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Providing a Clean Slate: Removing Barriers to Employment

Key Points

- Public safety is a core responsibility of government, and it is critical that criminal record relief laws be reasonably restrictive to balance community safety with both redemption and renewed opportunity.
- Research has shown that among eligible individuals, those who successfully obtain expungement have low recidivism rates and earn an average of over 22% more wages within one year.
- Automating the record clearing process would eliminate all forms and fees, both lightening the courts' workload and removing barriers to relief.

Executive Summary

No matter its severity, a criminal record carries a heavy burden, leading to decreased employment opportunities, less than average annual earnings, fewer housing options, and fewer educational opportunities. Many individuals who are eligible to clear their record fail to do so successfully; some are simply unaware of their eligibility, while others struggle to overcome hurdles such as administrative hassles, access to counsel, or affording court costs and fees.

Texas should automate the record sealing process for those already entitled to an order of nondisclosure. Through the Department of Public Safety's Computerized Criminal History System, Texas could create an automated eligibility determination that would automatically seal records. This would allow court resources to be used more efficiently and eliminate all fees and forms, while the record holder would no longer be required to initiate the petition process—helping speed up the process to record relief and removing barriers to individuals getting back to work.

Introduction

While it is difficult to determine the exact number of people living with a criminal record, based on fingerprint records held by the Federal Bureau of Investigation, it is estimated that nearly one in three Americans live with a criminal record ([Federal Bureau of Investigation, 2022](#); [Vallas & Dietrich, 2014](#); [Gaebler, 2013](#)). There is currently a gap in recent data for Texans living with a criminal record, however, from 2017 to 2020, Texas made over 2.5 million arrests—many of which were for low-level misdemeanors ([Texas Department of Public Safety, n.d.](#)). Although they vary in severity, ranging from an arrest without conviction to convictions for serious felonies that result in incarceration, criminal records are accompanied by a social stigma that can hinder an individual's ability to secure employment, housing, skills training, and education. Despite research showing that the risk of an individual reoffending decreases as time passes, criminal records have historically followed an individual for the rest of their life ([Horowitz, 2020](#); [Leasure & Andersen, 2017](#)). However, since the creation of this criminal record and its subsequent lifelong consequences are a government-imposed punishment, the government has an obligation to ensure these records legitimately protect the safety of the public and are not a perpetual unjust punishment for the crimes.

In response to the overwhelming number of Americans struggling to find present and future stability due to mistakes in their past, states are implementing criminal record relief to both preserve public safety and remove roadblocks to economic success. From 2009 to 2014, more than 40 states passed legislation

In 2018, Pennsylvania became the first state to pass legislation to automate the record sealing process by using software, eliminating all forms and fees, commonly referred to as “Clean Slate” legislation.

to mitigate the consequences of a criminal record ([Vera Institute of Justice, 2014](#)). In 2018, Pennsylvania became the first state to pass legislation to automate the record sealing process by using software, eliminating all forms and fees, commonly referred to as “Clean Slate” legislation. With strong bipartisan support combined with the overwhelming impact seen post-implementation, a movement began in multiple state legislatures. In 2021, 10 states introduced similar Clean Slate legislation ([Hernandez, 2021](#)).

It is important to clarify that certain crimes should not qualify. Moreover, some public criminal records serve the interest of public safety and should not be eligible for sealing or expungement. For example, if a convicted sex offender is allowed to expunge their record and later get a job working with children, this would create a significant safety concern. Record relief should target low level, non-violent, first-time offenses and should not extend to violent, sexual, or repeat offenses. Public safety is a core responsibility of government, and it is critical that criminal record relief laws be reasonably restrictive to balance community safety with both redemption and renewed opportunity.

Negative Effects of a Criminal Record

The effects associated with a criminal record affect a large population—nearly one in three Americans ([Vallas & Dietrich, 2014](#); [Gaebler, 2013](#)). Criminal records, even those containing only non-violent, low-level crimes, result in reduced opportunities for success, below-average annual wages, limited housing options, and disqualification from some educational opportunities.

Income stability achieved with gainful employment is a critical part of reducing recidivism. However, with the rise of technology, many more employers have access to and choose to investigate an applicant’s criminal history—with recent numbers estimating that 87% of employers

use background checks ([Vallas & Dietrich, 2014, p. 9](#)). Since employers take on some liability when hiring, companies should continue to retain the right to investigate a potential employee’s history and have public access to records containing violent, sexual, or habitual offenses. However, many records containing low-level, non-violent offenses fail to present a compelling risk to public safety, and as more time passes, the likelihood of an individual reoffending decreases and can eventually become equal to the general population’s likelihood to offend ([Leasure & Andersen, 2017](#)). Still, any type of criminal record strongly disincentivizes an employer from hiring an applicant ([Vallas & Dietrich, 2014, p. 9](#)). Among all employment-related stigma, having any arrests during a person’s lifetime is the leading reason for a decrease in employment opportunities—reducing the chances of getting a callback from a potential employer by 50% ([Vallas & Dietrich, 2014, p. 9](#); [Couloute & Kopf, 2018](#)). On the other hand, a recent study found that among eligible individuals, those who successfully obtain expungement have both low recidivism rates and earn on average 22% more wages within one year ([Prescott & Starr, 2020](#)).

In addition to employment, having safe, stable, and affordable housing is a foundational stepping-stone to economic security for both individuals and families. However, with about 9 out of 10 landlords running criminal background checks on potential tenants, the ability to find housing can be difficult for those with an existing record ([Transunion SmartMove, 2017](#)). While landlords should continue to have the right to run criminal background checks, especially to verify if a potential tenant is high-risk or a potential liability, oftentimes low-level misdemeanors can still prevent a landlord from renting to a tenant—despite research showing that as time passes, individuals show low recidivism rates and present little to no risk to the public ([Clean Slate Texas, n.d.-a](#); [Collateral Consequences Resource Center, 2018](#)). Additionally, underemployment or unemployment can exacerbate housing instability and homeownership can be inaccessible due to the savings-limiting effects of a criminal record ([Vallas et al., 2015, p. 9–10](#)).

These negative effects also have a broader societal and economic impact. One study estimates that criminal records for those who have spent time in prison or have a prior felony conviction result in a \$78 billion to \$87 billion loss in annual GDP ([Bucknor & Barber, 2016](#)). While incarceration can create a skills gap or disruption in education that contributes to fewer employment opportunities, many individuals with felony convictions do not serve any prison time but are locked out of many government jobs and

licensed professions due to regulations, which is a contributing factor to this loss in GDP. Additionally, with nearly half of American children now having at least one parent with a criminal record, the instability associated with a record can cause intergenerational effects. Parents with a criminal record often struggle to find and keep stable housing, and research has shown that children in poverty who move three or more times for negative reasons are less likely to graduate high school and enroll in postsecondary education ([Ratcliffe, 2015, p. 3](#)).

Innovations and Success in Other States

The process one must navigate to achieve a clean record is complicated and cost-prohibitive for many. Nationwide, states have expanded access to record sealing, but even with recent reforms, many eligible individuals are still unable to achieve a clean record. Some are unaware of their eligibility, while others may not be able to overcome government-imposed financial and process hurdles such as administrative procedures, access to counsel, and associated costs and fees. This disparity, often referred to as the expungement gap or uptake gap, has become a subject of recent research. A 2020 study conducted in Michigan found that only 6.5% of eligible recipients obtained a clear record within five years of eligibility ([Prescott & Starr, 2020](#)). Furthermore, a Delaware study estimates that only 6% of those eligible to expunge a conviction have actually received criminal record relief ([Chien et al., n.d.](#)).

States across the nation are moving to address the expungement gap and the negative, collateral consequences attached to criminal histories. One mechanism for reform is via the creation of *automatic* and *automated* record clearing processes.

Automatic record clearing does not require eligible individuals to file a petition; however, the court must still manually clear the record of those who qualify. *Automated* record clearing is the implementation of software that automatically clears records for qualifying individuals without the need for a petition from the defendant or an order from the court ([National Conference of State Legislatures \[NCSL\], 2020](#)). Automation allows limited court resources to be used more efficiently, while also speeding up the process and removing barriers for eligible individuals. As a result, a larger number of individuals can reap the benefits, no matter their ability to afford the process.

In 2018, Pennsylvania became the first state to implement an automated record clearing system with the passage of House Bill 1419 ([2017](#)). The reform received powerful bipartisan support, with 71% of Americans, including 62% of Republicans, supporting the change ([Center for American Progress, 2019](#)). Since implementation, over 1.2 million Pennsylvanians have had their records sealed through the Clean Slate automated process ([My Clean Slate PA, n.d.](#)).

Table 1
Pennsylvania Clean State Legislation

Eligible offenses	Ineligible offenses
<ul style="list-style-type: none"> • 2nd degree misdemeanors • 3rd degree misdemeanors • Misdemeanors punishable by two years or less in prison • Summary convictions • Charges not resulting in convictions 	<ul style="list-style-type: none"> • Crimes involving danger to persons • Crimes against families • Firearm offenses • Offenses relating to criminal homicide • Offenses related to crimes against an unborn child • Offenses related to assault • Offenses related to kidnapping • Offenses related to human trafficking • Sexual offenses • Violations relating to abortion • Cruelty to animals

Note. From *State Policies to Clear Criminal Records*, National Conference of State Legislatures, 2020 (<https://www.ncsl.org/research/civil-and-criminal-justice/state-policies-to-clear-criminal-records.aspx>).

Following the success of Clean Slate in Pennsylvania, Delaware, New Jersey, Michigan, and Utah have passed similar legislation (NCSL, 2021; [Clean Slate Initiative, 2021](#)). The New Jersey legislation created a task force that is still undergoing the process of developing and implementing an automated expungement system (NCSL, 2020; 2021). The Michigan law will expand eligibility for expungement and also create a process to automatically seal eligible non-violent misdemeanor and felony convictions after a period of seven to ten years ([Safe & Just Michigan, n.d.](#)). Utah will now expunge all traffic offenses through the automated system while all other eligible offenses are automatically expunged with an order from a judge. The law also notifies prosecutors of eligible cases, providing them the opportunity to object to the expungement (NCSL, 2020; 2021).

The length of time before an individual becomes eligible for record relief varies depending on state record clearing laws (NCSL, 2021). Research shows that recidivism most commonly occurs within the first few years of an arrest, sentence, or release—meaning longer duration of punishment does not equate to greater public safety ([Horowitz, 2020](#)). This theory can also be applied to the length of time individuals live with a public criminal record. If an individual has successfully completed their necessary sentence and has proven over time not to recidivate, states should act in the public interest and ensure the period until record relief

is not unnecessarily prolonged ([Horowitz, 2020](#); [Pressley & Levin, 2021](#)).

Current Policy in Texas

The two main methods of criminal record relief in Texas are orders of nondisclosure (OND), also referred to as “record sealing,” and expunction. Both methods have varying levels of eligibility requirements and confidentiality provided. An OND hides the criminal offense from the public, meaning an individual would not need to disclose the offense to most employers or institutions. However, more than 30 agencies and entities can still access the contents of a sealed record despite the OND—including criminal justice agencies, the Texas Department of Licensing and Regulation, the Texas Medical Board, the Texas Education Agency, and more ([Tex. Gov. Code, Sec. 411.0765](#)). On the other hand, an expunction permanently deletes the arrest, charge, or conviction from a person’s record, leaving no evidence of the incident ([Texas Young Lawyers Association and the State Bar of Texas, 2019](#)). However, Texas has strict qualifications for expunctions, limiting the practice to rare cases such as an arrest that never led to a charge, acquittals, and pardons ([Texas Young Lawyers Association and the State Bar of Texas, 2019, p. 1–2](#); [Silva, 2022](#)).

In recent years, Texas has expanded access to its OND laws to include greater eligibility opportunities. Currently, Texas allows individuals to petition for record sealing if they fall under the specifications listed in **Table 2**.

Kirsten’s Story:

“In 1998 I had just started nursing and developed a habit with some crack cocaine and that changed my life. I lost my nursing license. ... I was not able to rent an apartment, I was not able to rent a house. I was not able to function the way that a normal person would function. ... I was denied repeatedly in my attempts to obtain housing. It was really by the grace of God that doors began to open for me.

“If Clean Slate would have been enacted during my timeframe, I believe that having the hope, that knowing that something was going to drop off of your record at a later time, that this was not going to follow you around for the rest of your life, that it would have given me the incentive to be like ‘okay, I can dust myself off now and I can move on because eventually that’s going to disappear and I don’t want to keep adding to the problems that I’ve already created’. But at the time, once I got the first charge against me ... all hope was gone. And I knew that those collateral consequences were going to follow me for the rest of my life.

“I made some bad decisions along the way, I got involved in things I shouldn’t have been involved in, but the things that I did do not make me who I am.”

–Kirsten Ricketts, founder and director of Restorer of City Streets

Source: “Why We Need Clean Slate,” Clean Slate Texas (<https://www.cleanslatetexas.org/stories>).

Table 2
Current Texas OND Eligible Offenses

Offenses resulting in deferred adjudication	Offenses resulting in conviction followed by community supervision	Offenses resulting in conviction not followed by community supervision
<ul style="list-style-type: none"> • First-time, non-serious misdemeanors guaranteed automatic record sealing, so long as the petitioner meets all eligibility requirements. • Repeat, non-serious misdemeanors eligible at the discretion of the court with no waiting period. • Serious misdemeanors eligible at the discretion of the court with a two-year waiting period. • First-time driving while intoxicated and boating while intoxicated eligible at the discretion of the court with a two-year waiting period. • Felonies eligible at the discretion of the court with a five-year waiting period. 	<ul style="list-style-type: none"> • First-time, non-serious misdemeanors eligible at the discretion of the court with no waiting period. • First-time, serious misdemeanors eligible at the discretion of the court with a two-year waiting period. • Intoxication-related and organized crime offenses are disqualified. • Felonies are disqualified. 	<ul style="list-style-type: none"> • First-time, fine-only misdemeanors eligible at the discretion of the court with no waiting period. • First-time misdemeanors eligible at the discretion of the court with a two-year waiting period. • Intoxication-related, organized crime, and violent or sexual offenses are disqualified, other than misdemeanor assault. • Felonies are disqualified.

Note. Taken from Sections 411.072, 411.0725, 411.0726, 411.073, 411.0731, 411.0735, and 411.0736, [Texas Government Code](#).

According to [Section 411.0745](#), Texas Government Code, those who qualify for an OND and wish to apply must petition the court in person, electronically, or by mail. The petition must include evidence that the person is eligible for an OND and therefore entitled to filing a petition, including a copy of their Department of Public Safety criminal history record. The filing fee is about \$280, plus any other fees that a county may require ([Clean Slate Initiative, n.d.](#)). Once the petition is filed, a hearing is set for a judge to review the petition, and if all requirements are met, the judge will issue the OND. Once an OND is granted, it can take up to one year to take effect—further burdening the record holder despite their entitlement to a sealed record ([Clean Slate Texas, n.d.-c](#)).

In 2021, legislation was introduced in Texas that would automate the record clearing process—eliminating all forms and fees currently needed to petition for criminal record relief. This would both lighten the workload on the courts, while also removing a barrier to relief.

The legislation passed the House but failed to receive a committee hearing in the Senate ([HB 3601, 2021](#)).

Recommendations

Automate the Record Clearing Process

Evidence shows that criminal records have negative effects on individuals, families, and the economy. Texas should automate the record sealing process for those entitled to an OND. Through the Department of Public Safety’s Computerized Criminal History System, the state can use technology to create an automated eligibility determination to notify district clerks who will then seal the record—with no significant fiscal impact anticipated for the state to implement the automated process ([HB 3601 Fiscal Note, 2021](#)). This would eliminate all fees and forms and would no longer require the record holder to initiate the petition process, speeding up the process to record relief and helping individuals get back to work quicker.

Conclusion

While many other barriers to reentry and gainful employment exist, the obstacles associated with a criminal record are immensely consequential, having long-lasting negative effects on the family, community, and larger economy. Although Texas provides the opportunity for many

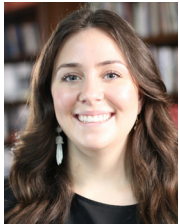
offenders to seal their records, research has shown that a large portion of these offenders fail to successfully seal their record due to court or attorney costs. Texas should reform current policies to remove barriers to employment and subsequently promote healthier families, communities, and the economy. ★

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