

Criminal Justice Reform: Removing Barriers to Housing and Employment through Record Sealing and Expungement

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Overview

- Introduction to JAN
- The Collateral Consequences of a Criminal Record
- The Arguments
- Recent State-Level Reforms
- Next Steps and Ways to Get Involved

Who We Are



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The Collateral Consequences of a Criminal Record: Scope

- Fifty states, Guam, and Puerto Rico report the total number of persons in their criminal history files as 110,235,200
 - Individuals might have records in multiple states
 - Includes arrests that do not result in conviction
- There is no data on the proportion of the individuals behind these arrests that have a service record
 - As of 2011-2012 (!), an estimated 7 percent of the nation's jail population were veterans
- In 2006, 50 percent of FBI records were missing final disposition information

The Collateral Consequences of a Criminal Record: Employment

- Nine in ten employers report performing background checks
- A survey of employers revealed that having “any arrest” decreases the likelihood of employment more than not having a diploma, a history of unemployment, or part-time work experience
- A criminal record reduces a job seeker’s chance of getting a callback or job offer by nearly 50 percent
- Many occupational licenses can be denied due to a criminal record

The Collateral Consequences of a Criminal Record: Housing

- Local public housing authorities may restrict access if someone “has engaged in during a reasonable time” “other criminal activity” that threatens “health, safety, or right to peaceful enjoyment”
- Most landlords (four in five) use background checks

The Collateral Consequences of a Criminal Record: Education

- Convictions may restrict eligibility for federal grants, loans, or work assistance
- Convictions may restrict access to college housing

The Collateral Consequences of a Criminal Record: Economic

- The estimated cost of employment losses due to people with criminal records is as much as \$65 billion per year in terms of gross domestic product
- In 2008, the country had as many as 1.7 million fewer workers due to employment barriers for people with criminal records

The Collateral Consequences of a Criminal Record: Conclusion

- Over one-third of judges reported “rarely” or “never” discussing collateral consequences with defendants
- Almost 45,000 collateral consequences have been identified

Collateral Consequences Inventory

Use the categories below to search and view details of policies relating to collateral consequences of a criminal conviction.

1,277 Matching Entries (out of 44,631 total consequences)

« 1 2 ... 128 » Export Results List Reset Search

DESCRIPTION	JURISDICTION	CONSEQUENCE TYPE	KEYWORDS
<input type="text" value="Search within results"/> <input type="submit" value="Q"/>	Select all that apply	Education	Select all that apply
<input type="checkbox"/> Include Federal Consequences			+ Show More Options
<i>Code of Ala. § 12-15-217</i> Notify school administrators/teachers of student's juvenile adjudication	Alabama	Education Registration, pu...	Education & sc... Teachers & instr...

Case Study: Thomas Hurt

- Vietnam Veteran
- Charged with misdemeanor battery after a fight with a coworker
- Served one night in jail
- At the age of 60, was still being turned down for jobs due to “violent criminal history”
 - Even the VA refused his volunteer application

The Arguments: Little Public Safety Risk

- Once an individual with a prior property/drug conviction has stayed crime free for three to four years, that person's risk of recidivism is no different from the risk of arrest for the general population
 - Other convictions: 10 years
- In one state, just 6 percent of all recipients of record sealing were rearrested within five years; only 2 percent are rearrested for violent offenses; and reconviction rates are even lower

The Arguments: Stronger Employment Outcomes

- Recent research from Michigan found that “among those legally eligible for expungement, just 6.5 percent obtain it within five years of eligibility”
- But, of those that do, expungement produces an increase in wages of 25 percent within two years
- Employment is strongly correlated with reduced recidivism

The Arguments: “Right to Know”

- “However, opponents, including the Greater Albuquerque Chamber of Commerce, say businesses have a right to know who they’re hiring. And the New Mexico Foundation for Open Government argues that the bill ‘violates the most basic principle of the public’s right to know by erasing what is and has historically been a public record.’”
- “‘It would let the courts wipe away the public record of arrests and convictions as though they never have occurred,’ said Melanie Majors, FOG’s executive director. ‘... This bill asks the courts to change our history. We believe passage of this bill would set a very dangerous precedent with potentially serious consequences to public safety.’”

The Arguments: “Right to Know”

- “It’s one thing to find a way to protect victims of identity theft and those wrongfully convicted. Providing a way to completely rewrite history and keep the public in the dark about misdeeds of prospective employees, neighbors, etc. is another.”

Overview of Reforms

- “In 2018, 32 states, the District of Columbia, and the U.S. Virgin Islands produced 61 separate laws aimed at reducing barriers faced by people with criminal records in the workplace, at the ballot box, and elsewhere”
 - “The largest number of new laws—29 statutes in 20 states—expanded access to sealing or expungement, by extending eligibility to additional categories of offenses and persons, by reducing waiting periods, or by simplifying procedures”

Overview of Reforms: 2018 Alone...

- Ten states increased the offenses eligible to be sealed or reduced the waiting period
- Eight states eased access to sealing of non-conviction records
- Four states limited public access of juvenile records
- Four states closed records for marijuana-related offenses
- Seven states regulated access of records related to victims of human trafficking

Overview of Reforms: Key Questions

- Which offenses?
- How long to wait?
- Who qualifies?
- Automatic, after a request, and/or mandatory?
- Sealed or expunged? (And is it destroyed?)
- Retroactive?

Overview of Reforms: What is Sealed?

- Under “Clean Slate,” “All notations of arrests, indictments or other information,” and “All information relating to a conviction and the arrest, indictment or other information”
- In New Mexico, “public records” means documentation relating to a person's arrest, indictment, proceeding, finding or plea of guilty, conviction, acquittal, dismissal or discharge, including information posted on a court or law enforcement website”
 - But do not include records that reveal confidential sources or methods, files of DAs maintained as confidential records, records that federal law requires agencies to maintain

Overview of Reforms: Clarifying Disclosure

- “...an individual may not be required or requested to disclose information about the individual's criminal history record that has been expunged or provided limited access ... An individual required or requested to provide information in violation of this section may respond as if the offense did not occur”
- “the proceedings shall be treated as if they never occurred, and officials and the person who received the order to expunge may reply to an inquiry that no record exists with respect to the person”

Pennsylvania's "Clean Slate"

- Automatic record sealing
- "...criminal history record information pertaining to a conviction of a misdemeanor of the second degree, a misdemeanor of the third degree or a misdemeanor offense punishable by imprisonment of no more than two years if a person has been free for 10 years from conviction for any offense punishable by imprisonment of one or more years and if completion of each court-ordered financial obligation of the sentence has occurred..."
 - Plus summary and non-conviction records
- Nonviolent misdemeanors only
- Court system notifies state police regarding eligible cases; state police verify; court system then creates final list and issues automatic orders
 - DA may challenge

Pennsylvania's "Clean Slate": Automation

- Burden falls on the court system rather than the individual
- Technological issues
- Can be produced as part of the original criminal case

Pennsylvania's "Clean Slate": Public Opinion

- "Now, some people support a proposal that would allow the criminal record of non-violent misdemeanors to be automatically sealed after a few years assuming they haven't committed another crime"
- 81% support overall
 - 73% of Republicans
 - 87% of Democrats
 - 85% of Independents
 - 74% of Trump voters

New Mexico Provides Sweeping Record Sealing (1/4)

- Wrongfully-identified persons: no waiting period, judge holds a hearing and “shall order” expungement
- Those arrested and released without conviction: one-year waiting period, any offense, law enforcement may object at hearing, judge “shall order” expungement if no other charge is pending
 - Includes acquittals, not guilty verdicts, other dismissal, pre-prosecution diversion, etc.

New Mexico Provides Sweeping Record Sealing (2/4)

- Those convicted:
 - Must have paid any fines or fees owed to the state for the conviction
 - Law enforcement may object at the hearing
 - Judge “shall order” expungement if:
 - No other charge or proceeding is pending
 - Justice will be served by an order to expunge
 - Victim restitution was fulfilled
 - No other criminal conviction of the petitioner has occurred for a period of two years for ordinances/lower-level misdemeanors; four year for serious misdemeanors/lower-level felonies; six to ten years for other felonies

New Mexico Provides Sweeping Record Sealing (3/4)

- Will justice be served?
 - The nature and gravity of the offense or conduct
 - The petitioner's age, criminal history and employment history
 - The length of time that has passed since the offense was committed and the related sentence was completed
 - The specific adverse consequences the petitioner may be subject to if the petition is denied
 - Any reasons to deny expungement of the records submitted by law enforcement

New Mexico Provides Sweeping Record Sealing (4/4)

- Exemptions: an offense committed against a child, an offense that caused great bodily harm or death to another person, a sex offense, embezzlement, or an offense involving driving while under the influence of intoxicating liquor or drugs

Nevada's Expansion of Record Sealing (2017) (1/2)

- Reduced the waiting period for the most serious felonies from 15 years to 10 years (some exemptions)
- Reduced the waiting period for other felonies from 15 years/12 years to 5 years
- Reduced the waiting period for lowest level felonies from 7 years to 2 years
- Reduced the waiting period for serious misdemeanors from 5 years to 2 years; all other misdemeanors: 1 year
- Created a rebuttable presumption in favor of sealing the record

Nevada's Expansion of Record Sealing (2017) (2/2)

- Important provision: “the court may order sealed all records of the conviction which are in the custody of any agency of criminal justice or any public or private agency, company, official or other custodian of records in the State of Nevada, and may also order all such records of the petitioner returned to the file of the court where the proceeding was commenced from, including, without limitation, the Federal Bureau of Investigation, the California Bureau of Criminal Identification and Information and all other agencies of criminal justice which maintain such records and which are reasonably known by either the petitioner or the court to have possession of such records”

Other Important Reforms

- Oklahoma removed the requirement that individuals have received a pardon before becoming eligible for expungement (2018)
- Tennessee removed the fee for expunction (2019)
- South Carolina overrode a gubernatorial veto of a bill to expunge certain drug crimes/young adult offenses (2018)

Related Reforms: “Ban-the-Box” and Employer Liability Shields

- “Ban-the-box” merely prevents a criminal record from being an automatic bar to consideration for employment, and delays the inquiry into the criminal record until the applicant can explain it fully
 - “Ban the box” does not require any state or local government to hire a particular applicant
 - “Ban the box” does not prevent a state or local government employer from conducting a background check
- Limiting civil liability for employers who choose to hire those with a criminal record can ease concerns by employers; three different approaches:
 - Prohibit/presume against a cause of action
 - Use of a certificate to presume due care
 - Limit use of criminal record info at trial

Next Steps: Emerging Issues

- “Mugshots” posted online
- Diversion vs. conviction; citations in lieu of arrest
- Automatic or petition-based process and the quality of criminal records
- Fines/fees/restitution

Next Steps: Ways to Get Involved

- Your clients and their stories
- Your phone calls, emails, and testimony
- Improving knowledge of collateral consequences
- Expungement clinics/fairs

Thank you!

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