOWN STORIES BEHIND FAMILIAR LEGAL EXPRESSIONS*, (New Haven: Yale University Press, 2011), p. 211. Thornburg suggests that associating the phrase *record of arrest and prosecution* to a *rap sheet* is actually a *backronym*, an “after-the-fact association of a word with a phrase.” *Id.*, at 213.

<sup>3</sup> Gordon Karl Zenk, *PROJECT SEARCH: THE STRUGGLE FOR CONTROL OF CRIMINAL INFORMATION IN AMERICA*, (Westport, CT: Greenwood Press, 1979).

<sup>4</sup> Detailed discussions surrounding the creation of state criminal history records repositories, and historical perspectives on centralized versus decentralized approaches to these repositories, can be found in Zenk, *supra* note 3, and Donald L. Doernberg and Donald H. Zeigler, *Due Process Versus Data Processing: An Analysis of Computerized Criminal History Information Systems*, 55 *NEW YORK UNIVERSITY LAW REVIEW* 1110 (1980).

<sup>5</sup> Becki R. Goggins and Dennis DeBacco, *SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS*, 2018 (Washington, DC: US Department of Justice, Bureau of Justice Statistics, 2020), *Table 2. Number of Subjects (individual offenders) in State Criminal History File, 2014, 2016, and 2018*, <https://www.ojp.gov/pdffiles1/bjs/grants/255651.pdf>. By contrast, the FBI reports that they have criminal history records on 78,664,783 persons. FBI, JANUARY 2021 NEXT GENERATION IDENTIFICATION (NGI) SYSTEM FACT SHEET, <https://www.fbi.gov/file-repository/ngi-monthly-fact-sheet/view>. The variance is due to a variety of factors, including persons having criminal records in more than one state, states maintaining criminal records on offenses that are not included in FBI records (certain levels of misdemeanors, for example), differences in purge criteria (states may purge their criminal history files of records of long deceased offenders), etc.

<sup>6</sup> GUN CONTROL ACT OF 1968, PUBLIC LAW 90-618, TITLE 18, US CODE – FIREARMS, CHAPTER 44, §922 UNLAWFUL ACTS (d) (1-4), p. 1220.

<sup>7</sup> H.R. 1025 – BRADY HANDGUN VIOLENCE PREVENTION ACT, 103<sup>rd</sup> Congress (1993–1994).

<sup>8</sup> Becki Goggins, *Survey Insights Blog Series #1: An Overview of Findings from the 2018 Survey of State Criminal History Records Repository Administrators*, December 17, 2020, at <https://www.search.org/an-overview-of-findings-from-the-2018-survey-of-state-criminal-history-records-repository-administrators/>.

<sup>9</sup> Becki R. Goggins and Dennis DeBacco, *op cit.* note 5.

<sup>10</sup> See SEX OFFENDER REGISTRATION AND NOTIFICATION ACT, TITLE I OF THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006 (PUBLIC LAW 109-248), 34 U.S.C. § 20901 *et seq.* For a brief historical background, see Meaghan Flattery, Wm. N. Noël, *SEX OFFENDER REGISTRATION AND NOTIFICATION POLICIES: SUMMARY AND ASSESSMENT OF RESEARCH ON CLAIMED IMPACTS TO REGISTERED OFFENDERS* (Washington, DC: Federal Research Division, Library of Congress, October 2020), p. 4.

<sup>11</sup> The most comprehensive and detailed inventories of collateral consequences, research, resources, and commentary are available from the Collateral Consequences Resource Center, <https://ccresourcecenter.org/>, and the National Inventory of Collateral Consequences, <https://niccc.nationalreentryresourcecenter.org/consequences>. Also see, U.S. Commission on Civil Rights,

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COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES (Washington, DC: U.S. Commission on Civil Rights, 2019).

<sup>12</sup> Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in Marc Mauer and Meda Chesney-Lind, eds., *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* (New York: The New Press, 2002); Gabriel J. Chin, *Race, The War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 *THE JOURNAL OF GENDER, RACE & JUSTICE* 255 (2002); Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 *STANFORD LAW & POLICY REVIEW* 153 (1999).

<sup>13</sup> Debbie A. Mukamal and Paul N. Samuels, *Statutory Limitations on Civil Rights of People with Criminal Records*, 30 *FORDHAM URBAN LAW JOURNAL* 1501 (2003); Ginger Jackson-Gleich and Rev. Dr. S. Todd Yeary, *Eligible, but Excluded: A Guide to Removing the Barriers to Jail Voting*, Prison Policy Initiative, October 2, 2020, at [https://www.prisonpolicy.org/reports/jail\\_voting.html](https://www.prisonpolicy.org/reports/jail_voting.html).

<sup>14</sup> Ginger Jackson-Gleich, *Rigging the Jury: How Each State Reduces Jury Diversity by Excluding People with Criminal Records*, Prison Policy Initiative, February 18, 2021, at <https://www.prisonpolicy.org/reports/juryexclusion.html>

<sup>15</sup> See, e.g., National Housing Law Project, *How Does a Criminal Record Affect Your Housing Rights? Public Housing and Section 8 Vouchers in Alameda County*, at [https://www.nhlp.org/files/Fact%20sheet%20for%20potential%20tenants%20-%20AC\(final\).pdf](https://www.nhlp.org/files/Fact%20sheet%20for%20potential%20tenants%20-%20AC(final).pdf); Reentry Resource Center: New York, *People's Guide, Housing and Reentry, Admissions: Getting Into Housing with a Criminal Record*, at [https://www.reentry.net/ny/help/item.2912-Housing\\_and\\_Reentry](https://www.reentry.net/ny/help/item.2912-Housing_and_Reentry).

<sup>16</sup> Center for Community Alternatives, *THE USE OF CRIMINAL HISTORY RECORDS IN COLLEGE ADMISSIONS: RECONSIDERED*, (New York: Center for Community Alternatives, 2010); Rebecca R. Ramaswamy, *Bars to Education: The Use of Criminal History Information in College Admissions*, *COLUMBIA JOURNAL OF RACE AND LAW*, Vol. 5.2, 145-164 (2015).

<sup>17</sup> Lucius Couloute, *Getting Back on Course: Educational Exclusion and Attainment Among Formerly Incarcerated People*, Prison Policy Initiative, October 2018; Marina Duane, Nancy La Vigne, Mathew Lynch, and Emily Reimal, *CRIMINAL BACKGROUND CHECKS: IMPACT ON EMPLOYMENT AND RECIDIVISM* (Washington, DC: Urban Institute, 2017); Michelle Natividad Rodriguez and Maurice Emsellem, 65 *MILLION "NEED NOT APPLY": THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT*, (New York: National Employment Law Project, 2011).

<sup>18</sup> Chidi Umez and Rebecca Piriou, *BARRIERS TO WORK: IMPROVING EMPLOYMENT IN LICENSING OCCUPATIONS FOR INDIVIDUALS WITH CRIMINAL RECORDS*, (Washington, DC: National Conference of State Legislatures, 2018).

<sup>19</sup> J.J. Prescott and Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, *HARVARD LAW REVIEW*, Vol. 133, No. 8, pp. 2460, 2523–2543 (June 2020). Also see, Jeffrey Selbin, Justin McCrary, and Joshua Epstein, *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 *JOURNAL OF CRIMINAL LAW & CRIMINOLOGY* 1 (2018).

<sup>20</sup> Alfred Blumstein and Kiminori Nakamura, *Redemption in an Era of Widespread Criminal Background Checks*, 47 *CRIMINOLOGY* 327 (2009).

<sup>21</sup> *Id.*, p. 332.

<sup>22</sup> Also see, Shawn D. Bushway and Gary Sweeten, *Abolish Lifetime Bans for Ex-Felons*, *CRIMINOLOGY & PUBLIC POLICY*, 6:697–706 (2007). “Lifetime bans for ex-felons affect an estimated 1 in 19 adults and 1 in 3 black male adults in the United States [citation omitted]. These bans may have some short-term benefit in the time period during which ex-felons are at a higher risk of reoffending. But, after a relatively short time span, offending risk differences disappear. Life-course research on desistance shows that virtually all ex-felons eventually desist and that the risk of reoffense drops precipitously as the period of nonoffending increases. Lifetime bans bar entry into many types of employment, impede formation of stable family units, and block access to education assistance, low-income housing, and public assistance. These bans block the very domains thought to be central to the desistance process [citation omitted].” p. 702.

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<sup>23</sup> Shawn D. Bushway, Brian G. Vegetabile, Nidhi Kalra, Lee Remi, and Greg Baumann, *Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks*, (Santa Monica, CA: RAND Corporation, RR-A1360-1, 2022). [https://www.rand.org/pubs/research\\_reports/RRA1360-1.html](https://www.rand.org/pubs/research_reports/RRA1360-1.html).

<sup>24</sup> RAND, *Research Brief: Resetting Recidivism Risk Prediction*, (Santa Monica, CA: RAND Corporation, 2022), p. 2, at [https://www.rand.org/content/dam/rand/pubs/research\\_briefs/RBA1300/RBA1360-1/RAND\\_RBA1360-1.pdf](https://www.rand.org/content/dam/rand/pubs/research_briefs/RBA1300/RBA1360-1/RAND_RBA1360-1.pdf).

<sup>25</sup> Nicole D. Porter, TOP TRENDS IN STATE CRIMINAL JUSTICE REFORM, 2020, (Washington, DC: The Sentencing Project) January 2021. For a detailed historical review of past reform movements designed to grant relief and to restore rights for arrested and convicted offenders, see Margaret Colgate Love, *Starting Over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URBAN LAW JOURNAL 101 (2003), “Part 1: Historical Background—Back to the Future” at pp. 103–113, and Gabriel J. Chin, *Collateral Consequences*, in REFORMING CRIMINAL JUSTICE, VOLUME 4: PUNISHMENT, INCARCERATION, AND RELEASE, (Phoenix, AZ: Arizona State University, 2017), pp. 371–398.

<sup>26</sup> The Ban the Box initiative is believed to have started with a campaign in Hawaii in the late 1990s, resulting in the enactment of HI REV STAT § 378-2.5, prohibiting prospective employers from considering criminal convictions before making a conditional offer of employment, and even then the conviction record should bear a “rational relationship to the duties and responsibilities of the position.” See, Stewart J. D’Alessio, Lisa Stolzenberg, and Jamie L. Flexon, *The Effect of Hawaii’s Ban The Box Law on Repeat Offending*, AMERICAN JOURNAL OF CRIMINAL JUSTICE, June 24, 2014. Also see Amanda Agan and Sonja Starr, BAN THE BOX, CRIMINAL RECORDS, AND STATISTICAL DISCRIMINATION: A FIELD EXPERIMENT, (Michigan Law, University of Michigan, Law and Economics Research Paper Series, Paper No. 16-012), June 2016; Beth Avery and Han Lu, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, National Employment Law Project (NLRP), September 30, 2020, and FAQ: Fair Chance to Compete for Jobs Act of 2019, NLRP, December 17, 2019, at <https://www.nelp.org/publication/faq-fair-chance-to-compete-for-jobs-act-of-2019/>.

<sup>27</sup> Starting July 1, 2021, the CALIFORNIA PENAL CODE § 4852.03 (a) specifies the period of rehabilitation shall be five years residence within the state following discharge from confinement and community supervision, and this period extends for additional time depending on the nature of the offense. Those convicted of offenses that require registration as a sex offender must serve an additional five years and the certificate does not relieve the burden of registering as a sex offender. *Id.*, CALIFORNIA PENAL CODE § 4852.03(a)(2)(B).

<sup>28</sup> Margaret Love and David Schlüssel, PATHWAYS TO REINTEGRATION: CRIMINAL RECORD REFORMS IN 2019 (Washington, DC: Collateral Consequences Resource Center, 2020), p. 1.

<sup>29</sup> Rebecca Vallas and Sharon Dietrich, ONE STRIKE AND YOU’RE OUT (Washington, DC: Center for American Progress, 2014).

<sup>30</sup> See, e.g., The Unified Judicial System of Pennsylvania, *Clean Slate, Expungement and Limited Access: Frequently Asked Questions, What is Clean Slate?* at <https://www.pacourts.us/learn/learn-about-the-judicial-system/clean-slate-expungement-and-limited-access>, and Utah Courts, *Utah’s Clean Slate Law Goes Into Effect, Automatically Clearing Old and Minor Criminal Records*, at <https://www.utcourts.gov/utc/news/2022/02/10/utahs-clean-slate-law-goes-into-effect-automatically-clearing-old-and-minor-criminal-records/>. *Automatic* is defined as “able to operate independently of human control” and “an automatic machine, process, or system is able to operate, complete a task, or move by itself without being controlled by a person.” *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/automatic>. Rather than automatic, Clean Slate initiatives are more aptly described as *automated*, “made to operate by machines or computers in order to reduce the work done by humans.” *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/automated>. Representatives of courts and state criminal history record repositories typically use computers to identify pools of candidates who are potentially eligible for Clean Slate records relief, which requires additional, individual review, analysis, and record matching to determine if all statutory eligibility requirements have been met, e.g., that (a) fines,

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fees, and restitution has been paid, (b) the records subject has fully discharged their sentence, (c) has not been charged or convicted of other offenses, (d) has remained crime-free for required waiting periods, etc.

<sup>31</sup> Michael Hartman, *Criminal Record Clearing: The Terminology*, POLICY SNAPSHOT (Washington, DC: National Conference of State Legislatures, April 2020).

<sup>32</sup> BLACK'S LAW DICTIONARY (St. Paul, MN: West Publishing Co., 4th edition, 1968), p. 693.

<sup>33</sup> See Table A-1 in the Technical Appendix for state terminology.

<sup>34</sup> MCL §780.621. (2021).

<sup>35</sup> MCL §780.622 (2021).

<sup>36</sup> RCW 9.94A.640.

<sup>37</sup> RCW 9.94A.650(4)(b) provides “A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense occurring on or after July 28, 2019, and may be used to establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.” [departure from sentencing guidelines].

<sup>38</sup> SC CODE § 17-1-40 (B)(1) – (a) (2019).

<sup>39</sup> 11 DE CODE § 4373(A)(1)(A.) (2021).

<sup>40</sup> MT CODE § 44-5-202(8) (2019).

<sup>41</sup> CT GEN. STAT. § 54-142a. ERASURE OF CRIMINAL RECORDS. (2019).

<sup>42</sup> *Id.*, § 54-142a(c) (2019) “Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state’s or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased.”

<sup>43</sup> Michael Vitiello, *Legalizing Marijuana: Lessons from the United States*, STUDI SENESI (forthcoming 2018). <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1341&context=facultyarticles>.

<sup>44</sup> NCSL, *State Medical Marijuana Laws*, <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>, March 1, 2021.

<sup>45</sup> Keith Coffman and Nicole Neroulis, “Colorado, Washington First States to Legalize Recreational Pot,” REUTERS, November 6, 2012, at <https://www.reuters.com/article/us-usa-marijuana-legalization/colorado-washington-first-states-to-legalize-recreational-pot-idUSBRE8A602D20121107>.

<sup>46</sup> NCSL, *Cannabis Overview*, March 5, 2021, at <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>. Notwithstanding these legislative changes, it is interesting to note that the FBI reports 361,825 arrests for marijuana possession in 2019. See FBI, CRIME DATA EXPLORER, *Arrests Offense Counts in the United States, 2019, Arrests for Drug Possession Offenses*, <https://crime-data-explorer.app.cloud.gov/explorer/national/united-states/arrest>.

<sup>47</sup> California (WEST'S ANN. CAL. HEALTH & SAFETY CODE § 11357 *et seq.*), Illinois (20 ILCS 2630/0.01 *et seq.*), Maryland (MD CODE, CRIMINAL PROCEDURE, § 10-101 *et seq.*), Missouri (2022 Missouri Constitutional Amendment 3, which legalized marijuana and authorized expungement for nonviolent cannabis offenses), New Hampshire (N.H. REV. STAT. § 651:1 *et seq.*), New Jersey (<https://www.njcourts.gov/courts/municipal/marijuana-expungement>), New York (MCKINNEY'S CPL § 160.10 *et seq.*), North Dakota (NDCC, 19-03.1-01 *et seq.*), Oregon (O.R.S. § CH. 459, § 2 *et seq.*), and Rhode Island (Rhode Island Supreme Court Order No. 2023-02, [https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/23-02\\_Amended.pdf](https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/23-02_Amended.pdf)). NCSL, *Clearing Criminal Records for Cannabis Offenses*, April 21, 2020, at <https://www.ncsl.org/research/civil-and-criminal-justice/clearing-criminal-records-for-cannabis-offenses.aspx>. Nicole D. Porter, TOP TRENDS IN STATE CRIMINAL JUSTICE REFORM, 2020, (Washington, DC: The Sentencing Project) 2021; Douglas A. Berman, *Leveraging Marijuana Reform to Enhance Expungement Practices*, FEDERAL SENTENCING REPORTER, VOL. 30, 2018, April 18, 2018.

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<sup>48</sup> Deborah M. Ahrens, *Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform*, 110 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 379, 407 (2020)

<sup>49</sup> Gene Johnson, *Washington Gov. Insee to Pardon Marijuana Convictions*, AP NEWS, January 4, 2019, cited in Ahrens, *supra* note 48; see <https://apnews.com/article/a57f9cd5ec4a40bcbdf7467589da617d>.

<sup>50</sup> RCW 9.96.060 (5) (2019). Melissa Santos, *It Just Got Easier to Wipe That Week Conviction Off Your Record in WA. Here's How*, CROSSCUT, July 29, 2019. See <https://crosscut.com/2019/07/it-just-got-easier-wipe-weed-conviction-your-record-wa-heres-how>.

<sup>51</sup> N.Y. CRIM. PROC. LAW § 440.10(1)(i) (2012). Also see Alyssa M. Barnard, “*The Second Chance They Deserve*”: *Vacating Convictions of Sex Trafficking Victims*, 114 COLUMBIA LAW REVIEW 1463-501 (2014).

<sup>52</sup> See: RCW 9.96.060 (3) (2019); MO REV. STAT. § 610.131 (2019); Polaris, *New Georgia Law Helps Trafficking Survivors Clear Their Records*, July 13, 2020, at <https://polarisproject.org/blog/2020/07/new-georgia-law-helps-trafficking-survivors-clear-their-records/>; Polaris, *Progress on Criminal Record Relief for Trafficking Survivors*, August 12, 2019, at <https://polarisproject.org/blog/2019/08/progress-on-criminal-record-relief-for-trafficking-survivors/>; Casey Leins, *Hawaii Passes Law Protecting Sex Trafficking Victims*, U.S. NEWS & WORLD REPORT, July 13, 2019. See generally, Jessica Emerson and Alison Aminzadeh, *Left Behind: How the Absence of a Federal Vacatur Law Disadvantages Survivors of Human Trafficking*, 16 U. MD. L.J. RACE RELIG. GENDER & CLASS 239 (2016); American Bar Association, Commission on Domestic & Sexual Violence, POST-CONVICTION ADVOCACY FOR SURVIVORS OF HUMAN TRAFFICKING: A GUIDE FOR ATTORNEYS, (Washington, DC: American Bar Association, Commission on Domestic & Sexual Violence, 2016); Amanda Robert, *States Help Trafficking Survivors Overcome Criminal Records*, ABA JOURNAL, February 1, 2020; Michael Hartman, *State Policies to Clear Criminal Records*, POLICY SNAPSHOT, (Washington, DC: National Conference of State Legislatures) 2020; Ashleigh Pelto, *Criminal Record Relief for Human Trafficking Survivors: Analysis of Current State Statutes and the Need for a Federal Model Statute*, 27 MICH. J. GENDER & L. (2021).

<sup>53</sup> In Michigan, the applicant for an order to set aside a conviction must prove “by a preponderance of the evidence that he or she was a victim of human trafficking when committing the crime.” MCL 780.621(d)(12). (2021).

<sup>54</sup> MCL 780.621(g). (2020).

<sup>55</sup> MCL 780.621(b) (2020).

<sup>56</sup> Michigan limits records relief to individuals convicted of operating a vehicle while intoxicated to a first conviction. MCL 780.616c.

<sup>57</sup> The Restoration of Rights Project provides detailed state-by-state and federal links and summaries of legislation governing sealing, expungements, and provisions for setting aside convictions. RESTORATION OF RIGHTS PROJECT, *50-State Comparison: Expungement, Sealing & Other Record Relief*, updated March 2021, at <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>.

<sup>58</sup> MO REV STAT § 556.061 (19) (2019).

<sup>59</sup> MO REV STAT § 610.140 (2019).

<sup>60</sup> See, Missouri Courts, *Criminal Forms, Petition for Expungement – Section 610.140, RSMo*, at <https://www.courts.mo.gov/page.jsp?id=649>.

<sup>61</sup> MO REV STAT § 610.124 (1993).

<sup>62</sup> MO REV STAT § 610.120 (2021); 610.140 (2021).

<sup>63</sup> Washington State is not implementing, nor is it currently planning for, Clean Slate legislation. The state’s legislature passed Clean Slate legislation in 2020 that was later vetoed by its governor due to uncertainty over its fiscal impact.

<sup>64</sup> A 2021 study reported that, 10 years post-sentencing, the majority of former defendants represented by public defenders owed fines (57%) and costs (62%), a rate much higher than former defendants represented by private counsel (36% and 30%, respectively). Source: Jeffrey T. Ward, Nathan W. Link, and

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Andrew Christy. *Imposition and Collection of Fines, Costs and Restitution in Pennsylvania Criminal Courts* (ACLU of Pennsylvania, updated March 1, 2021).

<sup>65</sup> Caroline Cohn, Margaret Love, Ariel Nelson, Andrew G. Pizor, David Schlusel, and Abby Shafroth, *THE HIGH COST OF A FRESH START: A STATE-BY-STATE ANALYSIS OF COURT DEBT AS A BAR TO RECORD CLEARING*, (Boston, MA and Washington, DC: National Consumer Law Center and the Collateral Consequences Resource Center, 2022), p. 20.

<sup>66</sup> Oklahoma statute requires that restitution be paid for certain nonviolent felony convictions. Fines, fees, and restitution payment requirements for all other convictions are not clearly addressed in statute.

<sup>67</sup> Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

<sup>68</sup> MCL 780.161.(h)(3). (2020).

<sup>69</sup> Margaret Love and David Schlusel, *WAITING FOR RELIEF: A NATIONAL SURVEY OF WAITING PERIODS FOR RECORD CLEARING*, (Washington, D.C.: Collateral Consequences Resource Center, 2022). In some jurisdictions there may be no waiting period and relief can be granted upon completion of the person’s sentence (Ark. Code Ann. §§ 16-90-1404(1), - 1406) or completion of probation without revocation (Cal Penal Code §§ 1203.4, 1203.4a, 1203.425). In North Carolina, the waiting period for “expunction of two or three nonviolent felonies, 20 years after the date of the most recent conviction listed in the petition, or 20 years after any active sentence, period of probation, or post-release supervision, related to a conviction listed in the petition, has been served, whichever occurs later.” N.C. Gen. Stat. § 15A-145.5(c)(2)b.

<sup>70</sup> Alfred Blumstein and Kiminori Nakamura, *supra* note 20; Shawn D. Bushway, Brian G. Vegetabile, Nidhi Kalra, Lee Remi, and Greg Baumann, *supra* note 23.

<sup>71</sup> James Jacobs, *The Eternal Criminal Record* 131 (Harvard Univ. Press 2015).

<sup>72</sup> RCW 9.94A.640 for felony convictions and RCW 9.96.060 for misdemeanor convictions.

<sup>73</sup> Prescott and Starr, *supra* note 19, pp. 2501–2506.

<sup>74</sup> Colleen V. Chien, *America’s Paper Prisons: The Second Chance Gap*, 119 MICHIGAN LAW REVIEW 519, 526 (December 2020).

<sup>75</sup> Sophie Quinton, *In These States, Past Marijuana Crimes Can Go Away*, PEW FOUNDATION: STATELINE, November 20, 2017.

<sup>76</sup> FAIR CREDIT REPORTING ACT (FCRA), 15 U.S.C. § 1681 *et seq.*

<sup>77</sup> <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/conductingbackgroundinvestigations.aspx>.

<sup>78</sup> Administrative Office of the Pennsylvania Courts (AOPC), *Agreement Concerning Bulk Distribution of Electronic Case Record Information on Recurring Basis*, at <https://www.nelp.org/wp-content/uploads/PA-Courts-Agreement-Distribution-Electronic-Case-Record-Information.pdf>. This LifeCycle file covers both the Common Pleas Criminal Court Case Management System (CPCMS) and the Magisterial District Judge Automated System (MDJS).

<sup>79</sup> Mo. Rev. Stat. 43.532; Mo. Sup. Ct. Op. R 2.02. Access to any Missouri judicial website, including but not limited to Case.net, by a site data scraper or any similar software intended to discover and extract data from a website through automated, repetitive querying for the purpose of collecting such data, is expressly prohibited.

<sup>80</sup> [Izadi Elahe, An old arrest can follow you forever online. Some newspapers want to fix that, The Washington Post, January 23, 2021.](#)

<sup>81</sup> More detail about the nature of these challenges is provided later in the document.

<sup>82</sup> The amount is typically less than \$50.

<sup>83</sup> 34 U.S. Code S 40316 (1998).

<sup>84</sup> *Id.*

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<sup>85</sup> The Compact Council is the governing body of the National Crime Prevention and Privacy Compact. For more information, see: <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/compact-council>.

<sup>86</sup> Bureau of Justice Statistics, *National Crime Prevention and Privacy Compact: Resources Materials*, (Washington, DC: Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, January 1998, NCJ 171671), pp. 17–18.

<sup>87</sup> Becki R. Goggins and Dennis DeBacco, *supra* note 5, *Table 1. Overview of state criminal history systems, December 31, 2018*.

<sup>88</sup> The Brennan Center for Justice. *Police Responses to Covid-19*. Updated July 8, 2020. Accessed November 30, 2020. <https://www.brennancenter.org/our-work/research-reports/police-responses-covid-19>.

<sup>89</sup> Corrections systems are predominately cell-based, and most operate akin to a hotel system. Inmates may be assigned different numbers for each confinement related to separate sentences/adjudications. This cell-based systems data does contain some person-based characteristics.

<sup>90</sup> Discharge information is even more scarce or completely non-existent for former jail detainees.

<sup>91</sup> The Interstate Identification Index (III) is a fingerprint-based “index-pointer” system that is administered by the FBI and in which all states and the District of Columbia participate. As an index, III enables the interstate identification and exchange of computerized criminal history record files of the FBI with the centralized state criminal history files maintained by each participating state in a national system. This system serves as the vehicle for data sharing and integration across the country. It includes arrest and disposition information for individuals charged with felonies and reportable misdemeanors under state or federal law. Through an electronic inquiry of the Index, criminal justice agencies can determine if criminal history records pertaining to a subject are available in other jurisdictions, and they can identify in which jurisdictions the records can be found. If a “hit” is made against the Index, detailed record requests are made using the subject’s State Identification Number (SID) or Universal Control Number (UCN); data are automatically retrieved from III and each state criminal history repository holding matching records on the individual; these data are then forwarded to the requesting agency. Users can search on a variety of identifiers such as name, date of birth, race, sex, UCNs, and SIDs. <https://www.search.org/states-participation-in-national-systems-and-programs-that-facilitate-interstate-exchange-of-criminal-history-records/>.

The National Crime Information Center (NCIC) is a criminal records database allowing criminal justice agencies to enter or search for information about stolen property, missing or wanted persons, and domestic violence protection orders; to get criminal histories; and to access the National Sex Offender Registry. <https://www.justice.gov/tribal/national-crime-information-systems>.

<sup>92</sup> Alfred Blumstein and Kiminori Nakamura, *Potential Redemption in Criminal Background Checks*, (Pittsburgh, PA: Carnegie Mellon University, 2010). Blumstein and Nakamura noted that 20–22% of individuals in their sample had arrests in multiple jurisdictions. *Id.*, pp. 32–35. *Also see* Matthew R. Durose, Howard N. Snyder, and Alexia D. Cooper, *Special Report: Multistate Criminal History Patterns of Prisoners Released in 30 States*, (Washington, DC: Office of Justice Programs, Bureau of Justice Statistics, 2015, NCJ 248942), which reports that 25% of the 404,638 prisoners released in 2005 in 30 states had at least one out-of-state arrest *prior* to their release, and 11% had at least one out-of-state arrest in the 5-year period *following* release.

<sup>93</sup> Matthew R. Durose, Howard N. Snyder, and Alexia D. Cooper, *supra* note 92.

<sup>94</sup> Oklahoma has not yet begun to implement Clean Slate, but its related legislation identifies the Criminal History Repository as being the responsible entity for initial eligibility determinations.