

TECHNICAL AND OPERATIONAL CHALLENGES OF IMPLEMENTING CLEAN SLATE

Technical Appendix – Profiles of 11 Study States



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Introduction

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, selected in consultation with the Clean Slate Initiative. The 11 states under study include Colorado, Connecticut, Delaware, Michigan, Missouri, New York, Oklahoma, Pennsylvania, Texas, Utah, and Washington. 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.

Individual profiles of each of the 11 study states are included in this Technical Appendix to the primary report, *Technical and Operational Challenges of Implementing Clean Slate: Research Findings*.¹

Records Relief: State and Document Terminology

| State Terminology | SEARCH Document Terminology | |
|-------------------|----------------------------------|--------------------------|
| | Seal/Suppress | Expunge/Destroy |
| Colorado | Seal, expungement ² | |
| Connecticut | Erasure | |
| Delaware | Expungement ³ | Expungement |
| Michigan | Set Aside | |
| Missouri | Expungement Closed Records | Expungement ⁴ |
| New York | Seal, suppress | Expungement |
| Oklahoma | Expungement | |
| Pennsylvania | Limited Access | Expungement |
| Texas | Order of Nondisclosure | Expunction |
| Utah | Seal Expungement ⁵ | |
| Washington | Vacatur Sealing ⁶ | Expungement |

¹ David J. Roberts, Karen Lissy, Becki Goggins, Mo West, and Mark Perbix, *Technical and Operational Changes of Implementing Clean Slate: Research Findings* (Sacramento, CA: SEARCH Group, Incorporated, 2023).

² Colorado statutes use both “seal” and “expungement” synonymously in that records are retained with limited access, but not destroyed.

³ Delaware retains expunged records in a segregated file within the criminal history repository; all other records in law enforcement and court entities are physically destroyed.

⁴ In Missouri, expungement that triggers destruction of records in the repository equates to increased confidentiality in the courts. Cases expunged in the courts means the defendant’s name in the associated court case is overwritten with the word “EXPUNGED,” rendering it unsearchable by the defendant’s name.

⁵ Utah statutes use “seal” and “expungement” interchangeably, meaning records are retained with limited access.

⁶ Sealing has very limited use for adults in Washington. An adult record sealed by [Court Rule](#), rather than by statute, it is not sealed at the Criminal History Repository. Only convictions vacated by court order are vacated in the Criminal History Repository of the Washington State Patrol.

Clean Slate State Profile: Colorado

September 2022

The purpose of this Clean Slate State Profile is to describe the current processes and practices in Colorado related to record relief as of the beginning of the 2022 legislative session, and to describe the changes to the records relief processes resulting from the passage of SB 22-090, which was signed into law on May 31, 2022. This profile covers topics that include eligibility requirements, processing requirements, decision-making processes, notifications, effects, costs, and operational impacts.

The terms **expunge** and **seal** are used throughout the Colorado statutes and the meaning of both is effectively the same — records are sealed (limiting access), not destroyed.¹ The law does not authorize the physical destruction of any sealed conviction records.² As of January 1, 2022, Colorado had methods or provisions to expunge or seal criminal justice records. Criminal record relief can occur by:

- 1) filing a petition or a motion,³
- 2) a court-initiated “simplified” process,⁴
- 3) an automatic sealing process,⁵ and
- 4) cases or convictions having special circumstances, such as arrests based on a mistaken identity or cases involving human trafficking.

Provisions for all forms of records relief are found in *C.R.S. Title 24, Article 72, Part 7. Criminal Justice Record Sealing*. The eligibility criteria differ for each, but the process after initiation is largely the same. The court-initiated “simplified” records relief process for certain qualifying non-conviction records became effective on August 2, 2021. More comprehensive records relief legislation was signed into law in June 2022.⁶

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¹ As a general rule, the term “expungement” refers to the process of sealing or limiting access to juvenile records. However, the term is also used when referencing the sealing of certain adult records, such as cases of mistaken identity (C.R.S 24-72-702) or the termination of a deferred judgment and sentence (C.R.S 16-18.5-111). The term expungement is also used when referring to the *destruction* of DNA evidence for an arrest or case where no charges are filed or the individual had all charges dismissed or was acquitted (C.R.S. 16-23-105).

² C.R.S 24-72-703(4).

³ C.R.S. 24-72-704; C.R.S. 24-72-706.

⁴ C.R.S. 24-72-705.

⁵ C.R.S. 24-72-704.

⁶ SB 22-099.

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Key Terms, Actors and Acronyms in Colorado

- **Expungement:** Term refers to limiting access to criminal justice records. It does not authorize the physical destruction of a record.
- **Sealed record:** A term synonymous and used interchangeably with “expungement.” The record is retained with limited access.
- **Colorado Bureau of Identification (CBI), Biometric Identification and Records Unit:** The agency responsible for maintaining the state’s criminal history records repository.
- **State Court Administrator’s Office (SCAO):** The office responsible for managing the sealing and expungement process for the state district and county courts.
- **ORI:** Originating Agency Identifier, a unique number assigned by CBI used to identify each agency in the criminal justice system.

Colorado Record Sealing Practices as of January 1, 2022

Petition- or Motion-based Process

Eligibility

An individual may file a petition or motion to seal in cases where no charges are filed,⁷ non-conviction cases,⁸ or for certain conviction records.⁹

No Charges Filed. Eligible cases where no charges have been filed include those where:

- 1) the individual completed a diversion program, and no criminal charges were ever filed,
- 2) the individual was not charged and the statute of limitations has run, or
- 3) the individual was not charged and the statute of limitations has not run but the person is no longer being investigated by law enforcement for commission of the offense.¹⁰

Non-Conviction Cases. To seal a non-conviction record, which includes acquittals, completely dismissed cases, successful post-filing diversion cases, and successful deferred cases, the petition or motion is filed into the existing criminal case. In all other instances where a criminal case does not already exist, such as to seal a municipal court record, the individual must file the petition as a civil action in the district court.

Conviction Records. In order to petition to seal a conviction record, only convictions for certain enumerated crimes are eligible, and a time requirement is imposed on eligibility. Conviction charges eligible for expungement include petty offenses, and certain class 1, 2, and 3 misdemeanors and class 3, 4, and 5 felonies that do not involve crimes of violence, sexual involvement, domestic violence, stalking, crimes against children or at-risk individuals, intimidation of witnesses or victims, or retaliation against a judicial official.¹¹ Certain traffic offenses and cases involving specified aggravating sentencing factors are also ineligible for records relief.¹² If multiple charges within a single case are being considered for sealing, all offenses within the case must be eligible for sealing.¹³

Section 24-72-109 (1) defines when a defendant may petition the court to seal individual or multiple conviction records that are not otherwise eligible to be sealed because of an intervening conviction:

- 1) If the offense or highest offense of the multiple offenses is an eligible petty offense or eligible petty drug offense, the petition may be filed 2 years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning the conviction, or the latest in time criminal conviction of the multiple convictions;

⁷ C.R.S. 24-72-704.

⁸ C.R.S. 24-72-705.

⁹ C.R.S. 24-72-706.

¹⁰ C.R.S. 24-72-704 (1)(a)(I), (II), (III).

¹¹ C.R.S. 24-4.1-302 (1).

¹² C.R.S. 24-4.1-302 (2).

¹³ C.R.S. 24-72-703 (12)(a)(I); C.R.S. 24-72-708 (1)(b).

- 2) If the offense or highest offense of the multiple offenses is an eligible misdemeanor or eligible misdemeanor drug offense, or eligible level 4 drug felony, the petition may be filed 5 years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning the conviction, or the latest in time criminal conviction of the multiple convictions; or
- 3) If the offense or highest offense of the multiple offenses is an eligible felony or eligible drug felony, the petition may be filed 10 years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning the conviction, or the latest in time criminal conviction of the multiple convictions.

There are some additional limitations in determining the eligibility to seal these multiple conviction records. C.R.S. 24-709 (2) defines these limitations:

- 1) If the offense or highest offense of the multiple offenses is an eligible petty offense or eligible petty drug offense, the petition may be filed only if the defendant has no more than five convictions in separate criminal cases;
- 2) If the offense or highest offense of the multiple offenses is an eligible class 2 or eligible class 3 misdemeanor or eligible level 1 or eligible level 2 misdemeanor drug offense, the petition may be filed only if the defendant has no more than four previous convictions in separate criminal cases; or
- 3) If the offense or highest offense of the multiple offenses is an eligible class 1 misdemeanor, an eligible class 4, eligible class 5, or eligible class 6 felony, or an eligible drug felony, the petition may be filed only if the defendant has no more than three previous convictions in separate criminal cases.

C.R.S. 24-72-709 (5)(a) identifies a multitude of more serious offenses that are ineligible for sealing under this section. Conviction records for these otherwise ineligible offenses may, however, be eligible for sealing if the district attorney consents to the sealing or if the court finds, by clear and convincing evidence, that the petitioner's need for sealing of the record is significant and substantial, the passage of time is such that the petitioner is no longer a threat to public safety, and the public disclosure of the record is no longer necessary to protect or inform the public.¹⁴ When requesting to seal multiple conviction records, no more than one serious felony crime as defined in C.R.S. 24-4.1-302 (1) may be sealed.¹⁵ This exception does not apply to certain records related to possession or consumption of alcohol or marijuana by juveniles.¹⁶

¹⁴ C.R.S. 24-72-709 (5)(b). The court's decision-making process as described here weighing the interests of the individual against the interests of the public is hereinafter referred to in this document as the "balancing test." The statute more precisely defines this process in C.R.S. 24-72-706 (1)(g): "...the court must determine that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining public access to the conviction records. The judge will take into consideration the severity of the offense that is the basis of the conviction records, the criminal history of the defendant, the number of convictions and dates of the convictions for which the defendant is seeking to have the records sealed, and the need for the government agency to retain the records."

¹⁵ C.R.S. 24-4.1-302 (1) enumerates a plethora of serious crimes ranging from crimes against the person to first degree burglary, arson, and violation of a protection order.

¹⁶ C.R.S. 24-72-706(2)(c); C.R.S. 24-72-709(5)(b).

A time requirement is imposed to establish eligibility based upon the seriousness of the crime:

- For petty drug offenses, 1 year after date of final disposition or release from supervision;
- for Class 2, 3 or drug misdemeanors, 2 years after date of final disposition or release from supervision;
- for Class 4, 5 or 6 felonies or level 3 or 4 drug felonies, or class 1 misdemeanors, 3 years after date of final disposition or release from supervision;
- for all other offenses, the time requirement is 5 years after date of final disposition of all proceedings or release from supervision.¹⁷

Process

The petition to seal is filed in the criminal court where the criminal case was filed. In other cases, such as municipal courts cases or petitions to seal only an arrest record with no accompanying criminal court case, the case is filed as a district court civil case. Any petition or motion to seal criminal records shall list each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed.¹⁸ For criminal cases, costs of \$65 are assessed unless waived due to indigency.¹⁹ For petitions or motions filed as civil cases, costs of \$224 are assessed unless waived due to indigency.

If the records relief process is initiated by petition, a hearing date must be set within 35 days after determining that the petition is sufficient “on its face” and is eligible for consideration. Once the hearing date is set, the defendant shall notify the prosecuting attorney, arresting agency, and any other person or agency identified by the defendant.²⁰ Victims of serious crimes shall receive notice of the hearing.²¹ If the district attorney does not object and the offense is not ineligible for consideration, the court may decide the petition with or without the benefit of a hearing. If the district attorney objects to the petition or the offense is a crime otherwise ineligible to be sealed and the district attorney requests a hearing on behalf of a victim, the court shall set the matter for hearing.²² If no objection is received by the court 7 days prior to the hearing date, the court shall vacate the hearing and order such records to be sealed.²³

Decision-Making

When making a decision to seal conviction records as defined in C.R.S. 24-72-706, the court must take the following factors into consideration when making its decision:

- For petty offenses or petty drug offenses, the court may act based on the petition and criminal history alone *if the court determines that the defendant has not been subsequently convicted* of a criminal offense.

¹⁷ C.R.S. 24-72-706(1)(b).

¹⁸ C.R.S. 24-72-704(1)(b); C.R.S. 24-72-706(1)(c); C.R.S. 24-72-709(1)(b).

¹⁹ C.R.S. 24-72-705(2)(a); C.R.S. 24-72-706(1)(h); C.R.S. 24-72-709(4).

²⁰ C.R.S. 24-72-704(1)(c)(2).

²¹ C.R.S. 24-4.1-302.

²² C.R.S. 24-72-710(3).

²³ C.R.S. 24-72-704(1)(c)(II).

- For class 2, 3 or drug misdemeanors, the court may act if there is no objection by the prosecutor and the defendant has not been subsequently convicted of a criminal offense. If there is an objection, the court will decide after considering whether the privacy of the defendant outweighs the public interest in retaining access to the record (i.e., the “balancing test”).²⁴
- For class 4, 5 or 6 felonies or level 3 or 4 drug felonies or class 1 misdemeanors, the court may act if there is no objection by the prosecutor or victim and the defendant has not been subsequently convicted. If there is an objection, the court will decide after considering the balancing test.
- For all other offenses, the court shall set a hearing and shall decide the motion after considering the position of the district attorney and after considering the balancing test.²⁵

Court-Initiated “Simplified” Process

Eligibility

The courts can initiate a process to seal “non-conviction” records, which are defined as instances in which a) the case is completely dismissed; b) the defendant is acquitted of all counts in the case; c) the defendant completes a diversion agreement after a criminal case has been filed; or d) the defendant completes a deferred judgment and sentence, and all counts are dismissed.²⁶ The court can order the record sealing at the time of the dismissal or acquittal. If the court does not order the sealing at that time, the defendant may make a motion with the court to do so with written notice to the prosecutor.²⁷

Process

If a defendant files a motion to seal under C.R.S. 24-72-705, “the court shall promptly process the defendant’s request to seal the criminal justice records within the criminal case without the filing of an independent civil action and without any further evidence except for evidence of the dismissal or acquittal. Motions filed pursuant to this section are procedural in nature and sealing pursuant to this section applies retroactively for all eligible cases when the case has been completely dismissed or the defendant has been acquitted of all counts in a state or municipal criminal case.” The court shall expedite the processing of such a motion and set a return date for the sealing motion no later than 42 days after receipt of the motion. The court shall also allow the district attorney the opportunity to inform the victim that the record will be sealed.

²⁴ The term “balancing test” is used to summarize the decision-making process that the court must undertake when making the determination to seal a record. C.R.S. 24-72-706 (1)(g) defines this more completely as “...the court must determine that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining public access to the conviction records. The judge will take into consideration the severity of the offense that is the basis of the conviction records, the criminal history of the defendant, the number of convictions and dates of the convictions for which the defendant is seeking to have the records sealed, and the need for the government agency to retain the records.”

²⁵ C.R.S. 24-72-706(1)(f).

²⁶ C.R.S. 24-72-705 (1)(a).

²⁷ C.R.S. 24-72-705 (1)(b).

The defendant shall pay a processing fee of \$65, which the court may waive upon a determination of indigency.

Decision-Making

The processes and procedures applicable to the petition- or motion-based process discussed earlier and found in C.R.S. 24-72-703 and 24-72-705 shall be followed in making the decision to seal the record.

Automatic Sealing of Arrest Records

Eligibility

C.R.S. 24-72-704(2) defines the process for the automatic sealing of arrest records *by the criminal history repository*. For arrests on or after January 1, 2022, the Colorado Bureau of Investigation (CBI) shall automatically seal an arrest record when no criminal charges have been filed within 1 year of the date of the person’s arrest. If the CBI does not receive documentation of the filing of criminal charges from a court or another state or local agency or office within 1 year of the date of arrest, the CBI shall seal the arrest records.

Process

C.R.S. 24-72-704 (2) defines the process for sealing records: For arrests without a conviction after January 1, 2019, but before January 1, 2022, the CBI shall automatically seal an arrest record of a person when no criminal charges have been filed within 3 years after the date of arrest for a felony offense for which the statute of limitations is 3 years; or within 18 months after the date of arrest for a misdemeanor offense, a misdemeanor traffic offense, a petty offense, a municipal ordinance violation for which the statute of limitations is 18 months or less, or if there is no indication of the classification of the crime in the arrest data.

Automatic sealing is also allowed for arrest records without a conviction occurring between January 1, 2019, and before January 1, 2022, if no *subsequent* criminal charges have been filed within 3 years for felonies with a statute of limitations of 3 years or 18 months for a misdemeanor offense, a misdemeanor traffic offense, a petty offense, or a municipal ordinance violation for which the statute of limitations is 18 months or less. Additionally, “[i]f the CBI does not receive documentation from a court or another state or local agency or office that criminal charges have been filed within these time periods... the CBI shall seal the arrest records...”²⁸

Decision-Making

The automatic sealing of arrest records with no convictions is retroactive and a schedule for sealing records is provided in statute.²⁹ Arrest records for a felony offense with a statute of limitations of more than 3 years or with no statute of limitations are not eligible for sealing.³⁰

²⁸ C.R.S. 24-72-704.

²⁹ C.R.S. 24-72-704(2).

³⁰ C.R.S. 24-72-704(2)(b)(1)(IV) and (V).

Convictions or Cases Having Special Circumstances

Colorado allows for the sealing of records under certain special circumstances, specifically:

- A person who was arrested as a result of mistaken identity and who did not have charges filed against him or her.³¹
- Conviction records for individuals who establish that they were involved in human trafficking by another person.³²
- Conviction records for certain municipal offenses.
- A person receiving a full and unconditional pardon.

Eligibility

No time requirement is imposed on persons arrested as a result of mistaken identity, who were involved in human trafficking, or who have received a full and unconditional pardon. To be eligible for sealing municipal offenses, 3 years must have passed since final disposition or release from supervision, the defendant has not committed another felony or misdemeanor during this period, and the offense committed was not a misdemeanor traffic offense that involved a holder of a commercial driver's license or the operator of a commercial vehicle.³³ The defendant may petition to seal other offenses not identified in statute except those involving domestic violence.³⁴ These eligibility requirements are consistent with those that apply to petitions to seal a single conviction.

Process

In cases involving a mistaken identity, law enforcement must file a petition for relief on behalf of the defendant at no cost to the defendant.³⁵ No hearing is held, and the order must be issued within 90 days.

In cases involving human trafficking, the defendant must file a petition or motion to seal. The statute is silent as to whether a hearing is held.

In cases involving convictions for municipal offenses, the defendant must file a petition or motion and pay the required filing fee. The court shall review the motion and determine whether there are grounds to proceed to a hearing on the petition. If the court denies the petition, the court shall enter an order denying the motion and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the motion. If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition, the court shall set a date for a hearing and the court shall notify by certified mail the prosecuting attorney, the arresting agency, and any other person or agency identified by the defendant.

³¹ C.R.S 24-72-702.

³² C.R.S 24-72-707.

³³ C.R.S 24-72-708.

³⁴ C.R.S 24-72-708(1)(a)(II).

³⁵ C.R.S. 24-72-702(1)(b).

Anyone receiving a full and unconditional pardon may file a motion in the case in which any conviction records exist pertaining to the defendant's conviction for any offenses that received a full and unconditional pardon. The defendant is not required to pay a processing fee but shall provide notice of the motion to the district attorney. If the district attorney objects, a hearing must be held.³⁶

Decision-Making

Record sealing decision-making in special circumstances cases are as follows:

- In cases involving a mistaken identity, the order to seal must be issued within 90 days.
- In cases involving human trafficking, if the defendant establishes by a preponderance of the evidence that, at the time he or she committed the offense, he or she had been trafficked by another person for the purpose of performing the offense, the court shall order the case sealed.
- In pardon cases, the court shall order the records sealed unless the court finds by clear and convincing evidence that the public interest in retaining public access to the conviction records outweighs the harm to the privacy of the defendant, the dangers of unwarranted, adverse consequences to the defendant, and the intent of the full and unconditional pardon (i.e., the balancing test).

In all matters related to record sealing, the court shall look favorably upon defendants who have successfully completed a veteran's treatment program and/or successfully completed a substance abuse treatment program.³⁷

Limitations to Filing a Case-sealing Petition

A person may only file a petition to seal a case once every 12 months.³⁸

Cases that are dismissed or not charged due to a plea agreement in another case are only eligible for sealing when the related case is eligible. Conviction records cannot be sealed if the defendant still owes restitution, fines, court costs, late fees, or other court-ordered costs.³⁹

If a defendant is convicted of a new criminal offense after an order sealing conviction record is entered, the court shall order the conviction records to be unsealed.⁴⁰

Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the motion to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees vacated the order.⁴¹

³⁶ C.R.S.24-72-710.

³⁷ C.R.S. 24-72-703(10) and (10.5).

³⁸ C.R.S 24-72-703(3).

³⁹ C.R.S 24-72-706(1)(e); C.R.S 24-72-709(4)(b).

⁴⁰ C.R.S. 24-72-703(2)(a)(V).

⁴¹ C.R.S. 24-72-706(1)(e).

Sealing is not allowed for cases when the only charges are class 1 or 2 misdemeanor traffic offenses, or class A or B traffic offenses. Sealing is not available for records pertaining to a deferred judgment and sentence concerning the holder of a commercial driver's license; and records pertaining to a deferred judgment and sentence for a felony offense where the factual basis involved unlawful sexual behavior.⁴²

For conviction records, sealing is not allowed for a host of offenses that include the following:

- class 1 or 2 misdemeanor traffic offenses
- class A or B traffic infractions
- convictions for driving under the influence or driving while impaired
- offenses involving the underlying factual basis of unlawful sexual behavior
- offenses involving child abuse
- sentencing for crimes involving extraordinary aggravating circumstances or extraordinary risk
- crimes involving a pregnant victim or a special offender
- where the underlying factual basis involves domestic violence
- certain sexual offenses
- a crime of violence
- serious felony offenses involving murder, manslaughter, criminally negligent homicide, vehicular homicide, aggravated assault, vehicular assault, menacing, kidnapping, sexual assault, sexual assault on a child, certain other sex offenses, robbery, and numerous other felonies or certain crimes related to animal cruelty, or
- certain serious drug felonies.⁴³

Notifications

As a general rule, the court shall direct any order entered to each custodian that may have custody of any part of the arrest and criminal record information that is the subject of the order. The petitioner (defendant of criminal case) shall provide CBI and every custodian of such records with a copy of the order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to the order from its database. The defendant shall pay the cost of sealing records in the custody of the CBI.⁴⁴ In cases of mistaken identity, the petitioner is not required to pay this cost.⁴⁵

⁴² C.R.S. 24-72-703(12).

⁴³ C.R.S. 24-4.1.302(1); C.R.S. 24-72-709(5)(a).

⁴⁴ C.R.S. 24-72-703(8).

⁴⁵ C.R.S. 24-72-702(2).

Effects of Sealing or Expunging a Record

The defendant and all criminal justice agencies may properly reply, upon an inquiry, that public criminal records do not exist with respect to the petitioner or defendant.⁴⁶ Courts currently respond to inquiries by saying that “no such record exists.” Inspection of records may thereafter be permitted by the court only upon petition by the petitioner or defendant. Employers, state and local government agencies, officials, landlords, and employees shall not require an applicant to disclose any information contained in sealed conviction records in any application or interview or in any other way.⁴⁷ These provisions are applicable to the sealing of arrest and criminal records under the following circumstances:

- Arrest records when no charges are filed (24-72-704).
- Records other than convictions (24-72-705).
- Certain convictions for minor offenses (24-72-706).
- Criminal conviction records committed by human trafficking victims (24-72-707).
- Criminal conviction records for municipal offenses (24-72-708).
- Certain criminal conviction records for multiple convictions (24-72-709).
- Criminal conviction records for individuals who receive a full and unconditional pardon (24-72-710).

Limitations and Exceptions to Record Access

Inspection of sealed court records may be permitted by the court only upon petition by the person who is the subject of the records or by the prosecuting attorney and only for those purposes named in the petition. However, victims may be allowed access to sealed records or sealed record information under certain circumstances, and members of the public may petition the court to unseal any court record where the public interest in disclosure outweighs the defendant’s interest in privacy.⁴⁸ Specific statutes identify the circumstances when access to sealed records is permitted:

- An order sealing arrest or other criminal records does not deny access to the criminal records of a petitioner or defendant by any court, law enforcement agency, criminal justice agency, prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual.⁴⁹
- A party or agency required by law to conduct a criminal history record check is authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required.⁵⁰
- Records may be disclosed to the Colorado State Board of Law Examiners⁵¹ and Department of Education for specified purposes.⁵²

⁴⁶ C.R.S. 24-72-702(3); 24-72-703(2)(b).

⁴⁷ C.R.S. 24-72-702(4); 24-72-703(2)(d)(I).

⁴⁸ 24-72-703(5); 24-72-704(1)(d).

⁴⁹ C.R.S. 24-72-703(2)(a)(I).

⁵⁰ C.R.S. 24-72-703(2)(a)(III).

⁵¹ C.R.S. 24-72-703(2)(d)(II).

⁵² C.R.S. 24-72-703(2)(d)(III); 24-72-704(5).

- Approved treatment providers providing treatment to individuals with sealed records are allowed access to these records.⁵³
- If a defendant is convicted of a new criminal offense, the court shall order the conviction records to be unsealed.⁵⁴

Operational Practices and Impacts

Two state criminal justice agencies are primarily impacted by record sealing practices because of their statewide coverage and responsibilities:

- The **Colorado Bureau of Investigation (CBI)**, Biometric Identification and Records Unit is responsible for the sealing and expungement process within the state’s criminal history repository.
- The Colorado Judicial Department, **State Court Administrator’s Office (SCAO)** provides technical support and guidance for the sealing and expungement process for all state-level (District and County) courts across state, except for Denver County Court, which is responsible for managing the sealing and expungement process for this court.

Other criminal justice agencies may also be responsible for sealing records, including law enforcement agencies, prosecutors, defense counsel, and supervision agencies (jails and prisons), but for the most part these agencies are custodians for a limited set of records (with the exception of the district attorneys) or maintain decentralized data systems and are not included in this assessment. Similarly, municipal courts also operate independently and are not included in this assessment.

Criminal History Repository – Colorado Bureau of Identification

The CBI sealing or expungement processes begin upon the receipt of a court order for sealing or expungement or by operation of the automatic sealing process as defined in C.R.S. 24-72-704(2). Both processes require a significant amount of manual research to verify and complete the record sealing process. CBI received 10,981 orders to seal in 2021. Each order requires a \$20 fee from the petitioner to complete the sealing of an arrest record in the criminal history repository.

Following the receipt of an order to seal from the court, CBI staff researches the record to identify all related arrest records. Court dispositions are transmitted electronically to the repository and an automated process exists to match court dispositions to arrests, but it is common that disposition records fail to match arrest records for two reasons:

- 1) **Arrest records may not exist for the court disposition due to the failure to fingerprint the defendant as part of the arrest and prosecution process.** Colorado allows for certain felony and misdemeanor arrests to be processed by summons without requiring the individual to be fingerprinted. Criminal history repositories require fingerprint-based identification, commonly referred to as the State Identification Number (SID), to positively identify each arrested individual and the corresponding adjudication records (e.g., charge dispositions, dismissals, acquittals). Without this identifying information,

⁵³ C.R.S. 24-72-704(3).

⁵⁴ C.R.S. 24-72-703(2)(a)(V).

criminal history repositories do not have a record of the arrest and disposition records received from the courts do not have an arrest record to link to.

- 2) **The courts may not provide sufficient information to match the disposition to the arrest record.** Courts do not receive or otherwise have an SID for the defendant and cannot provide this data to match the court record to the arrest record maintained by CBI. In these circumstances, an automated matching process relies on a secondary set of data elements like Defendant Name, Date of Arrest, and the county portion of the Arrest Agency identification number (ORI) or by Defendant Name and Court Case Number to make a match. Courts also do not consistently capture and forward the unique arrest identification number — called the Process Control Number (PCN) or arrest tracking number — to CBI, which could also be used to reliably match the court case disposition to the arrest record.

Disposition matching is also challenging if the person is arrested by an agency other than the one that initiated the case (for example in another court). The automatic match will not occur since the ORIs between the arrest record and the court case will not match. Law enforcement must enter a docket number on the arrest record to get a match. This does not always happen at the time of arrest, but may be caught by SCAO and the court clerks when there is no SID on the court case.

Another factor that complicates the disposition matching process is that multiple arrest records may be associated with a single court case disposition. For example, both the arresting agency and the jail may fingerprint the offender for the same criminal event, thus creating two arrest records in the repository. The repository can only match the court disposition to one arrest record without creating the appearance that the defendant has multiple disposition records when only one exists. It is also possible that an individual can be arrested multiple times for different criminal events and have these arrests combined into one criminal case. This, too, makes it impractical to match the court case disposition to all originating arrest events without creating the appearance of the defendant having multiple dispositions caused by duplicating court disposition data. To resolve these discrepancies, CBI staff manually research the individual criminal history record in order to seal all appropriate arrests related to the court disposition (e.g., related warrant arrests or duplicate arrests).

Records sealed due to acquittals or dismissals are updated differently from arrest records associated with convictions.

Colorado's automatic sealing process, which allows the sealing of certain lower-level offenses such as possession of marijuana, is not fully *automated* and requires manual research. This research is required to reconcile arrest charges with conviction charges, which are often different. For example, a person may have been arrested for Possession of 8 ounces or less of Marijuana, which is an offense that is not eligible for automatic sealing, but they were convicted of Possession of 2 ounces or less of Marijuana, which is eligible for automatic sealing. In this scenario, the conviction record is sealed but the arrest record is not. This results in the criminal history retaining what appears to be an "open" arrest for the original arrest charge of Possession of 8 ounces or less of Marijuana. This arrest record would be accessible to law enforcement and other authorized users but restricted from public access.

CBI is currently working to seal older cases following the schedule laid out in statute.⁵⁵ These records are processed by month. CBI only seals records that include a court case docket number.

CBI staff also automatically seal arrest records where no court filing has been received within a specified period of time (as per C.R.S. 24-72-704).

State Court Administrator's Office

Colorado has a unified court system that includes all state District and County Courts with the exception of Denver County Court, and the SCAO provides technology support for all such courts throughout the state with the exception of Denver County Court.⁵⁶ Upon issuing an order to seal, court clerks update the case disposition with this information and the order to seal is mailed to CBI, which updates the appropriate criminal history record if a match is found. The notifications resulting from motion-initiated sealing orders require manual intervention when the records cannot be reconciled between SCAO and CBI. When this occurs, court staff must manually research and reconcile arrest and disposition records with CBI. The entry of motions and orders to seal are handled as routine recordkeeping activities of court support staff.

SCAO provides two different monthly reports to assist courts with getting dispositions to match with CBI. Clerks use these reports to compare arrest records to the court case and correct any data errors that may exist. If the data is correct but a match is not occurring, the courts will work with the interagency coordinator at SCAO and CBI staff to resolve the issue.

According to the SCAO, from 2017 through 2021, there were 273,958 unique cases flagged as being eligible for sealing, or an average of 54,792 annually.⁵⁷ This average was used to approximate the number of cases that will need to be sealed annually starting July 1, 2024, under SB22-099 (discussed in the next section).

Changes Resulting from Signing into Law SB22-099 – Sealing Criminal Records

To simplify and expand the “automatic” record sealing process, the Colorado legislature passed Senate Bill 22-099, which was signed into law by the governor on May 31, 2022. This statute directs the State Court Administrator to compile a list of potentially eligible convictions that may be sealed following an automated eligibility determination process and a semi-automated sealing process.

Eligibility

The scope of laws eligible for sealing is substantially the same as existing law. Defendants who have not paid fines, court costs, late fees or other fees may now have their case considered for sealing, although as discussed under [decision-making](#), “neither the court or the [SCAO] shall factor in or take into consideration” this fact when deciding to seal.⁵⁸ Only restitution may be

⁵⁵ C.R.S. 24-72-704(2)(b).

⁵⁶ Municipal courts are also not included in the state court case management system.

⁵⁷ SB22-099 Fiscal Note, 04-25-2022, page 5.

⁵⁸ 24-72-703 (12)(b).

considered when denying a motion to seal. The defendant remains obligated to pay all outstanding fees, fines, and costs even if the case is sealed.⁵⁹

Process

“The bill requires the State Court Administrator to compile an initial list of eligible cases by February 1, 2024, and to send the list to district attorneys. District attorneys have 45 days to remove convictions from the list where the condition of a plea was that the defendant agreed not to have their conviction record sealed and where the defendant has a pending criminal charge, an intervening conviction, or convictions that are ineligible for sealing. For non-drug felony convictions, district attorneys may object when the district attorney has a reasonable belief that the public interest and public safety in retaining public access to the record outweighs the privacy interest of or adverse consequence to the defendant. A defendant may request a court hearing for any objection relating to a felony offense. The district attorney must send the final list back to the State Court Administrator who then will remove the convictions objected to by the district attorneys and send the list to each chief judge of each judicial district to enter sealing orders. The records on the initial list must be sealed by July 1, 2024, and a new list must be updated quarterly. All sealing orders must be sent electronically to the Colorado Bureau of Investigation (CBI) and the defendant may obtain a copy of sealing order and serve it to any record custodian.”⁶⁰

SB22-099 defines more specific processing requirements and directs the SCAO to submit the comprehensive list of eligible cases to the appropriate county prosecuting attorney’s office.⁶¹ Prosecuting Attorneys have 45 days to object to any case included in the list and provide specific grounds for objection.⁶² In cases where the prosecuting attorney objects, the court will send letters to defendants and provide them with the opportunity to request a hearing. Only upon the defendant’s request will a hearing be scheduled for a sealing determination. SCAO will submit the final list of eligible cases to each judicial district, which will then have 14 days to enter sealing orders for all cases not objected by the prosecuting attorney.

Denver County courts do not use the state system and will be required to implement processes similar to the state.

For diversion cases, “[t]he bill requires district attorneys to seal their records and to notify the CBI and other law enforcement entities to seal their records once an offender’s diversion is complete.”⁶³

Notifications

Once a record is sealed through the new, state-initiated process, the statute requires the *court* — instead of the defendant — to serve the District Attorney, CBI, and the defendant with a copy of a sealing order. The courts will electronically submit orders to District Attorneys and CBI, and

⁵⁹ 24-72-703 (2)(a)(III).

⁶⁰ SB22-099 Fiscal Note, 04-25-2022, Summary of Legislation.

⁶¹ 13-3-117(1)(a.5), (2)(1).

⁶² *Ibid.*

⁶³ SB22-099 Fiscal Note, 04-25-2022, page 2.

while the court is no longer required to send notice to the defendant,⁶⁴ SCAO will attempt to serve sealing orders to defendants via mail sent to their last known address. If orders are returned to SCAO, staff will review these for updated contact information and attempt service again. The defendant may request a copy of the order.⁶⁵ In addition, record subjects will be able to query a court website maintained by SCAO to determine if their eligible cases have been sealed. The precise way this website will authenticate record subjects is to be determined.

Other Effects

Access to Records

Access to records remains unchanged under the provisions of this new law (i.e., there are no substantive changes to C.R.S. 24-72-703(2) and related laws).

Operational Impacts

The SCAO estimates that there are about 1.5 million cases since 2000 that could be subject to automatic sealing under the bill. The fiscal note assumes that of these cases, 25 percent of them have sealed their records under current sealing statutes. Of the remaining 1.12 million, it is assumed that 50 percent of those, 562,500 cases, will be immediately eligible for automatic sealing on the initial list required by the bill beginning in February 2024.⁶⁶

SCAO currently plans to use the addresses on file for individuals whose record is ordered sealed and will conduct manual research on orders that are undeliverable by mail. This follows the same process as motion-initiated sealing orders — the exception to that process is that the courts will notify the prosecuting attorneys electronically, as opposed to requiring the record subject to provide copies of the sealing order to the prosecuting attorney.

CBI already has a process in place to seal records. As discussed earlier, this requires some level of manual research and review. Should the volume of record sealing orders increase as anticipated, CBI may have to explore a more fully automated way to seal criminal history records.

The bill moves responsibility for sealing municipal court records from the state courts to the appropriate municipal court.

The bill requires consumer reporting agencies (CRAs) to exclude sealed and expunged records from a consumer report unless the user of the report demonstrates that the user is entitled or required to consider the information according to law.

According to a representative of the SCAO, CRAs do not receive copies of bulk data; instead, they perform on-demand inquiries for records, so CRAs should always have the most current data. Sealed records would not be provided. It is not known if there will be any costs to the courts associated with providing CRAs limited access to an expanded number of sealed records because CRAs already have access to court records, and the courts already have established confidentiality levels that prevent access to sealed cases by CRAs.

⁶⁴ C.R.S. 13-3-117 (3)(b)(II).

⁶⁵ C.R.S. 13-3-117 (3)(b)(IV).

⁶⁶ SB22-099 Fiscal Note, 04-25-2022, page 5.

Fiscal Impact

To implement SB22-099, the state anticipates a total cost of \$2,585,736 over a three-year period, including 6.7 FTEs to produce the eligibility lists and conduct research and verification of sealing orders.⁶⁷

⁶⁷ SB22-099 Fiscal Note, 04-25-2022, page 6.

Clean Slate State Profile: Connecticut

September 2022

In June 2021, Governor Ned Lamont signed Senate Bill 1019 into law, which enacted Clean Slate legislation in Connecticut, making it the fourth state in the nation to do so, following Pennsylvania, Utah, and Michigan. The legislation directs state and local criminal justice agencies to establish a state-initiated process to “erase” — a Connecticut term analogous with “sealing” in other states — most misdemeanors after 7 years and some felony convictions after 10 years from a person’s criminal history record. The law includes several additional requirements, which are described further in this document. Connecticut’s Clean Slate law automates its current petition-based process and does not require an individual to initiate the procedure. The legislation goes into effect on January 1, 2023.

The purpose of this Clean Slate State Profile is to:

- Describe the current pardon process, which is the primary method for records relief in Connecticut.
- Summarize key provisions of the Clean Slate legislation, qualifying convictions, limitations, and expansive prohibitions of discrimination based on erased criminal history record information.
- Describe anticipated processes to determine eligible records and route notifications, and examine the challenges to implementing automated record erasure technology.

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Key Terms and Actors in Connecticut

- **Erasure** – Term used to describe records that have been removed from public view, the semantic equivalent to “sealing” in most other states. These records are still available to law enforcement and the court system.
- **Absolute Pardon** – Results in the erasure of a person’s entire criminal history record.
- **Provisional Pardon** – A type of a pardon that is meant to relieve an eligible offender of barriers to employment. It prohibits employers from denying employment to someone or discharging or discriminating against an employee solely because of an offense for which he received a provisional pardon.
- **Certificate of Rehabilitation/Employability (COR/COE)** – Two forms of relief from barriers to employment or licensing. These replaced provisional pardons in 2015.
- **Board of Pardons and Paroles (BOPP)** – State agency responsible for issuing pardons and certificates of rehabilitation/employability.
- **Department of Emergency Services and Public Protection (DESPP)** – State agency responsible for maintaining the state criminal history records repository.
- **Nolled** – A legal notice or entry of record which indicates that the prosecutor or plaintiff has decided to abandon the prosecution or lawsuit.¹
- **Misdemeanor** – Crimes punishable by imprisonment for not more than 1 year.
- **Felony** – Crimes punishable by imprisonment for more than 1 year.

Overview: Connecticut's Current Records Clearance Processes

Connecticut provides criminal records relief through a process referred to as *erasure*, which is synonymous with the term “sealing” in most other states in that records are not physically destroyed, and disclosure is restricted to a narrow range of statutorily authorized individuals.¹ Convictions erasure occurs in three ways; the first two methods require defendants to initiate the process via petitions.

- **Absolute pardon:** The first and most common method to obtain an erasure is to request an absolute pardon through the state Bureau of Pardons and Parole (BOPP),² which is an autonomous state agency that administers pardons, parole, sentence commutations, and certificates of rehabilitation and employment. The latter two were previously referred to as “provisional pardons” and do not result in erasure but provide a mechanism to gain employment and obtain a variety of professional licenses.³
- **Court petition:** The second conviction erasure method is to petition the sentencing court for cases involving “youthful offenders,” decriminalized offenses, or individuals who were in “manifest danger.”
- **Non-conviction erasure:** Non-conviction records are also subject to erasure and occur in cases when charges are terminated in favor of the accused, e.g., dismissals, acquittals, and *nolled*⁴ charges. Non-conviction erasures occur through the operation of law⁵ and do not require the defendant to take any action.

These methods are described in greater detail in the following sections.

Erasure Via Absolute Pardons

Connecticut is unique in that pardon and sentence commutation authority is vested in an independent entity, such as BOPP,⁶ as this is typically a responsibility of the governor in most other states. Since 2004, BOPP has overseen and evolved several methods to address the collateral consequences associated with criminal convictions. For Clean Slate purposes, the most consequential are absolute pardons. Connecticut law establishes a process for individuals to request an absolute pardon which will, if granted, result in a complete erasure of their entire criminal history record for an incident.⁷

Pardon Eligibility

Pardons, Certificates of Rehabilitation, and Certificates of Eligibility are subject to the same eligibility requirements and may be requested when:

¹ Connecticut General Assembly, *Office of Legislative Research Report*, “RE: Erasure of Criminal Records,” April 19, 1995, 95-R-0604. <https://www.cga.ct.gov/PS95/rpt/olr/htm/95-R-0604.htm>.

² <https://portal.ct.gov/BOPP>.

³ Connecticut General Assembly, *Office of Legislative Research Report*, “RE: Pardons and Provisional Pardons,” September 21, 2007, 2007-R-0561. <http://www.cga.ct.gov/2007/rpt/2007-R-0561.htm>.

⁴ Nolled charges are those no longer pursued by prosecution.

⁵ Conn. Gen. Stat. § 54-142(c)(1).

⁶ Conn. Gen. Stat. § 54-130(a).

⁷ *Ibid.*

- Three years have passed after the most recent conviction for misdemeanors and 5 years after the most recent conviction for felonies,
- The applicant has no pending charges in any jurisdiction,
- The applicant is not on any type of supervision, probation, or parole, and
- The applicant does not have a *nolle* within the previous 13 months of a pardon request.

Connecticut does not factor outstanding court fines, fees, or restitution status when considering granting pardons.

Pardon Application Process

The pardon process is administered and overseen by the Board of Pardons and Paroles, a state agency with independent decision-making authority over pardons, parole conditions, and commutations.⁸ The Board consists of 10 full-time and five part-time members appointed by the Governor, with the consent of the state legislature. Five members in addition to the Board chair consider pardon applications exclusively. BOPP establishes and adopts policies and procedures regarding pardon application requirements, review criteria, and hearings.

BOPP requires that all pardon applicants complete and submit the following documentation to initiate the review process:⁹

- a fingerprint-based criminal history report completed within the last year,
- a notarized Background Investigation Authorization form,
- three personal reference questionnaires,
- police reports from arrest convictions within the last 10 years,
- a letter from probation if the applicant served any term, and
- a copy of a valid license or state identification.

Applicants may provide additional documentation for the BOPP to consider (e.g., certificates, resumes, proof of employment, sources of income, recent W-2 form, letter of support of financial support, etc.) to demonstrate suitability of the person being considered for a pardon.¹⁰ BOPP does not charge filing or registration fees, but applicants must pay \$75 to receive the criminal history report. This fee may be waived upon request and approval from the Department of Emergency Services and Public Protection (DESPP), which manages the state criminal history record repository.¹¹

⁸ Connecticut General Assembly, Office of Legislative Research Report, “Board of Pardons and Parole,” September 7, 2007, 2007-R-0533. <https://www.cga.ct.gov/2007/rpt/2007-R-0533.htm>.

⁹ <https://portal.ct.gov/BOPP/Pardon-Division/Pardon/Documents-Required-for-Absolute-Pardon-Application>.

¹⁰ [BOPP Absolute Pardon Additional Documentation Instructions](#).

¹¹ [Criminal History Record Waiver Request and Affidavit – Petitioners for Pardons form](#).

In 2015, BOPP established a web-based registration and application portal to submit relevant documentation. Paper-based mail submissions were eliminated in 2020. Upon receipt of all required documentation, BOPP staff review materials for completeness and contact applicants for a remote interview and to schedule a hearing. The Board conducts monthly pardon hearings, which are currently conducted remotely over web-based videoconferencing platforms. Also in 2015, BOPP received legislative authorization to conduct “expedited reviews” to remove the formal, in-person hearing requirement for non-violent conviction pardon applications.¹²

Pardon Criteria

During the review process, the BOPP considers the following criteria in determining pardon outcomes:¹³

- the rehabilitation of the applicant,
- the severity of the offense,
- the impact of the offense on the victim and the victim’s input,
- applicant’s past criminal history and the amount of time since the commission of the most recent offense, and
- whether the public interest is served by erasing a criminal record.

The Board will also consider the opinion of the State’s Attorney (if provided), applicant accomplishments since the most recent offense, work history, any subsequent contact with the justice system, character references, and any community service. The Board may consider any other pertinent information available in deciding to grant or deny a pardon.¹⁴

Erasure Via Court Petitions

Convictions may be erased through petitions to courts in limited circumstances. Convictions eligible for erasure through the court petitions include:

- Offenses where a person was adjudicated as a “youthful offender” and discharged from supervision upon reaching 21 years of age,¹⁵
- Decriminalized marijuana offenses, including possession under 4 ounces, possession of paraphernalia, and manufacturing, distributing, or selling under 4 ounces,¹⁶ and
- Convictions of defendants who were in “manifest danger.”¹⁷

If a court orders records to be erased, then they will order the criminal history repository and local law enforcement agencies to remove and not disclose convictions.¹⁸

¹² CGS § 54-124(2)A.

¹³ [BOPP Pardon FAQs](#).

¹⁴ *Ibid.*

¹⁵ Conn. Gen. Stat. § 46b-146.

¹⁶ Conn. Gen. Stat. § 54-142(d) directs all law enforcement, court, and prosecution records involving decriminalized offenses to be physically destroyed.

¹⁷ Conn. Gen. Stat. § 54-142b.

¹⁸ Conn. Gen. Stat. § 54-142a(e)(1).

Erasure of Non-convictions

Erasure occurs automatically when charge outcomes are advantageous to the accused, which include acquittals,¹⁹ dismissals,²⁰ and *nolled* charges where arrest charges are not pursued by prosecutors after 13 months.²¹ These are erased by operation of law rather than requiring a petition by the defendant.²² Defendants who complete certain pretrial programs or receive a deferred adjudication may also be eligible for charges to be dismissed, resulting in erasure. In either case, when an erasure is granted, the defendant is “deemed to have never been arrested with respect to the proceedings so erased and may so swear under oath.”²³

Erasure Notification / Disclosure

Notifications

Upon granting an absolute pardon, BOPP notifies the petitioner and the clerk of the sentencing court or the Office of the Chief Court Administrator if such person was convicted in the Court of Common Pleas, the Circuit Court, a municipal court, or a trial justice court.²⁴ The court or Office of the Chief Court Administrator will then direct law enforcement agencies to erase the pertinent records; agencies are prohibited from disclosure.²⁵ These agencies are not under a statutory requirement to physically destroy records, unless the record subject requests record destruction and 3 years have elapsed since the final disposition.²⁶ Statutes also require courts to notify consumer reporting agencies (CRA) of record erasures and “permanently delete such records not later than 30 calendar days after receipt of information on the erasure of criminal records...and shall not further disclose such erased records.”²⁷ The Judiciary Department currently completes this process via monthly electronic submissions to CRAs.

Disclosures

Conviction erasure information may not be disclosed to any party with few exceptions. These disclosures may only indicate that a conviction was erased and may not include defendant information, unless the victim, or victim’s legal representation intend or began a civil action that the erasure created “loss or damage” to the victim.²⁸

¹⁹ Conn. Gen. Stat. § 54-142(a)(a).

²⁰ Conn. Gen. Stat. § 54-142(a)(b).

²¹ Conn. Gen. Stat. § 54-142(a)(c).

²² Conn. Gen. Stat. § 54-142(a)(a).

²³ Conn. Gen. Stat. § 54-142(a)(3).

²⁴ CGS § 54-130d.

²⁵ CGS § 54-142a(e).

²⁶ CGS § 54-142(2)(e)1.

²⁷ CGS § 54-142(b)(2).

²⁸ CGS § 54-142c(b).

Pardon Utilization Statistics

The BOPP publishes historical utilization data from the previous 5 years in addition to monthly data from the previous year.²⁹ Over the last 5 years, BOPP has averaged 1,647 applications annually, with 2021 being the most active year. Application volume increased 42% from 2020, presumably due to the COVID-19 pandemic (Figure 1).

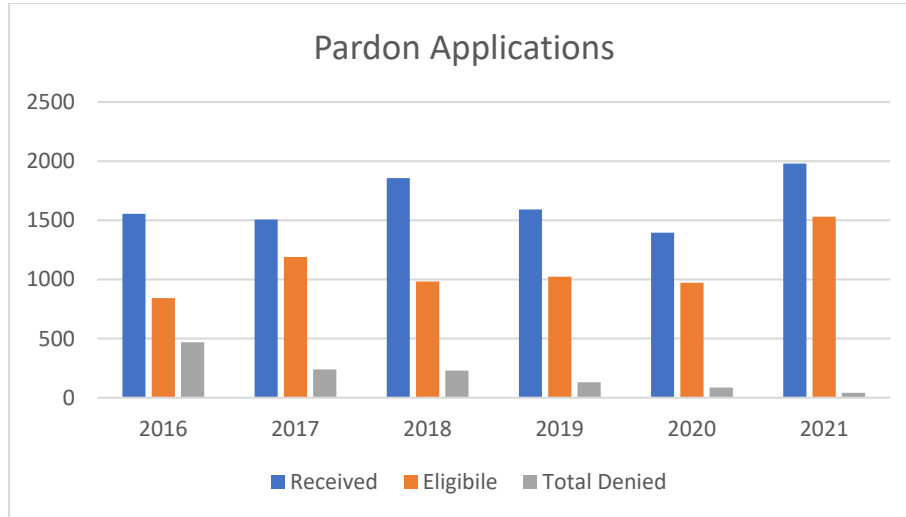


Figure 1: Pardon Applications

The gradual increase to the overall numbers of pardons granted coincides with introduction of the expedited application process in 2016, which eliminated the requirement for an in-person hearing. Since its availability, the majority of pardons have been granted via the expedited process, growing from 44% granted in 2017 to 58% granted in 2021 (Figure 2).

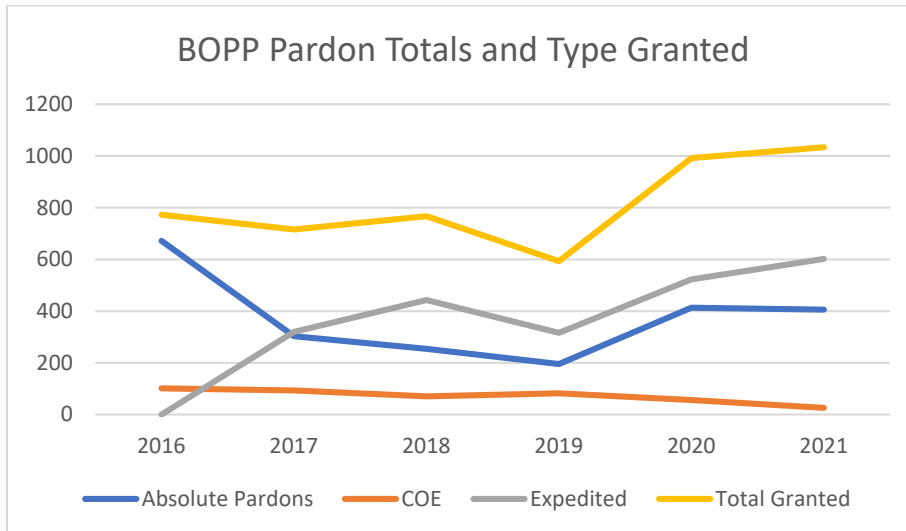


Figure 2: BOPP Pardon Totals and Type Granted

²⁹ <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Historical> and <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Monthly-Pardons-and-Parole-Activity>.

Figures 3 and 4 highlight the significant, if gradual, increase in rate in which eligible applications are granted pardons since 2016, a 55% increase in 5 years, and the drastic reduction in denials in the same time frame. The changes to these rates have not been attributed to a single factor or policy change but are likely influenced by the relative straightforward eligibility criteria, clear application preparation instructions and electronic submission capability, and assistance from advocates.

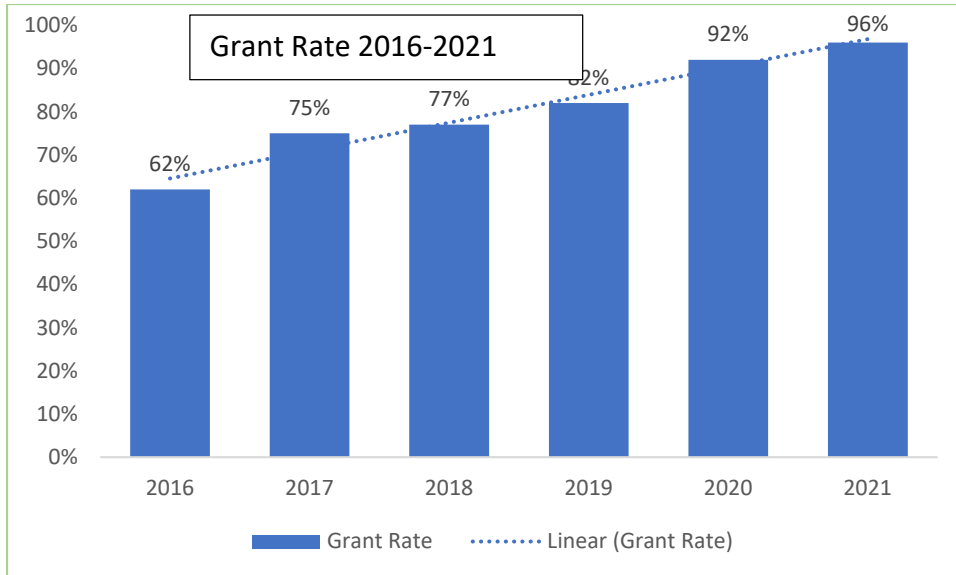


Figure 3: Grant Rate 2016–2021

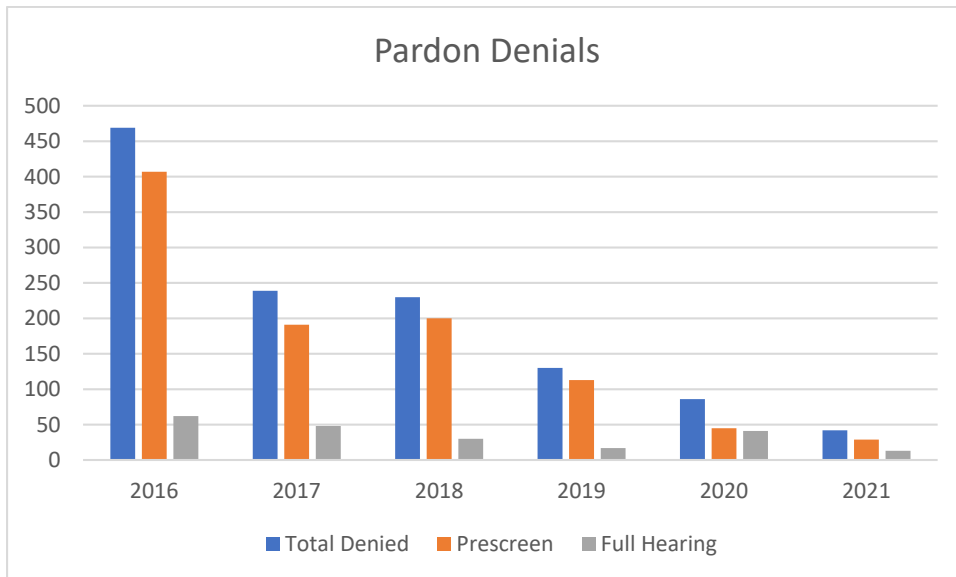


Figure 4: Pardon Denials

Despite the increased volume and pardon acceptance rates, the number of eligible individuals who take advantage of absolute pardons remains at approximately 3%.³⁰ The factors affecting this low rate of utilization have not been researched extensively, but ostensibly requiring individuals to initiate and complete the application process is the primary hurdle. Eligible candidates may not be aware of the option, not understand or see the value of a pardon, or simply want to avoid any further contact with criminal justice agencies. In recognition of this situation, Connecticut lawmakers introduced Clean Slate legislation.

Connecticut's Clean Slate Legislation

In June 2021, Connecticut enacted Substitute Senate Bill No. 1019, Public Act No. 21-42, a “Clean Slate” law, which establishes eligibility criteria of certain convictions for erasure without action by individuals.³¹ This new legislation identifies the parameters for erasure by operation of law (i.e., state-initiated record sealing) — similar to charge dismissals, acquittals, and *nolled* charges. The new erasure provisions of the law take effect on January 1, 2023.

All misdemeanors and class D, E, and unclassified felonies with a maximum sentence of less than 5 years are eligible for erasure after 7 years have passed since the most recent conviction (misdemeanors) and 10 years have passed since the most recent conviction (felonies). Offenses involving family violence³² or sexual crimes³³ are excepted from consideration, as are situations where an individual has any pending charges. Decriminalized drug convictions — such as marijuana — will not apply when considering the most recent conviction timeframe.³⁴ It is estimated that Clean Slate will affect approximately 360,000 Connecticut citizens with criminal records who are eligible for records clearance under these revised provisions.³⁵

Key Provisions / Highlights

Reporting Updated Records

The law requires that erasure notifications be sent to the pertinent police, court, and prosecuting attorney agencies, directing them to erase records. DESPP, in consultation with the Judicial Department and Criminal Justice Information System (CJIS) Governing Board, is responsible for developing automated processes for erasure and stakeholder notifications.³⁶ It also requires all purchasers of court records, such as CRAs, to update their records monthly or other schedule established by the Judicial Department.³⁷

³⁰ Colleen Chien, Hithesh Bathala, Prajakta Pingale, Evan Hastings, and Adam Osmond, *The Connecticut Second Chance Pardon Gap* (2021).

³¹ <https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00032-R00SB-01019-PA.PDF>.

³² CT Gen Stat § 46b-38a (note this statute defines family violence offenses and refers to 53a-24, which defines an offense. It does not specify the applicable offense statutes).

³³ CT Gen Stat § 54-250 (note this statute defines nonviolent and violent sexual offenses, which refer to 53a-70b, 53a-70, 53a-70a, 53a-71, 53a-72b, 53a-92a).

³⁴ Conn. Gen Stat. § 54-142a(2)(B)(3).

³⁵ <https://paperprisons.org/states/CT.html>.

³⁶ Conn. Gen Stat. § 54-142a(5)(a).

³⁷ Conn. Gen Stat. § 54-142e(b)(1).

Partial Expungement

Unlike absolute pardons, which erase entire convictions with multiple charges, the Clean Slate law allows for erasure of all eligible charges even if some convictions do not qualify for state-initiated erasure.³⁸

Payment of Court Debt

The Clean Slate law under Public Act No. 22-26 states that automatic erasure eligibility “shall not apply to any conviction for any offense until the defendant has completed serving the sentence imposed.”³⁹ Completing all imposed sentences includes the payment of court-ordered debt.

Discrimination

The legislation defines extensive prohibitions and various forms of discrimination based on an individual’s erased criminal history record information, such as in employment, public accommodations, the sale or rental of housing, the granting of credit, and several other areas.⁴⁰

Anticipated Automation Process

As directed by the Clean Slate law, DESPP is coordinating with the Judicial Department and CJIS to develop planning materials, identify policy and information system requirements, and create system interface design documentation to automate the record erasure process.

Initial plans call for DESPP to determine initial record eligibility upon receipt of a sentence discharge message from the courts confirming all terms for the sentence have been successfully completed. The eligibility determination made by DESPP will be based on the offense statute, classification, and conviction date. Once eligibility is established, DESPP will submit a notification to a message broker shared by state justice stakeholders,⁴¹ which will then route the notification to the appropriate agencies (e.g., courts, law enforcement, prosecutors, etc.) for subsequent record erasure within each agency’s records management system.

DESPP currently receives all dispositions electronically from the Judicial Department’s consolidated court case management system. The Judicial Department⁴² is the state court administrative entity and provides operational, technical, and financial support to the state’s non-unified court system.

Challenges to Implementing Technology

Timeframe for Implementation

Clean Slate erasure provisions take effect on January 1, 2023, leaving a limited amount of time for stakeholders to plan, procure, develop, test, and implement the automated information exchanges among stakeholders required to support state-initiated records relief. The

³⁸ Conn. Gen Stat. § 54-142a(3)(g).

³⁹ Conn. Gen Stat. § 54-142e(3).

⁴⁰ Conn. Gen Stat. § 46a-59-68 details the numerous discrimination prohibitions related to erased criminal records.

⁴¹ This message broker, referred to as the [Connecticut Information Sharing System](#), is managed by the state CJIS and supports a variety of applications to automate business processes among state and local justice agencies.

⁴² <https://www.jud.ct.gov/>.

Connecticut Criminal Justice Information System Governing Board⁴³ is coordinating the development of Clean Slate erasure planning and implementation resources in conjunction with the affected state agencies. Specifically, DESPP will need experienced project management and development resources to coordinate the deployment of several new information system interfaces and programming modifications to the existing criminal history repository.

Charge Matching

Connecticut, like other states, faces challenges with matching court dispositions with arrest records, in particular with citations in lieu of arrests. The state criminal history repository, managed by DESPP, relies upon criminal justice stakeholders to provide information that comprises an individual's criminal history. This process is initiated upon capturing a person's fingerprint images (typically by law enforcement at booking), which generates a unique, biometrically based identification number for that person and corresponding arrest charge tracking identifiers. These person and charge tracking numbers must be shared with jails, prosecutors, courts, and corrections agencies throughout the criminal proceedings to accurately link the person and their charges through final disposition.

When law enforcement issues a citation and releases the subject, no fingerprints are captured at the time of arrest. When the courts subsequently adjudicate the charges resulting from the citation and report the disposition to the state criminal history repository, DESPP has no record of the original offense and cannot associate the disposition with an arrest event. These "orphaned" dispositions require DESPP staff to manually review and research each event in order to correctly update criminal history records. This process is inefficient, slow, and costly and will affect the timeliness of eligible Clean Slate record erasure.

Sentence Discharge Notification

DESPP does not currently receive information regarding the successful completion of an offender's sentence. Stakeholders have identified sentence completion as a requirement for Clean Slate erasure, and are actively preparing automated information exchanges among courts, corrections, and community supervision agencies to provide this data to DESPP.

Erasure Subject Notification

Unlike the pardon process, which requires the record subject to initiate the request (and provide current contact information), Clean Slate erasure will be triggered without the defendant's involvement and in many cases without their knowledge. Courts and DESPP do not maintain current contact information on all record subjects, so individuals cannot be notified when their record has been cleared through the state-initiated process. Since any contact information is typically several years old, there is a possibility that the record subject no longer has the same address, email, and/or phone number. If the courts or repository attempt to contact the subject of a record based on outdated contact information, they may inadvertently disclose confidential criminal history information that has been sealed to someone else.

⁴³ <https://portal.ct.gov/CJIS/Content/Governing-Board/Governing-Board>.

As an alternative, Connecticut’s Judicial Branch offers a free, searchable public website to allow individuals to search for their conviction records.⁴⁴ Citizens can proactively search the public website to determine if a record has been erased, e.g., if no record appears in response to the search, then it is reasonable to assume that the record has been cleared under Clean Slate. Persons may also request a copy of their criminal history record by contacting the Connecticut State Police Bureau of Identification.⁴⁵

Costs

As of May 2022, the Connecticut General Assembly had allocated \$4.1 million specifically to support automatic Clean Slate erasure development activities, including requirements identification, interface design, and implementation.

⁴⁴ <https://www.jud2.ct.gov/crdockets/SearchByDefDisp.aspx>.

⁴⁵ <https://portal.ct.gov/DESPP/Division-of-Emergency-Service-and-Public-Protection/Reports-and-Records/State-Police-Bureau-of-Identification>.

Clean Slate State Profile: Delaware

September 2022

Over the past 15 years, Delaware policymakers have made incremental yet significant changes to petition-based criminal records relief, referred to as **expungement**,¹ which is synonymous to the term “sealing” used in most other states. In essence, records may be retained and not released to the public. These efforts began in 2008 with the creation of mandatory record expungement for non-conviction records and eliminated the previous requirement for a hearing and/or court order. Mandatory expungements were expanded in 2019 to include certain low-level misdemeanors and violation convictions. Despite legislative efforts to increase the availability of expungements, Delaware has an estimated 290,000 adults with over 590,000 convictions who are eligible for mandatory expungement under current law.²

In 2021, Governor John Carney signed into law two bills: SB111, which transitioned mandatory expungement from a petition-based process to a state-initiated process, and SB112, which further expanded mandatory expungement eligibility for certain juvenile adjudications and felony convictions. Collectively, these two bills are referred to as the “Clean Slate Act,” making Delaware one of the earliest states to enact such clean slate legislation.

The purpose of this Clean Slate State Profile is to:

- Describe the petition-based record relief processes in Delaware prior to Clean Slate.
- Assess key provisions of the Clean Slate legislation components, qualifying convictions, and limitations.
- Describe the policy, operational, and technical challenges, considerations, and strategies as Delaware prepares for Clean Slate implementation.

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¹ 11 Del C § 4373(c)(4).

² SB 111 Fiscal Note, April 16, 2021 Section 4.

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Key Terms, Actors, and Acronyms in Delaware

- **Expungement:** Means all law-enforcement agency records and court records relating to a case in which an expungement is granted — including any electronic records — are destroyed, segregated, or placed in the custody of the State Bureau of Identification (SBI), and are not released in conjunction with any inquiry beyond those specifically authorized in statute.
- **Mandatory Expungement:** Petition-based expungement overseen by SBI when a case is terminated in favor of the accused, e.g., acquittals, dismissals, *nolle pros* after 1 year of arrest.
- **Discretionary Expungement:** Petition-based expungement granted by the sentencing court upon demonstration of manifest injustice.
- **Pardon:** Restoration of civil rights (voting, jury service, public office, and firearm purchasing) granted by the Governor.
- **Misdemeanor:** A criminal offense punishable by up to 1 year of incarceration
- **Felony:** A criminal offense punishable to 1 year or more of incarceration
- **State Bureau of Identification (SBI):** Agency responsible for managing records in the state criminal history repository within the Delaware State Police.
- **Superior Court:** Court of general jurisdiction to hear criminal matters.
- **Family Court:** Court with jurisdiction over domestic matters and juvenile cases.
- **Delaware Justice Information System (DELJIS):** State agency that manages comprehensive integration infrastructure to support the criminal justice system operations.

Overview: Delaware's Current Record Relief Processes

Delaware currently has two record relief methods related to criminal convictions and charges: Mandatory expungements and Discretionary expungements.

- **Mandatory expungements** are overseen by the State Bureau of Identification (SBI) within the Delaware State Police (DSP) and initially were only available for individuals with cases terminated in favor of the accused, e.g., charge dismissals, acquittals, or *nolle prosequi* decisions by prosecuting attorneys.³ In 2019, legislation [expanded](#) mandatory expungement eligibility to include violations and certain misdemeanors.
- **Discretionary expungements** are administered by the court and are available for individuals with qualifying types of convictions after a prescribed period of time remaining crime-free.

Both methods are petition-based and have the same effect when granted: “a person is not required to disclose, nor should the person be asked to disclose, to anyone for any purpose that the person was arrested for, charged with, or convicted of an offense for which records have been expunged.”⁴

Eligibility: Common Disqualification Criteria

Both **mandatory** and **discretionary expungement** share common disqualification criteria, rendering individuals ineligible if any of the following conditions apply:⁵

- Pending charges, excepting –
 - Underage possession of alcohol⁶
 - Possession of marijuana⁷
 - Title 21 (motor vehicle, traffic, and licensing-related) violations⁸
- Currently serving a term of incarceration, parole, or probation
- Received an expungement for a prior conviction within the previous 10 years
- Received an expungement for a felony conviction, and seeking expungement of a new felony conviction
- Outstanding fines, fees, or restitution with a conviction
- Title 21 offense⁹ conviction, unless it is one of the following:
 - Driving after judgment prohibited
 - Reckless driving
 - Operation of a motor vehicle causing death

³ 11 Del C § 4372(b)(1)-(6).

⁴ 11 Del C § 4372(d).

⁵ 11 Del C § 4372(f)(1)-(l).

⁶ 4 Del C § 904(e).

⁷ 16 Del C § 4764(c).

⁸ 21 Del C defines motor vehicle, traffic, and licensing-related statutes: <https://delcode.delaware.gov/title21/index.html>

⁹ *Ibid.*

- Convictions for the following offenses:
 - Vehicular assault in the second degree
 - Incest
 - Unlawful sexual contact in the third degree
 - Coercion¹⁰
 - Unlawfully dealing with a child¹¹

Mandatory Expungement

Originally established to expedite expungements for charges or cases that did not result in conviction, or were “terminated in favor of the accused,” mandatory expungements are available when one or more of the following circumstances apply:¹²

- The accused is acquitted of all charges related to the case.
- A *nolle prosequi* is entered on all charges related to the case.
- The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the court enters an order discharging the person from probation.
- All charges related to the case are otherwise dismissed.
- The accused is acquitted of one or more charges related to the case, and the other charges are dismissed by the entry of a *nolle prosequi* or otherwise.
- The accused is arrested for the commission of one or more crimes and no charges related to the matter for which the person was arrested are filed in any court within 1 year of the arrest.

In 2019, the Delaware legislature expanded the mandatory expungement criteria to allow individuals without other convictions to expunge violation convictions after 3 years, misdemeanor convictions after 5 years, and some felonies after 10 years. For individuals with multiple misdemeanor convictions, or a combination of misdemeanor and violation convictions related to the same case, those convictions are eligible for expungement after 5 years.¹³ Additionally, class G¹⁴ drug felony convictions are eligible after 5 years, and certain class C and E drug-related convictions are eligible after 10 years. Felony convictions for possession of burglary tools, second-degree forgery, and unauthorized use of a credit card are also eligible for mandatory expungement after 10 years.¹⁵

¹⁰ 2 Del C § 791 defines “coercion” as when an individual compels another to commit a crime through instilling fear of physical injury, property damage, or other forms of harm.

¹¹ 11 Del C § 1106 defines “unlawfully dealing with a child” as permitting a child to enter or remain in a place where narcotic, sexual, or gambling activity is being conducted.

¹² 11 Del C § 4372(b)(1)-(6).

¹³ 11 Del C § 4373(a)(1) specifies that previous convictions for possession of a personal quantity of marijuana or paraphernalia and underage consumption of alcohol are exempted for mandatory eligibility determination purposes.

¹⁴ 11 Del C § 4201 defines the seven felony classifications (Class A – G) for sentencing purposes in Delaware. Class A is the highest severity and Class G is the lowest.

¹⁵ 11 Del C § 4373(a)(2)(a)-(c)(6).

Mandatory Exclusions

In addition to the exclusions for any expungement type, 4373(b) of Chapter 11 provides additional misdemeanor offenses that are not eligible for mandatory expungement. These include crimes of domestic violence, sex offenses, weapons or firearms violations, etc. The Appendix provides a complete list of these offenses contained in statute.

Discretionary Expungement

Discretionary expungement is available to individuals who do not qualify for mandatory expungements, or who have received a pardon by the governor.¹⁶ Eligibility for discretionary expungement of an adult record includes the following circumstances where the individual:¹⁷

- Was convicted of one or more misdemeanors, other than domestic, violent, or sexual offenses (a complete list is contained in the [Appendix](#)), relating to the same case and at least 3 years have passed since the date of conviction or the date of release from incarceration, whichever is later, and the person has no prior or subsequent convictions.
- Was convicted of one or more misdemeanors listed in the Appendix relating to the same case and at least 7 years have passed since the date of conviction or the date of release from incarceration, whichever is later, and the person has no prior or subsequent convictions.
- Subject to subsection (b) of this section, was convicted of a felony and at least 7 years have passed since the date of conviction or the date of release from incarceration, whichever is later, and the individual has no prior or subsequent convictions.

Discretionary Exclusions

In addition to the common expungement eligibility criteria described [earlier](#), a person is not eligible for discretionary expungement if they were convicted of any violent felony,¹⁸ long-term care facility patient abuse,¹⁹ vulnerable adult abuse,²⁰ or a felony conviction involving physical or sexual assault crimes.²¹

Application Processes

As previously noted, both mandatory and discretionary expungements in Delaware are currently initiated by individuals and the application process is determined by the specific expungement type requested. Mandatory expungements are administered by the State Bureau of Identification (SBI) and discretionary expungements are managed through the courts.

¹⁶ 11 Del C 4375(a) permits discretionary expungements for otherwise ineligible convictions with a pardon from the governor. Governor pardons restore civil rights, such as voting, jury service, and holding public office.

¹⁷ 11 Del C § 4374(a)(1)-(3).

¹⁸ 11 Del C § 4201(c).

¹⁹ 16 Del C § 1136.

²⁰ 31 Del C § 3913.

²¹ 31 Del C § 309.

Mandatory Expungement Petitions

Mandatory expungement petitions are submitted to one of three SBI offices located in each county, where applicants are required to obtain a certified criminal history report via fingerprint submission. SBI charges applicants a \$52 fee for a state criminal history report. Upon confirmation of the criminal history record, SBI staff will research the criminal history record to determine mandatory expungement eligibility.

The SBI research process requires staff to perform individual queries on the Delaware Justice Information System (DELJIS), which is a legacy mainframe database that supports many law enforcement user interfaces across the state, including the state criminal history repository. After staff review, SBI will notify the applicant by mail which, if any, convictions qualify for mandatory expungement. Applicants are required to pay a separate \$75 processing fee to SBI in order to complete a mandatory expungement. This expungement process is further described in the next [section](#) of this document. If an individual has any conviction(s) on their criminal history that do not qualify for mandatory expungements, they may petition the courts for a discretionary expungement.

Discretionary Expungement Petitions

Discretionary expungement petitions are submitted to either Family or Superior Court. If all of the charges and convictions sought to be expunged were disposed of in Family Court, the petition must be filed in the Family Court for the county where the most recent case was terminated. If an applicant has any convictions from Superior Court, then the petition must be filed in the Superior Court for the county where the most recent case was terminated.²² Superior courts will hear discretionary expungement requests if petitions include convictions from both Superior and Family courts.²³

Family and Superior Courts provide in-person and mail options to file, and Family Court allows filing via email. Family Court does not charge a filing fee, whereas Superior Court charges \$75. Both courts require applicants provide certified copies of their criminal history with an accompanying cover letter from SBI, completed expungement petitions,²⁴ and expungement order granting forms.

Discretionary expungement petitions must also demonstrate that the continued existence of a criminal record presents a hardship to the applicant, referred to as “manifest injustice” in statutes. Family Courts developed an expungement petition instruction guide²⁵ that provides filing guidance and examples of manifest injustice. These examples include difficulties obtaining employment, acceptance in vocational training programs, or college admissions:

²² 11 Del C 4375(c).

²³ 11 Del C 4375(d).

²⁴ [Family Court Forms 281 and 283](#) (Petition and Order); Superior Court Forms [CIV_EXP_02_A](#) and [CIV_EXP_04_A](#) (Petition and Order).

²⁵ State of Delaware Family Court, 1021IP, [Adult Expungement Instruction Packet](#), Revised March 2022.

“If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records and all other indicia of arrest, including any electronic records, relating to the charge or case. Otherwise, it shall deny the petition.”²⁶

Discretionary expungements, unlike mandatory expungements, include the ability for prosecutorial review. Upon filing a discretionary petition, the Court clerk “will provide a copy to the Attorney General’s Office, which may file an objection or answer to the petition within 30 days thereafter.”²⁷ In cases involving violent felony juvenile records, the Attorney General’s Office will attempt to contact the victim to determine their position on the petition and include it in the response.²⁸

Unless the court believes a hearing is necessary, statute directs courts to dispose of petitions without a hearing.²⁹

Notification, Disclosure, and Retention Processes

When SBI confirms a conviction meets mandatory expungement criteria, or receives an order from the court, SBI is required to “promptly notify all courts and law-enforcement agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of, or concluded.”³⁰ A court or law enforcement agency that receives an expungement notice from the SBI must provide a written confirmation back to SBI that the expungement was completed. In discretionary expungement cases, the court notifies SBI to expunge all or part of the criminal history within 60 days of receipt of the order. SBI must then provide written confirmation to the court upon completion or notice with the reason why it is unable to comply with the order.³¹ SBI is responsible for submitting notifications to federal law enforcement.³²

Complying with an expungement order means “all law-enforcement agency records and court records relating to a case in which an expungement is granted, including any electronic records, are destroyed, segregated, or placed in the custody of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically authorized”³³ by statute. These disclosure exemptions include law enforcement employment purposes, criminal investigations, eligibility for court-supervised programs, and concealed weapons licensing.³⁴

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Del C 1018(c).

²⁹ 11 Del C 4374(f).

³⁰ 11 Del C 4372(e)(2).

³¹ *Ibid.*

³² 11 Del C 4377.

³³ 11 Del C 4372(e)(2).

³⁴ 11 Del C 4376(a)(1).

In addition, the statute excludes the destruction of photographs or fingerprints when used solely by law enforcement in performance of their duties investigating criminal activity.³⁵

For *mandatory expungements*, SBI removes the appropriate conviction information from the criminal history repository to a secured and segregated file within the DELJIS system and limits access for specific criminal justice purposes. SBI distributes written notifications to all stakeholders that may have physical records instructing them to submit all pertinent records to SBI for destruction, or acknowledge that no records exist within that agency. SBI maintains the notification status in physical files and routinely monitors compliance while expungement confirmation is pending. SBI staff report high compliance rates among stakeholders.

In *discretionary expungements*, the appropriate court will place records into a segregated archive file and issue an expungement order directly to SBI, which triggers the same process as a mandatory expungement. SBI submits acknowledgement to the court upon completion of the expungement process, and the court administratively seals the expungement request record.

Overview: Clean Slate Legislation in Delaware

Even with the current mandatory and discretionary expungement options available to criminal record holders in Delaware, the Collateral Consequences Resource Center estimates that less than 1 percent of the 290,000 eligible individuals in Delaware take advantage of these options.³⁶ Effective August 1, 2024, Delaware’s mandatory expungement process will shift from a petition-based process to a state-initiated process as described in SB111, and commonly referred to as “automatic” expungement. Rather than requiring individuals to initiate the process, SBI will identify eligible cases, using the mandatory expungement criteria described earlier, on a monthly basis³⁷ and follow the current notification process among courts and law enforcement agencies. The important distinction in the state-initiated process is the elimination of fingerprint submission and fees previously required by SBI to complete a mandatory expungement.

The new law also includes provisions that allow individuals to petition for an automatic expungement if an eligible case has not otherwise been expunged,³⁸ and shields the state from any potential “damages as a result of the failure to identify an individual’s case as eligible for automatic expungement.”³⁹

Implementation Challenges and Strategies

Delaware stakeholders are in the initial planning phase and anticipate creating a dedicated Steering Committee to manage Clean Slate implementation. The committee will include

³⁵ *Ibid.*

³⁶ Collateral Consequences Resource Center, “[Delaware governor signs automatic record cleaning laws](#),” Reynolds and Offredo, November 10, 2021.

³⁷ 11 Del C 4377A(b).

³⁸ 11 Del C 4377A(d).

³⁹ 11 Del C 4377A(e).

representatives from involved agencies to identify the key requirements and conditions to streamline an estimated 590,000⁴⁰ mandatory expungement convictions to the extent possible.

Expungement Automation

Any potential Clean Slate automation efforts will rely on coordination among agency subject matter experts to enhance the DELJIS platform capabilities. State partner agency staff have a wealth of experience and knowledge of expungement processes and practices. Leveraging this collective understanding of complicated and detailed tasks will be necessary in order to translate business practices into technology requirements for subsequent development activities in DELJIS. DELJIS currently supports a wide variety of justice applications and interfaces among multiple agencies, making it an indispensable tool for Delaware justice administration — including expungements. Data contained within DELJIS systems range from law enforcement incident reports, warrants, arrest charges, court case tracking, case fines and fees, to protection orders, criminal history, and ,pre.⁴¹ Many of these systems currently leverage data from each other in order to integrate business processes and reduce the reliance on paper-based exchanges among justice stakeholders across the state.

One critical shared resource in DELJIS is the Law File, which contains a common set of offense statutes. Using a standard set of offense statutes will assist in the analysis of convictions eligible for automatic mandatory expungement under the Clean Slate Act. Once agency staff identify qualifying statutes, they can more easily cross-reference conviction offenses and coded values within the criminal history repository and court case management system. The resulting record set would be an initial and over-inclusive starting point for subsequent eligibility analysis.

This subsequent analysis will likely involve creating a series of scripts to identify and refine pools of qualifying individuals and convictions and remove those convictions that do not meet the statutory criteria. For instance, upon identifying initial convictions based on qualifying statutes, DELJIS could write a program to confirm that the record subject has:

- successfully completed statutory waiting periods of 3 years for misdemeanors and 7 years for felonies,
- no active or pending charges,
- successfully discharged and completed all supervision terms, and
- met all financial obligations, e.g., payment of all fines, fees, court costs, and restitution.

Stakeholder Notifications

In addition to automating expungement processes, stakeholders should consider electronic expungement notification and acknowledgements. Currently, SBI, courts, law enforcement, and prosecutors send and receive paper forms via mail to notify agencies of expungements and confirmations. This process is time-consuming and labor-intensive and automatic expungements will exacerbate the problem. Alternatives to this process range from establishing a specific application and database to electronically create and track notifications and compliance, or

⁴⁰ SB 111 Fiscal Note, April 16, 2021 Section 4.

⁴¹ [DELJIS Systems and Applications](#).

simply developing electronic versions of the current paper documents and exchange them via email. The result would alleviate the time, cost, and effort to manage paper-based exchanges.

Individual Expungement Notifications

Under the existing petition-based expungement process, individuals request expungements and provide current contact information to receive notifications from SBI or courts. Once automatic mandatory expungements take effect, SBI will face challenges in efforts to contact affected individuals to inform them of expungements. For example, last known addresses, phone numbers, or email addresses may be out of date and SBI runs the risk of inadvertently disclosing sensitive data to third parties as part of the notification process.

Delaware stakeholders may consider establishing a hotline or public-facing web interface with two-factor authentication (name, date of birth, and email validation, etc.) to inform individuals of their expunged convictions. These approaches could be coupled with a public relations campaign, to include targeted social media outreach, public service announcements, radio, television, billboard advertising, etc. This public outreach investment will assist in fulfilling the ultimate objective of the Clean Slate Act.

These strategies will help SBI staff streamline the significant volume of eligible records for automatic expungement and expedite the notification process, which will alleviate the burden on stakeholder agency staff. These technology approaches will have a varying degree of difficulty to develop and implement. Stakeholders will need to work closely with the DELJIS development team to coordinate project plans to address priorities, level of effort, resource allocations, timeframes, etc. DELJIS staff have extensive experience working with partner agencies to create new functionality and enhancements, and stakeholders should leverage this system's capabilities and their knowledge of Clean Slate requirements to automate expungement processes as much as possible and alleviate already constrained staff resources.

DELJIS Resource Availability

As described previously, DELJIS will be a central component to implementing automatic expungement. Any new development activity will affect DELJIS development resources in maintaining current functionality and backlog of enhancements already in progress. The primary concern among stakeholders interviewed in April 2022 involved resource constraints on the DELJIS development team, which may affect the implementation schedule. DELJIS can manage this challenge with proper coordination and planning until automatic expungement goes into effect. As with any other technology initiative, a key component to managing expectations as development activities evolve is frequent communication and updates on progress made and challenges encountered.

Allocated Funding and Staffing Shortage

Stakeholders also indicated that, despite funding being appropriated, agencies have had difficulty accessing necessary funds to fill current vacant positions and equipment needs. These challenges appear to be administrative and stakeholders are aware of the potential for delays. Agency representatives will continue to monitor developments and seek opportunities to release funding in a reasonable timeframe. Stakeholders have also reported that they have had difficulty hiring staff due to labor shortages. They anticipate needing additional time to post,

hire, and train the staff positions needed to accommodate the significant increase in expungement-related activities.

Anticipated Budget

To address these challenges, Delaware justice stakeholders anticipate a budget of over \$6 million over the next three fiscal years to implement and sustain the Clean Slate Act, as illustrated in Table 1.⁴² Of that amount, Delaware anticipates approximately \$1.9 million in one-time costs dedicated to technology efforts involving DELJIS programming and digitizing criminal history records at SBI to reduce the number of hard copies and streamline record administration, including expungements. Operating costs account for 67% of the requested funds, which primarily covers the increased personnel costs across stakeholder agencies. These 16 additional staff positions are necessary to support the dramatic volume increase of expungement orders processing, notifications, and subsequent record handling among these agencies.

| | One-time Costs | Operating Costs | FY Total |
|------------|----------------|-----------------|-------------|
| FY 22 | \$1,097,325 | \$1,341,792 | \$2,439,117 |
| FY 23 | \$850,000 | \$1,368,692 | \$2,218,692 |
| FY 24 | \$0 | \$1,394,649 | \$1,394,649 |
| Total Cost | \$1,947,325 | \$4,105,133 | \$6,052,458 |

Table 1: Budget to Implement and Sustain Clean Slate Act, FY2022–FY2024

⁴² SB 111 Fiscal Note, April 16, 2021.

Appendix: Mandatory Expungement Exclusions – 11 Del C § 4373(b)

- (1) A crime of domestic violence. For purposes of this section, a “crime of domestic violence,” means an offense that meets both of the following:
 - a. Was committed by any of the following:
 1. A member of the victim’s family, as “family” is defined under § 901 of Title 10, regardless, however, of the state of residence of the parties.
 2. A former spouse of the victim.
 3. A person who cohabited with the victim at the time of or within 3 years before the offense.
 4. A person with a child in common with the victim.
 5. A person with whom the victim had a substantive dating relationship, as defined under § 1041 of Title 10, at the time of or within 3 years before the offense.
 - b. Is an offense under any of the following sections: § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 781, § 785, § 791, § 804, § 811, § 821, § 822, § 823, § 1271(3), § 1271A, § 1311, or § 2113 of this title.
- (2) Offenses where the victim is a child.
- (3) Offenses where the victim is a “vulnerable adult,” as defined under § 1105 of this title.
- (4) Any misdemeanor set forth in subparts A, B, C, or F of subchapter VI of Chapter 5 of this title.
- (5) Any of the following misdemeanors:
 - a. Unlawfully administering drugs, under § 625 of this title, when the charge is in conjunction with a sexual offense, as defined in § 761(f) of this title.
 - b. Sexual harassment, under § 763 of this title.
 - c. Indecent exposure in the second degree, under § 764 of this title.
 - d. Indecent exposure in the first degree, under § 765 of this title.
 - e. Trespassing with intent to peer or peep into a window or door of another, under § 820 of this title.
 - f. Organized retail crime, under § 841B of this title.
 - g. Home improvement fraud, under § 916 of this title.
 - h. New home construction fraud, under § 917 of this title.
 - i. Official misconduct under § 1211 of this title.
 - j. Offenses against law-enforcement animals, under § 1250 of this title.
 - k. Promoting prison contraband, under § 1256 of this title.
 - l. Resisting arrest, under § 1257 of this title.
 - m. Use of an animal to avoid capture, under § 1257A of this title.
 - n. Hate crime, under § 1304 of this title.
 - o. Malicious interference with emergency communication, under § 1313 of this title.

- p. Abusing a corpse, under § 1332 of this title.
- q. Violation of privacy, under § 1335 of this title.
- r. Lewdness, under § 1341 of this title.
- s. Patronizing a prostitute, under § 1343 of this title.
- t. Permitting prostitution, under § 1355 of this title.
- u. Carrying a concealed dangerous instrument, under § 1443 of this title.
- v. Unlawfully dealing with a dangerous weapon, under § 1445 of this title.
- w. Unlawfully permitting a minor access to a firearm, under § 1456 of this title.
- x. Possession of a weapon in a Safe School and Recreation Zone, under § 1457 of this title.

Clean Slate State Profile: Michigan

February 2022

In 2020, the State of Michigan passed legislation that expanded eligibility to petition for records clearance, and eventually to automate the process of identifying candidates for state-initiated clearance for some criminal justice records. As the third state in the nation to pass such “clean slate” legislation, Michigan is also a leader with the broadest expansion to date in terms of candidate eligibility. Michigan is the first state to include felonies in its eligibility pool and (at the time) was the first to prevent unpaid legal debt from disqualifying otherwise eligible individuals for state-initiated records clearance.¹ The purpose of this Clean Slate State Profile is to:

- Illustrate the differences between the established petition-based system in Michigan, the updated petition system, and the future record clearance process that places the burden on the state to initially identify eligible records for clearance.
- Provide a summary of the petition-based process, including its limitations, which ultimately led a bipartisan coalition to push for Clean Slate legislation.
- Provide an overview of the updated petition process and the future automated process, including determining eligible records, costs, and implementation challenges.
- Address the benefits of the automated processes to identify persons eligible for record clearance, pursuant to Michigan’s Clean Slate legislation.

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¹ Crime and Justice Institute, “Michigan governor signs historic Clean Slate legislation,” October 12, 2020.

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Key Terms and Actors in Michigan

- **Set Aside:** Term used to describe records that have been removed from public view; these are still available to law enforcement and the court system.
- **Expungement:** Term used to describe records that have been destroyed, including fingerprints and arrest records.
- **Seal:** Term used interchangeably with set aside; meaning to remove records from public view.
- **Felony:** A crime punishable by more than 1 year in state prison, unless it is specifically stated to be a misdemeanor.
- **Major Misdemeanor:** Lesser crime punishable by 93 or more days in prison.
- **Minor Misdemeanor:** Lesser crime punishable by 92 or fewer days in prison.
- **ICHAT:** Internet Criminal History Access Tool; tool used by Michigan law enforcement and citizens to look for criminal histories.
- **DTMB:** Department of Technology Management and Budget.
- **CJIC:** Criminal Justice Information Center, the criminal records repository for Michigan.
- **MSP:** Michigan State Police.
- **SCAO:** State Court Administrative Office.

Overview: Michigan’s Current Petition-Based Records Clearance Process

Eligibility

Michigan has an established petition-based records clearance process, which enables an eligible person to petition the courts to **set aside** their conviction after a 5-year waiting period. Set aside records in Michigan are sealed, meaning that public access is restricted and only a small number of eligible agencies may access the records. In order to qualify as “eligible,” an individual must have been convicted of only a single **felony** offense or “not more than two **misdemeanors** and no other felonies.”² If there are multiple conviction charges in a single case, the charges are considered separate convictions, which can render a person ineligible from petitioning for a set aside.³ A person who is sentenced to life in prison upon conviction of a felony or attempted felony is similarly ineligible.

If a charge is not filed against an arrested person, the arresting law enforcement agency shall notify the Michigan State Police (MSP) Bureau of Criminal Identification and Records. MSP must destroy the records, including biometric identification data related to the record subject.⁴ If charges are filed by the prosecutor but dismissed by the court before going to trial, the records must be **expunged** (i.e., destroyed) by MSP within 60 days from the date of an order of dismissal, as long as there is no objection by the prosecutor or the judge of the court in which the case was filed.⁵

Application Process

To be granted a set aside, a person must petition the court in which they were convicted. Petitioners can download petition forms from multiple state websites, including the Michigan State Courts website.⁶ The petitioner will need to have the details of their conviction record available to properly complete forms MC227a (Application to Set Aside Marijuana⁷ Conviction) or MC227 (Application to Set Aside Conviction). Petitioners can retrieve their criminal history record from the MSP Internet Criminal History Access Tool (ICHAT) for a \$10 fee.⁸ The petitioner must include a certified copy of the judgment of sentence and an official set of the petitioner’s fingerprints in the set aside application. The petitioner must mail a notarized application and supporting documents (i.e., a certified copy of the judgment of sentence, program order, or register of actions for each conviction) to MSP, along with a check or money order for \$50. The petitioner must also mail or deliver the application package to the following: a) the court where the conviction occurred, b) the prosecuting agency where the conviction occurred, and c) the

² Michigan Compiled Laws (MCL) §780.621(1)(c), (1)(2)).

³ *People v. Blachura*, 440 N.W.2d 1, 2 (Mich. Ct. App. 1989).

⁴ MCL §28.243(7).

⁵ MCL §28.243(8)(b).

⁶ State of Michigan, Form MC 227a, *Application to Set Aside Marijuana Conviction(s)*, revised March 2021, <https://www.courts.michigan.gov/siteassets/forms/scao-approved/mc227a.pdf> or Form MC227, *Application to Set Aside Conviction(s)*, Revised March 2021, <https://www.courts.michigan.gov/siteassets/forms/scao-approved/mc227.pdf>

⁷ Michigan law uses this spelling of the drug as *marihuana*.

⁸ <https://apps.michigan.gov/>.

Criminal Trial and Appeals Division of the Attorney General’s office. If the petitioner has multiple convictions, this process must be repeated for each conviction for which records relief is sought.

Once MSP determines eligibility, that information is returned to the courts and the court decides whether to grant the set aside request. Petitions may take up to 6 months to be processed.⁹ Three months of this time is granted to MSP to process its background check. Concurrently, the Attorney General’s office conducts an eligibility analysis based on statutes.¹⁰ In Michigan, a set aside is considered a privilege rather than a right. The court may consider circumstances, applicant behavior, and the welfare of the public,¹¹ among other considerations, in its decision.

Disseminating a Set Aside Order

Once a court makes a determination to set aside a conviction, MSP will keep a nonpublic copy of the petitioner’s record. This record will include the order to set aside and other documents, such as fingerprints, arrest records, and sentencing information. Access to set aside records is limited to:

- A court that has the authority to review the conviction,
- An agency or judicial branch of the state government,
- The Department of Corrections,
- A law enforcement agency,
- The Attorney General, and
- The Governor.¹²

If the petitioner requests a set aside for an assaultive crime or serious misdemeanor, the victim must be notified by the prosecuting attorney, who is responsible for sending a notice by first-class mail to the last known address of the victim.¹³ The victim has the right to appear at the proceeding and present a statement.

Current Automatic Expungement Process

If a person is arrested and no charges are filed or the charges are dismissed before trial, all information about the arrest (including fingerprints and other biometric information) must be destroyed.¹⁴ Similarly, if a person is found not guilty or if a prosecutor declines to prosecute a case, then all records related to the arrest and subsequent actions by the courts and prosecutors must be destroyed.¹⁵ If a case is dismissed, all related records must be dismissed provided there is no objection from the prosecutor within 60 days.¹⁶

⁹ Safe and Just Michigan, “Frequently Asked Questions: Michigan’s Clean Slate Legislation,” July 6, 2021, p. 6.

¹⁰ Sherry Rosin, personal communication with authors, January 6, 2022, and February 4, 2022.

¹¹ MCL § 780.621(d)(9).

¹² MCL §780.623(2).

¹³ MCL §780.621(d)(10).

¹⁴ MCL §28.243 (7-8)

¹⁵ MCL § 28.243 (7-10)

¹⁶ MCL § 28.243 (8)(b)

Limitations

The existing records clearance process limits individuals to allowing set asides for a single felony or two misdemeanors. Under the petition-based process, multiple offenses committed during the same event are all considered separate offenses and may disqualify someone from consideration. Additionally, individuals convicted of a felony, or an attempt to commit a felony that is punishable by life in prison, are ineligible to petition for a set aside of their conviction.¹⁷

Background of Michigan’s Clean Slate Efforts

Status of Clean Slate Legislation and Timeframe for Implementation

Michigan has implemented six of the seven bills signed in October 2020 that pertain to Clean Slate and expanded records clearance.¹⁸ Six of these bills address expanded eligibility to petition for a set aside and became effective on April 11, 2021. The final bill is focused on the automatic set aside process and has a 2-year implementation timeline. It is scheduled to become effective April 11, 2023.¹⁹ MSP and the Department of Technology Management and Budget are currently in the process of creating systems and processes to implement its Clean Slate legislation.

On August 23, 2021, Governor Whitmer signed House Bill 4219 that expands eligibility for set asides to first-time convictions of operating while intoxicated (commonly referred to as “driving under the influence”).²⁰ The provisions of House Bill 4219 took effect on February 19, 2022.

Coalitions in Support of Clean Slate Legislation

The Clean Slate bills that passed in Michigan had extensive support. The bipartisan coalition included Governor Gretchen Whitmer (D) and was championed by Lieutenant Governor Garlin Gilchrist (D). The bills were sponsored by Rep. Eric Leutheuser (R-Hillsdale) and included supporters House Speaker Lee Chatfield (R-Levering), Rep. Graham Filler (R-DeWitt), Rep. David LaGrand (D-Grand Rapids), Sen. Pete Lucido (R-Shelby Township), and Sen. Sylvia Santana (D-Detroit).²¹ The suite of bills passed both chambers convincingly: 76% of the House and 84% of the Senate supported it.

Other supporters include Safe and Just Michigan, the American Civil Liberties Union of Michigan, the state chapter of Americans for Prosperity, and the Crime and Justice Institute (CJI). CJI, along with the Clean Slate Initiative, Code for America, and the Chan Zuckerberg Initiative, advised Safe and Just Michigan on this legislation.²²

Costs to the State

In her 2022 budget, Governor Whitmer proposed \$20.1 million “to fund the coordinated development of criminal record expungement systems across multiple departments, including

¹⁷ MCL §712A.18(2)(a).

¹⁸ Michigan Public Act (MPA) 187 (October 13, 2020), MPA 188 (October 13, 2020), MPA 189 (October 13, 2020), MPA 190 (October 13, 2020), MPA 191 (October 13, 2020), MPA 192 (October 13, 2020), and MPA 193 (October 13, 2020).

¹⁹ Michigan Courts, “Clean Slate Legislation.”

²⁰ MPA 78 (August 23, 2021).

²¹ Crime and Justice Institute, “Michigan governor signs historic Clean Slate legislation,” October 12, 2020.

²² *Id.*

the Departments of Attorney General, Corrections, State Police, and the Judiciary.”²³ It is anticipated that the program will receive \$2.2 million for ongoing program support and maintenance. The appropriation will include \$560,000 for the Department of the Attorney General, \$605,000 for the Judiciary, and \$1.1 million for MSP.

In April 2021, the Michigan Department of Labor and Economic Opportunity awarded \$4 million to Michigan Works! Agencies’ Clean Slate Pilot program to support their efforts to aid citizens with pursuing set asides and expungements.²⁴

Benefits to Citizens

The new Clean Slate laws expand eligibility to many citizens. Due to the cost and complexity of the previous laws surrounding petition-based set asides, only a small percentage (6.5%) of the eligible population applied for records relief each year.²⁵ In addition to the cumbersome process required to petition for a set aside, which discouraged uptake among many eligible citizens, the older law only allowed for one felony or two misdemeanors to be set aside. The new legislation reaches a broader candidate pool, by placing the burden of identifying eligible candidates on the state, adding certain traffic offenses, and increasing the number of convictions a person can have and still be eligible to have records set aside. The expanded qualifications for the petition process included with the Clean Slate legislation reflects changes in marijuana possession and use laws to make an additional 240,000 people eligible for a set aside.²⁶ Additionally, people eligible for state-initiated clearance of their record will not have to go through the expense of hiring a lawyer and paying fees to file a petition to clear their record.²⁷ It is expected that the Clean Slate legislation will benefit up to 1 million citizens.²⁸

Individuals who have their convictions set aside will be able to legally state that they have never been convicted or arrested for a crime on occupation and school applications, or when applying for public benefits, housing, or employment.²⁹ Prescott and Starr project that the expanded access to records clearance could increase the income of people who receive set asides by 23 percent.³⁰

²³ Michigan League for Public Policy, “A first look at Gov. Gretchen Whitmer’s 2022 state budget,” February 24, 2021.

²⁴ The Office of Governor Gretchen Whitmer, “\$4 million investment in Clean Slate Pilot program launched to assist returning citizens with setting aside a conviction” [Press Release], April 14, 2021.

²⁵ J.J. Prescott and Sonja B. Starr, “Expungement of Criminal Convictions: An Empirical Study,” 133 *Harvard Law Review* (2020), pp. 2461–2555, at 2466.

²⁶ Safe and Just Michigan, “Frequently Asked Questions: Michigan’s Clean Slate Legislation,” July 6, 2021, p 5.

²⁷ Crime and Justice Institute, “Michigan governor signs historic Clean Slate legislation,” October 12, 2020.

²⁸ Gus Burns, “Up to 1 million Michigan residents may be eligible for ‘clean slate’ criminal expungements,” *MLive*, April 13, 2021.

²⁹ Angie Jackson, “Here’s how Michigan’s expungement laws will change this spring,” *Detroit Free Press*, January 29, 2021

³⁰ J.J. Prescott and Sonja B. Starr, “Expungement of Criminal Convictions: An Empirical Study” 133 *Harvard Law Review* (2020), pp. 2461–2555, at 2528.

Overview: Michigan’s Clean Slate Record Clearance Process

How the State-Initiated Set Aside Process Works Under Clean Slate

The state-initiated set aside process of Michigan’s final Clean Slate bill requires the Michigan State Police to set aside certain convictions without requiring the offender to complete an application. A conviction for certain felonies can be set aside 10 years after the imposition of a sentence or the completion of any term of imprisonment with the Michigan Department of Corrections (DOC), depending on which occurs later.³¹ The Clean Slate legislation also expands the number of set asides to two qualifying felonies (compared to one felony under the previous petition-based process).

For purposes of setting aside records, the legislation divides misdemeanor convictions into two categories:

- 1) Misdemeanors that result in a sentence of 92 or fewer days can be set aside 7 years after the imposition of a sentence or completion of the term of incarceration; there is no limit on the number that may be sealed.
- 2) If the misdemeanor results in a sentence of 93 or more days, the number of convictions that can be set aside is limited to four, although the waiting period is the same.³²

Some serious misdemeanors (resulting in a sentence of 1 year or more) are treated equivalent to felony convictions and count toward the number of felonies that may be set aside.

MSP is responsible for generating the list of eligible records among misdemeanors resulting in a sentence of more than 93 days and felony convictions. They will then send the list of eligible records to the court, which will determine whether to grant a set aside order. The court can overrule eligibility if they deem it necessary (e.g., the court determines that there are disqualifying convictions that were not identified by MSP). Once the court receives the list, they have 30 days to determine if the records are eligible for a set aside. The court has 10 days to notify the arresting agency once the change is made in its system. Misdemeanors resulting in a sentence of fewer than 93 days are identified by the courts – rather than MSP – prior to being set aside.

Information pertaining to *pending charges*, a key determinant of eligibility, is part of the MSP criminal history records management system, but is incomplete. MSP relies on prosecuting agencies to update charge information to the record, although they are not required to report it by statute.³³ MSP plans to overcome this gap by working with prosecutors and Department of Technology, Management and Budget (DTMB) to implement information-sharing upgrades and conduct outreach to all criminal justice agencies prior to the effective date of the Clean Slate legislation.

³¹ MPA 193 (Sec. 1g)(2)(a), October 13, 2020.

³² MPA 193 (Sec. 1g)(4-5), October 13, 2020.

³³ Sherry Rosin, personal communication with the authors, January 6, 2022.

Technical Challenges to Implementing State-Initiated Set Asides Under Clean Slate

Challenges with Identifying Eligible Persons

MSP establishes criminal history records on people using fingerprints to establish positive identity. Once positive identification is established, a state identification number (SID) is assigned to identify each individual within the computerized criminal history (CCH) database. The SID record contains descriptive information about each person, including name, demographic information (i.e., sex, race, date of birth), and physical characteristics (e.g., height, weight, eye color, hair color, scars, marks, tattoos, etc.). Records that lack fingerprints cannot be linked to an individual person and are not appended to an individual's criminal record.

Each arrest record has an SID, a corresponding Transaction Control Number (TCN), and the Originating Agency Identifier (ORI) for the arresting and/or booking agency. These numbers allow MSP to reliably identify longitudinal arrest records for a specific individual.

Court records are case-centric rather than person-centric, which makes it challenging to identify individuals who have multiple charges/convictions within the case management system (CMS). The court assigns each **case** a unique case number and attaches its own ORI, but the court does not necessarily include the SID or TCN needed to link the case to the arrest within its CMS.³⁴ Without an SID or TCN, other numeric identifiers may be combined with identifying features (such as name, date of birth, and sentencing date) about the defendant to match eligible records. Insufficient information to match court and MSP records can delay the state's ability to make an eligibility determination.

The MSP will face challenges in reliably associating arrest and court records. Aside from that, there is the fundamental challenge concerning records maintained by the courts that are not housed by MSP. As indicated earlier, in order to be included within a person's CCH record, arrest records must be supported by positive identification through the submission of fingerprints. In 2020, Michigan reported that law enforcement agencies routinely cite and release individuals without fingerprinting for violations³⁵ that would be eligible for relief under Clean Slate. Unless Clean Slate is expanded to allow the courts to initiate eligibility determinations, many qualified low-level convictions may have to proceed through the petition-based process in order to be set aside, since MSP will not be able to make determinations for records that are only held by the courts.

If a court orders a record to be set aside and new information becomes available that demonstrates the individual should have been *ineligible*, the court will re-enter the (improperly set aside) conviction into its case management system and notify MSP to do the same.³⁶

³⁴ *Id* at 16:01.

³⁵ Becki R. Goggins and Dennis DeBacco, *Survey of State Criminal History Information Systems, 2020*, (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, Awaiting publication), Table 9.

³⁶ MPA 193 (Sec. 1g)(12). October 13, 2020.

Challenges with Identifying Eligible Records

Michigan will need to construct multiple robust computer programs to address the state-initiated set aside process. MSP will design and build a rules engine to identify candidates eligible for state-initiated records clearance within its CCH database. For example, the computer programs must perform the following analyses to generate set aside lists for the courts:

- **Calculate the total number of felony and misdemeanor convictions on each individual's record within the CCH database.** Since only two qualified (non-serious) felonies and four misdemeanors punishable by 93 or more days in prison may be set aside, the computer program must rule out/rule in eligible candidates based on their conviction history. MSP is able to determine which offenses are felonies or misdemeanors punishable by 93 days or more based on the conviction statute provided by the courts. The computer program will need to be able to dynamically calculate the total number of potentially disqualifying misdemeanor records and felony records for each person to establish eligibility.
- **Identify the period of time since a person's last conviction.** Since there is a waiting period before a person is eligible to have their convictions set aside under the state-initiated process (10 years for qualified felonies and 7 years for misdemeanors), the computer program will determine when the most recent sentence was imposed or when a person was released from incarceration, whichever is later, to establish the date when a person becomes eligible to have their conviction set aside.
- **Identify eligible offenses within each arrest and court event.** Since Michigan will apply Clean Slate at the charge level, individuals may have charges that qualify for set asides that occurred as part of the same arrest and/or court event as ineligible offenses. For example, a person may be arrested for two felonies and one misdemeanor, but the prosecutor only elects to pursue charges on a single felony, to which the individual pleads guilty. If the same individual has two other felony convictions, then the single felony conviction would not be eligible to be set aside. The remaining felony and misdemeanor charges would qualify to be expunged, since no formal charges were filed by the court. If the same individual did not have any additional felony convictions, the felony conviction could be set aside after 10 years, and the other felony and misdemeanor could be expunged as soon as the prosecutor makes its final determination against filing charges.

As state-initiated records relief matures in Michigan, MSP will need an electronic interface to communicate with the DOC so that it can access release dates to calculate when persons become eligible. This system should also electronically notify the DOC of set aside records so that they may be sealed within DOC.³⁷ As the MSP can only determine eligibility of records from incidents that include fingerprints, it is critical that the MSP's CJIC, the courts, and DOC systems communicate and synchronize with one another. Any open cases (i.e., arrests missing court dispositions) that exist in the MSP database will provide challenges to determining eligibility, so MSP is working to update these cases with dispositions.³⁸

³⁷ Sherry Rosin, "Planning for Clean Slate: Michigan's Experience," SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021 [conference presentation at 21:45].

³⁸ *Id.*

Expanded Eligibility Under the Petition-Based Process

Michigan's state-initiated records relief also expanded traditional petition-based eligibility. In instances where a person has convictions that are eligible for state-initiated set asides, the applicant can opt to petition to have the record set aside sooner, rather than waiting for the required amount of time to elapse to qualify for the state-initiated set aside process. In cases where a person has not previously requested a set aside, he/she may file a petition to set aside a misdemeanor after 3 years (minor misdemeanors) or 5 years (more serious misdemeanors); the comparable waiting period for the state-initiated process is 7 years.³⁹ All subsequent misdemeanor offenses (those that occur after a person's first set aside) have a 7-year wait prior to filing a petition with the same qualifications, whether the set aside is state-initiated or based on a petition. All felony convictions are subject to a 10-year waiting period.

The expansion of the Clean Slate-related laws included some convictions that can only be set aside through the petition process. These include traffic offenses and some marijuana offenses.⁴⁰

A citizen may petition for a set aside related to traffic offenses 3 years after having completed a sentence or 5 years after the offense occurred. Though some traffic offenses can be set aside, they will not be removed from a person's driving record.⁴¹

For marijuana offenses, judges must grant set aside requests for offenses that would no longer be considered a crime as of December 6, 2018. Prosecutors may object to the application within 60 days; if an objection occurs, applicants will be given an opportunity to defend their request.⁴²

Several convictions do not qualify for a set aside:

- A felony or attempted felony where the punishment is life imprisonment.
- Select offenses related to the exploitation and delinquency of minors.
- A violation or attempted violation of fourth-degree controlled substance offense (if convicted on or after January 12, 2015).
- Certain traffic offenses, including operating while intoxicated, committing a traffic offense using a commercial drivers' license while operating a commercial vehicle, or any traffic offense that involves injury or death.
- Felony domestic violence (if the applicant has a previous misdemeanor conviction for domestic violence).
- Human trafficking offenses.⁴³

The newly expanded Clean Slate eligibility has also added a "One Bad Night" rule. This principle states that if multiple felonies or misdemeanors occur contemporaneously and result in multiple

³⁹ MPA 4980 (1), October 13, 2020.

⁴⁰ MPA 78 (4)(d), August 23, 2021 and MPA 192 (1), October 13, 2020.

⁴¹ MCL § 712a.18e(17).

⁴² MPA 192 (4), October 13, 2021.

⁴³ MPA 187 (1), October 13, 2020.

convictions, they will be treated as a single felony or misdemeanor.⁴⁴ The only exceptions are when the crime is assaultive, involves the use or possession of a dangerous weapon, carries a maximum penalty of 10 or more years imprisonment, and when the individual is convicted for a crime in another state that, had it occurred in Michigan, would be for an assaultive crime.

Eligibility Determinations

Under the new state-initiated set aside law, no more than two felony convictions and four major misdemeanors (carrying a sentence of 93 or more days) may be set aside. This limitation does not apply to minor misdemeanors (carrying a sentence of 92 or fewer days).⁴⁵

Pending charges may make a person ineligible for having a conviction set aside, even if their convictions meet the state's eligibility criteria. In any case, a person will not become eligible for a set aside until 7–10 years from the most recent conviction.⁴⁶

Michigan has decided that unpaid fees, court costs, or restitution will not impact a person's set aside eligibility. The courts in Michigan consider neither the satisfaction of these debts, nor the completion of probation, in deciding eligibility. The law allows for a set aside to be rescinded if the court determines that a person has not made a good faith effort to pay owed restitution.⁴⁷

Post-Conviction Relief Processes

Access to Set Aside Records

The courts and the MSP retain access to all set aside records. This arrangement is necessary because the MSP is required to provide set aside records to a limited set of agencies for background checks. The courts may also access the records in the event there is a need to enhance a sentence on a subsequent conviction. If a set aside is granted, the petitioner will not legally be considered to have ever been convicted of that crime. These set aside "prior convictions," however, may be considered by the courts, law enforcement agencies, and district attorneys to charge an individual with subsequent offenses.⁴⁸

It is considered a misdemeanor in Michigan to share or use one's knowledge of an individual's set aside offense.⁴⁹

Records Access for Research

While there is no specific provision in the package of Clean Slate legislation regarding access to sealed records for research purposes, the law pertaining to the set aside of adjudicated records does include an exception for "research on the utilization and effectiveness of the set aside process."⁵⁰ This legislation refers to youth adjudications. At this time, it is unknown whether this clause would pertain to adult convictions.

⁴⁴ MPA 188 (1), October 13, 2020.

⁴⁵ MPA 193 (Sec. 1g)(5), October 13, 2020.

⁴⁶ *Id.* (Sec. 1g)(6)(b).

⁴⁷ *Id.* (Sec. 1h)(3).

⁴⁸ *Id.* (Sec.1)(1)(9).

⁴⁹ *Id.* (Sec 3)(5).

⁵⁰ Michigan Probate Code of 1939. Act 288.

Notification Requirements

Interagency communication about cleared records will be key to this program's success. When the court decides to set aside a record, it must notify the arresting law enforcement agency by the tenth day of the month following the set aside date.⁵¹ The courts are also responsible for notifying MSP and prosecutors so that records can be sealed at the local level.

No process has been set up to *notify citizens* when records have been successfully set aside by the courts under Clean Slate, unless the set aside is the result of a petition. For an individual to find out if their record was sealed under the state-initiated Clean Slate set aside process, they will need to search for or request their own criminal history records. Records may be obtained through searches on ICHAT (the access tool run by MSP) for \$10. Individuals may also make a Freedom of Information Act request (associated fees can vary).⁵² Finally, individuals can make a request from the DOC's database based on their Offender Tracking Information System (OTIS) number. While there is no charge for making a DOC information request, this database only holds information about prisoners, parolees, and those on probation.⁵³

Remaining Questions and Discussion

Questions are anticipated as implementation of Clean Slate begins in Michigan. Challenges are expected to include how to create a process to notify record holders that their record has been set aside. Without this knowledge, it will be difficult to assess whether the automatic set aside process improves an individual's economic situation. The extent to which set-aside records will be made available to researchers is unknown; thus, it is unclear if an outcome evaluation of Clean Slate on housing, employment, and licensing opportunities is possible.

Michigan is also in the process of determining how to handle *paper* records (separate from electronic records) that are eligible to be set aside. All MSP records are electronic, but the courts may retain paper records in some cases. The courts will need to determine how they will handle or process electronic notifications received by MSP, where the record is actually a physical hardcopy.

⁵¹ MPA 193 (Sec. 1g)(1), October 13, 2020.

⁵² American Civil Liberties Union Michigan, "Know Your Rights: How to Expunge Your Criminal Record," n.d., accessed November 1, 2021.

⁵³ *Id.*

Clean Slate State Profile: Missouri

September 2022

The purpose of this Clean Slate State Profile is to:

- Document Missouri’s automated criminal records closure process and distinguish “open” from “closed” records.
- Document the current petition-based records relief processes in Missouri.
- Explain the differences between the automated closing process and the petition-based process.

This analysis focuses on the records relief responsibilities associated with the two largest criminal justice record holders: The Missouri State Highway Patrol (MSHP), which manages the state’s central repository for criminal history records, and the Office of the State Court Administrator (OSCA), which manages the court case management system.

Current Missouri law supports three methods of records relief: a *state-initiated* method of restricting access to criminal records following an automatic eligibility determination, and two methods of “expunging” criminal records by *petition*. One expungement method *restricts public access*, while the second authorizes *record destruction*. To avoid confusion, the petition-based expungement process that limits access is referred to herein as **expunged**, while the petition-based process that results in record destruction is referred to as **expunged-destroyed**.

The Missouri statutes and court rules that restrict access to criminal records are termed **closed** by law enforcement and **confidential** by the courts. When the term “closed” is used in this document, it also represents the courts’ assignment of a confidential status to the court case record unless it is otherwise specifically being applied only to closed arrest records.

Expunged and closed criminal records remain accessible for law enforcement purposes as well as numerous other specifically authorized non-criminal justice purposes. The effect of a petition for expungement and an automatically closed record is essentially the same. The distinctions between the two are that the petition-based expungement process can include offenses and circumstances that are outside the eligibility criteria for automatic closure, and arrest records that are automatically closed can be reopened under certain circumstances.¹

As of the date of publication, *the State of Missouri has not passed any automated, Clean Slate-type records relief legislation, but efforts are underway to introduce legislation in the 2023 legislative session.*² Legislation to expand the records relief process has been proposed during prior legislative sessions, the most recent being Senate Bill 61, which was introduced during the 2021 session, but it failed to be forwarded out of committee.

CONTRIBUTORS

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¹ The most common circumstance when an automatically closed record is reopened is when a case is filed more than 30 days after arrest (Mo. Rev. Stat. § 610.100(2)(3)).

² The Clean Slate Initiative has funded the University of Missouri - Kansas City Law School to explore opportunities to introduce Clean Slate legislation in a forthcoming session.

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Key Terms, Actors, and Acronyms in Missouri

- **Records Relief:** A general term used to describe all forms of limiting access to or destroying criminal justice records.
- **Expungement:** In Missouri, this term can refer to either the physical *destruction* of a record or to *restricting access* to a record. Most expunged records are restricted access and authorize the retention and use of these records in accordance with state law while not allowing access by the public. Certain expunged records can be ordered to be *destroyed* in very limited circumstances, such as an unfounded arrest. To distinguish these types of expungements, this document uses the following definitions:
 - **Expunged:** Expungements that result in restricted access to records.
 - **Expunged-Destroyed:** Expungements that result in record overwriting or destruction.
- **Closed Records:** Certain minor offense records held by the repository are automatically closed, which has the same effect as being expunged. Closed records may be re-opened (and later re-closed) based on certain rules.
- **Confidential Records:** Court cases that are eligible for restricted access or destruction are designated as *confidential*. Expunged cases have a confidentiality level that allows access by authorized users. Cases ordered destroyed are assigned the highest confidentiality level and have the most restricted access.
- **Open Records:** Missouri is an “open records” state and most criminal justice records are accessible to the public, with noted exceptions.
- **Missouri State Highway Patrol (MSHP):** The agency responsible for maintaining the state’s criminal history records repository. MSHP also manages the automated closure process for data maintained in the criminal history repository.
- **Office of the State Court Administrator (OSCA):** The office responsible for maintaining the state courts case management system (i.e., the Justice Information System [JIS], which is migrating to ShowMe Courts) and managing the automated closure/confidentiality process for court cases.

Overview: Missouri's Current Records Relief Processes

Missouri is an “open records” state, which means that virtually all “meetings, records, votes, actions, and deliberations of public governmental bodies [are] open to the public unless otherwise provided by law.”³ Criminal justice records, consequently, are open to public inspection unless otherwise restricted by law.

Missouri has defined multiple methods for records relief that include a state-initiated process to close or restrict public access to criminal records (referred to as **closure** by the Missouri State Highway Patrol, or **confidential** by Missouri courts), and two petition-based processes (both called **expungement**) that result in either restricting access to the record or destroying the record. Missouri's current records relief options include both non-convictions and convictions of a limited number of less serious offenses. While Missouri has not passed “Clean Slate” legislation that provides *state-initiated* records relief for less serious offenses, its current closure process is very similar to automated records relief efforts in other states.

Missouri law currently provides three options for records relief:

- **Automatic Closure:** A criminal record may be “closed”⁴ following an automatic eligibility determination, which restricts who may access it. MSHP refers to records with restricted access as “closed”; the courts refer to this as a “confidential” record.⁵
- **Expungement-Destruction:** A criminal record may be “expunged” and destroyed for a limited number of circumstances following a petition-based process.⁶
- **Expungement:** A criminal record may be “expunged” following a petition-based process, which has the effect of restricting public access to the record.⁷

Various statutes also refer to “closing” criminal records under certain circumstances. These fall outside of the limited circumstances authorizing destruction and presumably would be handled as expunged (restricted access). In practice, however, MSHP and the courts interpret the meaning of “closed” independently, and as discussed under the [Eligible Offenses - Expunged-Destroyed](#) section, the courts effectively destroy certain closed records by assigning them the highest level of confidentiality.

Automatic Closure

Automatic closure of criminal records is managed programmatically by both MSHP and OSCA. Eligible records are identified and marked as **closed** by the repository and as **confidential** by the courts as soon as their automated processes determine that arrest and case records are eligible.

³ Mo. Rev. Stat. Chapter 610 is the state's open records or “Sunshine Law.”

⁴ “Closure” refers to being marked a different level of confidentiality, which results in restricted access. It is not related to cases that may be dismissed.

⁵ Mo. Rev. Stat. § 610.120.

⁶ Mo. Rev. Stat. § 610.124; Mo. Rev. Stat. § 610.123.

⁷ Mo. Rev. Stat. § 610.140.

MSHP reports that approximately 1 million records were automatically marked as closed in 2021.⁸ The courts provided no estimate of the number of expunged (confidential) records.

Eligibility

The automatic closure of arrest and conviction records is allowed in two situations:

- 1) if the case results in an outcome favorable to the defendant (e.g., the case is dismissed, prosecution is not pursued [*nolle prosequi*], or the defendant is found not guilty) or the defendant receives a Suspended Imposition of Sentence (SIS)⁹ or
- 2) if the individual is arrested but not charged within 30 days.¹⁰ In this latter case, the record may be reopened if charges are subsequently filed.

Process

As the custodian of arrest records, MSHP has established an automated process to fulfill the automatic record closure requirements. All criminal history records are initially considered “open.” Records are marked “closed” when the automated system detects that the requisite conditions are met, so open records are closed through the normal course of business. The most common occurrence for the automatic closure of arrest records is for arrests that do not move forward in the adjudication process 30 days after arrest.

Given its automated nature, neither the record holder nor any other agencies are alerted to a record’s closure or its inverse, i.e., that a closed record has been re-opened and its level of access changes. For example, if a public background check is performed 15 days after an individual was arrested, the arrest will be included on the criminal history record (since the record is open), but if the same background check were conducted 35 days after an arrest and no subsequent charges were filed, the arrest record would no longer be included on the criminal history record because it was closed after 30 days. Updates and quality control checks are conducted on the automated process on an as-needed basis, such as when state statutes that affect current practices are amended.¹¹

No fees are associated with automatic closures (or when closed records are re-opened). Because the process is automated, no petitions are filed, no objections are considered, and no notifications are made. The only way to confirm that a record has been closed is to request a criminal history record and *not* find the specific arrest in question.

Missouri’s automated system either allows or restricts dissemination of criminal history or criminal court case information based on the level of access authorized for the entity seeking the information.¹²

⁸ Estimate provided by Missouri State Highway Patrol, in conversation with authors, April 28, 2022.

⁹ Mo. Rev. Stat. § 610.105. Suspended Imposition of Sentence is different than the Suspended Execution of a Sentence. In the former, a guilty plea is entered but upon successful completion of community supervision, no judgment of conviction is entered, and the case is eligible for closure. In the case of a Suspended Execution of Sentence, an entry of conviction is made by the court, thus making the record a conviction ineligible for record closure.

¹⁰ Mo. Rev. Stat. § 610.100(2)(3). Exceptions are defined in Mo. Rev. Stat. § 610.120.

¹¹ MSHP, in conversation with authors, April 28, 2022.

¹² *Ibid.*

Petition-Based Expungement

There are two forms of *petition-based record expungement* under Missouri law:

- 1) For a limited set of circumstances, the record can be ordered to be *destroyed*.¹³
- 2) All other forms of expungement records must be retained but *limit or restrict access* by the public.¹⁴ This second form of expungement allows access to records for law enforcement and statutorily defined non-criminal justice purposes.¹⁵

Like the automated closure process, Missouri either allows or restricts access to criminal history and criminal court record information based on the level of access authorized for the entity seeking the information.¹⁶

Petitioning to expunge records is a comparatively rare event. In calendar year 2021, MSHP reported that 161 petitions to expunge records to be destroyed were filed and 78 petitions, or 48%, were granted; 1,032 petitions to expunge records for restricted access were filed and 745 petitions, or 72%, were granted.¹⁷

Eligible Offenses

The scope of offenses eligible for expungement depends on whether the petitioner is seeking to have the records destroyed or restricted.

Expunged-Destroyed Records

Missouri Revised Statute Section 610.122 specifically defines limited eligibility criteria for records that can be destroyed.¹⁸ Records may be destroyed under two sets of circumstances:

- 1) when the arrest was based on false information *and* there is no probable cause that the individual committed the offense, no charges will be pursued, and the individual did not receive a Suspended Imposition of Sentence for any offense related to the arrest; or
- 2) when the individual was charged with certain misdemeanor or traffic offenses that were subsequently not prosecuted, dismissed, or the defendant was found not guilty.

There are two additional caveats that make the record ineligible for expungement resulting in record destruction:

- 1) the person holds a commercial driver's license and was operating a commercial vehicle at the time of the arrest, and
- 2) the person has a civil action pending relating to the arrest.

¹³ Mo. Rev. Stat. § 610.124.

¹⁴ Mo. Rev. Stat. § 610.140.

¹⁵ Mo. Rev. Stat. § 610.140(9).

¹⁶ MSHP, in conversation with authors, April 28, 2022.

¹⁷ Ibid.

¹⁸ While criminal history records may be closed or expunged, in no case are court records ever destroyed or obliterated. Even in the most stringent level of expungement in Missouri, the offender's name is overwritten but the records remain.

Other offenses eligible for record destruction beyond those defined in Mo. Rev. Stat. § 610.122 include criminal non-support,¹⁹ certain alcohol-related convictions,²⁰ identity theft,²¹ cases of mistaken identity,²² or cases resulting in a *nolle prosequi*, dismissal, imposition of sentence is suspended or a finding of not guilty.²³

Expunged Records that Limit Access

The more common form of expungement by petition is to restrict public access. This form is open to a much broader set of offenses, including certain felony and misdemeanor convictions, deferred sentences, and non-conviction records. This form of expungement restricts access to records in the same manner as records that are closed.²⁴ Expunged records may apply to all charges arising from the same criminal event or episode.²⁵ Eligibility criteria differ for conviction records as compared to records associated with other dispositions.

A person may petition the court to expunge conviction records for a limited set of offenses or series of related offenses. Offenses *ineligible* for expungement²⁶ broadly include:

- serious or violent felonies,
- offenses that require registration as a sex offender,
- felonies that include death as an element of the offense,
- any domestic assault, felonious assault, or kidnapping,
- sex crimes,
- abuse of vulnerable persons,²⁷
- first-time alcohol-related driving convictions,²⁸
- offenses related to intoxication-related traffic, boating, or aircraft operation,²⁹
- violations of state law or local motor vehicle ordinance while having a commercial driver's license,³⁰
- unlawful use of weapons,³¹ or
- local ordinance that is substantively similar to state statute.

¹⁹ Mo. Rev. Stat. § 568.040.

²⁰ Mo. Rev. Stat. § 610.130.

²¹ Mo. Rev. Stat. § 610.145.

²² *Ibid.*

²³ Mo. Rev. Stat. § 610.105. The courts assign these cases a confidentiality level 9.

²⁴ Expunged records are not destroyed and may be accessed by law enforcement and for purposes otherwise defined by law. It has the equivalent effect of a "sealed" record as this term is commonly understood. The petition process and eligibility criteria are outlined in Mo. Rev. Stat. § 610.140.

²⁵ Mo. Rev. Stat. § 610.140.

²⁶ For a list of ineligible offenses, see Mo. Rev. Stat. § 610.140.

²⁷ As defined in Mo. Rev. Stat. §§ 105, 130, 188, 191, 194, 217, 334, 375, 389, 455, 557, 565 – 578, and 632.

²⁸ Except first-time alcohol-related convictions. Also, first-time convictions involving individuals issued a *commercial* driver's license are not subject to the exception, as defined in Mo. Rev. Stat. § 610.130.

²⁹ As defined in Mo. Rev. Stat. § 577.001.

³⁰ Mo. Rev. Stat. § 610.140(10).

³¹ As defined in Mo. Rev. Stat. § 571.030. Exceptions include where the person was convicted or found guilty prior to January 1, 2017, or has/had a valid concealed carry permit.

General Eligibility Criteria

The following eligibility criteria apply to all petition-based record expungements.

Lifetime Eligibility Limits

Individuals are limited in the number of expungements that may be received for conviction offenses over their lifetime. A person may expunge a single felony and two misdemeanors involving a term of imprisonment, regardless of the court in which the expungement is sought.³² Missouri has no restrictions on the number of expungements that may be received for infractions.³³ A person seeking an expungement for an alcohol-related conviction is eligible for only one expungement for this offense.³⁴

Waiting Period from Completion of Sentence

Individuals must wait 3 years from the successful completion of a sentence for a felony conviction, and 1 year from successful completion of a misdemeanor conviction, for each offense identified in the petition.³⁵ Payment of related legal financial obligations (including fines, fees, and restitution) are included in the state's definition of a successful completion of the sentence.^{36,37} Alcohol-related driving convictions become eligible for expungement after 10 years.³⁸

Deserving of a Second Chance

To be eligible for the expungement of a *conviction* record, the defendant must successfully demonstrate that they have effectively been “reformed” by not having any pending charges during the waiting period and demonstrate that they are no longer a threat to public safety. Through the hearing process, the court must determine that expungement is consistent with the “public welfare and in the interest of justice.”³⁹

Petition Process

The procedures for filing and processing petitions to expunge-destroy or expunge to restrict access are substantially the same. Petitions⁴⁰ must be initiated as a civil action in the Circuit Court by the individual seeking the expungement. Petitions must be filed in the Circuit Court where the record originated, and the court provides standard forms to address the various types

³² Mo. Rev. Stat. § 610.140.12.

³³ Ibid.

³⁴ This eligibility does not apply to any individual who has been issued a commercial driver's license or is required to possess a commercial driver's license issued by this state or any other state. See Mo. Rev. Stat. § 610.130.

³⁵ Mo. Rev. Stat. § 610.140 (5)(1).

³⁶ Mo. Rev. Stat. § 610.140 (5)(3).

³⁷ Restitution collection is managed by prosecutors and there is no central registry to consult in order to determine if restitution requirements have been met.

³⁸ Mo. Rev. Stat. § 610.130 (1).

³⁹ Mo. Rev. Stat. § 610.140 (5).

⁴⁰ The petition-based expungement process is defined in Mo. Rev. Stat. § 610.140, and its requirements for filing are enumerated in § 610.140 (3) and (4), and § 610.123.

of expungements and their individual requirements.⁴¹ There is a \$250 charge to file a petition for expungement, in addition to standard court costs; a judge may waive this fee if the petitioner is unable to pay.⁴²

The petition⁴³ must name all records custodians that “the petitioner has reason to believe may possess records” and would be subject to the order of expungement. Petitions must specify the offense, its location and date that is being requested to be expunged, as well as provide the case number and name the court.⁴⁴ For petitions to destroy arrest records under Mo. Rev. Stat. § 610.123, the petitioner must provide a copy of his/her fingerprints.⁴⁵

Once a petition is filed and served, the clerk of court notifies all named defendants. The clerk of court provides notice to the prosecuting attorney, who has 30 days to object in writing. Expungement hearings are typically held within 60 days of receipt of any objection.⁴⁶ The court shall issue said order of expungement or dismissal within 6 months of the petition’s filing.⁴⁷

Decision Making

The court may take multiple factors into consideration in making its determination whether or not to expunge the record. Among its considerations, it will ensure the petitioner has met the eligibility requirements, has not been found guilty of other misdemeanors or felonies and has no charges pending, has satisfied all financial obligations (e.g., paid fines, court fees, restitution, etc.), and is not a threat to the public.⁴⁸

The victim’s opinion may be heard, and the prosecutor may challenge the court granting an expungement by presenting evidence that expungement is not warranted. The prosecutor may cite the petitioner’s habits and conduct to demonstrate that the petitioner is a threat to public safety, and that the expungement is not consistent with the public welfare and the interests of justice.⁴⁹ The court must determine that all of the eligibility criteria for each offense, violation, or infraction listed in the petition have been met in order to grant an order of expungement.⁵⁰

⁴¹ The courts provide petition forms that may be used to file for an expungement for offenses eligible under Mo. Rev. Stat. §§ 610.122 (arrest records eligible to be destroyed), 610.140 (general relief), 610.123 (identity theft), and 610.145 (mistaken identity). <https://www.courts.mo.gov/page.jsp?id=649>.

⁴² Missouri Bar Association, April 6, 2021. <https://news.mobar.org/missouri-expungement-law-what-does-it-mean-to-seal-a-record-and-how-do-you-do-it/> and <https://www.courts.mo.gov/page.jsp?id=649>.

⁴³ <https://www.courts.mo.gov/page.jsp?id=649>.

⁴⁴ Mo. Rev. Stat. § 610.140.

⁴⁵ Mo. Rev. Stat. § 610.123 (1)(1)(7).

⁴⁶ Unless agreed to otherwise. Mo. Rev. Stat. § 610.140 (5).

⁴⁷ Mo. Rev. Stat. § 610.140 (7).

⁴⁸ Mo. Rev. Stat. § 610.140 (5)(5).

⁴⁹ Mo. Rev. Stat. § 610.140 (5).

⁵⁰ Mo. Rev. Stat. § 610.140 (7).

Effects of Expunging Records

Expunged-Destroyed

Expunged-Destroyed records are permanently removed or obfuscated from each affected data system. In the courts, the associated case records are not physically destroyed; rather, the defendant's name is overwritten with the word "Expunged" and they are assigned the most restrictive level of access control (confidentiality). This severs the relationship between a case and the record holder's name, effectively rendering the records unidentifiable.

MSHP manually deletes the records, including fingerprints.⁵¹

Expunge to Restrict Access

Both the automatic closing process and the petition-based process to expunge records have a similar effect of *restricting public access* to criminal history and court case records. The benefit of a petition-based record expungement is that this restriction is permanent (barring a separate proceeding to unseal a record) and allows for consideration of offenses beyond the limited number of offenses eligible under the automated record closure process, whereas a record closed following the automated process can be "reopened" under certain circumstances⁵².

The intended effect of expungement is "to restore such person to the status he or she occupied prior to such arrests, pleas, trials, conviction, or expungement as if such events had never taken place."⁵³ For records expunged by petition, the defendant may respond upon inquiry that no event ever took place, and may not be guilty of giving a false statement should he or she fail to acknowledge the records' existence, except as otherwise provided by law.⁵⁴ Similarly, for all closed records, "no person...shall...be held to be guilty of perjury or otherwise of giving a false statement by reason of his failure to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose" except as otherwise required by law.⁵⁵

Notwithstanding these provisions, individuals must disclose the existence of an expunged or closed record under various circumstances enumerated in statute, including when completing an application for a professional license, certificate, or permit issued by the state; any license related to licensed gaming activities or firearms possession; employment related to licensed gaming activities; employment with any federally insured bank or financial institution or in the insurance industry; or employment with any industry that requires exclusion of individuals with certain criminal records.⁵⁶

Expunged records remain accessible for law enforcement and other criminal justice purposes and certain statutorily authorized non-criminal justice purposes.⁵⁷ These additional uses include:

⁵¹ MSHP, personal communication with authors, August 29, 2022.

⁵² Mo. Rev. Stat. § 610.100(2)(3).

⁵³ Mo. Rev. Stat. § 610.140 (8).

⁵⁴ *Ibid.*

⁵⁵ Mo. Rev. Stat. § 610.110.

⁵⁶ Mo. Rev. Stat. 610.140 (9).

⁵⁷ These additional uses are defined in Mo. Rev. Stat. § 610.120 (1).

- the Department of Health and Senior Services for purposes of licensing and regulating facilities and regulating in-home services provider agencies;
- Federal agencies for purposes of criminal justice administration or employment;
- for child, elderly, or disabled care; and
- for investigative purposes as authorized by law or presidential executive order.⁵⁸

Closed and expunged records are not destroyed and are marked in a manner that restricts public access while allowing access for law enforcement and other statutorily defined non-criminal justice purposes. MSHP controls access to these records by flagging them as **closed**. The courts designate these records as **confidential**⁵⁹ and assign them a confidentiality level that provides appropriate authorized access, while eliminating public access.

A copy of the expungement order is provided to all named parties, and each entity shall close or restrict public access to any record in its possession.⁶⁰ The central repository will also request that the FBI expunge the records from its files.⁶¹ Records and files maintained regarding any administrative or court proceeding for any offense, infraction, or violation ordered expunged are confidential and only available to the parties or by order of the court.

Records custodians are not required to notify the individuals of compliance. Individuals may confirm that their record(s) have been expunged by conducting a criminal records background check to confirm compliance by the criminal history repository and by contacting the other records custodians directly. Individuals may conduct a criminal record background check on themselves via the following methods:

- A **fingerprint-based background check** would show both closed and open records and include “court actions” that would indicate “closed” records. This records check requires an individual’s fingerprints and costs \$20 for the state processing fee.⁶² MSHP estimates it conducts approximately 185,000 fingerprint-based background checks per year, although the majority are for governmental agencies rather than individuals.⁶³
- Record checks using only **personally identifying information** (e.g., name, date of birth, etc.) are available under Missouri’s “open records” law. Using this form of background check only shows open records (nothing that has been Closed, Expunged, or Destroyed). Missouri provides access to criminal history information through the online [Missouri Automated Criminal History System \(MACHS\) Portal](#). Mailed requests are also accepted but are far less common.⁶⁴ Either method costs \$14 per request.⁶⁵

⁵⁸ Mo. Rev. Stat. § 610.120 (1).

⁵⁹ Mo. Rev. Stat. § 610.140 (7).

⁶⁰ Mo. Rev. Stat. § 610.123 (4).

⁶¹ Mo. Rev. Stat. §§ 610.140 (7) and 610.124.

⁶² Mo. Rev. Stat. § 43.530 (2).

⁶³ MSHP, personal communication, April 28, 2022, and August 29, 2022.

⁶⁴ MSHP estimates mailed requests are <5% of all criminal history requests received. [Source](#): MSHP conversation with authors, April 28, 2022.

⁶⁵ Statute allows superintendent to set the fee for this service in the range of \$9–\$15. Mo. Rev. Stat. § 43.530.

Third-Party Access to Closed and Expunged Records

Missouri’s Central Repository may not sell its data to third-party vendors.⁶⁶ The courts are not prohibited from selling court data, but, in practice, it is not done. The rule authorizing the access to court records is defined in [Court Operating Rule 2](#). Third-party vendors are also prohibited from compiling, storing, and reselling such data,⁶⁷ including automated record harvesting (“screen scraping”) of court records.⁶⁸ The compilation and resale of such data is a misdemeanor.⁶⁹

Summary of Records Relief Processes in Missouri*

| Records Relief Process | Applicable MO Statute | Process | Effect ⁷⁰ | Eligible Records | Records Disclosure |
|--|---------------------------------|---|---|---|---|
| Records Closure | § 610.105 | <ul style="list-style-type: none"> Initiated by the State Automatic, Automated Requires no action on part of the record holder | <ul style="list-style-type: none"> Records are restricted from public view Reversible: closed records may later become open to the public under certain conditions | <ul style="list-style-type: none"> Dispositions favorable to the defendant Aging arrest Suspended Imposition of Sentence | <ul style="list-style-type: none"> Records that have been closed are accessible by law enforcement and for specified non-criminal justice purposes |
| Records Expungement | § 610.140 | <ul style="list-style-type: none"> Initiated by Petition to the Court | <ul style="list-style-type: none"> Records are restricted from public view | <ul style="list-style-type: none"> Convictions of lesser offenses | <ul style="list-style-type: none"> Expunged crimes need not be disclosed except in specific instances (see §610.140) |
| Records Expungement / Criminal Records Destroyed | § 610.122, § 610.123, § 610.124 | <ul style="list-style-type: none"> Initiated by Petition to the Court | <ul style="list-style-type: none"> Criminal history records are destroyed Court records receive its highest level of confidentiality, with identifying name overwritten with “Expunged” | <ul style="list-style-type: none"> Based on false information, and no finding of probable cause, charges will not be pursued, or the defendant did not receive a Suspended Imposition of Sentence; or certain traffic offenses that were dismissed or where the defendant was found not guilty | <ul style="list-style-type: none"> Expunged crimes need not be disclosed, as all criminal history repository records have been destroyed and court records have been overwritten |

Table 1: Records Relief Processes in Missouri

* Eligible records and processes in this table are generalized and intentionally simplified for the purpose of highlighting the basic differences in records relief processes in Missouri.

⁶⁶ Mo. Rev. Stat. 43.532.

⁶⁷ Mo. Rev. Stat. 43.532; Mo. Sup. Ct. Op. R 2.02.

⁶⁸ 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.

⁶⁹ Ibid.

⁷⁰ Unless a record is destroyed, criminal justice purposes will always be able to see a complete criminal history record.

Clean Slate State Profile: New York

September 2022

New York currently offers **automatic sealing** for favorable dispositions and certain low-level marijuana convictions. The State also has **petition-based** processes for sealing a select number of past felony and misdemeanor convictions. The New York State Legislature considered two different versions of Clean Slate legislation in 2022, although neither one was successful in passing. Each bill would have expanded state-initiated sealing to certain convictions, including driving under the influence, misdemeanors, and most felony convictions. While neither piece of legislation was passed during the 2022 legislative session, the Clean Slate Initiative has an active campaign to pass records relief in New York State, and it is anticipated that one or more Clean Slate bills may be considered next year prior to the close of the 2022–2023 session.

The purpose of this Clean Slate State Profile is to:

- Summarize the current process for automatically sealing and expunging records in New York State.
- Provide an overview of the existing petition-based processes for records relief in New York and their limitations.
- Highlight the challenges that could occur should similar versions of the 2022 Clean Slate bills become law in the future.

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Key Terms, Acronyms, and Actors in New York

- **Seal:** Term meaning to remove records from public view and to restrict access to records to a limited set of eligible persons and entities. This is also referred to as “suppression.”
- **Expunge:** In the event of an expungement, a record of the event is maintained at the repository, but the fingerprints and mugshots associated with the event are destroyed. The New York State Unified Court System (NYS UCS) never destroys electronic court records unless they are deleted based on a retention schedule.
- **Felony:** An offense for which a sentence to a term of imprisonment in excess of 1 year may be imposed (New York State Penal Law, Article 10). A felony is a crime. There are five categories and two subcategories of felonies (A-I, A-II, B, C, D, and E) ranging from the most to least serious in terms of severity of offense and the degree of potential punishment incurred. The penalty can vary from a term of probation to life imprisonment. In addition, the Penal Law authorizes the imposition of a fine not exceeding the higher of \$5,000 or double the amount of the defendant’s gain from the commission of the crime.¹
- **Misdemeanor:** An offense other than traffic infraction of which a sentence in excess of 15 days but not greater than 1 year may be imposed (New York State Penal Law, Article 10). A misdemeanor is a crime. Misdemeanors are grouped into one of three classes: Class A, Class B, or Unclassified.
- **Violation:** An offense other than a traffic infraction for which a sentence of imprisonment of up to 15 days may be imposed (New York State Penal Code, Article 10). A violation is **not** a crime.
- **DCJS:** Division of Criminal Justice Services, which maintains official criminal history records in New York.
- **OCA:** NYS UCS Office of Court Administration, which maintains court records in New York.

¹ Source: <https://omh.ny.gov/omhweb/forensic/manual/html/chapter1.htm#:~:text=A%20violation%20is%20not%20a,Penal%20Law%2C%20Article%2010>).

Overview: New York’s State-Initiated Records Clearance Process

New York has several current laws that require non-conviction and non-criminal conviction records (i.e., violations) to be automatically sealed or expunged. These laws generally apply to (a) cases terminated in favor of the accused, (b) violations (which are considered non-criminal convictions even if the original charge was a felony or misdemeanor), and (c) convictions for marijuana² offenses that are no longer classified as crimes. Currently, about 70 percent of arrests reported to the New York State criminal history repository result in a non-conviction or non-criminal violation disposition. From 2015 to 2019 (the latest timeframe available), New York courts and the Department of Criminal Justice Services (DCJS) automatically sealed an average of over 308,000 cases annually.³ This is compared to 1,175 cases that were sealed via court petition in 2019.⁴

Termination of Criminal Action in Favor of the Accused: CPL § 160.50

New York Criminal Procedure Law (CPL) Section 160.50 mandates the sealing of all related arrest and prosecution records held by DCJS and all appropriate police departments and other law enforcement agencies upon the termination of a criminal action or proceeding in favor of the defendant.⁵

Criminal actions or proceedings are considered to be terminated *in favor of the accused* when:

- An arresting police agency elects not to proceed in seeking prosecution,
- The district attorney elects not to prosecute,
- The court dismisses the entire prosecution, and no appeal is filed by the state,
- The court dismisses all charges,
- The court reaches a verdict of complete acquittal,
- The court sets aside a verdict, and no appeal is filed by the state,
- The court vacates a judgment, and no appeal is filed by the state, or
- The court invalidates a conviction by court order and no appeal is filed by the state.⁶

In cases terminated in favor of the accused, all related photographs, fingerprints, and/or palmprints shall be destroyed or returned to the subject of the record or his attorney.⁷ Because fingerprints are destroyed, records terminated under CPL 160.50 are no longer available for non-criminal background checks. DCJS, however, maintains the arrest and disposition record,

² Hereafter, this document uses the standard statutory spelling of “marihuana.”

³ Unpublished data, Office of Justice Research and Performance (OJRP), DCJS, 2022.

⁴ Colleen Chien, Navid Shaghghi, Evan Hastings, and Hithesh Sekhar Bathala, [The Estimated Size and Lost Earnings of New York’s Second Chance Sealing Gap](#), Paper Prisons Initiative, at page 1, accessed December 27, 2021.

⁵ N.Y. Crim. Proc. Law § 160.50, “Order upon termination of criminal action in favor of the accused.” <https://www.nysenate.gov/legislation/laws/CPL/160.50>. Electronic court records are maintained, but associated fingerprints and mugshots are destroyed in these cases.

⁶ N.Y. Crim. Proc. Law § 160.50 (3) (a-j). <https://www.nysenate.gov/legislation/laws/CPL/160.50>.

⁷ This condition holds true unless such fingerprints are already on file for another arrest that is not subject to sealing. Source: N.Y. Crim. Proc. Law § 160.50 (1) (e). <https://www.nysenate.gov/legislation/laws/CPL/160.50>.

which is only identifiable for name-based searches conducted for prospective police and peace officer employees and the National Instant Criminal Background Check System (NICS) for firearms transfers.

Convictions for Decriminalized Marihuana Offenses: CPL § 160.50

New York has decriminalized certain marihuana offenses in recent years, and these decriminalized convictions are automatically sealed without requiring the record holder to file a petition.⁸ Applicable convictions under this provision include 1) loitering (1st Degree) for the purposes of using or possessing marihuana, 2) unlawful possession of marihuana/cannabis under a certain weight, 3) sale of marihuana/cannabis under a certain weight (4th or 5th Degree), or personal cultivation of cannabis.⁹ Dissemination of marihuana conviction records is strictly limited in much the same manner as criminal actions terminated in favor of the accused — i.e., only name-based searches conducted for prospective police and peace officer employees and NICS for firearms transfers. Sealing of marihuana violations occurs even if the original charge was a felony or misdemeanor that was reduced to a violation. As with other offenses in New York, it is the charge at *adjudication* (not at arrest or filing) that determines if a record may be sealed.

Termination of Criminal Action by Conviction for Noncriminal Offense: CPL § 160.55

Convictions for traffic infractions or violations are automatically *sealed* unless the District Attorney demonstrates to the court that the “interests of justice require otherwise.”¹⁰ Sealing of violations occurs even if the original charge was a felony or misdemeanor that was reduced to a violation. The only exceptions to the sealing policy for non-criminal offenses (i.e., violations) are for operating a motor vehicle while impaired, or harassment involving a family member. Traffic infractions and violations (i.e., non-criminal offenses) may be provided to the record holder and law enforcement agencies upon a motion to the court. In addition,

- Records of non-criminal offenses may also be shared with officers or agencies responsible for issuing firearms licenses.
- Non-criminal offense records may be shared when a person is under supervision by corrections or probation.
- Convictions of second-degree harassment against a family member may be shared with law enforcement.

Convictions with a 160.55 seal are available for NICS background checks for firearms transactions but are not available for police/peace officer employment requests.

⁸ NY. Crim. Proc. Law § 160.50 (5) (a). <https://www.nysenate.gov/legislation/laws/CPL/160.50>.

⁹ NY. Crim. Proc. Law § 160.50 (3) (k). <https://www.nysenate.gov/legislation/laws/CPL/160.50>.

¹⁰ NY. Crim. Proc. Law § 160.55 (1) (a-b), “Order upon termination of criminal action by conviction for noncriminal offense; entry of waiver; administrative findings.” <https://www.nysenate.gov/legislation/laws/CPL/160.55>.

Conditional Sealing of Certain Controlled Substance Convictions: CPL § 160.58

Under existing law, persons who have successfully completed a drug treatment judicial diversion program may have their records sealed by a court upon its own motion or on the defendant's motion.¹¹ Similar to the existing petition-based process, limitations apply with respect to the number of offenses: those who have completed a drug treatment program may seal up to three misdemeanors, but no records may be sealed while a defendant has pending charges. The court makes individual determinations as to whether diversion records may be sealed. When a criminal record is sealed pursuant to CPL 160.58, the individual's prior crime or crimes cannot be seen by anyone other than qualified state agencies and state and local law enforcement and when a person is seeking to become a police or peace officer, applying for a gun permit, or the information is needed for law enforcement purposes.

If the person is subsequently arrested for or formally charged with any felony or misdemeanor offenses after having their record sealed under CPL 160.58, the sealed records will be unsealed immediately. If the new arrest results in eligibility for sealing under CPL 160.50 or CPL 160.55, then the unsealed records will become conditionally sealed again.

Convictions sealed pursuant to CPL 160.58 are still accessible for NICS background check requests, and they are still displayed for police/peace officer employment requests. The exception to the rule for sealing drug offenses is for eligible marijuana convictions, which may be sealed without having to file a petition.¹²

Expungement of Records for Victims of Sex Trafficking: CPL § 440.10

Courts may vacate convictions of select offenses on the grounds that a defendant was a victim of sex trafficking without the need for the subject of the record to file a petition.¹³ Since vacating the record is a criminal action in favor of the accused, all records related to the arrest, criminal prosecution, and court proceedings will be sealed pursuant to CPL 160.50.

Overview: New York's Petition-Based Records Sealing Process

New York State has an existing petition-based process for sealing records, which became effective in 2017.¹⁴ The law does not allow for complete expungement (i.e., destruction or obliteration) of records, but does allow defendants to request that their records be sealed.

¹¹ NY. Crim. Proc. Law § 160.58, "Conditional sealing of certain controlled substance, marijuana or specified offense convictions." <https://www.nysenate.gov/legislation/laws/CPL/160.58>.

¹² N.Y. Crim. Proc. Law § 160.50 (2)(k) and (5)(a).
<https://www.nysenate.gov/legislation/laws/CPL/160.50>.

¹³ N.Y. Crim. Proc. Law § 440.10, "Motion to vacate judgment."
<https://www.nysenate.gov/legislation/laws/CPL/440.10>.

¹⁴ N.Y. Crim. Proc. Law § 160.59, "Sealing of certain convictions."
<https://www.nysenate.gov/legislation/laws/CPL/160.59>. See also, New York City Bar Legal Referral Service, "Sealing Criminal Records," accessed December 29, 2021. <https://www.nycbar.org/get-legal-help/article/criminal-law/how-to-seal-criminal-records/>.

Eligibility Under CPL § 160.59

Persons may file a petition to have their records sealed with the sentencing court where the most serious conviction occurred.¹⁵ (If all offenses are the same classification, then the application is filed with the court where the most recent conviction occurred. Multiple offenses originating as a part of the same criminal transaction are considered as a single eligible offense.)

To be eligible, a person must have no more than two total convictions, no more than a single felony conviction, and 10 years must have passed from the most recent conviction (or release from incarceration, if applicable).¹⁶ Violent offenses, Class A felonies, and offenses that require a person to register as a sex offender are not eligible for sealing.¹⁷ Only one eligible felony and two offenses total may be sealed for any given individual.

The law is silent on whether a defendant must pay all court-ordered fines, fees, and restitution in order to be eligible to have their record sealed. The courts do not always know if all legal financial obligations (LFOs) have been met, as monies can be collected by the courts, jails, district attorney's office, or by probation staff, among other entities.¹⁸ Courts may impose a civil judgement for those defendants who are unable to pay fines, fees, or surcharges.¹⁹

Automatic Denials

Pursuant to statute, the court shall deny applications when any of the following conditions are met:²⁰

- The defendant is required to register as a sex offender pursuant to article six-C of the correction law.
- The defendant has already obtained the maximum number of allowable conviction records that may be sealed under section 160.58 of the criminal procedures law.
- The defendant has previously obtained sealing of the maximum number of convictions allowable under subdivision 4 of this section.
- Fewer than 10 years have passed since the defendant's last conviction and/or release from incarceration.
- The defendant has an undisposed arrest or pending charge(s).
- The defendant was convicted of any crime after the date of the entry of judgment for the last conviction for which sealing is sought.

¹⁵ N.Y. Crim. Proc. Law § 160.59 (2) (a). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

¹⁶ N.Y. Crim. Proc. Law § 160.59 (5). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

¹⁷ N.Y. Crim. Proc. Law § 160.59 (1) (a). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

¹⁸ Karen Kane, Director, Court Research, New York State Unified Court System, Office of Court Administration, interview with authors, April 18, 2022.

¹⁹ Ibid.

²⁰ N.Y. Crim. Proc. Law § 160.59 (3) (a-h). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

- The defendant failed to provide the court with a sworn statement providing the reasons why the court should grant the relief requested.
- The defendant has been convicted of two or more felonies or more than two crimes.

Application Process

Record holders may petition the court to have convictions sealed. In general, the defendant must provide:²¹

- A Certificate of Conviction from the sentencing court (or an explanation of why a certificate or similar documentation is unavailable). Courts located outside of New York City charge \$5 for this certificate, while those within the five boroughs of New York City charge \$10.²² Request forms are available from the [New York State Unified Court System](#), which also details the petition process.
- A sworn statement from the defendant as to whether the defendant has filed (or intends to file) an application seeking relief from another eligible offense.
- A copy of any other application to seal a record that has been filed.
- A sworn statement as to the conviction(s) for which relief is sought.
- A sworn statement as to why the court, at its discretion, should grant conviction relief, including any supporting documentation.

In addition to the application that is filed with the court, the defendant must serve the District Attorney in the county where the conviction occurred with a copy of the application.²³ The District Attorney is required to notify the court of any objection to the petition within 45 days. If an application is not subject to automatic denial, the court must schedule a hearing if the District Attorney opposes granting the petition.²⁴ If there is no objection from the District Attorney, the court may waive the hearing requirement and enter a judgment.

The court reviewing the petition must obtain a copy of the defendant’s fingerprint-based criminal history record from DCJS, which would include any previously sealed or suppressed records.²⁵ DCJS also includes any out-of-state convictions provided through the Federal Bureau of Investigation (FBI) on its criminal history report, and the court may share this information with the District Attorney and the defendant.

²¹ N.Y. Crim. Proc. Law § 160.59 (2) (h). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

²² Persons who receive public benefits or do not have enough money to pay for basic household needs may apply for a “Poor Person’s Relief” waiver to avoid paying fees. Source: <https://www.nycourts.gov/courthelp/GoingToCourt/feewaiver.shtml>.

²³ N.Y. Crim. Proc. Law § 160.59 (2) (c). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

²⁴ N.Y. Crim. Proc. Law § 160.59 (6). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

²⁵ N.Y. Crim. Proc. Law § 160.59 (2) (d). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

If the sealing application is approved, the court will issue a Seal Order to the defendant. To confirm that their record has been sealed, record holders can complete a [Request for Seal Verification](#) form, which is submitted to DCJS along with a copy of the Seal Order. There is no charge to verify if a record has been sealed.

Effect of a Sealing Order

When a court orders records to be sealed, all official records and papers relating to the arrests, prosecutions, and convictions on file with DCJS or any court shall be sealed and not made available to any person or public or private agency, with exceptions for law enforcement described below. DCJS will continue to retain any fingerprints, palmprints and photographs, or digital images related to the arrest and conviction.²⁶

Records sealed pursuant to a petition in New York are available to:²⁷

- the defendant or his designated agent,
- state and local law enforcement agencies acting within the scope of their official duties,
- any state or local officer or agency with responsibility for the issuance of licenses to possess guns,
- any prospective employer of a police officer or peace officer in relation to an application for employment as a police officer or peace officer, provided that the applicant be furnished with a copy of the records and given an opportunity to explain them, and
- the FBI’s Criminal Justice Information Services Division for the purposes of responding to queries regarding attempts to purchase or possess firearms.

Additionally, sealed records are accessible to officials with state and local agencies responsible for licensing and employment operating under a statute approved by the U.S Attorney General pursuant to Public Law 92-544.²⁸

While access to sealed convictions is restricted, all sealed convictions are still considered a conviction in criminal proceedings where prior convictions would enhance a penalty or is an element of the offense charged.²⁹

Overview of Clean Slate Efforts in New York

New York State considered two different versions of Clean Slate-related legislation over the past year. The first proposal under consideration was introduced by Senator Zellnor Myrie (D-20th District) along with 24 co-sponsors in January 2021 and is referred to herein as the “Legislative

²⁶ N.Y. Crim. Proc. Law § 160.59 (8). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

²⁷ N.Y. Crim. Proc. Law § 160.59 (9) (a-e). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

²⁸ [https://archives.fbi.gov/archives/news/testimony/fbis-perspective-on-criminal-history-record-information-checks-on-individuals-conducting-insurance-business#:~:text=Public%20law%20\(Pub.,General%20of%20the%20United%20States](https://archives.fbi.gov/archives/news/testimony/fbis-perspective-on-criminal-history-record-information-checks-on-individuals-conducting-insurance-business#:~:text=Public%20law%20(Pub.,General%20of%20the%20United%20States).

²⁹ N.Y. Crim. Proc. Law § 160.59 (10). <https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-160-59.html>.

Bill.”³⁰ The other proposal was included in the *FY 2023 New York State Executive Budget under the Public Protection and General Government Article VII Legislation*, which was presented by New York Governor Kathy Hochul to the New York State Assembly for consideration in January 2022.³¹ This bill is referred to herein as the “Governor’s Bill.”

Approaches in Proposed Legislation

Both the Legislative Bill and the Governor’s Bill proposed approaches that were similar, inasmuch as both provided for the sealing of certain convictions after a prescribed waiting period without the need for the defendant to file a petition. The state would bear responsibility for identifying records eligible for relief and initiate the process to seal the records without the need for any action on the part of the defendant.

The Governor’s bill would have required the Office of Court Administration (OCA) to determine eligibility,³² while the Legislative Bill placed the responsibility with DCJS.³³

Once a person is determined to be eligible, OCA (or DCJS) would have to immediately notify DCJS (or OCA), the court of conviction, prosecutors’ offices, and law enforcement agencies that the conviction is sealed.³⁴

Once notification was received from OCA or DCJS, all other record holders described above must have marked all paper and electronic records related to the conviction and underlying arrest that they maintain as “sealed” to prevent improper dissemination.³⁵ This is generally known as “state-initiated” records clearance.

In the event that records are sealed under the Clean Slate provisions of either bill, prior convictions could be used to enhance allowable penalties for subsequent charges.³⁶

Clean Slate Eligibility

While most Clean Slate initiatives around the nation require a waiting period following successful completion of all terms of a sentence, the New York Legislative Bill would have calculated waiting periods from the *imposition* of sentence.³⁷ The Governor’s Bill, on the other hand, predicated waiting periods based on the *expiration of the sentence*, “without

³⁰ https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S01553&term=0&Summary=Y&Actions=Y.

³¹ <https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ppgg-bill.pdf> (pages 177–183).

³² *Ibid.*

³³ https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S01553&term=0&Summary=Y&Actions=Y (page 2).

³⁴ *Ibid.*, page 181, lines 2–5.

³⁵ *Ibid.*, page 181, lines 5–18.

³⁶ https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S01553&term=0&Summary=Y&Actions=Y (page 5) and <https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ppgg-bill.pdf> (pages 182–183).

³⁷ “S. 1553 § 160.57, 1(b) Criminal convictions for misdemeanors and felonies shall be sealed upon satisfaction of the following conditions: (i) at least three years have passed from the imposition of sentence on the defendant’s most recent misdemeanor conviction in this state and at least seven years have passed since the *imposition* of sentence on the defendant’s most recent felony conviction in this state.” [emphasis added]

consideration of any conditional or supervised release from custody, credits or reductions a defendant may be due, may earn, and/or may have earned.”³⁸

These departures from common practice — of sealing records following waiting periods related to the *imposition of a sentence*, or the *expiration of a sentence less any credits or reductions due or earned*³⁹ — would likely have required significant and complex programming on the part of OCA and/or DCJS. Moreover, calculating these waiting periods based not on the actual date a sentence is successfully discharged, but based on the date of sentence imposition or a calculated date of sentence discharge (while not applying credits and reductions duly awarded by agencies of the state), disregards the actual dates on which a sentence has been duly completed. This potentially exposes the defendant to delinquent record-sealing practices.

Both bills would only have allowed records to be sealed when the subject of the criminal history record has no pending charges in New York State, and persons currently incarcerated or on probation would not be eligible for record sealing under Clean Slate. Both bills prohibited sex offenders from having their records sealed.⁴⁰ Neither bill required payment of court-ordered fines, fees, or restitution to be eligible, with the exception of court-ordered financial obligations for driving under the influence convictions, which would have to be paid under the Governor’s Bill.⁴¹

Additionally, the Governor’s Bill would have set the effective date of the Act at 18 months after becoming law,⁴² while the Legislative Bill would have set the effective date on the 120th day after passage.⁴³ Both proposals, however, would have allowed state officials up to 2 years after the effective date to seal eligible records.⁴⁴

How to Determine if a Record Has Been Sealed

Neither the Governor’s Bill nor Legislative Bill specifically addressed how a person could determine whether all or a portion of their record has been sealed. Under current practice, persons who want to check their own criminal history record may use the following procedures.

Online State Search via OCA

If a person wants to request a copy of their own public criminal history record (which does not include sealed records), they can pay a statutorily set \$95 fee to the New York Courts Unified Court System and access their record via the online [New York Statewide Criminal History Record Search](#) program. (Defendants may also submit an application via mail and include a check or money order.) There is no fee waiver form available through the NYS Courts website.

³⁸ Part AA, Section 1, § 160.57, 1.

³⁹ Such as credit for time served and good-time awards by the institutions.

⁴⁰ A full list of sex offenses is available at [New York Consolidated Laws, Correction Law, §168-a](#).

⁴¹ <https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ppgg-bill.pdf> (page 178).

⁴² *Ibid.*, page 184.

⁴³ https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S01553&term=0&Summary=Y&Actions=Y (page 7).

⁴⁴ *Ibid.*, page 5.

Records provided by OCA are based on an exact name and date of birth search provided by the requestor, so it is possible that records can be returned that are not associated with the person making the request. Because of the possibility of mismatched identities, individuals may prefer to obtain their criminal history from DCJS, which is supported by positive biometric identification (i.e., fingerprints).

Fingerprint-based Check via DCJS

People who want to review their criminal history records from DCJS may visit the [IdentoGO](#) website to schedule a fingerprint appointment at the nearest location.⁴⁵ If no IdentoGO facility is available, individuals may download an [FBI Fingerprint Form](#) and take it to a local law enforcement agency to have their fingerprints taken.

- If a person only wants to see unsealed records, they should indicate they want to receive “unsuppressed records” when requesting their record.
- If they would like to see all records, including those that are sealed, then they should indicate they want to receive “suppressed records” when filling out the application.

For DCJS background checks, there is a processing fee of \$13.50 for persons living in New York State and a \$43.50 fee for individuals living outside of the state. All criminal history records requested will be returned via mail within 3–4 weeks. DCJS offers a fee-waiver application packet that individuals can obtain via its [website](#) or through the mail.

Notification to Third-Party Background Check Providers

Criminal history records searches conducted by third-party background check providers (e.g., consumer reporting agencies [CRAs]), are name-based searches of the New York State court database.⁴⁶ NYS courts do not provide bulk extracts of data to CRAs; rather, the searches are done on a “transactional” basis whereby the NYS Court database is queried directly each time a new search is performed.⁴⁷ If a case is initially reported as “pending” and charges are subsequently dismissed, then the next time a CRA runs an inquiry against the record, no results will be displayed, as the case is no longer accessible.⁴⁸ Because the CRAs do not receive bulk copies of records, there is no need to push updates to the CRAs when a case is disposed. Because the CRAs are querying the court data directly, each time a new criminal history request is processed, only the most current data will be returned in response to the inquiry.

Access to Sealed Records

Under both proposed bills, records sealed under Clean Slate would be suppressed from access for most background checks conducted for employment, education, or housing opportunities.

⁴⁵ <https://www.criminaljustice.ny.gov/ojis/recordreview.htm>.

⁴⁶ Karen Kane, Director, Court Research, New York State Unified Court System OCA, interview with authors, April 18, 2022.

⁴⁷ Ibid.

⁴⁸ Ibid.

The bills would allow limited access to sealed records for specific individuals and when certain circumstances arise. Sealed records may be accessed by:⁴⁹

- the defendant or their attorney,
- any court or prosecutor for a pending criminal action against the defendant,
- the court, prosecutor, and defense counsel if the defendant becomes a witness in a criminal or civil proceeding,
- the court, prosecutor, and defense counsel when the conviction of a third party is integral to a defendant’s defense,
- any prospective employer of a police officer or peace officer,
- any federal, state, or local officer or agency with responsibility for the issuance of licenses to possess a firearm, or
- any federal, state, or local officer with responsibility for conducting background checks before the transfer or sale of a firearm or explosive.

The bills state that sealed records shall be made available to “qualified agencies” defined in subdivision 9 of section 835 of the executive law.⁵⁰ These agencies include:⁵¹

- courts in the Unified Court System,
- the Administrative Board of the Judicial Conference,
- probation departments,
- sheriffs' offices,
- district attorneys' offices,
- the state Department of Corrections and Community Supervision,
- the department of correction of any municipality,
- the Financial Frauds and Consumer Protection unit of the state Department of Financial Services,
- the Office of Professional Medical Conduct of the state Department of Health,
- the Child Protective Services unit of a local social services district when conducting an investigation,
- the Office of Medicaid Inspector General,
- the temporary state Commission of Investigation,
- police forces and departments having responsibility for enforcement of the general criminal laws of the state,
- the Onondaga County Center for Forensic Sciences Laboratory when acting within the scope of its law enforcement duties, and
- the Division of Forensic Services of the Nassau County Medical Examiner's Office when acting within the scope of its law enforcement duties.

⁴⁹ <https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ppgg-bill.pdf> (pages 182–183) and https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S01553&term=0&Summary=Y&Actions=Y (pages 2–3).

⁵⁰ <https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ppgg-bill.pdf> (page 179) and https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S01553&term=0&Summary=Y&Actions=Y (page 2).

⁵¹ <https://codes.findlaw.com/ny/executive-law/exc-sect-835.html>.

Sealed records may also be made available for purposes of civilian investigation or evaluation of a civilian complaint or civil action concerning actions by law enforcement officials or prosecutors.⁵² The proposed legislation specifically stated that sealed records shall be made available for *bona fide research purposes*, provided that all personally identifiable information is removed.⁵³

Estimated Costs to the State

According to the New York State Senate Majority staff analysis of the 2022–23 Executive Budget, the Governor’s Bill will have no state or local fiscal impact in Fiscal Year 2022–23.⁵⁴ While cost estimates are currently not available, implementation of Clean-Slate initiatives in other states have required significant investments to support the development of new data exchanges which were not already part of the state’s criminal justice records systems.

Technical Challenges to Implementing State-Initiated Records Clearance under Clean Slate-variety Proposals

In the Governor’s Bill, conviction records for felonies could have been sealed after 7 years of the expiration of sentence, and misdemeanor convictions could have been sealed after 3 years following expiration of sentence. The Bill defined “expiration of sentence” as the maximum date on which a sentence of incarceration or probation would expire based on the time imposed at sentencing. In other words, any credits or reductions to the original sentence that are earned by the defendant (e.g., credit for time served or “good time” credits) do not apply when determining a person’s eligibility for records relief.

There was no requirement to pay court-orders fines, fees, or restitution to be eligible for records sealing under the Governor’s Bill, except for convictions for driving under the influence (DUI) of alcohol or drugs. DUI convictions may be sealed 3 years after the completion of one’s sentence, including the payment of any imposed fine.⁵⁵

Convictions for felonies under the Legislative Bill could have been sealed after 7 years of the imposition of sentence on the defendant’s most recent felony conviction, and misdemeanor and DUI convictions could have been sealed after 3 years following imposition of sentence on the defendant’s most recent misdemeanor conviction. Unlike the Governor’s Bill, which requires payment of court-ordered financial obligations for DUI convictions, the Legislative Bill contains no requirement for any fines, fees, or restitution to be paid in order for convictions to be sealed.

Each bill would have been advantageous depending on a person’s unique circumstances. For persons with only one conviction (which is typically the majority of former offenders), the Legislative Bill would have been most advantageous. This is because the Governor’s Bill would have required the waiting period to begin at the *expiration* of a sentence, as opposed to

⁵² <https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ppgg-bill.pdf> (page 180) and https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S01553&term=0&Summary=Y&Actions=Y (page 3).

⁵³ Ibid.

⁵⁴ <https://www.nysenate.gov/newsroom/articles/2022/blue-book-senate-majority-staff-analysis-2022-2023-executive-budget-proposal>, pages 170–171.

⁵⁵ Ibid., page 178, lines 6–9.

beginning on the date the sentence was *imposed*. For instance, if a person was sentenced to a 5-year sentence for a felony on January 1, 2023, then the person's record would not be eligible for sealing until January 1, 2035 (5-year sentence + 7-year waiting period = 12-year total waiting period). Under the Legislative Bill, the same person sentenced on January 1, 2023, would be eligible for record sealing on January 1, 2030 (7-year total waiting period).

In some cases, however, the Governor's Bill would have been advantageous when a person has multiple convictions. Under the Governor's Bill, each conviction would have had a set waiting period (time sentenced + subsequent 3- or 5-year waiting period) while under the Legislative Bill, the waiting period adjusts to begin at the date of sentencing for the *most recent conviction*. Therefore, if a person had one or more felony convictions from 20 years ago where the expiration of sentence and waiting period had been completed but had a more recent conviction from a year ago, then that person would have to wait 7 years from the most recent conviction for any felony charges to be sealed — including the charges from 20 years ago. The same rule would have applied to misdemeanors. Under the Legislative Bill, the waiting "clock" would have reset each time a new conviction/sentencing occurred that was the same class (i.e., felony or misdemeanor) as a previous conviction.

Since it is relatively easy to calculate the date a person becomes eligible for Clean Slate consideration based on the date of expiration or imposition of sentence plus 3 or 7 years (depending on whether the offense was a DUI/misdemeanor or felony), the primary "challenges" with the Governor's and Legislative bills would be verifying payment of DUI fines (for the Governor's Bill) and checking to ensure that a person does not have outstanding arrests and/or charges pending disposition.

The Legislative Bill would have had the additional challenge of calculating a new eligibility date for previous offenses any time a new conviction occurred. Rather than calculating an eligibility date *once* (based on the date of sentencing for each crime), the eligibility date(s) for previous convictions would need to be updated in the system *each time* a new felony or misdemeanor conviction occurred.

Clean Slate State Profile: Oklahoma

October 2022

In June 2022, Oklahoma became the sixth state to pass Clean Slate legislation to allow state-initiated identification and clearance of criminal records. State agencies in Oklahoma are currently planning for Clean Slate implementation in November 2025.

This Clean Slate State Profile:

- Describes how Oklahoma’s new state-initiated records clearance process expands the state’s established petition-based process, which remains available for cases that are not eligible for Clean Slate clearance.
- Identifies some unique challenges to Oklahoma as it seeks to implement Clean Slate legislation.

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Key Terms and Acronyms in Oklahoma

Expungement: The sealing of criminal records, as well as any public civil record, involving actions brought by and against the State of Oklahoma arising from the same arrest, transaction, or occurrence.

Sealing: A term synonymous with “expungement” in Oklahoma. Some sealings result in deletion for criminal history records maintained in the state repository.

OSBI: The Oklahoma State Bureau of Investigation, the agency responsible for maintaining criminal history records in the state.

AOC: The Oklahoma Administrative Office of the Courts, which provides administrative and technical support to the court clerks, who maintain a county’s district court case records.

PPB: The Oklahoma Pardon and Parole Board.

Oklahoma Court Information System (OCIS): The case management system used by most district courts in the state. Other district courts use a system called KellPro.

Oklahoma State Courts Network (OSCN): The state Supreme Court’s public-facing website. Court records from all district courts are viewable on OSCN. The electronic case information includes both docket and payment history. District courts that use KellPro may also view their district court records on **On-Demand Court Records (ODCR)**.

Overview: Oklahoma’s Records Clearing Processes

Oklahoma has an established petition-based records relief program that provides **expungement**,¹ synonymous with *sealing* for most criminal records, but is interpreted as *deletion* for select criminal records. The state recently passed legislation that takes most of the criteria for the established expungement process and aims to make the state, rather than the individual, initiate this process.

Current Records Clearance Process

Oklahoma is an “open records” state, whereby any citizen can request a criminal history record (i.e., RAP sheet) for any individual in the state. Oklahoma has established procedures to allow individuals to expunge eligible records. Expungements may occur through one of two processes, depending on the individual circumstances:

- **Title 22 §§ 18 and 19** allows an individual to expunge the associated arrest record.
 - The effect of this law is to either seal or delete the associated criminal history record based on the circumstances of the case.
- **Title 22 § 991(c)** allows an individual who received a deferred sentence to expunge their plea, and have their case disposition updated to show that the case has been dismissed.
 - The effect of expungement under this law is that the case will read “pled not guilty, case dismissed,” but the *arrest record* will not be removed from the criminal history file.

The Oklahoma State Bureau of Investigation (OSBI) processes between 2,400 and 3,000 expungements per year under Title 22 §§ 18 and 19.² Approximately 500 to 600 records are expunged annually under Title 22 § 991(c).³ Expungements are considered a civil process in the State of Oklahoma. There is no statutory limit to the number of expungements that an individual may pursue.⁴

Eligibility

Under its primary expungement statute,⁵ Oklahoma law lists 15 different categories of circumstances that are eligible for expungement.⁶ The *effect of expungement* (who is allowed to access the file) varies depending on the eligible circumstance:

- *Associated records* may either be deleted or have restricted public access.
- *Nonconviction records* (acquitted, convicted but reversed, found factually innocent, arrested but no charges filed, under 18 and pardoned, or charged with a misdemeanor or felony but all charges dismissed and never convicted) are deleted entirely from the criminal history repository records.

¹ 22 OK Stat § 22-18 B.

² Erin Henry, OSBI, personal communication with authors, August 12, 2022.

³ Ibid.

⁴ Ibid.

⁵ 22 OK Stat §§ 18 & 19.

⁶ See table 1 in the Appendix for an abbreviated list of the 15 categories and their associated access/restrictions per statute.

- *Other select categories* (certain nonviolent conviction offenses and adult pardons) are sealed from public viewing.

Most violent convictions are excluded from petition-based expungement.⁷

Conditions

Eligible convictions include the condition that no charges be pending and/or the individual not be serving a sentence in any state, and include a waiting period that lasts 30 days to 10 years from sentence completion, depending on the seriousness of the offense and other circumstances. Restitution must be paid in full for certain nonviolent felony convictions, although fines, fees, and restitution payment requirements for all other convictions are not clearly addressed in statute.

Expungement for Deferred Judgment/Deferred Sentencing

In Oklahoma, a deferred judgment is not considered a conviction and follows a different procedure with the courts. Upon completion of the conditions of deferred judgment, and having paid all fines, fees, and monetary assessments, the defendant shall be discharged without a court judgment of guilt. The court shall order the verdict or plea of guilty or plea of *nolo contendere* to be expunged from the record and the charge shall be dismissed with prejudice to any further action.

Expunged deferred judgment records maintained by the state repository would show a disposition of “pled not guilty, case dismissed” and remain available to the public.⁸

Expunged deferred judgment *court records* are sealed to the public.⁹ The process of expunging a deferred judgment court record is described as follows:¹⁰

- All references to the name of the defendant shall be deleted from the docket sheet.
- The public index of the filing of the charge shall be expunged by deletion, mark-out or obliteration.
- Upon expungement, the court clerk shall keep a separate confidential index of case numbers and names of defendants which have been obliterated.
- No information concerning the confidential file shall be revealed or released (except upon written order of a judge of the district court or by request of the individual).
- Individuals may also petition the court to have the filing of the indictment and the dismissal expunged from the public index and docket sheet.

⁷ Violent convictions may be expunged after 10 years as long as they are not “85% crimes” (listed in 21 O.S. §13.1) or a sex offense that requires registration. See also circumstance 13 outlined in table 1 in the Appendix.

⁸ OSBI, in communication with authors, October 5, 2022.

⁹ 22 OK Stat §991c, Suspension of Judgment and Sentence (continued).

¹⁰ Ibid.

Application Process

Petition-based Expungements

Individuals seeking expungement may petition the district court for the district where the records are located. In most cases, there is no form for individuals to use to file a petition for expungement.¹¹ Typically petitions request the individual's Name, Social Security Number, Date of Birth, crimes charged, date of arrest, and disposition of the arrest and/or charges in court.¹² Multiple arrests in the same county may be filed in a single petition.¹³

Once an expungement order is granted by the court, all case details are sealed. The Supreme Court's public-facing website, Oklahoma State Courts Network (OSCN),¹⁴ displays the court records and contains both docket and payment history, which are also sealed.^{15, 16}

The petitioner is responsible for sending the Order of Dismissal and/or Expungement to the OSBI. It takes about one month from filing of the petition to receive an order, and another month after receiving the order for OSBI to complete the expungement.¹⁷

State-initiated Expungement

The Court may, but is not required to, initiate an expungement in special cases, such as those where an individual was a victim of identity theft,¹⁸ or was a victim of human trafficking.¹⁹

Fees

The fee for filing a petition for expungement varies by the county in which it is filed, in the range of \$85–\$164.²⁰ The resulting order must be sent to OSBI, which requires a separate \$150 fee to process an expungement. Other fees may be required by local law enforcement agencies.²¹

On its website, OSBI recommends that individuals seeking expungement hire an attorney.²² Fees to hire a lawyer have been estimated to run between \$1,500–\$5,000, depending on the complexity of the case.²³

¹¹ A few Oklahoma counties, such as Washington County and Muskogee County, do provide a form to *pro se* petitioners. Source: Erin Henry, OSBI, personal communication with authors, August 25, 2022.

¹² OSBI, "Criminal History Record Expungement" (n.d.).

¹³ *Ibid.*

¹⁴ See www.OSCN.net. Some district courts using a different case management system view district court records at <https://www1.odcr.com>.

¹⁵ Leann Paczkowski, Oklahoma County District Attorney's Office, personal communication with authors, August 31, 2022.

¹⁶ If an entire case is expunged/sealed, payment information is also sealed. If the expungement does not seal *all* count/charges in a case, payment information would still be viewable. Oklahoma Administrative Office of the Courts, September 19, 2022.

¹⁷ OSBI, "What is the time frame for expungement process?" (n.d.).

¹⁸ 22 OK Stat § 19b.

¹⁹ 22 OK Stat § 19c.

²⁰ Filing cost is \$85 in Tulsa County (28 O.S. § 152 A.14) and \$164 in Cherokee County. <https://www.tahlequahattorney.com/tahlequah-lawyer-blog/2021/03/how-much-should-an-oklahoma-expungement-cost/>.

²¹ OSBI, "How much does an expungement cost?" (n.d.).

If an expungement is granted by the court for a finding of “factual innocence,” the court will reimburse all filing fees and court costs incurred by the petitioner as a result of filing the expungement request.²⁴

Notification After an Order

Individuals are *not* notified when their record has been expunged. Individuals may instead check their record by sending a request to OSBI for a copy of their criminal history record.

Incidents do occur where an expungement is granted but the records of that arrest are not in the criminal history record. According to OSBI, this tends to happen most frequently when the arrest was handled at the municipal level, but it has occasionally occurred with felony arrests (OSBI never received the prints, or the prints were not of suitable quality to allow OSBI to use them).²⁵ Incidents have also occurred where OSBI received fingerprints after it processed an expungement request.²⁶

Once sealed, the OSBI, prosecuting agency, or arresting agency may petition the court to *unseal* records. A hearing will be held to assess any change of conditions or other compelling reason to unseal.

No employer, educational institution, state/local government agency, official, or employee shall require an applicant to disclose information contained in sealed records. The expungement offenses are “deemed never to have occurred... that no such action ever occurred and that no such record exists.”

Some records are effectively sealed or deleted; however, the physical destruction of any criminal justice records is not authorized under statute.²⁷ Furthermore, Oklahoma statute says that any record that has been sealed for 10 years after entry of the expungement order may be obliterated or destroyed at the end of the 10-year period.²⁸ A representative of the Oklahoma County District Attorney’s Office has clarified that while implementation of this provision may vary by Court Clerk, the court does not destroy any documents. Expunged documents are secured separately and flagged internally as expunged.²⁹

²² OSBI, “Do I need a lawyer to get an expungement?” (n.d.).

²³ Jabar Shumate as quoted in Keaton Ross, “The Expungement Process in Oklahoma is Long and Expensive. The Legislature Could Change That,” *Oklahoma Watch*, March 8, 2022. <https://oklahomawatch.org/2022/03/08/the-expungement-process-in-oklahoma-is-expensive-and-time-consuming-the-legislature-could-change-that/>.

²⁴ En. H.B. No. 3316 § 19 Q.

²⁵ Erin Henry, OSBI, personal communication with authors, August 25, 2022.

²⁶ Ibid.

²⁷ En. H.B. No. 3316 § 19 K.

²⁸ En. H.B. No. 3316 § 19 N.

²⁹ Leann Paczkowski, Oklahoma County District Attorney’s Office, personal communication with authors, August 31, 2022.

Background of Clean Slate in Oklahoma

Status of Clean Slate Legislation

House Bill 3316 was co-authored by Reps. Nicole Miller (R-District 82), Jon Echols (R-District 90), Mark Lepak (R-District 9), Regina Goodwin (D-Tulsa District 73), Marilyn Stark (R-District 100), John Waldron (D-Tulsa District 77), John Talley (R-District 33), and Andy Fugate (D-District 94), and Sens. David Rader (R-District 39) and Adam Pugh (R-District 41).³⁰ It was introduced in January 2022 and approved by Governor Kevin Stitt on May 2, 2022, with an effective date of November 1, 2022.³¹

Timeframe for Implementation

Clean Slate is scheduled to begin 3 years after its effective date: November 1, 2025. The law is retroactive.

Cost to the State

Cost associated with this legislation is unknown at this time, as HB3316 was not accompanied by a Fiscal Impact statement. The bill did contain language that said its implementation was “subject to the availability of funds.”³²

Clean Slate Record Clearing Process

Clean Slate Eligibility

Nearly all of the offenses and circumstances that are eligible for expungement via petition in Oklahoma are also eligible for expungement under Clean Slate.³³ Qualifying circumstances include:

- acquittal,
- reversal of a conviction,
- found factually innocent,
- arrested but no charges were filed,
- under 18 and pardoned for offense,
- charged but all charges dismissed,
- charged with misdemeanor but all charges dismissed following completion of deferred judgment,
- convicted of a misdemeanor and sentenced to a fine <\$500,

³⁰ Oklahoma State Legislature, Bill Information for HB 3316. <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb3316&Session=2200>.

³¹ Enr. H.B. No. 3316.

³² “Beginning three (3) years after the effective date of this act and subject to the availability of funds, individuals with Clean Slate-eligible cases shall be eligible to have their criminal records sealed automatically.” Enrolled HB 3316 § 18 C.

³³ See table 1 in the Appendix for a list of eligible circumstances.

- mistaken identity/identity theft (crime committed by another person), and
- convicted of a nonviolent felony that was subsequently reclassified as a misdemeanor and not serving a sentence in any state.³⁴

Notably, circumstances that are *not* eligible under Clean Slate are: cases pardoned by the Governor, charged with a nonviolent felony which was dismissed after deferred judgment, convicted of a nonviolent felony that was subsequently reclassified as a misdemeanor, having been convicted of no more than two felonies (that do not require registration as a sex offender).³⁵

The same provisions apply for Clean Slate expungements as with petition-based expungements: convictions must have no charges pending and/or the individual not be serving a sentence in any state and include a waiting period that lasts between 30 days to 10 years, depending on the seriousness of the offense and other circumstances. As with petition-based expungement, restitution must be paid in full for the circumstance involving nonviolent felony convictions.³⁶

Envisioned Process

The envisioned process for identifying Clean Slate-eligible records is outlined in Enacted [House Bill 3316](#), and OSBI is exploring how to refine the processes based on what is feasible and practical given the constraints of its data management and data sharing systems.

- On a monthly basis, OSBI will identify cases that are Clean Slate-eligible by searching the criminal history repository records.
- OSBI will then provide a list of Clean Slate eligible cases to the prosecuting agency and arresting agency.
- The prosecuting agency, arresting agency, and OSBI have 45 days to object to any records. Objections are disseminated to all parties. Reasons that an agency may object:
 - Agency believes case is not actually eligible for Clean Slate.
 - The individual hasn't paid court-ordered restitution to the victim.³⁷
 - The agency has reasonable belief that an individual is continuing to engage in criminal activity (whether or not they were charged, and criminal activity may be in-state or out-of-state).
- After 45 days, OSBI sends a list of all cases where all agencies have responded with no objection to the courts of original jurisdiction. Each court will review the list and provide a signed expungement order to all agencies with criminal history records. Each agency shall seal relevant records upon receipt. OSBI and the Oklahoma Supreme Court will establish rules to govern this process.

³⁴ [Enr. H.B. No. 3316 § 18 A.](#)

³⁵ [Ibid.](#)

³⁶ [Ibid.](#)

³⁷ Payment of fines and fees are not addressed in [Enr. H.B. No. 3316](#), but restitution is specifically mentioned for one conviction circumstance.

Every year, OSBI is required to submit a report to the Oklahoma Legislature with a list of initially-eligible cases that were not able to be expunged due to objections.

Individuals who are not identified as being eligible through state-initiated processes may seek expungement via petition.³⁸ State liability is also addressed: any failure of the state to identify eligible individuals or circumstances is not a cause for seeking damages.³⁹

Post-Sealing

Access to Sealed Records

Access to expunged records by the public and law enforcement entities under the enacted Clean Slate bill remains the same as if one were to follow the petition-based process. The enacted bill is summarized in table 1 in the Appendix. As with petition-based expungement, there is no physical destruction of records.⁴⁰

Notification Requirements

As with petition-based expungement, there is no expectation of individual notification with Clean Slate expungements.

Third-Party Sales

Since Oklahoma is an open records state, anyone can request a criminal history record for anyone else. The Oklahoma Criminal History Repository sells its data on a transactional basis. The only information needed to perform a criminal history check is Name, Date of Birth/Age, and/or Social Security Number. Criminal history record searches cost \$15.00, plus a \$1.00 online service fee for each transaction submitted through its Criminal History Information Request Portal (CHIRP).⁴¹

Oklahoma Courts do not sell case records, and the Oklahoma Supreme Court does not permit the bulk distribution or sale of electronic case information. Public access is available on a case-by-case basis via the internet through the Oklahoma State Court Network (oscn.net) or the On Demand Court Records system (odcr.com).⁴²

Anticipated Challenges

While early in the planning process, Oklahoma already anticipates a number of implementation challenges to its recent statute. The list below highlights some of the anticipated concerns identified early in the process, but should not be considered comprehensive.

1. How to disseminate the list of records believed to be eligible to the appropriate agency stakeholders (courts and prosecutors). It would be ideal to develop a system where the list is pre-populated for the stakeholders who log in to view them, perhaps with automated alerts sent to a designated contact when there are records from their

³⁸ Enr. H.B. No. 3316 § 19 C1.

³⁹ Enr. H.B. No. 3316 § 19 C2.

⁴⁰ Enr. H.B. No. 3316 § 19 K.

⁴¹ Erin Henry, OSBI, in communication with authors, August 17, 2022, and October 5, 2022. The CHIRP site is: <https://chirp.osbi.ok.gov/>.

⁴² Oklahoma Administrative Office of the Courts, September 19, 2022.

jurisdiction in the “list” that month. A flag should also be created in the system when a response has been received from all relevant agency stakeholders for a given record, which indicates “no objection.”

2. How to establish a process for the courts to review and submit orders for expungement.
3. How to handle the anticipated increased volume of potential expungements. Some processing may be automated, but most of the qualifying circumstances will require manual research to verify that the individual and circumstances truly meet the criteria. For example, current expungement legislation reads that Oklahoma must check for out-of-state records (e.g., pending charges), and this process may not be able to be automated. OSBI also needs to check on its ability to access discharge of sentence information to begin tolling the waiting period. OSBI anticipates it may need additional personnel to assist because most of the qualifying eligibility criteria are too complex to automate the entire process.
4. How to educate the public about the program so individuals know their records are eligible for expungement, and understand how expunged records may benefit them.

Appendix

Table 1. Oklahoma Expungement Circumstances, Access, and Effects⁴³

| Number | Description of Circumstance | Special Access | Effect in Criminal History Repository ⁴⁴ |
|--------|--|--|---|
| 1 | Acquitted. | | Deleted |
| 2 | Conviction was reversed with instructions to dismiss. | | Deleted |
| 3 | Found factually innocent through DNA. | | Deleted |
| 4 | Pardoned by Governor for crime. | <ul style="list-style-type: none"> Not sealed to Law Enforcement May also be sealed to PPB | Sealed |
| 5 | Arrested but no charges were filed, statute of limitations has passed, or prosecuting agency has declined to file. | | Deleted |
| 6 | Under 18 and pardoned for offense. | <ul style="list-style-type: none"> May also be sealed to PPB | Deleted |
| 7 | Charged with 1+ misdemeanor or felony, all charges dismissed, never convicted of a felony, no charges pending, statute of limitations has expired, or prosecuting agency confirms charge(s) will not be refiled. Does not apply to charges that have been dismissed following deferred judgment or delayed sentence. | | Deleted |
| 8 | Charged with misdemeanor, charge dismissed following completion of deferred judgment or delayed sentence, never been convicted of a felony, no misdemeanor or felony charges are pending, 1 year has passed since charge dismissed. | <ul style="list-style-type: none"> Not sealed to Law Enforcement Admissible in any subsequent criminal prosecution | Sealed |
| 9 | Charged with nonviolent felony offense (not listed in Section 571 title 57 of Oklahoma statutes), charge was dismissed after completing deferred judgment or delayed sentence, never convicted of a felony, no misdemeanor or felony charges pending, at least 5 years passed since charge was dismissed. | <ul style="list-style-type: none"> Not sealed to Law Enforcement Admissible in any subsequent criminal prosecution | Sealed |
| 10 | Convicted of misdemeanor, sentenced to fine <\$501 without term of imprisonment or suspended sentence, fine has been paid/satisfied, not convicted of a felony, no charges pending. | <ul style="list-style-type: none"> Not sealed to Law Enforcement Admissible in any subsequent criminal prosecution | Sealed |

⁴³ Abbreviated version of circumstances listed in *Enr. H.B. No. 3316*. Blue-highlighted rows indicate circumstances eligible for Clean Slate, per *Enr. H.B. No. 3316*.

⁴⁴ Source: *Enr. H.B. No. 3316* (22 § 18 E). Interpretation of effect in Oklahoma Criminal History Repository provided by Erin Henry, OSBI, in communication with authors, August 17, 2022.

| Number | Description of Circumstance | Special Access | Effect in Criminal History Repository ⁴⁴ |
|--------|---|---|---|
| 11 | Convicted of misdemeanor, sentenced to term of imprisonment, suspended sentence or fine >\$500, not been convicted of a felony, no charges pending, at least 5 years since end of last misdemeanor sentence. | <ul style="list-style-type: none"> • Not sealed to Law Enforcement • Admissible in any subsequent criminal prosecution | Sealed |
| 12 | Convicted of nonviolent felony offense (not listed in Section 571 title 57 of Oklahoma statutes), not convicted of any other felony, not convicted of separate misdemeanor in last 7 years, no felony or misdemeanor charge are pending, 5+ years since completion of sentence. | <ul style="list-style-type: none"> • Not sealed to Law Enforcement • Admissible in any subsequent criminal prosecution • May also be sealed to PPB | Sealed |
| 13 | Convicted of no more than 2 felony offenses (not in Section 13.1 of Title 21 of OK statutes) or any offense that would require registration as a sex offender, no charges pending, at least 10 years since completing the sentence for felony conviction. | <ul style="list-style-type: none"> • Not sealed to Law Enforcement • Admissible in any subsequent criminal prosecution • May also be sealed to PPB | Sealed |
| 14 | Mistaken identity/identity theft: person charged/arrested for a crime committed by another person who used the person's name/identification without consent or authorization. | <ul style="list-style-type: none"> • Not sealed to Law Enforcement | Sealed |
| 15 | Convicted of a nonviolent felony (not listed in Section 571 title 57 of Oklahoma statutes) which was subsequently reclassified as a misdemeanor under Oklahoma law; not currently serving a sentence in any state; at least 30 days since completion/commutation of sentence; and restitution paid in full and any court-ordered treatment program successfully completed. (Use Expungement forms provided in Section 18a of this title.) | <ul style="list-style-type: none"> • Not sealed to Law Enforcement | Sealed |

Clean Slate State Profile: Pennsylvania

October 2022

In 2018, the Commonwealth of Pennsylvania passed legislation to become the first state to pass Clean Slate legislation, which allows state-initiated identification and clearance of criminal records.

The purpose of this Clean Slate State Profile is to:

- Describe the differences between Pennsylvania’s new state-initiated records clearance process and the longstanding petition-based process, which remains available for cases that are not eligible for Clean Slate clearance.
- Describe the petition-based process, including an overview of factors that led a bipartisan coalition to push for the 2018 Clean Slate reform.
- Provide a detailed accounting of the Clean Slate process of identification and clearance, highlighting eligibility requirements, as well as costs and challenges surrounding implementation.
- Review the benefits of Clean Slate and plans for future enhancements.

CONTRIBUTORS

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Key Terms, Acronyms, and Actors in Pennsylvania

- **Administrative Office of Pennsylvania Courts (AOPC):** The initiating agency for Clean Slate legislation in Pennsylvania.
- **Pennsylvania State Police (PSP):** The verifying entity in Pennsylvania for Clean Slate; the PSP have the final say in verifying records to be sealed under Clean Slate.
- **Seal:** In Pennsylvania, records eligible for the Clean Slate process get sealed, not expunged, meaning that they still exist but are extremely limited in access. The FBI and law enforcement agencies maintain access to sealed records.
- **Expunge:** Some records are eligible for expungement, or total destruction of the record, but only by petition.
- **Magisterial District Judges System (MDJS):** The statewide system for Magisterial District Judges used in 66 of 67 Pennsylvania counties.
- **Common Pleas Case Management System (CPCMS):** AOPC’s comprehensive, statewide system of criminal case records. For the purposes of Clean Slate, cases and offenses are automatically identified within these two systems for PSP’s review.

Overview: Pennsylvania’s Petition-Based Records Clearing Processes

Pennsylvania has historically authorized clearance of criminal history records by petition. Prior to 2018 (when Pennsylvania passed *PA Act 56*, which codified state-initiated record clearance), filing a petition was the primary means to expunge or seal charges in one’s state criminal history record.

Pennsylvania has historically authorized criminal records expungement (or partial expungement) or sealing based on the type of offense and related criteria. In Pennsylvania, **expungement** refers to the total destruction of a record, while **partial expungement** expunges a portion of a record. **Sealing** does not destroy a record but removes it from public view.

Eligibility for Records Clearance

Expungement

Expungement is primarily reserved for non-conviction records where an individual was arrested or charged with a crime but never convicted (e.g., findings of not guilty or dismissals). A record may also be expunged for convictions for summary offenses, which are minor criminal offenses such as disorderly conduct, loitering, harassment, and low-level retail theft.¹ Record holders who are 70 years or older and have been arrest-free for 10 years since their last conviction² are also eligible under the state’s expungement provisions, which exist outside of Clean Slate. Crimes for which a person completed a special treatment program (such as an Accelerated Rehabilitation Disposition (ARD) program³) may also be eligible for expungement by petition.⁴

Partial Expungement

Records may also be partially expunged. For example, an individual may be charged with five crimes but only convicted of one crime. In that case, the four charges that did not result in conviction may be expunged (assuming other eligibility criteria is met).

¹ See Pennsylvania Statute Title 18 § 9122 for specific inclusions and exclusions related to Expungements. For Court Cases, Pennsylvania Code Title 234 Chapter 7 Rule 790. Any case for which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a Court Case. See Rule 490 for summary case expungement procedures. See also: Nick Vadala, “Broke in Philly: How to get your criminal record sealed or expunged in Pennsylvania,” *The Philadelphia Inquirer*, Dec. 22, 2020. <https://www.inquirer.com/philly-tips/criminal-record-expunged-sealed-pardon-petition-pennsylvania-20201222.html>.

² Pennsylvania Statute Title 18 § 9122(b)(1). <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=91&sctn=22&subsctn=0>

³ The ARD Program is usually for first-time offenders. The program is intended to encourage offenders to make a fresh start after participating in a rehabilitative program and offers them the possibility of dismissal of charges and the expungement of the offender’s arrest record upon completion of the program. Pennsylvania Office of Victim Services, “Accelerated Rehabilitative Disposition (ARD),” accessed July 6, 2022. <https://pcv.pccd.pa.gov/available-services/Pages/Flow%20County/ARD.aspx>.

⁴ For more details on expungement following completion of an ARD program, also see Rule 320.

Sealing

Sealing by petition is offered for convictions for many second- and third-degree misdemeanors after 10 years without any subsequent convictions, summary offenses that are at least 10 years old, and non-violent first-degree misdemeanors.⁵

Application Process

Petitioning the Court

The petition process in Pennsylvania consists of three main steps:

1. identifying records that may be sealed or expunged,
2. petitioning the court, and
3. disseminating the court's decision.

While different forms are used based on the types of offenses one seeks to expunge (lower-level summary offenses versus misdemeanor or felony charges), the petition process itself is the same for all offenses.

As outlined in Figure 1, the petition process⁶ begins with the individual record holder identifying records potentially eligible for expungement, possibly with legal assistance.⁷ Many individuals who seek relief find legal assistance to petition the courts on their behalf, as the process can be complicated and feel overwhelming.⁸ Dashboard programs are available in certain jurisdictions to assist legal services in locating disparate pieces of information needed to complete the form; for example, Community Legal Services in Philadelphia has access to an “Expungement Generator”⁹ that pulls requisite details from the Administrative Office of Pennsylvania Courts’ (AOPC) criminal records database.

⁵ Pennsylvania Code Title 234 Chapter 7 Rule 790. See also: Nick Vadala, “Broke in Philly: How to get your criminal record sealed or expunged in Pennsylvania,” *The Philadelphia Inquirer*, Dec. 22, 2020. <https://www.inquirer.com/philly-tips/criminal-record-expunged-sealed-pardon-petition-pennsylvania-20201222.html>.

⁶ For an overview of the Criminal Expungement process, see the Pennsylvania State Police website: <https://www.psp.pa.gov/Pages/Criminal-Expungement-Process.aspx>.

⁷ This has been a common role for Pennsylvania Legal Aid. <https://palegalaid.net/>.

⁸ Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

⁹ The Expungement Generator (<https://expunge.clsphila.org/index.php>) is hosted by Community Legal Services of Philadelphia and can only be accessed by properly-credentialed individuals.

Petition-Based Records Clearance Process in Pennsylvania

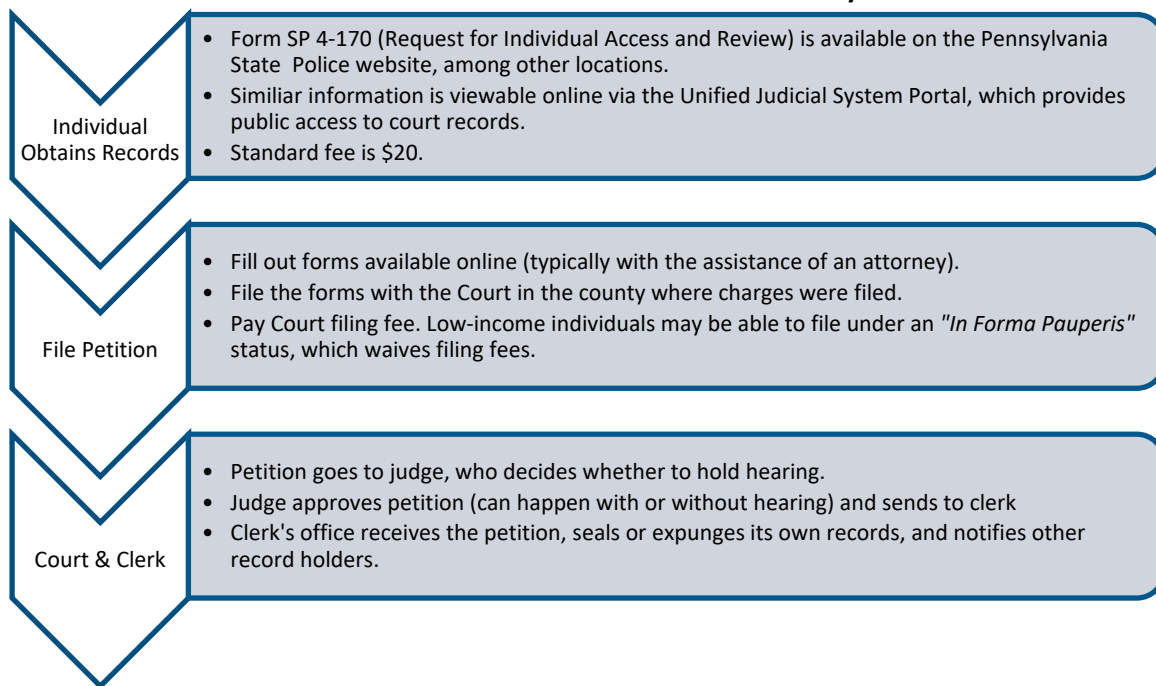


Figure 1: Petition-Based Records Clearance Process in Pennsylvania

For those proceeding without legal assistance, the process of applying for and obtaining criminal history records relief (if eligible) can be lengthy. The individual completes Form SP 4-170 (Request for Individual Access and Review), and submits it together with a \$20 fee to the Pennsylvania State Police (PSP).¹⁰ The individual's official criminal history is typically sent from PSP to the individual identified in the request via U.S. Postal Service mail. Once the individual receives the report, they should consult the Clerk of Courts in the county where the arrest took place for further instructions on how to petition the court for expungement.¹¹ The petitioner should file a copy of their PSP criminal history report along with the petition, and the criminal history report should be no more than 60 days old.¹²

Counties and courts vary in their individual practices and costs. In general, petition forms differ based on whether **charges were summary offenses**,¹³ or if they were **misdemeanor or felony charges**. The petitioner should complete the petition and file it with the court; in some jurisdictions, the petitioner may need to deliver the petition in person. Court fees to file

¹⁰ Pennsylvania Code Title 234 Chapter 7 Rule 790.

¹¹ Some jurisdictions do not require an Access and Review. For example, the Philadelphia District Attorney's Office has waived the need for it in the city. Source: Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

¹² Pennsylvania Code Title 234 Rule 490.
<http://pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/234/chapter4/s490.html&searchunitkeywords=rule%2Ccode%2C490&origQuery=rule%20code%20490&operator=OR&title=null>

¹³ A summary offense is the most minor type of criminal offense in Pennsylvania, and is often called a "non-traffic citation." Summary offenses can include disorderly conduct, loitering, harassment, and low-level retail theft, among others. A conviction for a summary offense usually results in a fine. Source: Community Legal Services, <https://clsphila.org/employment/summary-offenses-in-pennsylvania/#:~:text=A%20summary%20offense%20is%20the,usually%20results%20in%20a%20fine>.

expungement petitions vary by jurisdiction, but are generally around \$200.¹⁴ Record holders who are unable to pay to file a Petition for Expungement may file for a petition for a waiver, referred to as *Petition to Proceed In Forma Pauperis (IFP)*, which requires supporting documentation and may require a separate hearing.¹⁵

The final stage of the expungement process begins when the petition is filed with the court in the jurisdiction where the arrest occurred. Within 60 days¹⁶ of the petition's service, which is concurrent to court filing, the attorney for the Commonwealth will file a consent or objection to the petition or take no action. The consent or objection is filed with the clerk of courts. Upon receipt of the Commonwealth's response (or no later than 14 days after the 60-day period referenced earlier if no objection is received from the attorney from the Commonwealth), the judge shall grant or deny the petition, or schedule a hearing. After the hearing, the judge will promptly decide to grant or deny the petition, and an appeals process is available.¹⁷ If the judge approves a petition, then the clerk's office must process the order and serve a certified copy of the order to each criminal justice agency identified in the court's order.

The need for, and length of, hearings varies by county. For example, Philadelphia rarely holds hearings, as its Commonwealth attorney's office approves most petitions. In other counties, hearings are more common.¹⁸

Fees

Petitioners must pay a court filing fee that varies by county but is generally around \$200, plus an additional \$20 for a copy of their criminal history report.¹⁹ The Access and Review requirement may be waived in limited cases, and *In Forma Pauperis* waivers are available for individuals unable to pay the court filing fee. Some legal aid groups have also negotiated ways to reduce the filing fee burden on their clients. For example, in Philadelphia, Community Legal Services has an existing agreement with the city's Commonwealth attorney whereby its clients pay no filing fees.²⁰

¹⁴ As examples: Allegheny County charges \$232.00 for Petitions for Expungement (<https://www.alleghenycounty.us/court-records/criminal/cost-and-fee-schedule.aspx>); Cumberland County charges \$183.00 for Expungement/Limited Access Petitioners & Orders (<https://www.ccpa.net/3513/ExpungementLimited-Access-PetitionsOrder>); and Centre County charges \$207.00 (<https://centrecountypa.gov/DocumentCenter/View/1331/2016-Petition-for-Expungement-Pursuant-to-PARCrnP-9221b3i?bidId=>).

¹⁵ AOPC, "Petition to Proceed *In Forma Pauperis*," August 11, 2021. <https://www.palawhelp.org/resource/petition-to-proceed-in-forma-pauperis>.

¹⁶ Petitions for expungement for summary offenses allow only 30 days of Commonwealth attorney review. See Pennsylvania Code 234 Rule 490. <http://pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/234/chapter4/s490.html&searchunitkeywords=rule%2Ccode%2C490&origQuery=rule%20code%20490&operator=OR&title=null>.

¹⁷ Pennsylvania Code Title 234 Chapter 7 Rule 790. Procedure for Obtaining Expungement in Court Cases; Expungement Order. <http://pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/234/chapter7/s790.html&searchunitkeywords=expungement&origQuery=expungement&operator=OR&title=null>.

¹⁸ Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

¹⁹ *Ibid.*

²⁰ *Ibid.*

Disseminating an Expungement or Sealing Order

When the clerk approves the petition, an alert is sent to the AOPC's database. Sealed or expunged records are removed from the AOPC's public website and are entered in the LifeCycle File,²¹ which is provided to bulk purchasers of the state's data, such as consumer reporting agencies that offer private background checks. The LifeCycle File is updated monthly to include new court information together with a list of sealed or expunged cases that must be removed from any existing data files.²² The LifeCycle file is also sent to the PSP so that it may remove or seal records from their databases based on the courts' orders. If the petition to expunge a record is approved, the record will be destroyed and PSP will also notify the FBI to remove the expunged case from its database.

As of August 2021, the entire petition process in Pennsylvania averaged a duration of 4–5 months.²³

Limitations

The most significant obstacles to obtaining petition-based records relief in Pennsylvania are cost, the effort required of petitioners, and time delays. Because of the nuances of the laws in the state about records that are legally allowed to be sealed or expunged, how records need to be identified, and how paperwork is processed and filed, many petitioners seek legal assistance from an attorney.²⁴ The entire process can be time- and labor-intensive; consequently, it is often only undertaken by individuals with a pressing need for records clearance, such as someone who requires a background check for employment or housing.

Overview: Pennsylvania's Clean Slate Record Clearing Process

In 2018, the Pennsylvania General Assembly passed [Act 56](#), which amended Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes and automated the eligibility determination process for having specific criminal history records sealed.²⁵ In 2020, the legislature passed [Act 83](#), which increased the number of individuals who are eligible for records relief by removing the requirement that all outstanding Court fines and fees be paid.²⁶

²¹ For a sample contractual agreement for the LifeCycle File, see <https://www.nelp.org/wp-content/uploads/PA-Courts-Agreement-Distribution-Electronic-Case-Record-Information.pdf>.

²² David Price and Russel Montchal (AOPC), in discussion with the authors, July 30, 2021.

²³ Processing times are estimated at Center County Government, "Instructions to Expunge a Summary Offense," [no date], <https://centrecountypa.gov/DocumentCenter/View/1331/2016-Petition-for-Expungement-Pursuant-to-PARCrimP-9221b3i?bidId=> and Clear Up My Record, "Pennsylvania Record Expungement," [no date], <http://www.clearupmyrecord.com/pennsylvania-expungement-law.php>.

²⁴ Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

²⁵ Pennsylvania General Assembly, "2018 Act 56: Crimes Code (18 PA.C.S) and Judicial Code (42 PA.C.S.) – Omnibus Amendments Act of June 28, 2018, P.L. 402, No. 56." Reg. Sess. 2018. <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=56>.

²⁶ Pennsylvania General Assembly, "2020 Act 83: Crimes Code (18 PA.C.S) and Judicial Code (42 PA.C.S.) – Expungement, Petition for Limited Access, Clean Slate Limited Access, Effects of Expunged Records and Records Subject to Limited Access and Attachment and Summary Punishment for Contempts. Act of October 29, 2020, P.L.

Under Clean Slate, eligible records are **sealed**, meaning that only law enforcement agencies, judicial officers and certain licensing boards can still access the records, but they are generally not available to the public. No records are destroyed or expunged under Pennsylvania’s Clean Slate legislation.²⁷

Clean Slate Eligibility

Eligible Offenses

Only a subset of offenses eligible for records clearance through the petition-based process in Pennsylvania are eligible for sealing under Clean Slate (Figure 2). They are:

- All non-conviction records, which include dismissed or withdrawn charges and findings of not guilty, are eligible after 30 days have passed since the court entered the disposition.²⁸
- Convictions for summary offenses (which include minor crimes such as underage drinking, disorderly conduct, and low-level retail theft) are eligible.
- Certain misdemeanor convictions may also be sealed: first-degree misdemeanors with a potential penalty of 2 years or less; second- and third-degree misdemeanors; and ungraded offenses punishable by up to 5 years.
- All pardoned offenses.

Excluded Offenses

Certain offenses are not eligible to be sealed under Clean Slate.²⁹ These include:

- felonies,
- two prior convictions that carry a potential prison sentence of over 2 years in prison or four prior convictions that carry a potential sentence of over 1 year in prison, and
- certain cases that involve firearms, sex offenses, crimes against family, and similar offenses.

Eligibility Waiting Periods

Pennsylvania’s Clean Slate legislation automatically seals non-conviction charges within 30 days of final disposition by the courts. Records of qualifying misdemeanor adjudications may be

718, No. 83.” Reg. Sess. 2020. <https://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=2020&sessInd=0&smthLwInd=0&act=83>.

²⁷ Bradley Timbrell and Mark Shaver (PSP), in Sharon Dietrich, Bradley Timbrell, Mark Shaver, David Price, and Russel Montchal, “Pennsylvania Clean Slate Implementation and Operations,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021. <https://vimeo.com/588460073> at [41:55].

²⁸ Pennsylvania General Assembly, “2020 Act 83: Crimes Code (18 PA.C.S) and Judicial Code (42 PA.C.S.) – Expungement, Petition for Limited Access, Clean Slate Limited Access, Effects of Expunged Records and Records Subject to Limited Access and Attachment and Summary Punishment for Contempts. Act of October 29, 2020, P.L. 718, No. 83.” Reg. Sess. 2020. <https://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=2020&sessInd=0&smthLwInd=0&act=83>

²⁹ See Title 18, § 9122.3. “Exceptions.” <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=91&sctn=22&subsctn=3>.

sealed after 10 years of the individual being conviction-free, and there is no lifetime limit for the total number of criminal records that may be sealed.

Pardons, as well as all non-conviction records, may be sealed under Clean Slate with no waiting period.

Comparison of Petition-Based and Clean Slate Processes in Pennsylvania

| | Records Eligible for Sealing | Records Eligible for Expungement |
|--|--|---|
| Petition-Based Process (Act 5) | <ul style="list-style-type: none"> Non-conviction charges (eligible 30 days after the recording of the non-conviction disposition on the charge)* Misdemeanors (after 10-year waiting period for all) <ul style="list-style-type: none"> 1st degree: Carrying a potential penalty of 2 years or less Some 2nd and 3rd degree Upgraded offenses: Carrying a penalty of up to 5 years Summary offenses after 10 years* Pardoned cases Simple assaults (graded as 2nd and 3rd degree misdemeanors) Reckless endangerment Harassment Criminal coercion Sale or transfer of firearms graded as 2nd degree misdemeanors Corruption of minors graded as summary offenses Carrying loaded weapons other than firearms?? Sale or transfer of firearms | <ul style="list-style-type: none"> Non-conviction charges (eligible 30 days after the recording of the non-conviction disposition on the charge)* Misdemeanors (after 10-year waiting period for all) <ul style="list-style-type: none"> 1st degree: Carrying a potential penalty of 2 years or less Some 2nd and 3rd degree Upgraded offenses: Carrying a penalty of up to 5 years) Summary offenses after 10 years* |
| Clean Slate Process (via Act 56 & Act 83) | <ul style="list-style-type: none"> Non-conviction charges (eligible 30 days after the recording of the non-conviction disposition on the charge)* Misdemeanors (after 10-year waiting period for all) <ul style="list-style-type: none"> 1st degree: Carrying a potential penalty of 2 years or less Some 2nd and 3rd degree Upgraded offenses: Carrying a penalty of up to 5 years Summary offenses after 10 years* Pardoned cases | <p>There are no records eligible for expungement under Pennsylvania's Clean Slate process.</p> |

* Denotes where there is overlap between records eligible for expungement via the petition process and sealing via Clean Slate.

Figure 2: Comparison of Petition-Based and Clean Slate Processes in Pennsylvania

Impact of Court Ordered Financial Obligations

In the original 2018 Act, an individual could have no outstanding court fines, fees, or restitution for their records to be sealed under Clean Slate. The passage of Act 83 in 2020 eliminated unpaid fines and fees from impacting eligibility, although any unpaid restitution will continue to preclude eligibility.³⁰ Since many of the cases eligible for sealing under Clean Slate do not ordinarily require restitution to crime victims, the restitution requirement does not hinder the majority of defendants from qualifying under the 2020 amendment. As every county is using the CPCMS system, validation for restitution is entered into CPCMS in the same fashion as the other data used to support automated Clean Slate eligibility determinations. All payments/receipts and other accounting functions are done through CPCMS as well.

³⁰ Pennsylvania General Assembly, “2020 Act 83: Crimes Code (18 PA.C.S) and Judicial Code (42 PA.C.S.) – Expungement, Petition for Limited Access, Clean Slate Limited Access, Effects of Expunged Records and Records Subject to Limited Access and Attachment and Summary Punishment for Contempts. Act of October 29, 2020, P.L. 718, No. 83.” Reg. Sess. 2020. <https://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=2020&sessInd=0&smthLwInd=0&act=83>

Of note, the action to pass legislation eliminating the barriers posed by outstanding fines and fees was supported by recent analysis. Unpaid court debt was identified as the biggest barrier to sealing misdemeanors by automation, and an inability to pay is the major reason for this outstanding debt.³¹ The Philadelphia District Attorney’s Office found that 50% (or 9.2 million) of otherwise eligible misdemeanor convictions statewide were eliminated from automated sealing by court debt.³²

Case- Versus Charge-Level Sealing

In Pennsylvania, records are sealed on a charge-by-charge basis. Though this adds a significant volume to the number of records that must be processed through Clean Slate, it is beneficial for residents of Pennsylvania, who can have all non-conviction charges cleared even if they were convicted for a separate charge.³³ For example, if a person gets arrested for four charges but only convicted of one, the other three can be sealed.

Technical Aspects of the Clean Slate Record Clearing Process

The Clean Slate process in Pennsylvania is initiated by the AOPC, which transmits a record of any conviction eligible to the PSP central repository on a monthly basis (Figure 3).³⁴ PSP then reviews the cases — mostly the identified misdemeanor convictions — and validates eligible cases.³⁵ If PSP determines that a case is ineligible based on information housed within the state criminal history repository, it is added to a list of non-qualified records that is returned to AOPC each month. Ineligible cases are removed from future batches of records provided to PSP, and these cases would need to be sealed via the petition-based process. After attempting to match all of the offense tracking numbers (OTN), name, date of birth, and social security matches, PSP also returns a list of records that lack a reliable match in their system.³⁶

Once PSP has reviewed cases for eligibility, cases are processed in batches through a CPCMS software screen to produce a court order and final report. At that point, Common Pleas judges may review a report listing each case and offense in a batch prior to issuing an order. Once an order is issued, AOPC restricts the cases and offenses from the Public Web Docket sheets and indicates its limited access status on the CPCMS screen to make court personnel aware that records may not be disseminated beyond the limited number of agencies specified in the Clean Slate legislation.

³¹ Community Legal Services of Philadelphia, “PA General Assembly Unanimously Expands Criminal Record Sealing by Removing Court Debt and Other Barriers,” October 22, 2020. <https://clsphila.org/criminal-records/criminal-record-sealing-court-debt-legislation/>.

³² Ibid.

³³ Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

³⁴ David Price and Russel Montchal (AOPC), in Sharon Dietrich, Bradley Timbrell, Mark Shaver, David Price, and Russel Montchal. “Pennsylvania Clean Slate Implementation and Operations,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021. <https://vimeo.com/588460073> at [24:12].

³⁵ When developing Clean Slate review procedures, PSP granted the courts pre-approval authority to seal summary convictions and non-conviction records, which is why the Courts only need to review misdemeanors. Without this pre-approval authority, PSP would have to review all cases rather than just the misdemeanors. David Price and Russel Montchal (AOPC), in email communications to authors, August 12, 2022.

³⁶ Bradley Timbrell (PSP), in discussion with authors, July 28, 2021.

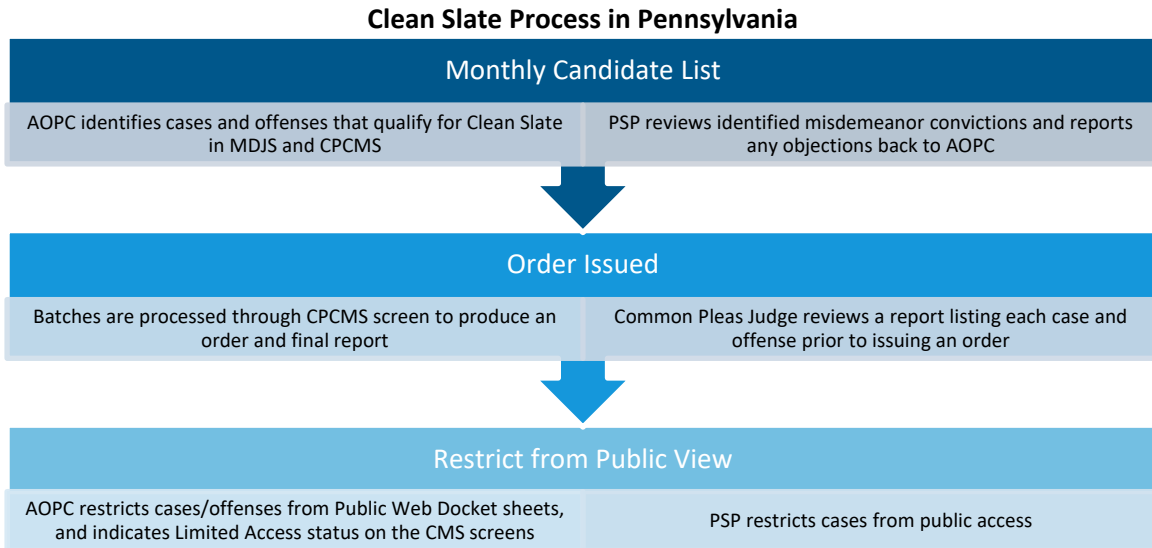


Figure 3: Clean Slate Processes in Pennsylvania

Technical and Operational Challenges to Implementation

From a technical perspective, Pennsylvania benefited from existing momentum within the state, and specifically the Courts, to centralize and automate its data systems.

Two data systems are crucial to the implementation of Clean Slate in Pennsylvania: The Magisterial District Judges System (MDJS) and the Common Pleas Case Management System (CPCMS). MDJS is the statewide system for Magisterial District Judges (in all 67 counties, except Philadelphia, which uses CPCMS for all cases), and CPCMS is AOPC’s comprehensive, statewide system of criminal case records. For the purposes of Clean Slate, eligible cases and offenses are automatically identified within these two systems by AOPC for PSP to review.

Both systems pre-dated consideration of Clean Slate legislation. The Pennsylvania Supreme Court began automating its records and directed other courts in the state to follow suit more than a decade beforehand. Courts of limited jurisdiction have automated their records since the 1990s, as have the appellate and trial courts. For Clean Slate, AOPC realized it could build on the existing data exchange from CPCMS to the PSP via the Pennsylvania Justice Network (known as JNET).³⁷ AOPC developed an automated algorithm that aligned with the conditions of the statute and then worked with PSP and respective counties over the course of the first year of implementation to validate the algorithm used to identify eligible cases for sealing.

Pennsylvania was able to apply algorithms to the existing records systems — MDJS and CPCMS — that resulted in significant cost and time savings, as statewide systems may otherwise have cost millions to build and years to implement. Because of the courts’ transition to automated records, paper records were not able to be sealed via automated Clean Slate processes. Many county or court jurisdictions had been keeping their paper files up to date with the electronic copies prior to Clean Slate. After Clean Slate, every county or jurisdiction was required to make changes to how it treats interaction with its paper copies. For example, courts must compare

³⁷ For a discussion of JNET, see <https://www.pajnet.pa.gov/Pages/default.aspx>.

paper copies of records with electronic copies to consider redactions before they can allow the public to view the paper records onsite.³⁸

The primary challenge to implementation in Pennsylvania was temporal, rather than technical, i.e., stakeholders said its implementation felt rushed.³⁹ As noted earlier, Pennsylvania had one year to build, implement, and test its technical components, and was working through cases that extended 50 years in arrears.⁴⁰ PSP has suggested that other states considering similar legislation give themselves 2–3 years to work through any technical challenges, especially if there is a backlog of records that must be evaluated for eligibility.⁴¹

Timeframe for Implementation

Passed on June 28, 2018, Act 56 directed PSP and AOPC to “identify and complete the processing of records that are eligible [for Clean Slate] within 365 days following the effective date of the Act.”⁴² Its Clean Slate provisions were instituted in June 2019.

Cost to the State

AOPC spent \$3.8 million to implement Clean Slate,⁴³ but the implementation costs would likely have been higher if the Pennsylvania Supreme Court had not already begun to automate and modernize its court records systems. PSP spent approximately \$225,000 implementing Clean Slate, most of which was to update its systems through its information technology provider, and some of which was covered under an ongoing maintenance agreement. While the legislation was passed as an unfunded mandate, its total cost to the state was over \$4 million.⁴⁴

³⁸ David Price and Russel Montchal (AOPC), in discussion with the authors, July 30, 2021.

³⁹ Bradley Timbrell and Mark Shaver (PSP), in Sharon Dietrich, Bradley Timbrell, Mark Shaver, David Price, and Russel Montchal, “Pennsylvania Clean Slate Implementation and Operations,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021. <https://vimeo.com/588460073> at [39:14].

⁴⁰ David Price and Russel Montchal (AOPC), in Sharon Dietrich, Bradley Timbrell, Mark Shaver, David Price, and Russel Montchal, “Pennsylvania Clean Slate Implementation and Operations,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021. <https://vimeo.com/588460073> at [22:35].

⁴¹ Bradley Timbrell and Mark Shaver (PSP), in Sharon Dietrich, Bradley Timbrell, Mark Shaver, David Price, and Russel Montchal, “Pennsylvania Clean Slate Implementation and Operations,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021. <https://vimeo.com/588460073> at [39:46].

⁴² Pennsylvania General Assembly, “2018 Act 56: Crimes Code (18 PA.C.S) and Judicial Code (42 PA.C.S) – Omnibus Amendments. Act of June 28, 2018, P.L. 402, No. 56.” Reg. Sess. 2018. <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=56>.

⁴³ David Price and Russel Montchal (AOPC), in Sharon Dietrich, Bradley Timbrell, Mark Shaver, David Price, and Russel Montchal, “Pennsylvania Clean Slate Implementation and Operations,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021. <https://vimeo.com/588460073> at [45:40].

⁴⁴ Bradley Timbrell (PSP), in discussion with the authors, July 28, 2021.

Benefits to Citizens

The consequences of a criminal conviction extend well beyond the immediate sentence authorized by statute and imposed by a judge.⁴⁵ A legion of invisible punishments,⁴⁶ or collateral consequences, accompany a criminal conviction and function to reduce, restrict, or exclude the felon from civic duties and benefits beyond mere reputational damage. These consequences include loss of the right to vote,⁴⁷ serve on a jury,⁴⁸ access public housing,⁴⁹ be admitted to college⁵⁰ or graduate school,⁵¹ obtain gainful employment or a professional license for any of a variety of careers,⁵² own or possess a firearm,⁵³ and other disabilities.⁵⁴ Because of the adverse consequences associated with a criminal record, many states like Pennsylvania have adopted state-initiated records clearance programs to eliminate the innumerable negative long-term outcomes often faced by ex-offenders.

Proponents of Clean Slate legislation in Pennsylvania cited the state's low rates of individuals who seek records relief through petition, as compared to the total eligible population. Generally

⁴⁵ The most comprehensive and detailed inventories of collateral consequences, research, resources, and commentary are available from the National Inventory of Collateral Consequences, <https://niccc.nationalreentryresourcecenter.org/consequences> and the Collateral Consequences Resource Center, <https://ccresourcecenter.org/>.

⁴⁶ 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).

⁴⁷ 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.

⁴⁸ 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>.

⁴⁹ 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.

⁵⁰ 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).

⁵¹ 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).

⁵² Chidi Umez and Rebecca Pirus, *Barriers to Work: Improving Employment in Licensing Occupations for Individuals with Criminal Records* (Washington, DC: National Conference of State Legislatures, 2018).

⁵³ 18 U.S.C. § 922(g). Also see, <https://www.atf.gov/firearms/identify-prohibited-persons>.

⁵⁴ The vast array of additional collateral consequences is richly cataloged in the National Inventory of Collateral Consequences of Conviction, at <https://niccc.nationalreentryresourcecenter.org/>.

referred to as the “second chance” gap or “uptake” gap,⁵⁵ this pattern exists in many states because of the real and perceived complexities of the petition-based process, and the time and resources it often takes to petition.⁵⁶

Clean Slate legislation should also benefit other community stakeholders. Employers will enjoy a larger potential labor pool and liability protection from having hired an individual with a limited access record due to Clean Slate.⁵⁷ Taxpayers will save money as incarceration rates reduce due to improved re-entry, and communities at large will be safer “due to lower recidivism rates as more justice-involved people are able to move on with their lives and provide for their families.”⁵⁸

Data from Pennsylvania show that, of the roughly 108,000 misdemeanor conviction records that were sealed between 2018 and 2021, only 2% were sealed following a petition (Figure 4). Approximately 20.6 million convictions for summary offenses⁵⁹ were sealed as a result of Clean Slate, as compared to 106,444 misdemeanor convictions. An additional 16.7 million non-conviction records (e.g., arrests without prosecution and findings of not guilty) had also been sealed during the same time period.⁶⁰

Number of Records Sealed by Clean Slate & Petition Processes (2018 - 2021)⁶¹

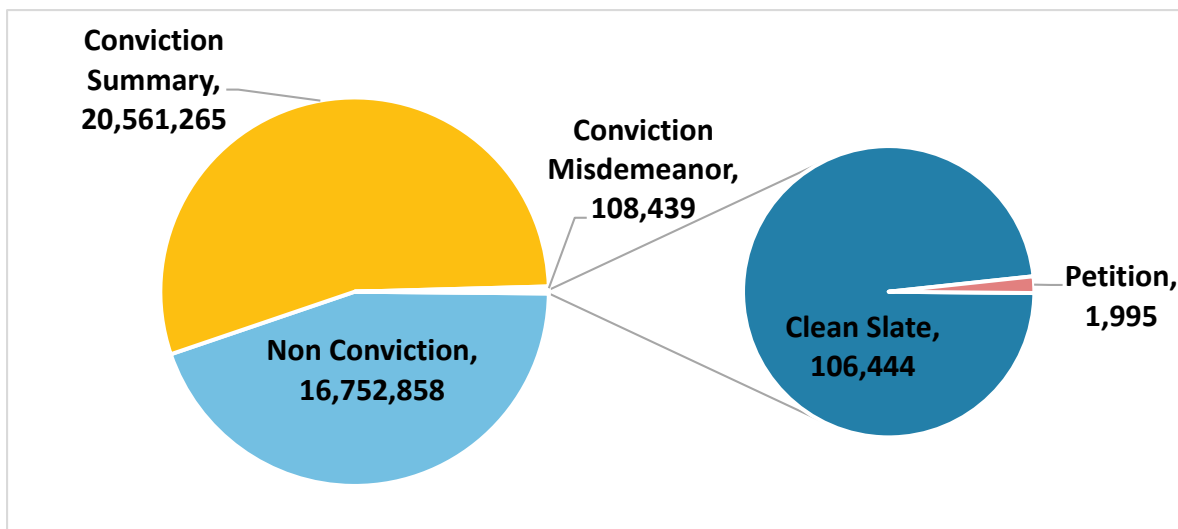


Figure 4: Number of Records Sealed by Clean Slate and Petition Processes, 2018–2021

⁵⁵ For example, as referred to in Colleen Chien, “America’s Paper Prisons: The Second Chance Gap,” 119 *Mich. L. Rev.* 519. 2020. Available at: <https://repository.law.umich.edu/mlr/vol119/iss3/3>.

⁵⁶ Center for American Progress, “Clean Slate Toolkit,” November 15, 2018. <https://americanprogress.org/article/clean-slate-toolkit/>.

⁵⁷ See Title 18, § 9122.6. “Employer immunity from liability.” <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18>.

⁵⁸ Center for American Progress, “Clean Slate Toolkit,” November 15, 2018. <https://americanprogress.org/article/clean-slate-toolkit/>.

⁵⁹ Summary offenses in Pennsylvania are non-traffic citations for minor offenses.

⁶⁰ Administrative Office of Pennsylvania Courts, *Processed Clean Slate Counts by County (June 28, 2019 – October 31, 2021)*. <https://www.pacourts.us/Storage/media/pdfs/20210709/164750-processedcleanslatenumbers-county.pdf>.

⁶¹ Ibid.

Coalitions in Support of Clean Slate

Act 56 (2018) had sponsors from both the Democratic and Republican parties, and enjoyed support from organizations with different perspectives.⁶² The key partner in the proposed legislation's bipartisan support was the Justice Action Network (JAN).⁶³ JAN successfully recruited conservative partners, including Scott Wagner (R-District 28) who was poised to become the Republican gubernatorial candidate at the time, to become key sponsors because it would help employers hire individuals with criminal records.

Another key champion was the Pennsylvania Chamber of Business of Industry, which advocated for criminal records relief for its benefits to businesses seeking to hire employees. Gene Barr, president of the Pennsylvania Chamber, supported the legislation to increase the labor pool through easier hiring of individuals with prior criminal histories. It was also promoted as reassurance to companies concerned about liability when they hire individuals with a criminal background.⁶⁴

The Philadelphia Eagles (National Football League) also supported and promoted the bill.⁶⁵ With these other groups onboard, the Pennsylvania District Attorneys Association agreed to support the legislation as well.

Process Post-Sealing

Access to Sealed Records

Non-convictions and summary offenses may only be sealed under Clean Slate, although these offenses may be expunged under the petition-based process. Summary convictions more than 5 years old may be petitioned for an expungement; under Clean Slate, they are sealed after 10 years.

Records sealed via Clean Slate are available to criminal justice agencies, other agencies such as the Department of Human Services for child protective services uses, and (under the 2016 law) to state professional and occupational licensing agencies (18 Pa. Cons. Stat. § 9121.1 (b.1) and (b.2)).⁶⁶ AOPC places sealed records in a Life Cycle File and requires all purchasers of AOPC data (primarily private background check companies) to remove such records from their datasets.⁶⁷

These differences are important to FBI background checks, as sealed cases remain visible to the FBI, other law enforcement and certain licensing and regulatory agencies. If an individual is a

⁶² Sharon Dietrich (Community Legal Services of Philadelphia), in Sharon Dietrich, Bradley Timbrell, Mark Shaver, David Price, and Russel Montchal, "Pennsylvania Clean Slate Implementation and Operations," presented at SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021. <https://vimeo.com/588460073> at [7:45].

⁶³ Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

⁶⁴ Hannah Knowles, "Criminal records can be a 'life sentence to poverty.' This state is automatically sealing some," *The Washington Post*, July 1, 2019. <https://www.washingtonpost.com/nation/2019/07/01/criminal-records-can-be-life-sentence-poverty-this-state-is-automatically-sealing-some/>.

⁶⁵ Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

⁶⁶ See Title 18 § 9122.1. "Petition for limited access." <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18>.

⁶⁷ David Price and Russel Montchal (AOPC), in discussion with the authors, July 30, 2021.

teacher or works in a nursing home, they would need to have the records expunged, rather than sealed, to prevent the sealed records from appearing on an FBI background check.⁶⁸

Notably, some individuals choose to file a petition to expunge sealed records so that they do not appear on FBI background checks. While non-conviction charges and summary convictions are eligible for *expungement* in Pennsylvania law, they can only be sealed under Clean Slate.

Records Access for Researchers

No members of the public, including researchers, have access to sealed records in Pennsylvania. Because the records still exist, Pennsylvania could change its access rules in the future to enable research entities to better study the impacts of Clean Slate on outcomes such as employment opportunities and housing access. If such changes are not made, it will be difficult to determine the intended long-term impacts of Clean Slate, beyond tallies of records sealed. For instance, one of the reasons cited for adopting Clean Slate was to increase the employment prospects of individuals with criminal records. Without access to information regarding which records were sealed, it is impossible to know if beneficiaries of Clean Slate records clearance were able to achieve better employment outcomes.

Notification Requirements

According to [Title 18 § 9122](#), “notice of expungement shall promptly be submitted to the central repository which shall notify all criminal justice agencies which have received the criminal history record information to be expunged.”⁶⁹ Similarly, the court must notify PSP and other record custodians of any arrests or convictions that must be sealed under Clean Slate so that any copies maintained by other governmental agencies will be appropriately shielded from public or other unauthorized access.

Individuals are *not* notified when their records are sealed, but may access their own court records online at no charge by using the [Unified Judicial System of Pennsylvania Web Portal](#).⁷⁰ Individuals can search using appellate court information, attorney, calendar event, citation number, complaint number, date field, docket number, incident number, organization, OTN, parcel, participant name, or a State Identification Number (SID), which is assigned by PSP when a person is first fingerprinted.

Individuals may also request a copy of their records maintained by PSP. To request results of a name-based search of PSP records, individuals must submit a completed [form SP4-170](#) along with a certified check or money order for \$20 and a copy of a valid government-issued identification card by mail to PSP.⁷¹ Criminal history records will be returned to the requestor by mail and may take 3 months or longer to process.⁷² The name-based PSP check only includes records maintained by PSP, but individuals may also wish to review records maintained by the

⁶⁸ Sharon Dietrich (Community Legal Services of Philadelphia), in discussion with the authors, July 29, 2021.

⁶⁹ <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=91&sctn=22&subsctn=0>.

⁷⁰ <https://ujportal.pacourts.us/CaseSearch>.

⁷¹ <https://epatch.state.pa.us/>.

⁷² https://epatch.state.pa.us/help/SP4-170_A&R.pdf and <https://epatch.state.pa.us/>.

FBI, as they may include additional information (e.g., sealed records from Pennsylvania and/or out-of-state records).

The FBI provides detailed information on obtaining one’s criminal history records on its [Criminal Justice Information Services \(CJIS\) website](#).⁷³ To obtain copies of FBI records, an individual must submit \$18 and a copy of their fingerprints on an [FD-1164 Identity Summary Request Form](#) to the FBI either online or by mail to verify their identity.⁷⁴ Fingerprints can be taken at state and local law enforcement agencies or through an approved [FBI Channeler](#).⁷⁵ Electronic requests take approximately 3–5 days to complete once a fingerprint card is received, while mailed requests take approximately 2–4 weeks to process.⁷⁶

Remaining Questions and Discussion

Due to the time elapsed since implementation, there is considerable information available on the Pennsylvania Clean Slate legislation relative to other states. Certain information is lacking, however, such as the demographics of individuals who have had their records sealed and those who file petitions. The state also lacks data on employment, housing, or education outcomes of individuals who have their records sealed and whether they differ from those with no records, or those who have not had their records sealed.

Questions also remain about other types of charges the state may consider including in future expansions of clean slate. “Clean Slate 3.0” is likely to be introduced in the Pennsylvania General Assembly in the coming years,⁷⁷ which is expected to explore the broadening of Clean Slate eligibility to include drug felonies after a waiting period of 10 years and shorten waiting periods for other offenses.

⁷³ <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/identity-history-summary-checks#Online>.

⁷⁴ Ibid.

⁷⁵ <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/identity-history-summary-checks/list-of-fbi-approved-channelers-for-departmental-order-submissions>

⁷⁶ <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

⁷⁷ Sharon Dietrich (Community Legal Services of Philadelphia), in Sharon Dietrich, Bradley Timbrell, Mark Shaver, David Price, and Russel Montchal, “Pennsylvania Clean Slate Implementation and Operations,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research, St. Louis, MO, July 13, 2021. <https://vimeo.com/588460073> at [13:31].

Clean Slate State Profile: Texas

OCTOBER 2022

The State of Texas has established record relief processes that allow adults to seek **Expunction** (whereby one’s records are destroyed in the criminal history), or an **Order of Nondisclosure** (that limits its access or disclosure). Both forms of records relief have petition-based and non-petition-based processes, although the latter only occurs in limited circumstances. Expunged records are destroyed, but records ordered “nondisclosed” in Texas remain accessible by law enforcement, licensing/professional boards, or other justice entities, but are not otherwise accessible.

As of the date of this document, the State of Texas has no pending “Clean Slate” legislation. The purpose of this State Profile is to provide an overview of the current records relief options available in Texas for adults, and describe how these forms of relief operate in the courts and in the criminal history repository.

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Key Terms and Acronyms in Texas

- **Expunction:** Term used to describe records that have been destroyed or returned to the court of record in Texas.
- **Order of Nondisclosure (OND):** Term used interchangeably with sealing; meaning to remove records from public view or access.
- **TX DPS:** Texas Department of Public Safety, which maintains the criminal history repository for the State of Texas
- **OCA:** Office of Court Administration in Texas. The court system in Texas is not considered to be unified.

Texas' Records Relief Options

Texas law has an established records clearance process that is primarily driven by petition. Adults may seek **Expunction** (record destruction) or an **Order of Nondisclosure** (OND, restricts public access to a record).¹ A third process – **Sealing** – pertains exclusively to Juvenile Records,² and is not addressed in this document. Expunctions and Orders of Nondisclosures are both primarily petition-based processes; however, in very limited circumstances, each may also be issued by the court without filing a petition.

Statutes governing ONDs are commonly updated in legislative sessions in Texas. ONDs are easier to amend than expunctions because groups that would normally oppose expanded expunctions, such as law enforcement and licensing agencies, do not oppose ONDs since, as the records are not destroyed, their access is maintained.

While ONDs may be more attractive for the Texas Legislature to amend, expunction may be the more common form of records relief in Texas. In 2021, the Texas Department of Public Safety (DPS) reports that it processed 3,860 nondisclosure orders from the courts, which only represents a slight decrease from the previous 2 years (3,994 and 4,399 in 2020 and 2019, respectively).³ Meanwhile, 21,378 expunctions and juvenile sealings are processed annually by the State.⁴

Expunction

Current Texas law provides for expunction⁵ of records, whereby the petitioner's criminal history record and files are destroyed or returned to the court. All indexed references to the records should also be deleted, and federal agencies or central repositories should delete or obliterate all references.⁶ Private entities that purchase criminal history information from the DPS are notified to delete or destroy any information in their possession related to an expunged record.⁷ The person arrested "may deny the occurrence of the arrest and the existence of the expunction order," and "when questioned under oath, may state only that the matter in question has been expunged."⁸ Expunction is considered a civil action in the State of Texas.⁹

¹ A number of resources are available to citizens to determine whether they qualify for an expunction or order of nondisclosure. See, for example, <https://texaslawhelp.org/article/clear-or-seal-your-record-expunctions-vs-nondisclosures-in-texas> and <https://georgetown.neotalogic.com/a/TexasFreshStartV2>.

² Sealing of juvenile records in Texas is equivalent to expunction, since the records are actually destroyed.

³ Texas DPS, personal communication with authors, January 5, 2022, and August 23, 2022.

⁴ Texas DPS did not begin to separate counts of expunctions from juvenile sealings until mid-2021, so these figures are reported together. Texas averaged 21,378 adult expunction and juvenile sealings for the 3-year period 2019–2021. Calculations made from figures provided by Texas DPS, March 24, 2022.

⁵ TX Code Crim Pro art [55.01](#) (2022).

⁶ TX Code Crim Pro art [55.02 § 2](#) (2022).

⁷ TX Code Crim Pro art [55.02 § 3 \(c-2\)](#) (2022).

⁸ TX Code Crim Pro art [55.03 §§ 1-3](#) (2022).

⁹ Jeanine Hudson, Texas DPS, personal communication with authors, January 4, 2022.

Similar restrictions occur in the courts. In local courts, an expunged case is obliterated from the clerk’s case management system, and any agency or office that has records associated with the expunged case must do the same.¹⁰ Financial records related to expunged cases are maintained, but all identifying information is removed.¹¹ The Office of Court Administration (OCA) permanently deletes the case documents and information from its records service and document storage systems, respectively known as **E-file Texas** and **Re:SearchTX**.¹²

Eligibility

In general, individuals who have been acquitted at trial,¹³ or who were convicted and subsequently pardoned or otherwise granted relief on the basis of actual innocence, or who have been released without charge and with no pending charges,¹⁴ or were convicted of certain unlawful weapons carrying charge before September 2021¹⁵ are entitled to have all records and files related to the arrest expunged in Texas. Expunctions may also be processed for individuals who have aging arrests or the statute of limitations have passed,¹⁶ or where the case involves inaccurate or false identification information.¹⁷

Individuals with Class C deferred adjudications or deferred prosecutions are also eligible for expunctions.¹⁸ Absent a pardon or acquittal on appeal, individuals with felony convictions, and individuals who are convicted of any offense or placed on community supervision for an offense more serious than a Class C misdemeanor are *ineligible* to have their records expunged. A person is also *not eligible* if the arrest relates to a probation violation warrant or if the person absconds from the jurisdiction after having been released on bond.¹⁹

Certain offenses that would otherwise be ineligible may become eligible if the defendant completes pre-trial diversion.²⁰ Some mental health treatment courts, drug treatment courts, and veterans’ treatment courts allow for expunction in certain cases.²¹ Expunging certain decriminalized misdemeanor offenses has been proposed in legislation, but did not pass the full legislature.²²

¹⁰ Sheri Woodfin, former District Clerk in Tom Green County, in communication with authors, August 29, 2022.

¹¹ Ibid.

¹² Casey Kennedy, Director of Information Services, Texas OCA, in communication with authors, August 29, 2022. Criminal records are not publicly available on Re:SearchTX.

¹³ There are numerous exceptions and nuance to this generalized list of eligibility criteria. For example, “A court may not order the expunction of records and files [for an acquitted offense]... if the offense for which the person was acquitted rose out of a criminal episode... and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.” TX Code Crim Pro art [55.01\(c\)](#) (2022).

¹⁴ TX Code Crim Pro art [55.01\(a\)\(1\)\(B\)](#) (2022).

¹⁵ TX Code Crim Pro art [55.01\(a\)\(1\)\(C\)](#) (2022).

¹⁶ TX Code Crim Pro art [55.01\(a\)\(2\)](#) (2022).

¹⁷ TX Code Crim Pro art [55.01\(d\)\(1\)](#) and art [55.01\(d\)\(2\)](#) (2022).

¹⁸ TX Code Crim Pro art [55.01\(a\)\(2\)](#) (2022).

¹⁹ TX Code Crim Pro art [55.01\(a-1\)](#) and art [55.01\(a-2\)](#) (2022).

²⁰ TX Code Crim Pro art [55.02](#) (2022).

²¹ TX Code Crim Pro art [55.01\(a\)\(2\)\(A\)\(ii\)](#) (2022).

²² [HB 859 in the 87th Legislative Session](#) passed the Texas House but stalled in committee in the Senate. It is not current law.

Petition Process

With few exceptions, expunction requires action on the part of the individual in Texas. In cases resulting from pardons or acquittals on appeal, individuals may request an expunction of the trial court within 30 days of the acquittal:²³ either the individual's attorney or the attorney for the state may prepare the order for the court.²⁴

Regardless of request or petition, the amount of information required is roughly equivalent: demographic and contact information, details about charged offense(s) and where it took place, case number, and a list of law enforcement or other criminal justice agencies that may have records.²⁵

Waiting periods apply for expunction petitions. Even if no charges were filed, there is a minimum waiting period before one may file an application for expunction: 180 days for Class C misdemeanors, 1 year for Class A and B misdemeanors, and 3 years for felonies or if there was a felony charging arising out of the same transaction for which the person was arrested. Recent jurisprudence has relaxed the requirement that the statute of limitations expire for every conviction for which the individual was arrested (not just those that are charged): misdemeanors are eligible for expunction on an individual basis.²⁶

Expunctions are usually filed electronically, but some paper-based expunction filings do occur on a limited basis.²⁷ If the record holder decides to use an attorney, the case must be filed electronically per Texas Court Rules. Cases filed by an individual on their own behalf may be filed via paper with the court clerk's office.

Expunction fees vary by jurisdiction, ranging from \$225–\$350,²⁸ although associated legal fees have been estimated to top \$3,000.²⁹ Individuals are encouraged to contact the county clerk's office where the offense(s) occurred to determine the exact fee amounts being imposed by those courts. The filing fee may be waived due to indigency and the Supreme Court of the State of Texas provides an online [indigency form](#).

²³ TX Code Crim Pro art [55.02 § 1](#) (2022).

²⁴ *Ibid.*

²⁵ TX Code Crim Pro art [55.02 § 2\(b\)](#) (2022).

²⁶ Per Texas Supreme Court ruling in [Ex parte R.P.G.P. 623 S.W.3d 313](#) (Tex. 2021). See also Texas RioGrande Legal Aid, "Clear or seal your record? Expunctions vs. Nondisclosures in Texas," July 1, 2022. <https://texaslawhelp.org/article/clear-or-seal-your-record-expunctions-vs-nondisclosures-in-texas>.

²⁷ Texas DPS, personal communication, January 4, 2022.

²⁸ Sites consulted: The City of Houston charges \$227, <https://www.houstontx.gov/police/expunction/>. Dallas charges \$292 plus fees for certified copies, https://www.dallascounty.org/Assets/uploads/docs/district-clerk/downloadable_forms/Guidelines_FilingExpunctions_091317.pdf. Tarrant and Bexar Counties charge \$350, https://www.tarrantcounty.com/content/dam/main/district-clerk/Civil_Filing_Fees.pdf?linklocation=Iwantto&linkname=Civil and <https://www.bexar.org/3103/Fee-Schedule>. El Paso charges \$350, https://www.epcounty.com/districtclerk/documents/Schedule_of_Fees.pdf. Texas Legal Aid reports that fees vary by court, <https://texaslawhelp.org/guide/i-need-to-clear-an-arrest-from-my-record-expunction/?toggle=0>.

²⁹ Jacob Vaughn, "[As Part of Annual Program, Dallas County Expunges 800 Criminal Offenses](#)," *Dallas Observer*, November 29, 2021.

Expunction hearings are held no sooner than 30 days from the petition’s filing to give each official or agency notice via certified mail or secure email.³⁰ Appeals of court decisions may be made and follow the same manner as other civil cases in Texas.³¹

When an expunction order is final (30 days after it is signed), the court notifies DPS,³² which will destroy the record³³ and notify the FBI that the record has been expunged. The court will also notify local custodians of records (e.g., law enforcement and prosecutors) so their records may also be destroyed. Once an expunction order has been processed, DPS sends a letter to the court affirming that it has processed the order.³⁴ Generally speaking, expunction orders require the court to obliterate all public references to the court proceeding, but it maintains files in an area not open to inspection.³⁵

To determine if one’s records have been cleared, an individual may be fingerprinted and request a copy of his/her own criminal history record to see that records have been expunged. Depending on jurisdiction, the courts in some counties may also send individuals a copy of the letter from DPS affirming that the order of expunction was carried out.³⁶

Order of Nondisclosure

An Order of Nondisclosure (OND) is a “court order prohibiting public entities such as courts and police departments from disclosing certain criminal records.”³⁷ It is considered a civil action in Texas. Sealing restricts the offense from being accessed by the general public and keeps an individual from having to disclose certain information about their criminal history in response to questions on job applications.³⁸ Records under ONDs may be disclosed to criminal justice agencies for criminal justice purposes, to the record holder, and to certain state licensing and professional boards.³⁹

When a nondisclosure is issued in the courts, local courts are to mark the files as Confidential by reason of OND and would be accessible only by those with statutory authority to review the case.⁴⁰ If someone without credential or authority asks the clerk for the record, the response would be that there is no record.⁴¹ With OCA, the court information is permanently deleted from its records service (Efile Texas) and document storage systems (Re:SearchTX).⁴²

³⁰ TX Code Crim Pro art 55.02 § 2(c) (2022).

³¹ TX Code Crim Pro art 55.02 § 3(a) (2022).

³² TX Code Crim Pro art 55.02 § 3(c) (2022).

³³ TX Code Crim Pro art 55.02 § 1a(c) (2022).

³⁴ Michelle Farris, Texas DPS, personal communication with authors, March 24, 2022. See also TX Code Crim Pro [art 55.02 § 5\(a\)\(1\)](#) (2022).

³⁵ TX Code Crim Pro [art 55.02 § 5](#) (2022).. There are numerous exceptions based on circumstances triggering the issuance of an expunction.

³⁶ Michelle Farris, Texas DPS, personal communication with authors, March 24, 2022.

³⁷ Texas OCA, [An Overview of Orders of Nondisclosure](#), February 2022. See also: TX Gov Code [§ 411.0755](#) (2022).

³⁸ Ibid.

³⁹ TX Gov Code [§ 411.0765](#) (2022).

⁴⁰ Sheri Woodfin, former District Clerk in Tom Green County, in communication with authors, August 29, 2022.

⁴¹ Ibid.

⁴² At this time, criminal proceedings are not available on Re:SearchTX. *Source:* Casey Kennedy, Director of Information Services, Texas OCA, in communication with authors, August 29, 2022.

Eligibility for Nondisclosure

Texas lists 10 categories of eligible offenses with restrictions and instructions to follow, depending on the circumstance.⁴³ The eligibility criteria, including waiting periods, and instructions are grouped in 10 categories:⁴⁴

1. Deferred Adjudication Community Supervision for Certain Nonviolent Misdemeanors.
2. Deferred Adjudication Community Supervision for Felonies and Certain Misdemeanors.
3. Deferred Adjudication Community Supervision for Certain Driving or Boating While Intoxicated Misdemeanors.
4. Successful Completion of Veterans Treatment Court Program.
5. Certain Victims of Trafficking of Persons.
6. Certain Veterans Placed on Community Supervision.
7. Community Supervision Following Conviction for Certain Misdemeanors.
8. Community Supervision Following Conviction and Certain Driving While Intoxicated Convictions.
9. Conviction for Certain Misdemeanors.
10. Conviction of Certain Driving While Intoxicated Convictions.

Each of the 10 eligible offense categories has specific instructions to follow.⁴⁵ For this reason, Texas highlights three common circumstances that would make a petitioner *ineligible* to receive an OND for a given offense,⁴⁶ rather than the myriad of reasons that may make an individual eligible for an OND:

- (1) Persons who have ever been convicted of (or placed on deferred adjudication for) any of the following:
 - offenses requiring sex offender registration,
 - aggravated kidnapping,
 - murder or capital murder,
 - trafficking of persons,
 - injury to a child, elderly or disabled individual,
 - abandoning or endangering a child,
 - violation of court orders or bond conditions in certain cases, including sexual assault or abuse, stalking or human trafficking, and
 - repeated violation of courts orders.
- (2) If the court has made an affirmative finding that the offense of interest involves family violence.
- (3) If the petitioner was convicted of or placed on deferred adjudication during the prescribed waiting period following conviction, probation, or deferred adjudication for the offense for which the OND is sought.⁴⁷

⁴³ For an overview, see Office of Court Administration, [An Overview of Orders of Nondisclosure](#), February 2022.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid, pages 3–4.

To qualify for an OND in Texas, the sentence must have been successfully discharged — meaning that all fines, fees, and restitution requirements must have been made, or have been waived by the court.⁴⁸ The local courts have access to records to determine whether the defendant has met their financial obligations.⁴⁹

Petition Process for Nondisclosure

Texas has 10 different categories of nondisclosure petitions and orders, each of which corresponds with slightly different instructions depending on the type of offense or adjudication. Each category has its own requirements and procedures.⁵⁰ Selecting the appropriate procedure for requesting the OND has been simplified in the OCA’s [Overview of OND](#) document.

Individuals may petition local courts for ONDs. Petitioners must first identify which set of laws apply to the offense that they seek to have non-disclosed. Petitioners are expected to collect the necessary documents related to their particular case, and file them with the Clerk of the Court in the county that sentenced them or placed them on community supervision or deferred adjudication community supervision. Petitions take the form of a multi-page letter to the court where model language is provided and blank spaces describing the applicable offense/individual are completed.⁵¹ Typical documents include copies of judgment in the case, signed orders or documents pertaining to the case (including reductions or completion), discharge orders, discharge and dismissal orders, and signed orders reflecting any affirmative findings made by the judge.⁵²

Civil action filing fees for petitions of Nondisclosure vary by county, but typically range between \$280–\$320.⁵³ Petitioners must contact the clerk of the county where the petition will be filed to obtain the correct fee information. Petitioners who are unable to pay the fees may submit a [Statement of Inability to Afford Payment of Court Costs](#).

State-Initiated Records Relief

After a given period of time, select offenses do not require a petition for nondisclosure. For example, convictions for prostitution where the offender was a victim of human trafficking can be sealed by an OND and do not have to be disclosed.⁵⁴ Similarly, defendants who have successfully completed deferred adjudication community supervision for certain nonviolent

⁴⁸ Jeanine Hudson (Texas DPS), personal conversation with authors, January 4, 2022. See also TX Code Crim Pro art [42.15](#), art [42.037](#), and art [42.10](#) (2022).

⁴⁹ Court costs, fines, and fees are collected by clerks, probation departments, and pretrial diversion programs (and remitted to the County Treasurer or Auditor). Source: Margie Johnson, OCA, and Sheri Woodfin, former District Clerk in Tom Green County, in communication with authors, August 29, 2022.

⁵⁰ TX Gov Code §§ [411.072](#), [411.0725](#), [411.0726](#), [411.0727](#), [411.0728](#), [411.0729](#), [411.073](#), [411.0731](#), [411.0735](#), [411.0736](#).

⁵¹ For example, see Office of Court Administration, [Instructions and Model Letter for Orders of Nondisclosure Under Section 411.072](#), April 2017.

⁵² Office of Court Administration, [An Overview of Orders of Nondisclosure](#), February 2022.

⁵³ See [Guidelines to Filing Nondisclosures](#), September 13, 2017; and [Instructions for Completing the Model Petition for Order of Nondisclosure Under Section 411.0729](#), January 2020, as an example.

⁵⁴ TX Gov Code § [411.0728](#) (2022).

misdemeanors,⁵⁵ and certain veterans placed on deferred adjudication community supervision under a veterans reemployment program⁵⁶ do not have to file a petition to receive an OND.

Many misdemeanors may be sealed *without a petition* after 180 days of a person’s discharge from community supervision as a result of a deferred adjudication.⁵⁷ *Exceptions* to this requirement are for the following misdemeanors: driving⁵⁸ or boating⁵⁹ while intoxicated; kidnapping, unlawful restraint and smuggling of persons,⁶⁰ sexual offenses,⁶¹ assaultive offenses,⁶² offenses against the family,⁶³ disorderly conduct and related offenses,⁶⁴ prostitution offenses,⁶⁵ weapons offenses,⁶⁶ and organized crime.⁶⁷ As long as a person was not convicted of one of the misdemeanors that are statutorily excepted, a judge may only reject an OND if they make an *affirmative determination* that it is not in the best interest of justice to allow the defendant to have their record sealed. If this determination is made, then the defendant must proceed through the petition-based process to see if their case is eligible for an OND.⁶⁸ Examples of misdemeanors that may qualify for an OND without a petition are writing bad checks, gambling, shoplifting, theft of property, prostitution, criminal trespassing, possession of marijuana, and minors in possession of alcohol or tobacco.⁶⁹

Process of State-Initiated Relief

Individuals who receive a discharge and dismissal from deferred adjudication community supervision for a qualifying nonviolent misdemeanor may qualify to receive a nondisclosure that does not require a petition.⁷⁰ These nondisclosures are intended to “be automatic for first time offenders”; however, in practice, individuals often have to remind the court to issue the nondisclosure.⁷¹ Reasons that this may occur is because the court needs evidence or additional information from the defendant, or the defendant may not have paid a required fee before the order may be issued.⁷² To address this, OCA has drafted a letter that defendants with a

⁵⁵ TX Gov Code § [411.072 \(b\)](#) (2022).

⁵⁶ TX Gov Code § [411.0729](#) (2022).

⁵⁷ TX Gov Code § [411.072](#) (2022).

⁵⁸ TX Penal Code § [49.04](#) (2022).

⁵⁹ TX Penal Code § [49.06](#) (2022).

⁶⁰ TX Penal Code § [20](#) (2022).

⁶¹ TX Penal Code § [21](#). (2022)

⁶² TX Penal Code § [22](#) (2022).

⁶³ TX Penal Code § [25](#) (2022).

⁶⁴ TX Penal Code § [42](#) (2022).

⁶⁵ TX Penal Code § [43](#) (2022).

⁶⁶ TX Penal Code § [46](#) (2022).

⁶⁷ TX Penal Code § [71](#) (2022).

⁶⁸ TX Gov Code § [411.072\(d\)](#) (2022).

⁶⁹ Office of Court Administration, [An Overview of Orders of Nondisclosure](#), February 2022.

⁷⁰ TX Gov Code § [411.072](#) (2022). The discharge and dismissal must have been granted under TX Code Crim Pro art [42A.111](#) (2022), and certain requirements must be met.

⁷¹ Texas Law Help, “How do I file for nondisclosure?” <https://texaslawhelp.org/article/clear-or-seal-your-record-expunctions-vs-nondisclosures-in-texas#how-do-i-file-for-expunction->.

⁷² Margie Johnson, Texas OCA, in communication with authors, August 29, 2022.

qualifying discharge and dismissal can submit to the court, to remind it of its obligation to consider whether or not an OND is appropriate.⁷³

Notification and Access Restriction Process

When the courts issue an OND, the clerk of the court must send DPS all relevant criminal history record information contained in the order or a copy of the order by certified mail, secure electronic mail, electronic transmission, or facsimile transmission within 15 business days.⁷⁴ Within another 10 business days, DPS seals relevant criminal history information in the order.⁷⁵

ONDs restrict access to the records in the courts, but they remain viewable by law enforcement and licensing and professional boards, pursuant to state or federal law.⁷⁶ DPS controls access to records through its online portal via user login credentials, so that access is only allowed for what an individual may legally view.⁷⁷

The Courts may not share non-disclosed records with the public; they remain sealed at the Courts.⁷⁸

Sharing with Private Entities

Private entities purchasing the criminal history record information from DPS are required to purge non-disclosures and expunctions,⁷⁹ and failure to do so invites civil liability.⁸⁰ Eligible private entities maintain accounts with the TX DPS Public Site. ONDs are sent to them electronically to review and purge from their records/database. DPS also sends a monthly list of expunctions to the private entities to provide notice to remove the expunged records.⁸¹

Counties are neither required nor prohibited from selling court case records. Each county decides and determines the most efficient way to sell records. Generally, if a company purchases batch records, they are required to get frequent updates to a record that was previously conveyed. When an expunction/OND is signed, these companies are notified to remove the affected records from their database. The clerk removes expunged records from the local case management system, prevents the disclosure of records subject to OND, and performs audit checks.⁸²

Transactional records may be accessed on *Re:SearchTX*, a data storage system managed by OCA. *Re:SearchTX* allows for transactional searches, but contains no criminal history information at

⁷³ Ibid.

⁷⁴ TX Gov Code § [411.075\(a\)](#) (2022).

⁷⁵ TX Gov Code § [411.075\(b\)](#) (2022).

⁷⁶ See TX Gov Code § [411.0765](#) (2022) for a list of agencies that have the authority to view nondisclosed information via their access to the DPS's secure website.

⁷⁷ Jeanine Hudson, Texas DPS, personal communication with authors, January 4, 2022.

⁷⁸ TX Gov Code § [411.076](#) (2022).

⁷⁹ TX Code Crim Pro § [55.02\(c-2\)](#) and TX Gov Code § [411.0851](#) (2022).

⁸⁰ TX Business and Commerce Code § [109.005\(b\)](#). State restrictions are listed under TX Business and Commerce Code § [109.006](#) (2022).. Officers or employees of the state are restricted under TX Code Crim Pro art [55.04 §§ 1-3](#) (2022).

⁸¹ Jeanine Hudson, Texas DPS, in conversation with the authors, January 4, 2022.

⁸² Sheri Woodfin, former District Clerk for Tom Green County, in conversation with authors, August 29, 2022.

this time. OCA does monitor the speed of clicks to ensure that only humans (rather than computers) are accessing the files. Any files in *Re:SearchTX* are hard-deleted upon notification of an expunction or OND.⁸³

Notifying Individuals

After an expunction, DPS sends notice to the courts that the Order has been completed. The clerk is able to share that notice with the petitioner and/or their attorney.⁸⁴

Nondisclosures are visible on the person's criminal history record (for appropriate entities requesting it). If an individual is fingerprinted and requests a copy of their record, they will see that the offense has been subject to an Order of Nondisclosure. The nondisclosure will not be visible for entities not legally allowed to view it.

⁸³ Casey Kennedy, Director of Information Services, Texas OCA, in conversation with authors, August 29, 2022.

⁸⁴ Texas DPS, in communication with authors, September 7, 2022.

Clean Slate State Profile: Utah

September 2022

In March 2019, Utah became the second state in the nation to pass and sign Clean Slate legislation into law. While its original effective date was May 1, 2020, its implementation was delayed due to the COVID-19 pandemic. Utah’s Clean Slate legislation is intended to automate the identification of eligible records, a process which Utah has validated through its comparison to manual identification, and is being applied retroactively to cases. As of summer 2022, Utah is in the midst of the process of identifying and matching cases with individual defendants but continues to conduct manual checks and adjust the coding to verify results produced by its algorithms.

The purpose of this Clean Slate State Profile is to:

- Summarize the differences between Utah’s new records clearance processes and its existing petition-based process (which will continue to exist for cases not eligible for clearance under Clean Slate).
- Explore new eligibility standards.
- Review the costs and challenges of Clean Slate implementation and maintenance.
- Assess the benefits of the new automated process.

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Key Terms, Actors, and Acronyms in Utah

- **Expunge:** In Utah, expunging a criminal record means that the court orders the history of the case to have restricted access. *Expungement in Utah does not mean the destruction or obliteration of criminal history records.* Expungement relates to records of the arrest, investigation, detention, and conviction (including a verdict or finding of guilty after trial or a guilty plea). Expungement only applies to government agencies. It does not affect third-party records (e.g., Internet searches, media accounts).
- **Seal:** “Sealed” is used interchangeably with “expunged” in Utah. Both terms essentially mean that record access is restricted.
- **Vacatur:** A form of expungement in Utah available on petition where the offense is committed while the petitioner is subject to force, fraud, or coercion. It is generally only used in limited cases, such as for victims of human trafficking.
- **Utah Administrative Office of the Courts (AOC):** The agency manages a unified court system and identifies eligible cases through a computer algorithm/program developed by Code for America (CfA).
- **Utah Prosecutors:** Review case files to assess eligibility and agree or object.
- **Utah Bureau of Criminal Identification (BCI):** The State Criminal History Records Repository issues Certificates of Eligibility, verifies eligibility under Clean Slate, and processes Expungement Orders issued by courts and notifies law enforcement agencies. BCI is a division within the Utah Department of Public Safety (DPS).
- **Plea in Abeyance:** Special circumstance where an individual pleads “guilty” or “no contest” and completes conditions under an agreement, resulting in no conviction on their record.
- **Certificate of Expungement Eligibility:** Document that certifies an individual meets eligibility criteria for expungement.

Overview: Utah’s Petition-based Records Relief Process

Utah has an established **petition-based** process for records relief and is also in the process of implementing a Clean Slate **state-initiated** process. Both Utah’s petition-based system and state-initiated processes provide relief through *records expungement*, a term that is synonymous with sealing in Utah. Utah’s established petition-based process generally provides relief for eligible non-convictions, some misdemeanors, and select felony convictions, whereas its newer state-initiated process is limited to non-convictions and select misdemeanors.

Expunging Criminal Records via Petition

The State of Utah currently provides a petition-based process for expunging criminal records, which effectively *seals* the record and restricts access to the general public and for most employment screening purposes.

“Expunging a criminal record [in Utah] means that the court orders the history of the case sealed. This includes records of the arrest, investigation, detention, and conviction, including a verdict or finding of guilty after trial or a guilty plea.”¹ Individuals whose records have been expunged may legally report to others that the arrest or conviction never happened.²

Eligibility

Utah’s current petition-based records relief process covers arrest records and criminal convictions, although each has different eligibility criteria related to mandatory waiting periods, case outcomes, and offense severity.

Arrest records. Arrest records may be cleared 30 days after the date of arrest, if there are no criminal cases pending, and specific conditions are met regarding how the charges were filed. Charges are eligible for expungement if:

- they were screened but no charges were filed,
- charges were filed but the case was dismissed with prejudice (including in accordance with a *Plea in Abeyance*³), dismissed without prejudice or without condition and the prosecutor consents in writing to issue a Certificate of Eligibility,⁴ or
- at least 180 days have passed since the case dismissal date; or charges were filed, but the individual was acquitted at trial; or if the statute of limitations has expired.⁵

¹ Utah Courts, “Expunging Adult Criminal Records: What expungement means” (n.d.), accessed Sept. 24, 2021. <https://www.utcourts.gov/howto/expunge/#what>.

² Ibid.

³ A Plea in Abeyance may be accepted by the clerk of court in some situations (under Rule 4-704). Under a plea in abeyance, no judgment of conviction will be entered against the defendant, and charges will be dismissed when the defendant has completed the conditions of the agreement. See, Utah Courts, “Plea in Abeyance” (n.d.), at https://www.utcourts.gov/howto/criminallaw/plea_in_abeyance.html.

⁴ Petitioners seeking to expunge records must first obtain a Certificate of Eligibility from BCI to confirm that they have met certain criteria. There is typically a \$65 application fee and a separate \$65 issuance fee. See Utah BCI, *Criteria for a Certificate of Eligibility*, April 29, 2019. <https://bci.utah.gov/wp-content/uploads/sites/15/2019/04/Criteria-for-a-Certificate-of-Eligibility-04-29-2019.pdf>.

⁵ There are additional conditions related to the number of crimes that were committed and providing misleading or false information. A complete list of detailed conditions is available at [Utah Code Section 77-40-105](#) (2021).

Criminal convictions. Criminal convictions become eligible for expungement after a waiting period of 3–10 years, depending on the severity of the offense. Ten-year waiting periods correspond with the most serious eligible misdemeanors and felonies, while 7-year waits are required for other felonies. Waiting periods for Class A or B misdemeanors and infractions range from 3–5 years.⁶

Once the waiting period condition has been satisfied, expungements may be requested for criminal convictions provided that all fines, fees, and restitution (including interest) related to the conviction have been paid and no additional criminal proceedings are pending against the applicant.⁷ Certain felony convictions may be cleared through this process provided there is no more than a single felony. Convictions for serious felonies (i.e., capital felonies, first-degree felonies, violent felonies,⁸ felonious automobile homicide, felonious violation of driving under the influence,⁹ registerable sex offense,¹⁰ or registerable child abuse offense¹¹) are ineligible unless a pardon has been granted.¹²

Expungement at the appellate courts will not occur automatically simply because a trial court expunged its records. If an individual appealed their criminal case to the Utah Court of Appeals or Utah Supreme Court, expunging those records requires a separate application and filing process.

Cannabis. Cannabis convictions may be eligible for expungement via the petition-based process, even in situations when an individual may not otherwise appear eligible under Utah’s usual criteria.¹³ Convictions related to cannabis possession that are not otherwise eligible for expungement may be expunged through the petition-based process in cases where an individual had a qualifying disease or condition and possessed a medicinal dosage of cannabis.¹⁴

Human trafficking. Individuals who were *victims of human trafficking* in Utah are eligible for relief under **Vacatur Expungement**. The petition-based process for Vacatur Expungement¹⁵ is separate and distinct from common expungement processes described in this document.

⁶ Utah Courts, “Expunging Adult Criminal Records” (n.d.), accessed Sept. 24, 2021. <https://utcourts.gov/howto/expunge/index.html>.

⁷ Utah Code Section 77-40-105 (2021).

⁸ Violent felonies are defined in Utah Code Section 76-3-203.5(1)(c)(i).

⁹ Utah Code Section 41-6a-501(2).

¹⁰ Defined in Utah Code Section 77-41-102(17).

¹¹ Utah Code Section 77-43-102(2).

¹² Title 77 Utah Code of Criminal Procedure, Ch 40.

¹³ For typical eligibility criteria, see <https://bci.utah.gov/expungements/> and <https://bci.utah.gov/wp-content/uploads/sites/15/2019/04/Criteria-for-a-Certificate-of-Eligibility-04-29-2019.pdf>.

¹⁴ Utah Courts, “Expunging Adult Criminal Records” (n.d.), accessed Sept. 24, 2021. <https://utcourts.gov/howto/expunge/index.html>.

¹⁵ <https://bci.utah.gov/wp-content/uploads/sites/15/2022/05/Vacatur-Application-4-11-2022.pdf>.

How the Petition Process Works

Applying for expungement begins with the petitioner applying to the Utah Department of Public Safety, Bureau of Criminal Identification (BCI) for a *Certificate of Eligibility*, which requires an application fee of \$65.¹⁶ Certificates of Eligibility require the submission of applicant fingerprints and are valid for 180 days.¹⁷ The application may be mailed or emailed.¹⁸

If deemed eligible, the petitioner must file a specific petition to expunge records,¹⁹ together with the Certificate of Eligibility.²⁰ The court may hold hearings as it considers the request. If a court approves a petition for records clearance, the order is sent to BCI, which in turn notifies relevant criminal justice agencies.

Petitioning the Court

After the individual petitions the court, the process may be delayed or become more complicated based on the prosecutor's actions:

- The prosecutor may sign and file an Acceptance of Service and Consent and Waiver of Hearings, indicating no objection.
- The prosecutor may file an objection or statement on behalf of the victim or themselves, resulting in the court scheduling a hearing.
- The prosecutor may sign and file the Acceptance of Service only, in which case the court may either schedule a hearing or decide to grant the petitioner's request.
- The prosecutor elects to take no action, in which case the petitioner should file a Proof of Service while the court decides whether or not to schedule the hearing or grant the petitioner's request.²¹

UTAH'S EXPUNGEMENT APPLICATION PROCESS

1. The petitioner must apply for a Certificate of Eligibility from the Utah BCI.
2. Once this is received, the petitioner completes and files a petition, along with the Certificate of Eligibility, with the court and serves the prosecutor who oversaw the case. This must occur within 180 days of having received the Certificate of Eligibility.
3. The petitioner must be available to respond to any objections and attend any court hearings.
4. Once the court has approved a record to be expunged, certified copies of the order are sent to BCI and any additional government agencies holding information about the arrest or conviction.

¹⁶ <https://bci.utah.gov/wp-content/uploads/sites/15/2019/04/Criteria-for-a-Certificate-of-Eligibility-04-29-2019.pdf>.

¹⁷ Utah State Legislature, "H.B. 392 Expungement Fee Amendments: Bill Text," 2022 General Session. <https://le.utah.gov/~2022/bills/static/HB0392.html>.

¹⁸ Utah Code Section 77-40a-304.

¹⁹ The petitioner must select a petition form for Charges Never Filed, Dismissal or Acquittal, Conviction, Cannabis Conviction, Drug Possession Conviction, or a Special Certificate from BCI. See <https://utcourts.gov/howto/expunge/index.html>.

²⁰ The petitioner may apply for a fee waiver. Source: Utah Courts, "Fees and Fee Waiver" (n.d.), accessed Dec. 2, 2021. <https://www.utcourts.gov/resources/forms/waiver/>.

²¹ Utah Courts, "Expunging Adult Criminal Records" (n.d.), accessed Sept. 24, 2021. <https://utcourts.gov/howto/expunge/index.html>.

Fees

Recent legislation has waived certificate and filing fees until June 2023.²² Generally, Utah charges petitioners \$65 for a Certificate of Expungement Eligibility for each case that resulted in a conviction, bail forfeiture, Plea in Abeyance, or diversion agreement,²³ and \$135–\$150 in court filing fees for expungement petitions.²⁴ If the filing fees are a hardship, petitioners may ask the court to waive these fees. The fee waiver request requires the petitioner to file a Motion to Waive Fees form and provide a detailed description of income, expenses, property, credit, and debts. A judge may approve, partially approve, or deny a fee waiver based on the individual's ability to pay.²⁵

Disseminating an Expungement Order

Expungement orders are sent to BCI from the courts. BCI notifies relevant law enforcement agencies of the order electronically. BCI will forward a copy of the order to the Federal Bureau of Investigation (FBI). Agencies that do not receive the Expungement Order are not required to seal their records.²⁶ A separate application process is available for individuals who wish to expunge records from a case that was appealed to the Utah Court of Appeals or the Utah Supreme Court.²⁷

Limitations

The current expungement process has several limitations. First, the expungement process can be expensive and time-consuming with the additional required step of obtaining a Certificate of Eligibility that is only valid for a limited period of time. Recent legislation that expanded its valid period from 90 to 180 days, in addition to its temporary fee waiver, should help address these concerns.²⁸ Second, expungement in Utah only applies to government agencies. Third-party accounts of an arrest and/or conviction (including newspaper articles or other third parties) are not retracted or otherwise affected by Utah's expungement process.²⁹

Expunged records in Utah remain viewable by, and may be copied by specified government organizations, such as the Board of Pardons and Parole, Peace Officer Standards and Training,

²² The requirement for a petitioner to pay an issuance fee for a Certificate of Eligibility (or a Special Certificate of Eligibility) under Subsection (3) is suspended from May 4, 2022, to June 30, 2023. Source: Utah State Legislature, "H.B. 392 Expungement Fee Amendments: Bill Text," 2022 General Session. <https://le.utah.gov/~2022/bills/static/HB0392.html>.

²³ The \$65 charge is the cost of a Certificate of Eligibility. Source: Utah DPS, *Application for Certificate of Eligibility*, April 27, 2022. <https://bci.utah.gov/wp-content/uploads/sites/15/2022/05/Expungement-Applicaiton-4-7-22.pdf>.

²⁴ Utah Courts, "Filing/Record Fees" (n.d.), accessed Sept. 24, 2021. <https://www.utcourts.gov/resources/fees.htm>.

²⁵ Utah Courts, "Fees and Fee Waivers" (n.d.), accessed Sept. 24, 2021. <https://www.utcourts.gov/resources/forms/waiver/>.

²⁶ Utah Courts, "Expunging Adult Criminal Records" (n.d.), accessed Sept. 24, 2021. <https://utcourts.gov/howto/expunge/index.html>.

²⁷ Expunging appeals proceedings requires filing a petition with the Utah Supreme Court. The process is governed by *Supreme Court Standing Order No. 12*. Source: Utah Courts, "Expunging Adult Criminal Records" and "How to expunge appellate records," accessed July 8, 2021. <https://www.utcourts.gov/howto/expunge/>.

²⁸ Utah State Legislature, "H.B. 392 Expungement Fee Amendments: Bill Text," 2022 General Session. <https://le.utah.gov/~2022/bills/static/HB0392.html>.

²⁹ Utah Courts, "Expunging Adult Criminal Records" (n.d.), accessed Sept. 24, 2021. <https://utcourts.gov/howto/expunge/index.html>.

Division of Occupational and Professional Licensing, State Office of Education, and select federal authorities. Further, courts may order previously-expunged records to be *unsealed* under certain conditions, e.g., if the petitioner is subsequently charged with a felony, the State may petition the court to open the expunged records. These records may also be admitted into evidence for sentencing purposes. Records will be ordered re-sealed at the conclusion of the court proceeding.³⁰

Utah's Clean Slate Background

Coalitions in Support of Clean Slate

In April 2018, in response to a request to provide a general public education session about Utah's expungement process, state government agencies convened an "Expungement Day" event to offer single-day criminal records clearance for low-level offenders. The unexpected popularity of the event galvanized a movement to automate Utah's records clearance process.

The Clean Slate bill, sponsored by Rep. Eric Hutchings (R-38th District) and Sen. Daniel Thatcher (R-12th District),³¹ was unanimously approved by the Utah Legislature. Its supporters included the statewide Utah Chamber of Commerce, Criminal Justice Advisory Council (CJAC) for Salt Lake County, the Crime and Justice Institute, and the national Clean Slate Initiative.³²

Status of Clean Slate Legislation

Utah's Clean Slate legislation (H.B. 431) was passed unanimously in both the House and Senate and signed into law in March 2019.³³ The effective date of the legislation was May 1, 2020, but the COVID-19 pandemic delayed its implementation, combined with the need for additional testing of the system's automation with the Courts.³⁴ The state began a pilot project to identify and process older eligible cases and individuals beginning in February 2022, and is working to fully automate this process (currently a hybrid mix of automation and manual checking).³⁵

Utah has estimated that approximately 200,000 individuals currently have a case eligible for expungement under Clean Slate, with an additional 20,000 individuals becoming eligible each subsequent year.³⁶

³⁰ Ibid.

³¹ Utah State Legislature, "H.B. 431 Expungement Act Amendments: Bill Text," 2019 General Session. <https://le.utah.gov/~2019/bills/static/HB0431.html>.

³² Noella Sudbury, "How Utah Got Automatic Expungement," Collateral Consequences Resource Center, January 15, 2021. <https://ccresourcecenter.org/2021/01/15/how-utah-got-automatic-expungement/>.

³³ Utah State Legislature. "H.B. 431 Expungement Act Amendments: Bill Status/Votes," 2019 General Session. <https://le.utah.gov/~2019/bills/static/HB0431.html>.

³⁴ Noella Sudbury, "How Utah Got Automatic Expungement," Collateral Consequences Resource Center, January 15, 2021. <https://ccresourcecenter.org/2021/01/15/how-utah-got-automatic-expungement/>.

³⁵ Brody Arishita, Holly Shepherd, and Casey Huggard (Utah AOC), in discussion with authors, March 18, 2022.

³⁶ Noella Sudbury in Greg Willmore, Nicole Borgeson, and Noella Sudbury, "Planning for Clean Slate: Utah's Experience," presented at SEARCH Symposium on Justice Information Technology, Policy and Research (St. Louis, MO), July 13, 2021. <https://vimeo.com/588417525> at [36:20].

Since Utah’s Clean Slate law is retroactive (with no statutorily-defined year as a lower bound for its case review), the state has determined it will first concentrate on clearing its backlog of eligible cases, with priority given to dismissals and acquittals, followed by time frame (oldest cases first). Utah’s Administrative Office of the Courts (AOC) has led this effort, in conjunction with BCI, to validate its automated clearance process through manual checks. The AOC has indicated it expects to have the backlog of cases cleared within approximately 1 year (spring/summer 2023),³⁷ although BCI expects that it may take longer due to the sheer volume of cases requiring manual review. As of late August 2022, BCI reported that over 72,000 cases (of 84,000 orders received from the AOC) are requiring manual processing.³⁸

Once the automated processes are verified and the backlog of aging cases is cleared, the focus will shift to more recent cases. Once fully operational, cases adjudicated on or after May 1, 2020, that are eligible traffic offenses under Clean Slate should be expunged as soon as they are identified. Future acquittal records are expected to be expunged within 60 days, and dismissals with prejudice are to be expunged after 180 days. All other Clean Slate-eligible cases should be expunged within 30 days of their identification. For all earlier cases, the goal is to expunge eligible cases within 1 year from the date on which they were identified.³⁹

Overview of Clean Slate Record Clearing Process

Clean Slate Eligibility

Eligibility for Clean Slate is determined by the charge and the individual’s criminal history. The following cases may be expunged through the state-initiated process under Clean Slate:⁴⁰

- arrests without prosecution
- dismissed charges (within 180 days of the order of dismissal)
- charges where a person was acquitted (within 60 days of the acquittal)
- convictions of a Class A misdemeanor for possession of a controlled substance (after 7 years from the date of adjudication)
- convictions of a Class B misdemeanor (after 6 years)
- convictions of a Class C misdemeanor (after 5 years)
- convictions of an infraction or traffic violation (after 3 years)

The only Class A misdemeanor conviction that can be expunged through the state-initiated process is Drug Possession. Class B and C misdemeanor convictions, meanwhile, can be expunged under Clean Slate if:⁴¹

³⁷ Brody Arishita, Holly Shepherd, and Casey Huggard (Utah AOC), in discussion with authors, March 18, 2022.

³⁸ As of August 23, 2022, at 9:00 a.m.: 84,237 orders were sent by AOC; 72,368 have needed manual review; and 51,922 are currently in the queue awaiting manual review. Source: Greg Willmore (Utah BCI), personal communication with the authors, August 29, 2022.

³⁹ Restoration of Rights Project, “Utah Restoration of Rights & Record Relief,” (n.d.). <https://ccresourcecenter.org/state-restoration-profiles/utah-restoration-of-rights-pardon-expungement-sealing/>.

⁴⁰ <https://le.utah.gov/~2019/bills/static/HB0431.html> (Section 77-40-102).

⁴¹ Ibid.

- The mandatory waiting time has passed since the conviction,
- The individual does not have any pending criminal charges,
- The individual has paid all court-ordered fines, fees and restitution, and
- The subject of the criminal history record does not have a combination of other disqualifying convictions.

Felonies are not eligible for state-initiated expungement under Clean Slate.

Individuals are not eligible if they have any of the following combinations of convictions on their record:

- Two or more felonies (other than drug possession),
- Three or more crimes (other than drug possession) of which include two class A misdemeanors,
- Four or more crimes (other than drug possession) of which include three class B misdemeanors,
- Five or more crimes of any degree (other than drug possession),
- Three or more felonies for drug possession, or
- Five or more crimes of any degree for drug possession.⁴²

Role of the Courts, BCI, and Prosecutors

The AOC, BCI, and prosecutors all play a role in the Clean Slate state-initiated clearance process. The AOC identifies eligible candidate cases using advanced computer algorithms to apply machine-readable business rules based on criteria established in statute.

On a monthly basis, eligible cases are expected to be sent to BCI for verification of eligibility and to originating prosecutors, who have 35 days to review and determine whether to file an objection (e.g., if the case is not eligible, restitution is owed, or the individual is continuing to engage in criminal activity). If these criteria are met and no objection is filed by the prosecutor, the court may issue individual orders for the expungement of a case.⁴³ Expungement orders are sent by AOC to BCI and the originating prosecutor. BCI matches cases using State Identification (SID) numbers, Case Identification numbers, Name, and Date of Birth and seals the record, and in turn notifies law enforcement agencies holding local copies of arrest records of the court order.⁴⁴ This process is outlined in Figure 1.

⁴² Utah Courts, “Expunging Adult Criminal Records” (n.d.), accessed Sept. 24, 2021. <https://utcourts.gov/howto/expunge/index.html>.

⁴³ If these criteria are not met, the individual may follow the petition-based process. If the prosecutor does not provide written notice of objection within 35 days, the court may proceed with the expungement. Nicole Borgeson in Greg Willmore, Nicole Borgeson, and Noella Sudbury, “Planning for Clean Slate: Utah’s Experience,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research (St. Louis, MO), July 13, 2021. <https://vimeo.com/588417525> at [18:10].

⁴⁴ *Ibid.*, at [8:22].

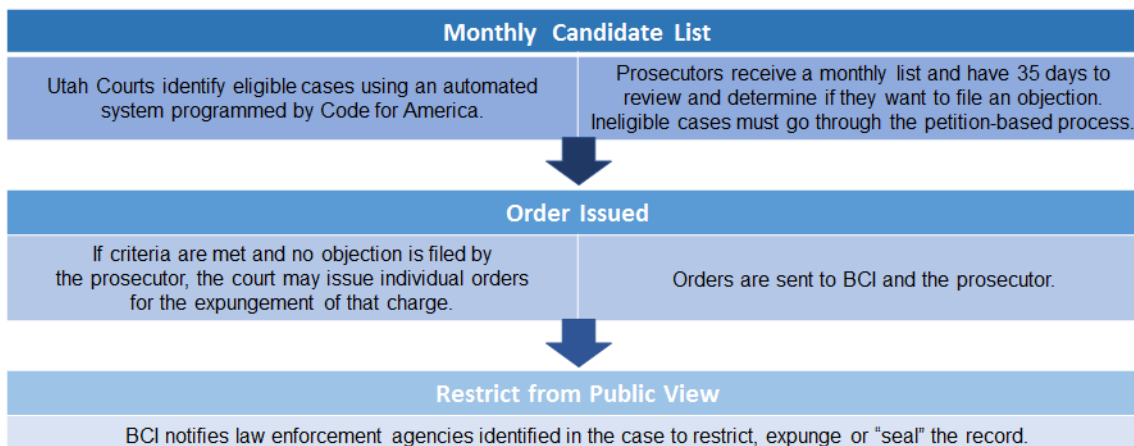


Figure 1: Clean Slate Process in Utah

Unlike the petition-based expungement eligibility determinations (which BCI conducts and which involve a national background check), under the Clean Slate state-initiated process, the courts *only inspect records held in Utah*. No national checks will be conducted to determine if an individual has a felony or other convictions in other states or federally that would be disqualifying had they occurred in Utah. Additionally, previously expunged in-state cases are not disqualifying under the Clean Slate eligibility criteria.⁴⁵

No appeals process exists within statute for state-initiated expungement, nor is there a notification system in place to alert individuals if their charge was expunged or denied. As with petition-based records, select agencies can receive information contained in expunged records.⁴⁶

Process Post-Sealing

Notification Requirements

Once the court is satisfied that the conditions for expungement have been met, it issues an expungement order and notifies BCI and the prosecuting agency to make corresponding changes to their records. BCI is responsible for notifying local law enforcement agencies to expunge any corresponding records in their systems. Notices are disseminated electronically via computer network to local law enforcement, police departments, sheriff's offices, jails and correctional offices. BCI will not notify any entity outside of its broadcast message.⁴⁷

Notifying individuals about the status of their criminal record is not required under the statute, in part because AOC and BCI may not have current contact information for individuals who have

⁴⁵ Ibid., at [12:54] and [22:34].

⁴⁶ Utah State Legislature, "77-40-109. Retention and release of expunged records – Agencies" in "H.B. 431 Expungement Act Amendments: Bill Text," 2019 General Session. <https://le.utah.gov/~2019/bills/static/HB0431.html#77-40-109>.

⁴⁷ Greg Willmore (Utah BCI), in discussion with authors, July 29, 2021.

their records sealed under Clean Slate.⁴⁸ If a person believes they have a qualifying record, they can request a copy of their criminal history record from BCI. Alternatively, most district courthouses and some justice court locations in Utah provide terminals to allow citizens to inspect court records, so an individual could visit a local courthouse and search their own name to determine what information is available, and therefore not expunged.⁴⁹ Utah is also creating a website for individuals to check their record status.⁵⁰

Utah does not notify private background check companies about individual expungement orders. Utah's contracts with third-party providers, however, require them to update their data monthly, which should function to eliminate expunged records in their databases as a part of their routine updates.⁵¹

Access to Expunged Records

Sealed records remain in databases maintained by AOC and BCI, but access to the records is restricted. Only the following entities may access expunged records:⁵²

- Board of Pardons and Parole,
- Peace Officer Standards and Training,
- Federal authorities, only as required by federal law,
- Department of Commerce,
- Department of Insurance,
- State Board of Education, and
- Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office.

Additionally, the petitioner, law enforcement officers involved in the case and seeking to defend themselves from civil action in that case, or other individuals involved in civil action arising from the expunged case, may also request the records be opened and entered into evidence, although the record will be expunged again at the end of the proceeding.⁵³

⁴⁸ Noella Sudbury in Greg Willmore, Nicole Borgeson, and Noella Sudbury, "Planning for Clean Slate: Utah's Experience," presented at SEARCH Symposium on Justice Information Technology, Policy and Research (St. Louis, MO), July 13, 2021. <https://vimeo.com/588417525> at [47:12].

⁴⁹ Utah Courts, "Expunging Adult Criminal Records" (n.d.), accessed Sept. 24, 2021. <https://utcourts.gov/howto/expunge/index.html>.

⁵⁰ Dennis Romboy, "How some states are working to make your rap sheet disappear," *Deseret News*, June 15, 2021. <https://www.deseret.com/utah/2021/6/15/22455427/how-states-some-states-making-your-criminal-record-disappear-clean-slate>.

⁵¹ Noella Sudbury, *Access Barriers to Felony Expungement in Utah*, Collateral Consequences Resource Center, July 2021, at pg. 12. https://ccresourcecenter.org/wp-content/uploads/2021/07/Access-Barriers_Expungement-Felony-Records_Utah.pdf.

⁵² Utah State Legislature, "H.B. 431 Expungement Act Amendments," 2019 General Session. <https://le.utah.gov/~2019/bills/static/HB0431.html>

⁵³ Ibid.

Technical and Operational Challenges to Implementation

The biggest challenge to Utah has been in automating its eligibility requirements. The AOC, in partnership with Code for America (CfA), has been working to automatically identify eligible records. CfA has assisted in the adoption and use of entity resolution software to identify eligible cases and individuals.⁵⁴ Utah has already begun piloting the process of pushing eligible cases and individuals to BCI for verification of eligibility, and to prosecutors for their review and opportunity for objection. This program became operational in April 2022.⁵⁵

Determining initial eligibility has been a two-step process, which was largely programmed for the AOC by CfA. First, CfA sought to identify eligible records. Since Utah's centralized court case management system is case-based rather than person-based,⁵⁶ entity resolution software (provided by a third-party vendor) was used to create unique person identifiers.⁵⁷ The software allowed the court database to be restructured to identify individuals, not simply court cases; court case records were then mapped to the corresponding person records.

BCI worked with a team of legal experts in Utah and the Department's General Counsel to draft a flowchart of all of the eligibility rules that apply to the petition-based process to ensure that they were being uniformly enforced under the automated process.⁵⁸ This document was translated into computer code to be run against the new, person-centric court database to identify Clean Slate candidates. CfA's work was completed in fall 2020 and presented to the courts in 2021.⁵⁹

Code for America's programming was validated by independent research performed by the University of Utah, in partnership with BCI and legal expungement experts. Initial validation of the code found an 86% match between coded results and human review, which was refined to achieve a false-positive rate⁶⁰ of less than 1%, which compares to a human error rate of 2.7%.⁶¹

The project has also identified the need for prosecutors to be able to efficiently review and flag cases or individuals whose expungement they may object to. Rather than simply providing a list of cases to prosecutors, who would then be required to research each case being proposed for expungement, Utah is creating a data dashboard with links to cases and related information to assist in prosecutorial review.⁶²

⁵⁴ The entity resolution software used in Utah is Senzing. <https://senzing.com/>

⁵⁵ Greg Willmore (Utah BCI), in discussion with authors, July 29, 2021.

⁵⁶ Noella Sudbury in Greg Willmore, Nicole Borgeson, and Noella Sudbury. "Planning for Clean Slate: Utah's Experience," presented at SEARCH Symposium on Justice Information Technology, Policy and Research (St. Louis, MO), July 13, 2021. <https://vimeo.com/588417525> at [33:50].

⁵⁷ *Ibid.*, at [35:10].

⁵⁸ *Ibid.*, at [35:59].

⁵⁹ *Ibid.*, at [36:20].

⁶⁰ "False-positive rate" is defined here as the proportion of instances where the computer code identified a case as eligible, but a human reviewer determined the case to be ineligible.

⁶¹ Noella Sudbury in Greg Willmore, Nicole Borgeson, and Noella Sudbury, "Planning for Clean Slate: Utah's Experience," presented at SEARCH Symposium on Justice Information Technology, Policy and Research (St. Louis, MO), July 13, 2021. <https://vimeo.com/588417525>. False positive rate [39:10]; human error rate [51:11].

⁶² Brody Arishita, Holly Shepherd, and Casey Huggard (Utah AOC), in discussion with authors, March 18, 2022.

Utah did relax one of its petition-based eligibility requirements to be able to accommodate state-initiated expungements through Clean Slate. While its petition expungement eligibility includes the requirement that there be no reasonable belief that an individual with a Clean Slate-eligible case is continuing to engage in criminal activity *within or outside of the state*, its state-initiated counterpart only considers criminal activity that occurs *within the state* due to limited access to that information without manual intervention.⁶³

Finally, Utah is experiencing some challenges from the sheer volume of records requiring manual review in its current backlog. Based on numbers reported by BCI in late August 2022, nearly 86% of the records it has received from AOC, and is attempting to verify as eligible, are requiring manual review.⁶⁴ Additional staff, technological solutions, or a combination of the two, may be needed to ease this burden.

Benefits to Citizens

A driving force for Clean Slate in Utah was making jobs more accessible among individuals with criminal records. With one of the lowest unemployment rates in the country (2018 data),⁶⁵ employers expressed difficulty filling open positions. Utah’s Department of Workforce Services contacted the Criminal Justice Advisory Council (CJAC) in Salt Lake City to host an “expungement workshop” for job seekers who were likely eligible to have their records expunged. Given the complexity and expense of the petition-based expungement process in Utah, however, the CJAC was not convinced that a one-day workshop would be effective.

Ultimately, the CJAC convened a coalition of attorneys, prosecutors, judges and BCI officials to host an “Expungement Day” event where individuals could have their records expunged at no cost. Dozens of people were able to have their records cleared in this effort, but its cost (nearly \$20,000) made statewide replication infeasible. CJAC worked with the statewide Chamber of Commerce to build a coalition of advocacy groups across the political spectrum to support Clean Slate to make it possible for more citizens to find work. Given the disruption in the economy caused by the COVID-19 pandemic (in addition to implementation delays), it is too early to determine the impact of Clean Slate on relative employment levels in Utah.⁶⁶

One of the primary complaints that DPS has heard from consumers who want to have their records expunged is that the petition-based process is too expensive.⁶⁷ The minimum cost for records clearance under the petition-based process is \$200–\$215 (\$65 per application for a Certificate of Eligibility, plus \$135–\$150 in court fees for each court, absent any attorneys’

⁶³ Nicole Borgeson, in Greg Willmore, Nicole Borgeson, and Noella Sudbury, “Planning for Clean Slate: Utah’s Experience,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research (St. Louis, MO), July 13, 2021. <https://vimeo.com/588417525> at [12:54] and [22:34].

⁶⁴ Of 84,237 orders sent from AOC, 72,368 were determined to need manual processing, after having been automatically processed. Source: Greg Willmore (Utah BCI), personal communication with authors, August 29, 2022.

⁶⁵ U.S. Bureau of Labor Statistics, “Unemployment Rates for States, 2018 Annual Averages,” accessed October 25, 2021. <https://www.bls.gov/lau/lastrk18.htm>.

⁶⁶ Noella Sudbury, “How Utah Got Automatic Expungement,” Collateral Consequences Resource Center, January 15, 2021. <https://ccresourcecenter.org/2021/01/15/how-utah-got-automatic-expungement/>.

⁶⁷ Nicole Borgeson in Greg Willmore, Nicole Borgeson, and Noella Sudbury, “Planning for Clean Slate: Utah’s Experience,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research (St. Louis, MO), July 13, 2021. <https://vimeo.com/588417525> at [26:18].

fees),⁶⁸ whereas there is no direct cost to the criminal record holders under Clean Slate. According to the Fiscal Note prepared for H.B. 431: “Enactment of this legislation could save individuals charged or convicted of certain offenses at least \$265 per instance.”⁶⁹ Utah’s recent legislation that waives many of the costs associated with a petition for expungement (at least until June 2023)⁷⁰ provides temporary relief that addresses this concern.

Clean Slate’s automation of records clearance is expected to reach a larger share of the eligible population. As previously noted, research has estimated 20,000 people are likely to be eligible for records expungement each year, while only about 10–15% of that number (2,000–3,000 individuals) apply under the current petition-based process.⁷¹ Survey data from the state-sponsored “Expungement Day” events found that 65% of attendees had not previously heard of Utah’s Clean Slate law,⁷² which suggests that public education and outreach campaigns may be needed.

Anticipated Cost to the State

Enacting H.B. 431 (Clean Slate legislation) will cost approximately \$1.38 million in one-time (FY2020)⁷³ appropriations, with another \$500,000 in ongoing costs⁷⁴ that will be split between the Courts, Department of Public Safety (DPS), Division of Technology Services (DTS), and Department of Wildlife Resources (DWR). Utah has also recognized that implementing Clean Slate legislation would decrease demand related to (and therefore revenue derived from) fees for new expungement applications.⁷⁵

The Department of Public Safety calculated a cost savings of \$22,400 (one-time) in FY 2020 and \$134,300 (ongoing) beginning in FY 2021 with the elimination of two full-time positions that currently process expungement applications as a result of the enactment of H.B. 431.⁷⁶ Implementing the legislation is expected to cost:

- Department of Public Safety – \$477,600 (FY2020)
- Division of Technology Services – \$500,000 (FY2020)⁷⁷

⁶⁸ Ibid. Greg Willmore mentions \$65 petition fee [3:08] and court fees [5:03]. Nicole Borgeson mentions auto-expungement is free to consumers [21:45].

⁶⁹ E. Hutchings, “Fiscal Note H.B.431 3rd Sub. (Cherry),” March 13, 2019.

⁷⁰ Utah State Legislature, “H.B. 392 Expungement Fee Amendments: Bill Text,” 2022 General Session. <https://le.utah.gov/~2022/bills/static/HB0392.html>.

⁷¹ Noella Sudbury in Greg Willmore, Nicole Borgeson, and Noella Sudbury, “Planning for Clean Slate: Utah’s Experience,” presented at SEARCH Symposium on Justice Information Technology, Policy and Research (St. Louis, MO), July 13, 2021. <https://vimeo.com/588417525> at [37:10].

⁷² Utah Indigent Defense Commission, *Background on Utah’s Clean Slate Law*, March 2021. <https://idc.utah.gov/wp-content/uploads/2021/03/Final-Clean-Slate-2-pager.pdf>.

⁷³ Utah Executive Appropriations Committee, *Budget of the State of Utah and Related Appropriations, 2019 General Session*, pages 3-53, 5-46, and 6-51. <https://le.utah.gov/interim/2019/pdf/00002717.pdf>.

⁷⁴ Ibid., page 3-3.

⁷⁵ E. Hutchings, *Fiscal Note H.B.431: 2019 General Session Expungement Act Amendments*, Utah State Legislature, March 3, 2019. <https://le.utah.gov/lfa/fnotes/2019/HB0431.fn.pdf>.

⁷⁶ Ibid.

⁷⁷ Utah Executive Appropriations Committee, *Budget of the State of Utah and Related Appropriations, 2019 General Session*, page 5-46. <https://le.utah.gov/interim/2019/pdf/00002717.pdf>.

- Administrative Office of the Courts – \$400,000 (FY2020)⁷⁸
- Department of Wildlife Resources – \$100,000 (FY2020)⁷⁹

While costs to the state have been estimated for the Fiscal Note that accompanied H.B. 431, these figures do not include the *pro bono* services provided by Code for America (CfA) to assist in the design and programming of Utah’s Clean Slate expungement program.⁸⁰ As of spring 2022, CfA continues to assist with programming work in Utah.⁸¹

⁷⁸ Ibid., page 3-53.

⁷⁹ Ibid., page 6-51.

⁸⁰ Code for America, “Clear My Record,” accessed July 28, 2021.
<https://www.codeforamerica.org/programs/criminal-legal-system/clear-my-record/>.

⁸¹ Brody Arishita, Holly Shepherd, and Casey Huggard, Utah AOC, in discussion with authors, March 18, 2022.

Clean Slate State Profile: Washington

September 2022

The State of Washington provides three forms of criminal records relief, all of which are petition-based: **conviction vacation**, **court record sealing**, and **non-conviction expungement**. Both conviction vacation and sealing require court petitions for a hearing and, if granted, vacated convictions occur by withdrawing a plea of guilty and entering not guilty or setting aside guilty verdicts and dismissing charges.¹ Sealed court records are not disclosed to the public. Expungement requests are submitted to the Washington State Patrol, which manages the state criminal history repository, and result in destruction of charge information from an individual's criminal history record. Non-conviction expungements may only occur if charges are terminated in favor of the accused, e.g., dismissals, acquittals, or non-prosecuted charges.²

These record relief methods have different eligibility criteria, administrative processing requirements, judicial discretion, and outcomes that are described in detail in this document. The rate at which eligible individuals use these methods for record relief largely mirrors the national trend of a less than 10% "uptake" rate.³ In response, the Washington State Legislature passed the New Hope Act in 2019,⁴ which expanded offenses eligible for vacation, reduced waiting periods for some misdemeanors and felonies, and adjusted the issuance process for certificates of discharge that verify felons have successfully completed sentence terms. In 2020, the legislature passed HB2793,⁵ which established a pilot initiative to streamline the conviction vacation process. Governor Jay Inslee vetoed the bill due to concern over cost at the onset of the COVID-19 pandemic,⁶ yet this effort led to further exploration of the viability to use technology, adopt policies, and implement procedures to expedite record relief in Washington.

The purpose of this Clean Slate State Profile is to:

- Describe the current petition-based records relief processes in Washington.
- Document the state's unique legal infrastructure.
- Identify opportunities and challenges to automate the state's current petition-based process.

CONTRIBUTORS

SEARCH

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¹ [RCW 9.94A.640\(4\)\(a\)](#) and [RCW 9.96.060\(7\)\(a\)](#).

² [RCW 10.97.060](#).

³ J.J. Prescott, "[Expungement of Criminal Convictions: An Empirical Study](#)," Sonja B. Starr, co-author, Harv. L. Rev. 133, no. 8 (2020): 2460–555. Colleen V. Chien, "[America's Paper Prisons: The Second Chance Gap](#)," 119 Mich. Law. Rev. 519 (2020).

⁴ [New Hope Act \(SHB 1041, Chapter 331, Laws of 2019\), Certificates of Discharge and Conviction Record Vacation](#).

⁵ [An Act Relating to Vacating Criminal Records HB2793, 2020](#).

⁶ [Message from Governor Inslee regarding HB2793 veto date April 3, 2020](#).

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Key Terms, Actors, and Acronyms in Washington

- **Conviction Vacation:** Modification of a guilty conviction to “vacated,” which is synonymous with set-aside.
- **Expungement:** Physical destruction of records.
- **Sealings:** Preserving and restricting public access to court records.
- **WSP:** Washington State Patrol – the agency responsible for maintaining the state’s criminal history records repository.
- **AOC:** The Washington Administrative Office of the Courts – the office responsible for supporting courts through policy, budgetary, and technology resources.
- **DOC:** The Washington State Department of Corrections.

Overview: Washington’s Current Petition-based Records Relief Processes

The State of Washington provides three forms of criminal records relief: **vacatur**, **sealing**, and **expungement**. The eligibility and process for each depends upon specific circumstances and distinct criteria that are described in greater detail below.

Conviction Vacation

Conviction vacation is the most common method of record relief from criminal convictions in Washington, with over 4,200 being granted in 2019. The vacation process is administered by the sentencing courts and requires individuals to file a petition for a hearing. If granted, “the court effectuates the vacation by: (a)(i), Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.”⁷

Eligibility

Washington statutes § 9.96.060 and § 9.94A.640 define the eligibility criteria and exclusions for vacating certain misdemeanors/gross misdemeanors and for felony convictions. Many of the eligibility criteria align with other state qualifications in that they establish minimum timeframes to remain crime-free in the community, exclude most violent and sex offenses, and fully discharge all sentence terms, including financial legal obligations.

Specifically for misdemeanors, RCW 9.96.060 provisions state that an individual is not eligible if:

- The applicant has not completed all terms of sentence.⁸
- The applicant has pending charges in any state, tribal, or federal court.⁹
- The offense was a violent offense or attempt.¹⁰
- The offense is a DUI-related offense, or a “prior offense” with a subsequent DUI or drug offense within 10 years.¹¹
- The offense is considered a sex offense, obscenity, pornography, sexual exploitation of children.¹²
- Less than 3 years have elapsed since the applicant’s completion of sentence terms and financial obligations.¹³
- The applicant has any convictions within past 3 years.¹⁴

⁷ RCW.9.96.060(1).

⁸ RCW 9.96.060(2)(a).

⁹ RCW 9.96.060(2)(b).

¹⁰ RCW 9.96.060(2)(c).

¹¹ RCW 9.96.060(2)(d).

¹² RCW 9.96.060(2)(e).

¹³ RCW 9.96.060(2)(g).

- The applicant is subject to a restraining order, protection order, or no contact order with a violation within the past 5 years.¹⁵
- The offense is a domestic violence offense and any of the following occurred:¹⁶
 - The applicant did not provide notification of petition to the prosecuting attorney's office.
 - The applicant has two or more previous DV convictions from different incidents.
 - The applicant perjured regarding previous DV conviction on affidavit/application.
 - Less than 5 years have elapsed since the applicant completed sentence, paid obligations, or successfully completed court-ordered treatment.

Statute also provides relief for several other specific circumstances, including marijuana misdemeanor convictions eligible for anyone who was 21 years old or older at the time of the offense,¹⁷ victims of sex trafficking, prostitution, commercial sex abuse of a minor, sexual assault or domestic violence,¹⁸ or tribal members who may exercise treaty Indian fishing rights at the location where the offense occurred.¹⁹

Felony conviction eligibility is defined in RCW 9.94A.640 and requires a Certificate of Discharge²⁰ to be issued by the sentencing court prior to requesting a motion to vacate. Similar to misdemeanors, the statute states that an offender is not eligible if any of the following criteria apply:

- The offender has pending charges in any state, tribal, or federal court.²¹
- The offense was a violent offense or crime against a person — except the following offenses may be vacated if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement:²²
 - assault in the second degree,²³
 - assault in the third degree when not committed against a law enforcement officer or peace officer,²⁴ and
 - robbery in the second degree.²⁵

¹⁴ RCW 9.96.060(2)(h).

¹⁵ RCW 9.96.060(2)(i).

¹⁶ RCW 9.96.060(2)(f)(i)-(iv).

¹⁷ RCW 9.96.060(5).

¹⁸ RCW 9.96.060(3).

¹⁹ RCW 9.96.060(4).

²⁰ [RCW 9.94A.637](#) directs the Washington State Department of Corrections to notify the sentencing court when an offender under DOC supervision has successfully completed their sentence terms. The court must issue the certificate to the offender. It also includes a provision to waive completion of financial obligations if the court finds good cause.

²¹ RCW 9.94A.640(2)(a).

²² RCW 9.94A.640(2)(b).

²³ RCW 9.94A.640(2)(b)(i).

²⁴ RCW 9.94A.640(2)(b)(ii).

²⁵ RCW 9.94A.640(2)(b)(iii).

- The offense is a class B felony and the offender has been convicted of a new crime 10 years prior to the application.²⁶
- The offense is a class C felony and the offender has been convicted of a new crime 5 years prior to the application.²⁷
- The offense is a class B felony and less than 10 years have passed since the later of the offender's:
 - release from community custody,²⁸
 - release from confinement,²⁹ or
 - sentencing date.³⁰
- The offense is a class C felony, other than a DUI-related felony, and less than 5 years have passed since the later of the offender's:
 - release from community custody,³¹
 - release from full and partial confinement,³² or
 - sentencing date.³³
- The offense was a (DUI) felony.³⁴

Similar to the misdemeanor provisions, offenders convicted while victims of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence with class B or C convictions are not subject to the same restrictions or timeframes.³⁵

Petition and Hearing Process

Petitioners must complete and file the Petition and Declaration for Order Vacating Conviction form,³⁶ which contains applicant contact information, the offense, grounds for application, and an attestation that the individual is eligible and that the information provided is true and correct. In addition, applicants must complete a Notice of Hearing to Vacate Conviction form,³⁷ which serves to request a hearing date and time. Applicants must file both forms with the court clerk where the conviction occurred and also submit them to the prosecuting attorney's office that prosecuted the case. Court practices vary across the state in that some jurisdictions require applicants to submit additional case records and a fingerprint-based criminal history record from

²⁶ RCW 9.94A.640(2)(c).

²⁷ RCW 9.94A.640(2)(d).

²⁸ RCW 9.94A.640(2)(e)(i).

²⁹ RCW 9.94A.640(2)(e)(ii).

³⁰ RCW 9.94A.640(2)(e)(iii).

³¹ RCW 9.94A.640(2)(f)(i).

³² RCW 9.94A.640(2)(e)(ii).

³³ RCW 9.94A.640(2)(e)(iii).

³⁴ RCW 9.94A.640(2)(g).

³⁵ RCW 9.94A.640(3).

³⁶ [Petition and Declaration for Order Vacating Conviction](#).

³⁷ [Notice of Hearing to Vacate Conviction](#).

the Washington State Patrol (WSP) when filing vacation petitions.³⁸ Prior to a hearing, the prosecuting attorney and judicial staff will review the petition and confirm eligibility under the law. The prosecuting attorney may invite testimony from crime victims and raise objections to the vacation petition. Applicants are required to attend the hearing.

Effect of Vacation

If and when a court grants a motion to vacate a conviction, the vacatur is effectuated by “(a)(i) permitting the applicant to withdraw the applicant’s plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.”³⁹

Statutes⁴⁰ for both felony and misdemeanor vacations contain the same language regarding the effect of vacated convictions: “the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime.”

Notifications

Court orders of vacatur are mailed to applicants and submitted to the state criminal history repository at WSP and to the arresting local law enforcement agency. Per statute, “The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation.”⁴¹ Upon receipt of the vacation order, WSP updates the individual’s criminal history record and retains the vacated order for disclosure to authorized criminal justice agencies, but not to the public.⁴² Conversely, courts amend the case file to reflect the vacated conviction and the case file remains available to the public.⁴³ Washington courts, via the Administrative Office of the Courts, currently sell case information to third-party consumer reporting agencies and submit monthly updates to those vendors. AOC has no oversight or provisions to limit repurposing court data. In Washington, sealing is the only method to limit public access to court-specific records.

³⁸ [Instructions for Vacating Misdemeanor and Gross Misdemeanor Convictions](#), Section 2 c: “In order to complete the form, you may need to obtain information from the court file or the court docket for the offense(s) you are asking the court to vacate. Some courts may require you to obtain copies of your criminal history records and attach them to your petition. Read the local court rules or contact the clerk of the court where you will file your petition to find out if this requirement or any other local requirement applies to you.”

³⁹ RCW 9.96.060(1).

⁴⁰ RCW 9.94A.640(4)(a) and RCW 9.96.060(7)(a).

⁴¹ RCW 9.96.060(8).

⁴² RCW 9.94A.640(4)(a) and RCW 9.96.060(7)(a).

⁴³ Washington Courts, [Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State](#), June 2021.

Court Record Sealing

The term **sealing** in Washington is used in the same context as most other states and is defined as “the means to protect from examination by the public and unauthorized court personnel.”⁴⁴ Sealing juvenile cases occurs routinely,⁴⁵ but sealing adult court records is rare.⁴⁶ Washington’s limited use of sealing is a collective result of interpretation of the state constitution, judicial case law, and court rules which is commonly referred to as the “Open Court” principle. The intent of Open Courts is to promote a publicly accessible criminal justice system through transparency and accountability and is founded upon the Washington State Constitution Article 1 Section 10, which states: “Justice in all cases shall be administered openly, and without unnecessary delay.” Supporting case law provides further clarification via several precedent-setting cases, including *Allied Daily Newspapers of Wash. v. Eikenberry*, which reaffirmed that the public and press may “freely observe the administration of civil and criminal justice,”⁴⁷ and *State v. Bone-Club*,⁴⁸ which established the criteria that must be considered on a case-by-case basis in order to seal cases. Courts statewide have adopted General Rule 15 (GR 15),⁴⁹ which established the current judicial canon and provides judges a “checklist” to consider for sealing motions. In summary, these criteria include:

- a showing of need due to a serious and imminent threat,
- opportunity for objections by anyone present at proceedings,
- [sealing] must be the least restrictive means to protect threatened interests, weighing competing interests of [sealing] and the public, and
- the order must be no broader than necessary to serve its purpose.

Failure to apply these criteria will result in a reversible order.⁵⁰

In the rare event a sealing order is granted for a conviction for an adult, sealing decisions in Washington apply only to court records since no authorizing legislation directs WSP to limit public disclosure of sealed adult court records. As a consequence, sealing an adult record by GR 15 does not affect the status of criminal history records maintained by WSP.

Non-Conviction Expungement

The final form of records relief in Washington is **non-conviction expungements**; they result in removal and destruction of non-conviction data from an individual’s criminal history record and occur when charges are terminated in favor of the accused. These include, e.g., dismissals, acquittals, and *nolle prosequi*. Individuals can obtain a copy of non-conviction criminal history information for \$12, or inspect their record in-person for 30 minutes at no cost. Individuals must

⁴⁴ *Ibid.*

⁴⁵ Washington Courts, *Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State*, June 2021. “Sealing Juvenile Records,” p.2.

⁴⁶ In 2019, WSP received 7,679 juvenile seal orders and 19 adult seal orders, according to WSP Criminal History Records Section staff research.

⁴⁷ *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993).

⁴⁸ *State v. Bone-Club*, 128 Wn.2d 254, 258–59 (1995).

⁴⁹ Washington Court General Rule 15(c)(1).

⁵⁰ Subsequent case law has set precedent that failure to comply with GR15 or *Bone-Club* is a reversible order. See *In re Marriage of R.E.*, 144 Wn. App. 393, 404-06, 183 P.3d 339 (2008).

submit their expungement requests⁵¹ to the WSP; these requests require identity verification via fingerprint submission and witness signatures.

An individual's criminal history record may be expunged when the following are true:⁵²

- The file consists of only non-conviction data.
- At least 2 years have elapsed since the record became non-conviction data as the result of entry of a disposition favorable to the defendant, or at least 3 years have elapsed from the date of arrest or issuance of a citation or warrant for which a conviction was not obtained (unless the defendant is a fugitive or the case is under active prosecution).
- The disposition was not a deferred prosecution or similar diversion of the alleged offender,
- The person has not had a prior conviction for a felony or gross misdemeanor.
- The person has not been arrested for or charged with another crime during the intervening period.

WSP will remove the expunged data — including personally identifiable information if expunged non-conviction is the only entry on an individual's record — from state and national criminal history databases maintained by the Federal Bureau of Investigation (FBI). WSP does not notify the court of jurisdiction if or when non-conviction data is expunged.⁵³

Background of Records Relief Legislation in Washington

The 1981 Sentencing Reform Act provided the foundation for the current records vacation process in Washington. Subsequent amendments in 2012, 2019, and 2021 have gradually expanded the number of eligible offenses, reduced timeframes for misdemeanors and felonies, removed legal financial obligations for felonies, and included provisions for victims of certain crime types, and cannabis convictions.

No legislative proposals have included language directing the state to initiate conviction vacation procedures. This is presumably due to the extensive number of operational, legal, and policy challenges unique to the Washington state criminal justice system described in more detail in the [next](#) section. In 2020, the Washington State Legislature passed HB2793, which included provisions to implement a pilot to streamline the current petition-based conviction vacation process, including the creation of a web-based portal whereby individuals could determine their eligibility and complete and file the necessary documentation to request a hearing. Governor Jay Inslee vetoed the bill due to the onset of the COVID-19 pandemic, as were most bills with an expected fiscal impact.

⁵¹ [WSP Request for Expungement/Deletion of Non-Conviction Records](#) form.

⁵² RCW 10.97.060.

⁵³ WSP non-conviction [Expungement Checklist](#).

Barriers to Automated Clean Slate in Washington

Inconsistent Data Collection and Information Sharing

State-initiated records relief implementations in other states require a high level of information sharing and coordination, particularly among courts and the criminal history repository entity.

Courts in Washington are non-unified, meaning that courts of all levels and jurisdiction are managed and operated independently. Presiding judges have a degree of latitude to operate each trial court (Superior, District, and Municipal). They are supported by court administrators who facilitate courtroom operations and County Clerks who manage dockets and court records. The Washington Administrative Office of the Courts (AOC) provides courts with statewide support resources that include technology, financial, programmatic, and research resources. A critical component of AOC services are the statewide case management systems for superior courts and another for district and municipal courts. While most courts use these systems, they are not required to do so;⁵⁴ as such, each court's data collection, document management, and information sharing practices can vary. Washington stakeholders provided two critical examples of how these varying practices could impact state-initiated conviction record relief.

Entering Conviction Judgment or Sentencing Data in Narrative Form

The first example is entering conviction judgment and sentence information in narrative or unstructured form. When this occurs, it requires manual intervention to evaluate and categorize data to uniformly define sentence information (e.g., sentence type, confinement terms, financial obligations, and other imposed conditions) to determine eligibility timeframes. This is evident when attempting to calculate and apply the appropriate waiting period based on the date on which an individual was released from confinement, community supervision, or sentenced. The inconsistent manner of reporting judgment and sentence information to the Department of Corrections and WSP inhibits a systematic and automated method to determine when an offender is eligible for relief.

Inconsistent Use of Person and Charge Tracking Identifiers

The second example highlights the inconsistent recording and sharing of person and charge tracking identifiers, which creates significant challenges with associating convictions to arrest records in the criminal history repository. Complete criminal history records rely on the biometric-based person identifiers and charge tracking numbers to confirm that all charges are properly and accurately disposed for the correct individuals. Court dispositions that do not contain this data will not be accepted into the repository. This is a particular challenge when citations are issued in lieu of custodial arrest, as this requires consistent practice of post-disposition fingerprint capture and reporting. This is not a standard operating procedure in Washington courts. These key pieces of information ensure that eligible individuals receive the full benefits of record vacation and address the associated collateral consequences of criminal records.

⁵⁴ The two most populous counties, King and Pierce, are the notable exceptions as they each use different systems and rely on data integrations to communicate with AOC systems.

Open Court Principle

While many other states use sealing, or limiting access to records, as the primary means to provide civil record relief, this is not a viable option in Washington due to the Open Court principle described [earlier](#) in the document. The required case-by-case judicial application of the GR 15 criteria — in addition to the absence of legislation directing WSP to restrict disclosure — effectively removes sealing as an option for state-initiated or automated means of relief.

Legal Standing of the State to Initiate Record Vacations

When considering the application of state-initiated records relief in Washington, it is unclear if the state has standing in a case to initiate vacation proceedings. While rare in practice, statute does provide some insight on the potential for the state to initiate record vacations. RCW 9.96.060(3) and RCW 9.94A.640(3) contain language that allows prosecutors to initiate conviction vacation for victims of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence. It further clarifies that the “prosecutor is not deemed to be providing legal advice or legal assistance on behalf of the victim, but is fulfilling an administrative function on behalf of the state in order to further their responsibility to seek to reform and improve the administration of criminal justice.”

Eligibility Determination

Washington faces several distinct challenges with determining eligible individuals for state-initiated conviction vacation. These include confirmation of all sentence terms; verification that no charges are pending in any state, federal, or tribal court; and confirmation of the lapse of time since completion of all sentence terms and financial legal obligations.

Confirmation of All Sentence Terms

Ensuring individuals have successfully completed all terms and conditions mandated in their sentence poses challenges due to the distributed nature of supervision and oversight among the State DOC and local community supervision agencies. (DOC has the responsibility of monitoring offenders who have felony or certain gross misdemeanors convictions, while the majority of misdemeanants are supervised by local community corrections entities.)

Currently, DOC provides electronic notifications to AOC when an individual with a felony conviction has completed all terms of their sentence, referred to as **Certificates of Discharge**, but these are not consistently filed in Superior Courts.⁵⁵ Neither DOC nor local community corrections agencies are required to provide Certificates of Discharge or similar documentation for misdemeanor convictions. This inconsistent reporting may create challenges in attempting to automate conviction vacation eligibility, as validating the successful completion of sentence terms, especially for misdemeanants, will likely require human intervention and manual research depending upon the technological capabilities of the local jurisdiction.

Verification that Individual Has No Pending Charges in Any Court

Verifying that an individual has no pending charges in any other court can only be accomplished by submitting a fingerprint-based state identification number (SID) via the Interstate

⁵⁵ Washington Courts, [Obtaining a Certificate of Discharge](#), July 2019, p. 1.

Identification Index (III),⁵⁶ which supports national searches of criminal history repository data, including pending charges. As previously noted, courts do not consistently capture and include person or charge tracking data when they report case dispositions to WSP. This is further compounded by tribal criminal justice entities' varying participation in state or federal background check initiatives. The U.S. Department of Justice (DOJ) established the Tribal Access Program (TAP),⁵⁷ which provides software and equipment to tribal law enforcement to share and receive information contained in national criminal justice systems, such as III. Currently 16 of the 29 federally recognized tribes in Washington⁵⁸ participate in this program and may contribute arrest and disposition data, whereas the remaining 13 tribes do not make this information available via TAP.

Confirmation of Time Since Completion of Sentence Terms and Legal Financial Obligations

AOC indicated that courts vary on financial obligation collection practices and may include external collection agencies to enforce compliance with court-ordered obligations. Confirmation of this requirement will likely be a manual process that varies by court, particularly for misdemeanants. Felony offenders have an established process through the Certificate of Discharge, but no similar mechanism exists for misdemeanor offenses. Sentence completion confirmation and determining the time lapse that follows will depend upon the supervising agency, as outlined [earlier](#).

⁵⁶ The Interstate Identification Index (III) is the primary means for law enforcement and criminal justice agencies to conduct national background checks. III routes queries to states and the FBI database to determine an individual's criminal history and any pending charges. III is limited to the information provided by or contained in state criminal history repositories. Absent a III check, the only check a state can perform is to search its own state database.

⁵⁷ <https://www.justice.gov/tribal/tribal-access-program-tap>.

⁵⁸ <https://www.washingtontribes.org/>.