

Expunging and Sealing Criminal Records

How Jurisdictions Can Expand Access to Second Chances

BY KENNY LO APRIL 15, 2020

What is a criminal record?

A criminal record is a list of a person's arrests and convictions that is maintained by the criminal justice system. More than 70 million Americans—nearly 1 in 3 adults—have a criminal record. As a result, more than 30 million U.S. children—nearly 1 in 2 kids—have at least one parent with a criminal record.

Not only do criminal justice agencies such as police, prosecutors, and courts have broad access to criminal records, but members of the general public, such as landlords and employers, can also search and obtain them. Even minor convictions that took place many years ago and arrests that did not result in a conviction are included in one's criminal record, meaning that even when someone is legally innocent of a crime, they could face barriers associated with having a record.

What barriers do criminal records pose?

Having a criminal record can severely limit one's access to employment, education, housing, civic engagement, and public assistance. Nearly 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges use background checks to screen for applicants' criminal records, and one study found that more than 45,000 federal and state statutes and regulations impose disqualifications or disadvantages on individuals with a conviction. Even when there isn't a conviction, an arrest record decreases a person's employment prospects more than other common employment-related stigmas. Moreover, the collateral damage of having a criminal record reaches across generations, as the socioeconomic barriers associated with a parent's criminal record can harm a child's long-term well-being and outcomes.

These impacts are disproportionately felt by families and communities of color: People of color are arrested and convicted at disproportionately high rates. Criminal records can also be used to target noncitizens for deportation, severing familial ties within migrant communities.

Can criminal records be cleared?

In the United States, certain types of criminal records can be expunged or sealed by a judge or court. An expungement removes



How can jurisdictions fix the problem?

Across the United States, states and local jurisdictions are making more criminal records eligible for expungement and sealing, including those that result from marijuana offenses and victimhood of human trafficking. States and localities are also increasingly taking steps to streamline existing procedures by eliminating waiting periods and reducing filing fees. From 2009 to 2014, at least 31 states and the **District of Columbia** expanded the scope and impact of expungement and sealing remedies in such ways.

A growing number of states are adopting "clean slate" laws to automate expungement and sealing procedures, in recognition of the many barriers that can prevent eligible individuals from clearing their records when filing a petition is required. At least three states, including **Pennsylvania**, have enacted clean slate legislation that creates an automatic and automated process for expunging or sealing certain eligible criminal records.

Furthermore, states are passing legislation to reduce occupational licensing barriers for individuals with criminal records. Today, a license to work is required for more than 1 in 4 jobs, including those in some of the fastest-growing industries, such as health care. In 2019 alone, at least nine states, including **Texas**, have begun to open these opportunities to qualified individuals with records by removing vague language in statutes and regulations, requiring transparency of licensing boards' decisions, and eliminating blanket bans on people with records from becoming licensed.

arrests and/or convictions from a person's criminal record entirely as if they never happened. Even a court or prosecutor cannot view a person's expunged record. In contrast, sealing removes a person's criminal record from public view, but it can still be accessed through a court order.

Most states provide some form of expungement or sealing for certain types of records. Yet the federal government currently does not have a regular mechanism for clearing federal conviction or even nonconviction records. Expungements and sealing typically require the individual to file a petition, appear in court, and serve a waiting period without reoffending. Taking these steps, however, can cost hundreds of dollars in legal and administrative fees, dissuading many who are eligible from expunging or sealing their criminal records. Additionally, many eligible individuals simply may not know that these remedies are even an option.

What's the opposition to expungements and sealing?

Some may argue that since people with records are thought to pose a threat to public safety, employers, landlords, colleges, and the general public have a right to know about a person's criminal record. However, research suggests that individuals with sealed or expunged criminal records actually commit crimes at a lower rate than the general adult population. In Michigan, for example, 99 percent of such individuals are not convicted of any felony, 99.4 percent are not convicted of any violent crime, and 96 percent are not convicted of any crime at all within five years of sealing their criminal records.

“I got these qualifications, and I know I can do the job; I just wasn't given the opportunity. I'm way more than two misdemeanors.”

—RONALD LEWIS, BENEFICIARY OF PENNSYLVANIA'S CLEAN SLATE LAW

Furthermore, expungement and sealing can benefit the economy by providing individuals with criminal records a second chance at employment. Economists estimate that the cost of barring these individuals from the workforce is roughly \$78 to \$87 billion in lost gross domestic product annually. One study found that putting to work just 100 of such individuals in Philadelphia would increase their lifetime earnings by \$55 million, income tax contributions by \$1.9 million, and sales tax contributions by \$770,000.

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Read more

Restoration of Rights Project | An online resource containing detailed state-by-state analyses of the law and practice in each U.S. jurisdiction, including that of expungement, sealing, employment, and licensing

Clean Slate Initiative | A bipartisan campaign launched by more than 25 groups from across the political spectrum to advance automatic criminal record-clearing initiatives

“Fair Chance Licensing Reform: Opening Pathways for People With Records To Join Licensed Professions,” December 2019 | A toolkit that provides an overview of fair chance licensing reform across the country and resources for advocates to continue such work

 This fact sheet will be periodically updated to account for new policy developments.

For a full list of sources, please see the web version of this fact sheet, available at www.americanprogress.org/?p=483264.