

Making the Promise of Expungement a Reality:

A Guide to Record Relief in the State Courts

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Introduction

When people are convicted of criminal charges, they typically receive penalties that are dictated by the criminal justice system, such as imprisonment, probation, or the payment of fines. In addition to these court-imposed sentences, individuals also face collateral consequences, a variety of penalties that are not formally imposed by the courts.¹ Collateral consequences of criminal records create social and economic barriers for individuals who are reentering society by denying or restricting rights and privileges that would otherwise be available to them.

More than 40,000 collateral consequences exist across the United States in the form of laws, ordinances, and organizational rules, policies, and procedures.² They include barriers to employment, housing, college admission, student loans, professional licenses, government benefits and services, voting rights, family reunification, and more.³ As roughly 1 in 3 American adults (nearly 80 million people) have criminal records,⁴ collateral consequences play a fundamental role in shaping people's lives and reproducing historical and systemic inequities.

Collateral consequences do not only affect individuals with criminal records; they also have serious implications for the courts and for the legal system broadly. Although these are often extra-judicial penalties, they are increasingly seen as an unavoidable component of the package of punishments that people receive for crimes (whether or not they have been convicted). Many collateral consequences are unrelated to the underlying offense that the individual was arrested for, charged with, or convicted of, and these penalties can undermine the fundamental goals of the legal system.⁵

¹ U.S. Commission on Civil Rights (June 2019). [Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities](#).

² Council of State Governments (2024). [National Inventory of Collateral Consequences of Conviction](#).

³ For an overview of collateral consequences issues as they relate to the courts, see Miller, Paige, & Trochesset (2021). [Collateral Consequences of Criminal Records](#). National Center for State Courts.

⁴ National Conference of State Legislatures (March 2023). [Criminal Records and Reentry Toolkit](#).

⁵ American Bar Association (Sept. 20, 2022). [Reducing the Impact of Collateral Consequences of Convictions](#).

Collateral Consequences Undermine the Goals of the Legal System

Collateral Consequences Contribute to Disproportionality

Although the American legal system is grounded in the principle that punishments should be proportional to crimes, the existence of collateral consequences means that some experience penalties far out of proportion to their offenses.⁶ Punishment disproportionality is especially complicated in situations where the label “violent crime” is applied to the individual’s offense. There exists a set of especially severe collateral consequences that are applied in those situations, despite the fact that definitions of violent crime are fairly arbitrary and vary widely from state to state.⁷ Furthermore, collateral consequences affect people who have been arrested or charged, even if they have never been convicted. Thus, in the most extreme cases of disproportionality, people experience penalties for crimes that they have not committed or of which they have not been found guilty.

Collateral Consequences Increase Recidivism

A major goal of the criminal legal system, along with punishment and deterrence, is the rehabilitation of those who have committed crimes.⁸ Because some collateral consequences can make it difficult for people to meet their basic needs through employment and housing, they can make it hard for people to successfully reintegrate into society. Research shows that when people are unable to secure employment and housing as a result of their criminal records, they become more likely to recidivate, because many crimes stem from a lack of access to societal resources.⁹ Thus, not only do severe collateral consequences increase the overall amount of crime, they also contribute to the strain on courts’ resources through heavier caseloads, and they cause programming such as parole and probation resources to be less effective.

⁶ Murray, B. M. (2020). Are collateral consequences deserved? *Notre Dame Law Review*, 95(3), 1031-1076.

⁷ O’Hear, M. (2019). Third-class citizenship: The escalating legal consequences of committing a “violent” crime. *Journal of Criminal Law and Criminology*, 109(2), 165-235.

⁸ Love, M. (2011). Paying their debt to society: Forgiveness, redemption, and the Uniform Collateral Consequences of Conviction Act. *Howard Law Journal*, 54(3), 753-794.

⁹ Whittle, T. (2018). Felony collateral sanctions effects on recidivism: A literature review. *Criminal Justice Policy Review*, 29(5), 505-524.

Jacobs, L. & Gottlieb, A. (2020). The effect of housing circumstances on recidivism: Evidence from a sample of people on probation in San Francisco. *Criminal Justice & Behavior*, 47, 1097.

Collateral Consequences Exacerbate Racial Disparities

In addition to their disproportionate involvement in the criminal justice system, people of color—particularly Black, Indigenous, and Latine individuals—also disproportionately bear the burden of collateral consequences.¹⁰ Researchers have found racial disparities in the extent to which criminal records impede people’s ability to reintegrate into society. In other words, although criminal records generally make it harder for everyone to obtain employment, housing, education, and social services, they create even *bigger* barriers for Black, Indigenous, and Latine people than they do for White people.¹¹ Thus, collateral consequences threaten the courts’ efforts to achieve racial equality in justice outcomes and likely undermine public trust and confidence in the courts.¹²

Relief from Collateral Consequences

There are two broad categories of relief designed to reduce collateral consequences.

The first is a set of policies (usually in the form of state legislation) that aim to limit the ways in which people’s court records can be used to make decisions about them. These forms of relief do not involve the court records themselves (and, therefore, do not involve any action by the courts). Instead, they aim to limit collateral consequences at the point where important decisions are being made about the person with a record.

For example, ban-the-box (BTB) laws require employers to wait until the call-back or interview stage of the hiring process before asking about a criminal record or conducting a criminal background check.¹³ The idea behind BTB laws is to give job applicants the chance to present their strengths and put their criminal record in context before employers learn about the criminal record, thereby increasing their chances of being hired.¹⁴ At least 37 states and more than 150 local jurisdictions have adopted BTB laws.¹⁵ Although some research suggests that this is a promising approach for increasing employment among people with criminal records and for decreasing recidivism,¹⁶ some

¹⁰ Alexander, M. (2020). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (10th Anniversary ed.). New York: The New Press.

¹¹ Leasure, P. & Kaminski, R. (2021). The impact of a multiple conviction record on hiring outcomes. *Crime & Delinquency*, 67, 1022-1045.

Schneider, V. (2018). The prison to homelessness pipeline: Criminal record checks, race, and disparate impact. *Indiana Law Journal*, 93(2), 421-455.

Burnside, A. (April 2022). [No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions](#). The Center for Law and Social Policy.

¹² For more information on public trust and confidence in the state courts (and particularly the role of perceptions of unequal justice), see National Center for State Courts. [State of the State Courts \(2023\)](#).

¹³ Miller, Paige, & Trochesset (2021). [Collateral Consequences of Criminal Records](#). National Center for State Courts.

¹⁴ National Conference of State Legislatures (June 2021). [Ban the Box](#).

¹⁵ Avery, B. & Lu, H. (October 2021). [Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies](#). National Employment Law Project.

¹⁶ D'Alessio, S., Stolzenberg, L., & Flexon, J. (2014). The effect of Hawaii’s Ban the Box law on repeat offending, *American Journal of Criminal Justice*, 40, 336-352.

research suggests that BTB laws may inadvertently *increase* racial disparities in hiring, as employers who lack access to applicants' criminal records may assume that applicants of color are more likely to have records.¹⁷

Another approach to reducing collateral consequences in employment decisions is fair chance licensing, which has been adopted in some form in at least 44 states.¹⁸ These laws expand access to state employment licensing for people with criminal records. There is variety across jurisdictions in the types of licenses that are covered by these laws. These policies can also take different forms. For example, they may expand the factors that licensing boards must consider when evaluating an application for a license, prevent specific types of records (such as juvenile records or nonviolent misdemeanors) from being considered at all, require licensing boards to provide written explanations or justifications for denials based on criminal records, require licensing boards to show a direct relationship between the underlying offenses and the licensed activity, limit the age of the convictions that can be considered, and more.

In addition to the employment sector, there have also been policy attempts to reduce collateral consequences in the areas of housing, public benefits, voting rights, and education.¹⁹ Many of these policy approaches are relatively new, so more research is needed to determine whether they are effective in reducing collateral consequences or decreasing recidivism.

The second category of collateral consequences relief includes policies that address the underlying court records (and sometimes law enforcement records) themselves.²⁰ Because these record-clearing policies directly involve the state courts, they are the focus of the remainder of this report.

¹⁷ Agan, A. & Starr, S. (2018). Ban the Box, criminal records, and racial discrimination: A field experiment. *The Quarterly Journal of Economics*, 133(1), 191-235.

Doleac, J. & Hansen, B. (2020). The unintended consequences of "Ban the Box": Statistical discrimination and employment outcomes when criminal histories are hidden. *Journal of Labor Economics*, 38(2), 321-374.

¹⁸ Council of State Governments Justice Center (March 2023). [Fair Chance Licensing Project: States Expand Access to In-Demand Jobs](#).

¹⁹ For an overview, see Miller, Paige, & Trochesset (2021). [Collateral Consequences of Criminal Records](#). National Center for State Courts.

²⁰ For an overview of different approaches to record-clearing, see National Conference of State Legislatures (April 2020). [State Policies To Clear Criminal Records](#).

Expungement and Other Forms of Record Clearing

One of the primary remedies available to a person experiencing collateral consequences is to have the criminal record cleared in some way. The terminology surrounding record-clearing policies varies across jurisdictions, but, generally speaking, these remedies remove a person's record from easy public access, limiting the extent to which the record can be used to make decisions about the person.²¹ The authority for a state court to clear a person's record typically comes from state legislation. All states limit the types of records that can be cleared and the circumstances under which record-clearing relief is available.

Expungement, Sealing, and Set-asides

As of March 2024, 38 states and District of Columbia allow people with felony and misdemeanor convictions to obtain expungement, sealing, or set-asides.²² Each jurisdiction includes and excludes specific types of offenses within those categories, so the breadth of convictions that are eligible for record clearing varies widely. An additional 5 states provide these remedies for misdemeanor and pardoned felony records, and 3 states provide these remedies only for misdemeanors. The remaining 4 states do not generally provide record-clearing remedies, but they have narrow specialized provisions for expunging, sealing, or setting aside convictions.

EXPUNGEMENT means that law enforcement and court records relating to a person's case are destroyed or separated from the rest of the records in some way.

The practical meaning and impact of an expungement varies widely across jurisdictions.²³ Depending on the state and the type of offense involved, expungement may mean that the record is completely destroyed, placed into a separate database apart from the primary body of court records, placed in the custody of a specific state agency (such as an agency responsible for firearm record checks), or simply made unavailable to anyone without a court order. Typically, the individual is given the legal right not to disclose that the arrest, charge, or conviction ever happened (for example, on job applications). However, many states carve out exceptions to this right. Whether a person must disclose their expunged records under oath, on sex offender registries, during firearm purchases, or on application forms varies across jurisdictions.

²¹ National Conference of State Legislatures (April 2020). [Criminal Record Clearing: The Terminology](#).

²² Collateral Consequences Resource Center (March 2024). [50-State Comparison: Expungement, Sealing & Other Record Relief](#), Section 1.

²³ National Conference of State Legislatures (April 2020). [Criminal Record Clearing: The Terminology](#). Hamann, K., Riley, P., & Bismuth, C. (January 2024). [The Evolving Landscape of Sealing and Expungement Statutes](#). American Bar Association.

SEALING typically means that the court record is preserved, but access to it is limited.

As with expungement, the practical meaning of sealing can vary quite a bit. It can mean that the record is deemed, as a matter of law, to have never occurred, or it can simply mean that only certain types of parties are allowed to access the record. After a record is sealed, it may be used for certain specific purposes that vary across jurisdictions, such as to determine whether a person is a “habitual offender” for sentencing purposes or to conduct background checks for health care licensure or law enforcement employment. As with expungement, whether a person is obligated to disclose the sealed records in certain situations varies across jurisdictions. Many states and the federal government carve out exceptions to how the sealed information contained in court or law enforcement records can nevertheless continue to be used. Thus, a person may be required to disclose the expungement under oath, for sex offender registry purposes, for firearms purchases, and on some application forms. Information may continue to be used for certain law enforcement purposes or by the federal government for its purposes.

A SET-ASIDE or ANNULMENT typically means that the individual is considered not to have been convicted of the crime in question.

A set-aside is often accompanied by an order to seal the underlying record. As with expungement and sealing, there is variation in how much access to the record is restricted after it has been set aside, as well as variation in the situations in which the person may be required to disclose the crime.

Note that in many jurisdictions, expungement, sealing, and set-asides apply only to records created in the trial court and do not address appellate records. Therefore, even when the original trial record is not accessible, appellate records related to the same underlying legal cases may be accessed.

Judicial Certificates of Relief

Judicial certificates of relief are a mechanism through which the court can communicate to the broader public that an individual appears to be rehabilitated.²⁴ A certificate generally states that the individual has satisfactorily completed the sentence and has demonstrated good conduct. A certificate may also grant the person relief from specific collateral consequences.

As of March 2024, 14 states provide for judicial certificates of relief, and the purposes of these certificates vary.²⁵ California and Connecticut provide a general finding of rehabilitation, and Arizona provides a certificate of second chance only if the person’s conviction has been set aside. Alabama, Ohio, and Washington focus on providing relief for employment and licensure purposes. The remaining 8 states (Colorado, Illinois, New Jersey, New York, North Carolina, Tennessee, Vermont, and New Mexico) provide relief for specific collateral consequences.

²⁴ National Conference of State Legislatures (June 2022). [Certificates of Rehabilitation and Limited Relief](#).

²⁵ Collateral Consequences Resource Center (March 2024). [50-State Comparison: Expungement, Sealing & Other Record Relief](#), Section 4.

Barriers to True Record Relief

Despite the wide variety of policies that have been enacted to provide relief from collateral consequences of criminal records, these records continue to make reentry into communities difficult for many Americans. There continues to be a strong relationship between the extent of collateral consequences and the likelihood of recidivism. And perhaps most alarmingly, there are still substantial racial disparities in collateral consequences.

One problem is that although there has been an expansion in record-clearing opportunities in recent years,²⁶ only 10–20% of adults who are eligible to apply for some type of relief do so, and less than 10% receive that relief.²⁷ About 20 to 30 million people are eligible for some type of relief, out of approximately 80 million people with criminal records.²⁸ Therefore, about 200,000 to 600,000 ultimately receive relief.²⁹ This problem is referred to as the “second chance gap.”³⁰

In this section, we discuss the major barriers to accessing record relief that have been identified by experts. After reviewing these barriers and some additional considerations, we lay out a set of policy and practice solutions that the courts might explore to address these barriers.



[Awareness of Eligibility](#)



[Availability of Legal Assistance](#)



[Waiting Periods](#)



[Effectiveness of Record Cleaning](#)



[Financial Barriers](#)

²⁶ Love, M. & Sibilla, N. (2024) [Advancing Second Chances: Clean Slate and Other Record Reforms in 2023](#). Collateral Consequences Resource Center.

Love, M. (2022). [The many roads from reentry to reintegration: A national survey of laws restoring rights and opportunities after arrest or conviction](#). Collateral Consequences Research Center.

²⁷ Chien, C. (2020). America’s paper prisons: The second chance gap. *Michigan Law Review*, 119, 519-612.

²⁸ Shannon, S. Uggen, C., Schnittker, J., Thompson, M., Wakefield, S., & Massoglia, M. (2017). The growth, scope, and spatial distribution of people with Felony Records in the United States, 1948-2010. *Demography*, 54(5), 1795–1818.

²⁹ National Conference of State Legislatures (March 2023). [Criminal Records and Reentry Toolkit](#). This is based on 20 to 30 million

³⁰ Chien, C. (2020). America’s paper prisons: The second chance gap, *Michigan Law Review*, 119, 519-612.



Awareness of Eligibility

In most cases (outside of automatic record clearing policies, which are discussed below), the responsibility for obtaining record relief sits squarely with the individual who holds a record. Many people who are eligible to petition for some type of record clearing relief are not aware of available opportunities.³¹ Although some states require judges to advise defendants at the time of sentencing that they may become eligible for record relief in the future, individuals are not likely to remember this information at the time it becomes relevant many years later.³² For most, the question of clearing a criminal record arises because the individual has already experienced collateral consequences. Accordingly, the very first barrier that people face toward record relief is simply knowing that they may be eligible for these remedies.

Though only a fraction of those with a criminal record are ever incarcerated,³³ prisons and jails may be one place where the state could make individuals aware of record relief opportunities. However, recent research suggests that the impact of this approach is often limited by poor implementation. For example, a recent survey of Ohio institutions found that very few jails provided any educational materials or programming on any of three different types of record relief opportunities. Many responding institutions reported that individuals had access to a law library and could look for resources on record relief on their own.³⁴



Waiting Periods

Those with criminal records typically must wait a certain period of time before they may be eligible for record relief. According to a 2022 survey of states, the waiting period for misdemeanor convictions ranged from less than one year to 10 to 15 years.³⁵ The waiting period for eligible felony record clearing ranged from less than one year to 20 years.

States also begin the waiting period for record relief at different points. For example, North Dakota³⁶ and Indiana³⁷ start counting from the time of conviction. Other states start the waiting period from the conclusion of all, or part, of the sentence such as incarceration, supervision, or payment of all restitution and court debt.

³¹ Collateral Consequences Resource Center (2024). [50-State comparison: Expungement, sealing & other record relief](#). Restoration of Rights Project.

Prescott, J., & Starr, S. (2020). Expungement of criminal convictions. *Harvard Law Review*, 133, 2460-2556.

³² Love, M. (2022). [The many roads from reentry to reintegration: A national survey of laws restoring rights and opportunities after arrest or conviction](#). Collateral Consequences Research Center.

³³ Sawyer, W., & Wagner, P. (2024). [Mass incarceration: The whole pie 2024](#). Prison Policy Initiative.

³⁴ Leasure, P., Ridgway, D., & Hrdinova, J. (2023). [Rights restoration education in Ohio jails and prisons](#). Drug Enforcement and Policy Center, Moritz College of Law, The Ohio State University.

³⁵ Love, M., & Schluskel, D. (2022). [Waiting for relief: A national survey of waiting periods for record clearing](#). Collateral Consequences Resource Center.

³⁶ Section 12-60.1-02 of the North Dakota Century Code.

³⁷ Indiana Code §35-38-9-3

Given that record relief is designed to reward individuals who have demonstrated their rehabilitation by not reoffending, long waiting periods may be counterproductive and ineffective.³⁸ The collateral consequences of a criminal record prevent many from fully reintegrating into society by providing obstacles to legal employment and housing. The length of waiting periods is not grounded in evidence based on when people are likely to recidivate. Research shows that if reoffending occurs, it is typically much closer to release than to the length of most waiting periods.³⁹ Long waiting periods, therefore, appear to make it more difficult than necessary for people to reenter society, exacerbating people's experiences of collateral consequences past the point at which they have demonstrated that they are unlikely to commit a crime.⁴⁰



Financial Barriers

Once individuals with criminal records become aware that they are eligible for relief and have passed the required waiting period, they typically must file a case in court to clear their records. At this point, all of the access-to-justice barriers that exist in other types of civil cases exist for people trying to clear their records. One major barrier is the financial difficulties that people may be experiencing because of the collateral consequences of their records.

Outstanding Court Debt

Outstanding court fines and fees⁴¹ can be a barrier to record clearing, directly and indirectly. In a survey of legal aid attorneys in 30 states, 90 percent of them responded that fines and costs are a barrier for record clearing of convictions and non-convictions.⁴²

At least 22 states require the payment of some or all court debt before an individual can qualify for relief.⁴³ This means that eligibility itself requires all fines and fees stemming from the original charges to be paid. As described above, the waiting period for eligibility in some jurisdictions is also determined by outstanding court debt. In places where the waiting period clock does not *begin* until all fines and fees are paid, people with records can face very long wait times before they reach eligibility.

³⁸ Bushway, S. D., Vegetabile, B. G., Kalra, N., Remi, L., & Baumann, G. (2022). [Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks](#). RAND Corporation.

Kelley, J., & Chavez, L. (2024). [Reforming waiting periods: Fostering equity and unleashing employment opportunities](#). Clean Slate Initiative.

³⁹ Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 47, 327-359.

⁴⁰ Prescott, J. J., & Starr, S. B. (2020). Expungement of criminal convictions. *Harvard Law Review*, 133, 2460-2556.

⁴¹ For more information about court fines and fees, see National Center for State Courts. [Fines, Fees and Pretrial Practices 2.0 Resource Center](#).

⁴² Boehner, J., Ginzberg, J., Gullen, J., & Svoboda-Kindle, K. (2021). [Breaking down barriers to record clearing: A survey of the field](#). National Record Clearing Project of Community Legal Services of Philadelphia.

⁴³ National Consumer Law Center & Collateral Consequences Resources Center. (2022). [High cost of a fresh start](#). Vallas, R. and Patel R. (2013). Sentenced to a life of criminal debt: A barrier to reentry and climbing out of poverty. *Clearinghouse Review*, 46, 131-141.

National Center for Access to Justice. (Updated 2022). [Fines and fees map for benchmark 16](#).

Indirectly, debt can prevent access to record clearing in two ways: through discretionary decision-making and by causing further legal issues. In 14 states, court debt itself does not disqualify an individual from record relief, but judges (or the relevant administrative decision makers) may consider outstanding debt as an indicator of non-rehabilitation when granting relief.⁴⁴ Additionally, outstanding court debt can cause further legal issues that postpone or prevent eligibility for record relief. For example, non-payment of court debt can lead to driver's license suspensions or parole or probation violations.⁴⁵

It is also worth noting that in some states, a lack of centralized court records can make it difficult for individuals to find out if they have outstanding court debts that need payment before proceeding with the application. In these jurisdictions, it is common for people to go through the cumbersome, and expensive, petition process only to find out that they are ineligible for relief.⁴⁶

Filing Fees and Case Costs

Existing court debt is not the only financial barrier to accessing record relief. Sixty percent of legal aid attorneys responding to a survey said that there was “always” or “sometimes” a filing fee for record relief, ranging from \$30 to \$650.⁴⁷ In addition to mandatory filing fees, some courts add their own fees, significantly increasing the costs to petitioners. Some states allow these fees to be waived if petitioners can show that they cannot afford them.⁴⁸ There have also been recent efforts to control these additional costs. For example, a 2022 Ohio law⁴⁹ limited courts to charging only the \$50 filing fee, with no additional fees. In Kentucky, a recent Supreme Court decision stated that courts must waive the filing fee and expungement fee for those who cannot afford it.⁵⁰

In addition to mandatory filing fees, most people seeking record relief incur the costs of gathering materials for the petition, such as costs to acquire copies of required documents, fees to other criminal justice agencies, fingerprinting fees, and notary fees.⁵¹ Parking, transportation, childcare, and costs for time off from work also make submitting a petition for record relief a significant financial investment.

⁴⁴ National Consumer Law Center & Collateral Consequences Resources Center. (2022). [High cost of a fresh start](#).

⁴⁵ For a review of the far-reaching impact of monetary sanctions, see Fernandes, A. D., Cadigan, M., Edwards, F., & Harris, A. (2019). Monetary sanctions: A review of revenue generation, legal challenges, and reform. *Annual review of law and social science*, 15(1), 397–413.

⁴⁶ Sudbury, N. (2021). [Access barriers to felony expungement in Utah](#). Collateral Consequences Resource Center.

⁴⁷ Boehner, J., Ginzberg, J., Gullen, J., & Svoboda-Kindle, K. (2021). [Breaking down barriers to record clearing: A survey of the field](#). National Record Clearing Project of Community Legal Services of Philadelphia.

⁴⁸ See waivers by state here: National Conference of State Legislatures. (2020). [Record clearing fees and waivers](#).

⁴⁹ Am.Sub.S.B. No. 288, 134 Ohio Laws 267.

⁵⁰ Jones v. Commonwealth of Kentucky 2019-SC-0651-DG <http://opinions.kycourts.net/sc/2019-SC-0651-DG.pdf>

⁵¹ Kimpel, A. F. (2022). Paying for a clean record. *Journal of Criminal Law and Criminology*, 112, 439-547.

Tupper, G., Lake, J., & Amaning, A. (2021). [Fines and fees are a barrier to criminal record-clearing](#). [Center for American Progress](#).



Availability of Legal Assistance

Another access-to-justice barrier faced by people seeking record relief is a lack of access to legal assistance. The constitutional right to counsel that exists in criminal cases does not extend to the expungement process. However, record clearing is a complex process that is made easier with legal representation. A study in one California county found that interventions by attorneys to assist with expungement increased earnings for those seeking relief.⁵²

Although Legal Aid attorneys and local expungement clinics⁵³ are available to some, their capacity and resources are limited. The complexity and diversity of local and state procedures make the record relief petition process time-consuming and prevent these organizations from being able to assist many people.⁵⁴ In one study, more than half of the legal aid attorneys surveyed described the expungement process in their state as “difficult,” “very difficult,” or “almost impossible.”⁵⁵ Many states offer guidance in the form of self-help websites,⁵⁶ but attorneys in the study said that these resources were often of limited help, because the forms are too long and the process is too complicated.



Effectiveness of Record Clearing

Another barrier to true record relief is that the actual effectiveness of the record clearing process varies. In many cases, as discussed above, expungement and sealing laws specifically call for records to be maintained and used in some limited types of decision-making (such as in background checks for firearm purchases). These are situations in which the incompleteness of the record clearing process is by design.

Sometimes, however, people’s records are preserved in ways that are likely not intended by the relevant statutes. For example, a criminal record that arises from a single incident may include a variety of charges. In some cases, only some of the charges are cleared and those that remain lead

⁵² Selbin, J., McCrary, J., & Epstein, J. (2018). Unmarked? Criminal record clearing and employment outcomes. *Criminal Law and Criminology*, 108, 1-72.

See also: Sandefur, R. L. (2015). Elements of professional expertise: Understanding relational and substantive expertise through lawyers’ impact. *American Sociological Review*, 80, 909-933.

Works, C. (2003). Reentry: The tie that binds civil legal aid attorneys and public defenders. *Clearinghouse Review*, Sept-Oct 2003, 328-340.

⁵³ See the National Association of Criminal Defense Lawyers (NACDL) National Expungement Clinic Directory: [https://www.nacdl.org/Landing/National-Expungement-Clinic-Directory-\(1\)](https://www.nacdl.org/Landing/National-Expungement-Clinic-Directory-(1)).

⁵⁴ Boehner, J., Ginzberg, J., Gullen, J., & Svoboda-Kindle, K. (2021). [Breaking down barriers to record clearing: A survey of the field](#). National Record Clearing Project of Community Legal Services of Philadelphia.

⁵⁵ Boehner, J., Ginzberg, J., Gullen, J., & Svoboda-Kindle, K. (2021). [Breaking down barriers to record clearing: A survey of the field](#). National Record Clearing Project of Community Legal Services of Philadelphia.

⁵⁶ See, for example, sites in: [Minnesota](#), [Franklin County, Ohio](#), [California](#), and toolkits in [New Jersey](#), [Utah](#), and [North Carolina](#).

to collateral consequences.⁵⁷ In other cases, the nuances of who is allowed to access a cleared record are not easily understood, and people can inadvertently access records for purposes that were not intended by the law.

An even bigger issue that prevents records from being fully and successfully cleared is the proliferation of criminal records across private parties outside of the courts.⁵⁸ Whereas court records used to exist almost exclusively in courthouses, law enforcement agencies, and a few other related government agencies, they are now copied and disseminated many times over across private parties, including background screeners, mugshot websites, and companies that sell data for profit.⁵⁹ Databases that house copies of people's court records are error-prone, out of date, and incomplete, and they are rarely updated when an expungement is granted.⁶⁰ In many jurisdictions, the petitioner has the responsibility for separately notifying each entity after an expungement has been granted, creating an additional set of burdens and barriers.⁶¹ For many people, it is not possible to identify and petition every single company or website that holds a copy of the criminal record. Furthermore, petitioners frequently find out that a company has an outdated copy of their criminal record only *after* they have been denied a job, housing, or service. As long as private parties who hold copies of court data do not correct and update their records, the remedy of a cleared criminal record exists only in theory.

⁵⁷ Adams, E. B., Chen, E. Y., & Chapman, R. (2016). Erasing the mark of a criminal past: Ex-offenders' expectations and experiences with record clearance. *Punishment and Society*, 19, 23-52.

⁵⁸ Jagunic, M. (2011). The unified sealed theory: Updating Ohio's record-sealing statute for the twenty-first century. *Cleveland State Law Review*, 59(1), 161-187.

⁵⁹ Love, M. (2011). Paying their debt to society: Forgiveness, redemption, and the Uniform Collateral Consequences of Conviction Act. *Howard Law Journal*, 54(3), 753-794.

⁶⁰ Lageson, S. (2022). Criminal record stigma and surveillance in the digital age. *Annual Review of Criminology*, 5, 67-90.

Adams, E. B., Chen, E. Y., & Chapman, R. (2016). Erasing the mark of a criminal past: Ex-offenders' expectations and experiences with record clearance. *Punishment and Society*, 19, 23-52.

Consumer Financial Protections Bureau. (2022). [Justice-involved individuals and the consumer financial marketplace](#).

⁶¹ Boehner, J., Ginzberg, J., Gullen, J., & Svoboda-Kindle, K. (2021). [Breaking down barriers to record clearing: A survey of the field](#). National Record Clearing Project of Community Legal Services of Philadelphia.

Special Considerations

In addition to the barriers to true record relief that are discussed above, there are a few specific issues that are important for courts to consider as they examine potential solutions to explore.

	<u>Eviction</u>		<u>Individuals with Behavioral Health Needs</u>
	<u>Juvenile Justice</u>		<u>Court Data</u>
	<u>Survivors of Human Trafficking</u>		

Beyond Criminal Cases

The first set of considerations is related to the case types involved in the second chance gap. Although conversations about expungement tend to focus on court records that are generated in criminal cases, record relief is also an important issue in eviction and juvenile cases.

Eviction

The need for record relief is not only felt by those with a criminal record. Those with eviction filings—including cases that never resulted in a judgment—on their record may face similar collateral consequences. About 2.7 million households receive an eviction filing each year.⁶²

For those with any eviction action on their record, the primary impact is on future housing opportunities. Having an eviction filing on one's record makes it very difficult to rent housing. It also harms individuals' credit scores, making it more difficult to purchase a home. Tenants who have an eviction filing may also be at risk of losing an existing housing subsidy or disqualified from receiving a future one. These are serious issues, as a lack of stable housing can have a destabilizing effect on other areas of life, including justice system involvement.⁶³

There are some important differences between criminal cases and eviction cases that make eviction records particularly complicated. First, eviction *filings* are created by private individuals, rather than

⁶² Graetz, N., Gershenson, C., Hepburn, P., & Desmond, M. (2023). A comprehensive demographic profile of the US evicted population. *Proceedings of the National Academy of Sciences*, 120(41), e2305860120.

⁶³ Bell, J. (2020). [Beyond displacement: How the ripple effects of an eviction can last for years](#). Develop PGH. Public Source. The Eviction Lab. [Understanding eviction](#).

prosecutors, which means that they can be filed without some of the screening processes that are present in criminal charges. In many jurisdictions, the majority of eviction filings do not result in an eviction judgment.⁶⁴ Furthermore, researchers have shown that some landlords file eviction cases, even when they know that eviction isn't warranted, as a tool to assist in rent collection.⁶⁵ However, the harms caused to tenants by eviction filings are nearly as severe as the harms caused by eviction judgments. In many states, eviction filings immediately appear on background checks, and are thus immediately available to housing providers or credit checkers.⁶⁶ Similar to an arrest or charge appearing on a criminal background check even if a person was not convicted, eviction filings can thus appear on housing and credit background checks even if a person was never evicted (or if there was never cause to evict in the first place). Because these records are bought and sold by third party screening companies, the nuance of what happens in a case may be lost or misinterpreted. And as rental markets tighten nationally, housing providers may impose stricter standards, including refusing to rent to tenants who have had a case filed against them, regardless of the disposition.

Finally, it is not uncommon for eviction filings to erroneously name minor children on them. These children then experience the collateral consequences of eviction records through no fault of their own, which can negatively affect them for years into adulthood.

Similar to criminal records, discussed above, there are substantial racial disparities in eviction records. Researchers consistently find that Black women experience the biggest disproportionality. They comprise about 10% of renters, but they represent 30% of eviction filings and 25% of evictions.⁶⁷ Black men comprise less than 10% of renters, but they represent 22% of filings and 20% of evictions. Some studies also find disproportionate eviction experiences for Latines, particularly if they live in predominantly White neighborhoods or have White landlords.⁶⁸ This means that Black people and other people of color who experience disproportionate evictions also bear a disproportionate burden of collateral consequences that stem from their eviction records. Accordingly, some researchers have described eviction as a “racial justice issue.”⁶⁹

⁶⁴ In some of NCSC's Eviction Diversion Initiative sites, fewer than 10% of eviction filings end in an eviction judgment. For more information, see National Center for State Courts. [Eviction Diversion Initiative Grant Program](#).

⁶⁵ Garboden, P. M. E., & Rosen, E. (2019). Serial filing: How landlords use the threat of eviction. *City & Community*, 18(2), 638-661.

⁶⁶ Polk, K. (2020). Screened out of housing: The impact of misleading tenant screening reports and the potential for criminal expungement as a model for effectively sealing evictions. *Northwestern Journal of Law & Social Policy*, 15, 338. Rickard, E., & Khwaja, N. (August 2021). [State policymakers are working to change how courts handle eviction cases](#). Pew Research.

⁶⁷ Graetz, N., Gershenson, C., Hepburn, P., & Desmond, M. (2023). A comprehensive demographic profile of the US evicted population. *Proceedings of the National Academy of Sciences*, 120(41), e2305860120. See also Hepburn, P., Louis, R., & Desmond, M. (2020). Racial and gender disparities among evicted Americans. *Sociological Science*, 7, 649-662.

⁶⁸ See, for example, Greenberg, D., Gershenson, C., & Desmond, M. (2016). Discrimination in evictions: Empirical evidence and legal challenges. *Harvard Civil Rights-Civil Liberties Law Review*, 51(1), 115-158.

⁶⁹ McCabe, B. & Rosen, E. (2020). [Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability](#). Georgetown University McCourt School of Public Policy. See also Merritt, B. & Farnworth, M. (2021). State landlord-tenant policy and eviction rates in majority-minority neighborhoods. *Housing Policy Debate*, 31(3-5), 562-581.



Juvenile Justice

Like criminal and eviction records, the laws governing the confidentiality, sealing, and expungement of juvenile delinquency records vary across jurisdictions.⁷⁰ Contrary to popular belief, it is often not the case that juvenile records are automatically sealed when individuals turn 18.⁷¹ Thus, juvenile court records create collateral consequences for young people at a period of life when they are often trying to establish their first markers of adulthood, such as education, employment, housing, and military service.⁷² After a punitive turn in the 1980s and 1990s, there has been an return to the original mission of rehabilitation in the juvenile courts over the last two decades;⁷³ however, rehabilitation is difficult to achieve if young people are unable to participate in society as adults because of their juvenile records.

As with other case types, there are significant racial disparities in juvenile justice, and these disparities begin to appear early in childhood. For example, as children, Black and Indigenous students receive harsher punishments for identical behaviors in school, compared to their White classmates; these punishments can include suspension and expulsion, which increase the likelihood of direct contact with the criminal justice system through school police officers.⁷⁴ Black youth are overrepresented in arrests for violent and property crimes and more than twice as likely to be arrested than White youth.⁷⁵ Young people of color are more likely than White young people to have their cases filed formally in court through a petition of adjudication, and they are more likely to be incarcerated as a result of adjudication.⁷⁶ Accordingly, young people of color, and the adults that they become, experience a disproportionate burden of their juvenile court records.

⁷⁰ Office of Juvenile Justice and Delinquency Prevention. [Expunging juvenile records](#).

⁷¹ Radice, J. (2018). The juvenile record myth. *Georgetown Law Journal*, 106(2), 365-446.

⁷² National Council of Juvenile and Family Court Judges. [Resolution Regarding Confidentiality, Sealing, and Expungement of Juvenile Records](#).

⁷³ Radice, J. (2018). The juvenile record myth. *Georgetown Law Journal*, 106(2), 365-446.

⁷⁴ See, e.g., Amemiya, J., Mortenson, E., & Wang, M.-T. (2020). Minor infractions are not minor: School infractions for minor misconduct may increase adolescents' defiant behavior and contribute to racial disparities in school discipline. *American Psychologist*, 75(1), 23-36.

Forsyth, C. J., Biggar, R. W., Forsyth, Y. A., & Howat, H. (2015). The punishment gap: Racial/Ethnic comparisons in school infractions by objective and subjective definitions. *Deviant Behavior*, 36(4), 276-287.

Krezmien, M. P., Leone, P. E., & Achilles, G. M. (2006). Suspension, race, and disability: Analysis of statewide practices and reporting. *Journal of Emotional and Behavioral Disorders*, 14(4), 217-226.

Whitford, D. K., & Levine-Donnerstein, D. (2014). Office Disciplinary Referral Patterns of American Indian Students from Elementary School through High School. *Behavioral Disorders*, 39(2), 78-88.

Monahan, K.C., VanDerhei, S., Bechtold, J. et al. From the School Yard to the Squad Car: School Discipline, Truancy, and Arrest. *J Youth Adolescence* 43, 1110-1122 (2014).

⁷⁵ Leonard, N. (March 2023). [Racial and ethnic disparities in the youth justice system](#). Coalition for Juvenile Justice.

⁷⁶ Office of Juvenile Justice and Delinquency Prevention. [Racial and ethnic disparity. Model Programs Guide - Literature Reviews](#).

Vulnerable Populations

Another set of considerations for the courts relates to populations that experience vulnerabilities that complicate the role of criminal records in their lives. While these vulnerable populations face many of the same challenges as others, they may have additional needs when it comes to record relief.



Survivors of Human Trafficking

In a survey of survivors of human trafficking, over 60% say they have been cited, detained, or arrested by law enforcement. More than 80% of these record-producing incidents occurred while they were being trafficked, and, therefore, operating in a situation characterized by coercion.⁷⁷ Like laws governing other types of record relief, criminal record relief for trafficking survivors varies by state. As of 2023, 47 states have specific relief policies for trafficking survivors, though two of those states limit relief to people who were minors when trafficked.

Survivors of trafficking experience the same collateral consequences and barriers to relief as discussed above, but these barriers may have a particularly significant impact on this population. For example, many survivors are moved from place to place during the period when they are trafficked. They often experience housing and job instability as a result of these experiences, making the need for a clean record even more urgent. They also face significant barriers when it comes to seeking record relief. For many survivors, their criminal records exist in a state where they no longer reside, or there are records in multiple states. Having to appear, in person, at an expungement hearing is thus even more costly and time consuming for survivors than for many others.



Individuals with Behavioral Health Needs

Although severe mental illness and substance use disorders do not cause criminal behavior, people experiencing behavioral health needs are overrepresented in the criminal justice system, including in the courts and in jails and prisons.⁷⁸ Because many justice-involved people have behavioral health needs that go unmet, they face particular barriers during incarceration and reentry.⁷⁹ Interactions with the criminal justice system often worsen behavioral health symptoms, as arrest and incarceration

⁷⁷ Polaris Project (2023). [Criminal record relief for trafficking survivors](#).

⁷⁸ Substance Abuse and Mental Health Services Administration. [About SAMHSA's criminal and juvenile justice efforts](#). McNeil, D. E., & Binder (2005). Incarceration associated with homelessness, mental disorder, and violence. *Psychiatric Services*, 56, 699–704.

Osher, F., D'Amora, D., Plotkin, M., Jarrett, N., & Eggleston, A. (2012). [Adults with Behavioral Health Needs under Correctional Supervision](#). Council of State Governments Justice Center.
For more information on behavioral health and the state courts, see the [National Judicial Task Force to Examine State Courts' Response to Mental Illness](#).

⁷⁹ Vera Institute of Justice (July 2015). [Incarceration's Front Door: The Misuse of Jails in America](#).
Bronson, J. and Berzofsky, M. (2017). [Imprisonment and health](#), Bureau of Justice Statistics.

can result in disruptions to treatment.⁸⁰ Disruptions to treatment often occur again when an individual is released from detention or incarceration.⁸¹

The stigma of incarceration can add to the stress of the transition back into the community and exacerbate behavioral health symptoms, and it may contribute to the higher rate of behavioral health issues among reentering citizens compared to the general population.⁸² Furthermore, transitions of care between criminal justice institutions and communities are poorly coordinated and can contribute to worsening health outcomes after release. Barriers to care include difficulty accessing medications and primary care and disruptions in an individual's social support system.⁸³ Employment and housing instability are also exacerbated by both the person's underlying behavioral health needs and by the person's criminal records.⁸⁴



Court Data

A final set of important considerations relates to the courts' data governance. Because court records are, essentially, pieces of data, strong data governance is vital for any program or initiative designed to offer court users record relief. In addition to exploring the potential solutions that are outlined in the next section, we recommend that courts examine their overall data governance, including data quality, data storage, and data retention policies.⁸⁵

Additionally, there are specific data-related questions that courts should consider in the area of record relief. One issue to consider is how the court can provide the person relief while both maintaining the integrity of related records such as financial accounting of fees and fines and maintaining aggregate, de-identified information about overall caseloads for research and program evaluation purposes.⁸⁶ As the information and technology environment evolves, and as courts begin to change their data collection practices to accommodate needs for research and public transparency, it will be important to keep revisiting these data governance strategies.

Finally, each of the solutions explored below comes with its own set of data-related questions and practices.

⁸⁰ Simpson, J. (2019). [Principles of Community-based Behavioral Health Services for Justice-involved Individuals: A Research-based guide. A bridge to the possible](#). Substance Abuse and Mental Health Services Administration.

⁸¹ Schnittker, J., & John, A. (2017). Enduring stigma: The long-term effects of incarceration on health. *Journal of Health and Social Behavior*, 48, 115-130.

⁸² Health Affairs (2021). [Prison and jail reentry and health](#). Health Affairs Health Policy Brief.

⁸³ Puglisi, L., Calderon, J., & Wang, E. A. (2017). What does health justice look like for people returning from incarceration? *AMA Journal of Ethics*, 19(4), 375-383.

⁸⁴ For more information on behavioral health and the state courts, see the [National Judicial Task Force to Examine State Courts' Response to Mental Illness](#).

⁸⁵ See National Center for State Courts. [Data Governance](#). See Joint Technology Committee (2014). [Developing an Electronic Records Preservation and Disposition Plan](#).

⁸⁶ National Center for State Courts (2020). [Expungements: A Data Governance Special Topic](#).

Solutions to Promote True Record Relief

The barriers discussed above have helped prevent expungement and other forms of record relief from achieving their policy goals. However, some jurisdictions have begun to explore creative solutions to these problems, helping court users experience more relief from the burdens of collateral consequences.

In this section, we outline these solutions and provide examples of the different ways they have been implemented. For each solution, we use icons to show which of the barriers and special considerations discussed above it aims to address.

Solution #1: Automatic record clearing

Applicable Barriers	Applicable Considerations
	

Purpose and Effectiveness of the Approach

Most record-clearing forms of relief are petition-based, which means that individuals must petition the court to seek relief. In contrast, automatic record clearing is not initiated by an individual's petition to the court. Instead, the state initiates the process, and the court verifies the eligibility of each individual case and/or offense.

As of March 2024, at least 24 states have passed automatic record clearing for at least one type of criminal offense after a designated waiting period (although not all of these laws have taken effect).⁸⁷ The offenses specified for automatic record clearing may include acquittals, dismissals, and/or convictions. Only nine states offer automatic record clearing for any level of felony.

In 12 of these states, automatic record clearing is also *automated*. In automated states, the eligible record is identified and verified using technology (rather than using manual verification by people), thereby limiting the need for staff resources to clear records.⁸⁸

The major benefit of automatic record clearing is that it removes the burden of obtaining relief from individual court users. This approach addresses many of the barriers discussed above, such

⁸⁷ See National Conference of State Legislatures, [Automatic or Automated Criminal Record Clearing Database](#). See Collateral Consequences Resource Center (March 2024). [50-State Comparison: Expungement, Sealing & Other Record Relief](#), Section 2.

⁸⁸ See, for example, Code for America, [Working with communities and government to fundamentally transform the process of clearing records](#).

as awareness of eligibility, waiting periods, cost, and the need for legal assistance. When large numbers of records are cleared at once, it is also easier to regulate third parties who hold copies of court data and require them to update their records, ensuring that cleared records are no longer being used or disseminated. Finally, automatic clearing benefits the most vulnerable populations. Those experiencing housing and employment instability, likely made worse by their criminal records, often face the biggest barriers to petition-based relief and have the most to gain by an automatic record-clearing approach.

Just as automatic record clearing has been adopted in many jurisdictions to address criminal records, similar methods could be used to address outstanding eviction and juvenile records, as well as to address the criminal records of trafficking survivors.

Automatic and automated record clearing approaches are difficult to evaluate, as many have only recently gone into effect. Additionally, variations in how, or if, data about the expungement is maintained makes evaluation difficult. However, the research that has been done is promising. A report produced in May 2020 about Pennsylvania’s automated sealing showed that, as of April of that year, the state had sealed over 33 million criminal records. The automated methods used to identify eligible offenses for sealing were efficient and low-cost, at less than three dollars per case.⁸⁹ In less than one year, automation led to the sealing of more than 50 times as many misdemeanor offenses as were sealed from petitions in an earlier three-year period.⁹⁰ Since the evaluation, Pennsylvania has expanded the type of offenses that can be automatically sealed to include some felonies.⁹¹

Implementation Examples

For **state-by-state breakdowns** of automatic and automated record clearing laws, see:

- The [Automatic and/or Automated Criminal Record Clearing](#) resource by the National Conference of State Legislatures
- The [50-State Comparison](#) resource by the Collateral Consequences Resource Center (Section 2; updated March 2024)
- The [Clean Slate in the States](#) resource by the Clean Slate Initiative

For **recommendations** regarding the automatic clearing of juvenile records, see the [NCJFCJ Resolution](#) regarding juvenile records.

Court Implementation Examples:

- [Pennsylvania](#)
- [Rhode Island](#)

⁸⁹ Chien, C. (2020). America’s Paper Prisons: The Second Chance Gap. *Michigan Law Review*, 199, 519-611.

⁹⁰ Dietrick, S. M. (2020). [PA Clean Slate: Delivering on Its Promises](#). Community Legal Services of Philadelphia.

⁹¹ Act 36, Session of 2023, P.L.334, No. 36, Pennsylvania Statutes at Large, 2024.

Challenges and Drawbacks

Automatic and automated record clearing has the potential to clear millions of offenses in a very short time, so the cost-per-offense is low. However, this approach does tend to require a large investment of funds at one time. Pennsylvania's experience⁹² suggests that, if implemented well, the payoff of these programs can be great. But legislatures and courts must work together to ensure that record-clearing initiatives are appropriately funded.

Implementation Considerations

Ultimately, automatic record clearing laws must be established through legislation. However, it is vital that courts are involved in informing any legislative effort to adopt automatic record clearing, as they are the owners of at least some of the data that will be evaluated for eligibility.

Access to complete, accurate criminal history data and good communication across the justice system is vital for automatic record clearing.⁹³ Criminal history data submitted to state information systems often have high rates of missing dispositions, which can make it falsely appear that a person is not eligible for automatic clearing, so it is important to examine data quality. It is also important that records include the necessary information about conviction, sentencing, or release dates to correctly calculate eligibility dates. Finally, legislatures must define the types of offenses that are eligible for clearing using criteria that match what data the courts have. If, for example, a statute says that cannabis possession offenses are only eligible if they involve a certain number of ounces of cannabis, a court cannot determine eligibility if that information is not tracked for each case in the case management system.⁹⁴

Some of the information needed to implement automatic clearing may come from the court's justice partners, rather than the court's own case management system. Furthermore, in states with less unified court systems, the necessary information may not be housed in one statewide court data system.⁹⁵ Just as collaborative caseflow management⁹⁶ and record linkage⁹⁷ are increasingly being seen as vital approaches in other areas of the courts, these practices will make it more feasible for legislatures, courts, and other justice partners to work together to accomplish automatic record clearing.

⁹² Dietrick, S. M. (2020). [PA Clean Slate: Delivering on Its Promises](#). Community Legal Services of Philadelphia.

⁹³ For a thorough review of the technical challenges of automated record clearing, see The SEARCH Group. (2023). [Technical and Operational Challenges of Implementing Clean Slate: Research Findings](#). The National Consortium for Justice Information and Statistics.

⁹⁴ Information and resources for lawmakers is available at the [Clean Slate Initiative's website](#).

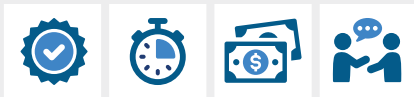
⁹⁵ See, for example, Hrdinova, J., & Miller, H. (2024, April 8). [Automatic Record Relief in Ohio: Recommendations for Minimizing Implementation Challenges and Maximizing Impact](#) (Ohio State Legal Studies Research Paper No. 837). Drug Enforcement and Policy Center.

⁹⁶ See, for example, National Center for State Courts (2022), [A New Model for Collaborative Court and Community Caseflow Management](#).

⁹⁷ See, for example, Assumpcao, A. (April 2024). [Record Linkage: The Matchmaking Tool for Data Records](#). National Center for State Courts.

Solution #2: Outreach about record relief options and eligibility

Applicable Barriers



Applicable Considerations



Purpose and Effectiveness of the Approach

In the vast majority of situations where automatic record clearing is not available,⁹⁸ the responsibility is on the individual to be aware of opportunities for record relief.⁹⁹ Public awareness efforts are based on research indicating that most people who are eligible for record relief are not aware of these options and do not pursue them.¹⁰⁰

Reaching out to court users and letting them know that they are (or may be) eligible for record relief helps to address the lack of awareness barrier and may reduce unnecessary delays in waiting periods, as people will be equipped to pursue record clearing as soon as they are eligible. Because, as discussed above, many people spend substantial time and money pursuing record relief only to find out that they are not yet eligible, this approach may also reduce costs and reduce needs for legal assistance.

Although we don't yet have specific evidence supporting their effectiveness in increasing awareness of eligibility for record relief, court public awareness initiatives have shown success in other areas. For example, text notifications have been found to increase court appearance rates in certain jurisdictions.¹⁰¹ Strategies like these could be used to notify individuals when the waiting period for expungement is over and they are eligible to petition for relief.

⁹⁸ This is the case in every state. While the availability of automatic record clearing is expanding, even the states that offer this option place limitations on type and number of offenses that are eligible for automatic clearing. In such circumstances, additional offenses may be eligible for clearing by application (See the [Restoration of Rights Project](#)).

⁹⁹ See Murray, B.M. (2021). Retributive expungement. *University of Pennsylvania Law Review*, 169, 665-716.

¹⁰⁰ See, Prescott, J.J., & Starr, S.B. (2020). Expungement of criminal convictions. *Harvard Law Review*, 133, 2460-2556. Chien, C. (2020). America's paper prisons: The second chance gap. *Michigan Law Review*, 199, 519-611.

¹⁰¹ See Griffith, S., & Tartaglia, M. (2024). [E-reminders toolkit](#). National Center for State Courts.

Implementation Examples

Online guides or self-assessments to determine eligibility

- [California](#)
- [Minnesota](#)
- [Ohio](#)

Webinars and live events

- [New York](#)

Notification of the right of expungement at adjudication

- [Kentucky](#)

Distribution of educational material on record relief to prisons and jails

- [Ohio](#)

Text notifications for court appearances

- [California](#)
- [New Hampshire](#)
- [New York](#)

Challenges and Drawbacks

Public awareness initiatives that provide general information about expungement and other record-clearing processes are a relatively simple way to help more people understand how record relief works. However, these types of outreach may not always reach the target population. Webinars, online guides, and video series may be relatively easy to create, but it's difficult to ensure that people who may be eligible for expungement receive these resources. Courts might consider working with local community and justice partners to help disseminate information to the relevant populations.

In contrast, providing information to individuals at disposition or while incarcerated, as in Ohio and Kentucky, is a low-cost way to reach the target population. However, these approaches provide the information to people at a time when they are likely not yet eligible for record clearing. This approach is useful for providing general information about how record clearing works, but it still leaves it up to individuals to understand (and remember later on) when they are eligible to petition for relief. This approach may be more effective in problem-solving courts or juvenile courts, where the court maintains a more personalized and sustained relationship with the individual. For example, NCJFCJ recommends that juvenile courts inform youth about record clearing availability, eligibility, and procedures multiple times throughout the course of their involvement with the juvenile justice system.¹⁰²

Individualized notification programs, such as through text messages, help to ensure that eligibility information reaches the relevant people at the right time. The challenge for these initiatives is maintaining updated contact information and eligibility information for court users.

¹⁰² National Council of Juvenile and Family Court Judges. [Resolution Regarding Confidentiality, Sealing, and Expungement of Juvenile Records.](#)

Implementation Considerations

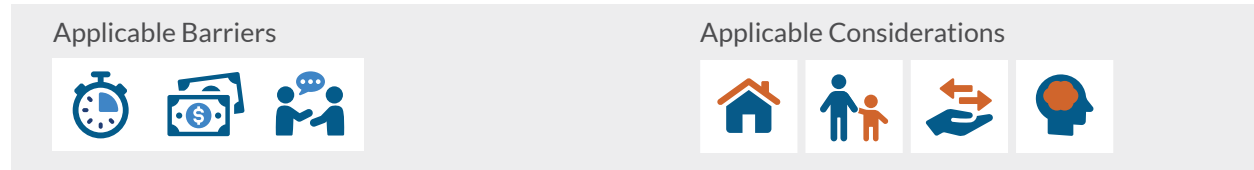
When exploring outreach efforts, courts should consider available resources, such as budgetary and staff capacity. The various approaches outlined above vary in how much they cost to develop and how much work they are to maintain. Because they also have distinct advantages and disadvantages, courts might consider pursuing multiple approaches, as resources allow.

Individualized notification programs are likely to be the most effective way to get information in the hands of the right people at the right time. This type of program requires maintaining updated contact information for court users with records, which may be a challenge for populations that experience more housing and employment instability. Courts might consider working with parole and probation departments and other community and justice partners to help keep contact information up to date.

Courts that are considering this approach will also need to ensure that case management data are complete, accurate, and up to date. In order to determine at any given time whether a person is eligible for record relief, the court must be able to determine from its case management system when any case events occurred that are relevant for calculating the waiting period and the exact nature of the charges and convictions. The court must also be able to update its eligibility determination with any changes to the law, such as expanded eligibility for certain offenses or changes to statutory waiting periods. Accordingly, an assessment of data quality is a good first step for any courts that want to explore helping court users understand when they are eligible for record relief.¹⁰³

¹⁰³ See National Center for State Courts. [Data Governance Policy Guide](#).

Solution #3: Process simplification and fee reduction



Purpose and Effectiveness of the Approach

As discussed above, petition-based record relief is often complicated, confusing, and expensive.¹⁰⁴ This makes it difficult for individuals to petition to clear their record without the assistance of an attorney. Moreover, the process in many states is time-consuming and complicated for attorneys,¹⁰⁵ which means that legal aid and pro bono services simply do not have the capacity to meet current needs. As in other areas that involve large numbers of self-represented litigants, it is important for courts to examine how processes and procedures can be simplified so that they are understandable and accessible to those seeking relief without attorneys.¹⁰⁶

Implementation Examples

Guides to record clearing (including information, links, and FAQs)

- [Connecticut](#)
- [Illinois](#)
- [New York](#)
- [Delaware](#)
- [Michigan](#)

Video series explaining the process

- [Maryland](#)
- [New Jersey](#)
- [Utah](#)

Self-Help toolkits

- [Utah](#)
- [New Jersey](#)
- [North Carolina](#)

Standardized, plain language forms

- [Illinois](#)

Removal or waiver of fees

- [Kentucky](#)
- [Ohio](#)
- [Oregon](#)

Special Considerations: Vulnerable Populations

- [Toolkit for Trafficking Survivors](#)

¹⁰⁴ See, for example Boehner, J., Ginzberg, J., Gullen, J., & Svoboda-Kindle, K. (March 2021). [Breaking Down Barriers to Record Clearing: A Survey of the Field](#). National Record Clearing Project of Community Legal Services of Philadelphia.

See also, Hu, A. (April 2023). [Is Obtaining Expungement of Criminal Records Simple? An Empirical Study of Kansas](#). Access to Justice Lab, Harvard University.

¹⁰⁵ Boehner, J., Ginzberg, J., Gullen, J., & Svoboda-Kindle, K. (March 2021). [Breaking Down Barriers to Record Clearing: A Survey of the Field](#). National Record Clearing Project of Community Legal Services of Philadelphia.

¹⁰⁶ Love, M.C. (2022). [The Many Roads from Reentry to Reintegration: A National Survey of Laws Restoring Rights and Opportunities After Arrest or Conviction](#). Collateral Consequences Resource Center.

Challenges and Drawbacks

Process simplification can go a long way toward making petition-based record relief accessible to more people. These approaches still require individuals to be aware that they may be eligible for record relief and to find the resources that are relevant to them. However, courts might be able to combine these efforts with the public awareness strategies outlined above to make them more effective.

Fee reduction and waivers help to cut down on how costly it is to seek record relief. However, as described above, the costs of petition-based record relief go beyond court fees. Costs such as copies of required documents, fees to criminal justice agencies, processing fees, and notary fees, as well as the costs of attending court in person (e.g., parking, time off from work, childcare costs) can keep record relief financially inaccessible for many.¹⁰⁷

Implementation Considerations

As with any court initiatives that are designed to promote access to justice, it is important to start with a clear understanding of who the target population is and what their needs are. Programs and resources are likely to be more effective to the extent that they meet people where they are, use plain and age-appropriate language, are culturally responsive in the local court's context, accommodate language and disability needs, are trauma-informed, and address the unique barriers faced by vulnerable populations.¹⁰⁸

As in any process simplification efforts, courts should closely examine both their processes and the information provided to self-represented litigants to ensure that procedures are as clear and understandable as possible.¹⁰⁹

Additionally, strategies that make the courts more accessible in general are also likely to make record relief more accessible. Remote proceedings, for example, have increased dramatically in recent years¹¹⁰ and have been shown to be useful in making the courts more accessible to many.¹¹¹

¹⁰⁷ Kimpel, A. F. (2022). [Paying for a Clean Record](#). *Journal of Criminal Law and Criminology*, 112, 439-547.

¹⁰⁸ For more information and examples across different case types, see NCSC's [Access to Justice](#) resources and the [Racial Justice Organizational Assessment Tool](#) (Guidance Part IV, Court Services).

¹⁰⁹ See Lupica, L. (November 2019) [Guidelines for Creating Effective Self-Help Information](#). Institute for the Advancement of the American Legal System.

¹¹⁰ See National Center for State Courts, [Remote Hearings & Services](#).

¹¹¹ See, for example, Miller, A. & Freeman, K. (2023). [Measuring Access and Fairness in Remote Court Proceedings](#). *Trends in State Courts*. National Center for State Courts.

Solution #4: Increased access to legal assistance

Applicable Barriers



Applicable Considerations



Purpose and Effectiveness of the Approach

There are two primary barriers to accessing legal assistance for record relief: cost and availability. Private attorneys are expensive, and there is no guarantee of access to counsel in these matters. While legal aid and pro bono attorneys are available to some, they do not have the capacity to meet the great need that exists.¹¹²

Like in many areas of civil justice, there is evidence that says individuals are more successful with petitions for record relief when they have legal representation.¹¹³ Moreover, evidence from one California county found that attorney assistance with record relief ultimately increased earnings.¹¹⁴

Across other areas of civil law, there are several approaches to providing wider access to legal assistance for those who would otherwise go unrepresented. These same strategies can be used in the record relief area. Most straightforward are clinics that give those seeking record relief access to attorneys or law students that can help them navigate the eligibility requirements. Other approaches include “limited scope services”¹¹⁵ (such as eligibility clinics), unbundled legal services,¹¹⁶ and regulatory innovation allowing non-lawyer legal services in certain circumstances.¹¹⁷

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- ¹¹² For an overview of the multiple civil access-to-justice issues, see: American Academic of Arts & Sciences (Spring 2021). [A Project to Advance Civil Justice Access in the 21st Century](#). Hannaford-Agor, P., Graves, S., and Miller, S. (2015) [Civil Justice Initiative: The Landscape of Civil Litigation in State Courts](#). National Center for State Courts.
- ¹¹³ LFA Group. (March 2009) [Clean Slate Program](#). Office of the Public Defender, City and County of San Francisco. One Justice. (February 2020). [Evaluating the Case Outcomes of Clients Served at Clean Slate Clinics](#).
- ¹¹⁴ Selbin, J., McCrary, J., & Epstein, J. (2018). Unmarked? Criminal record clearing and employment outcomes. *Criminal Law and Criminology*, 108, 1-72.
- ¹¹⁵ See National Center for State Courts. (July 2023) [Free Limited Legal Help Services](#).
- ¹¹⁶ Davidson, J. (October 2015) [Why Should Courts Encourage Unbundled Legal Services? A Toolkit for Court Leadership](#). Institute for Advancement of the American Legal System.
- ¹¹⁷ Ricca, L. & Ambrose, G. (October 2022). [The High Highs and Low Lows of Legal Regulatory Reform](#). Miller, A., Hannaford-Agor, P., & Genthon, K. (2021). [An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice](#). National Center for State Courts.

Implementation Examples

Record relief clinics

- [NACDL Expungement Clinic Directory](#)

Assistance obtaining counsel

- [Delaware](#)
- [Ohio](#)
- [Pennsylvania](#)

Regulatory Reform

- [Arizona](#)
- [Utah](#)

Challenges and Drawbacks

Efforts to provide more help to people through clinics and legal aid programs are relatively straightforward to implement, and they have a long history in the legal system. However, as the access-to-justice gap has grown dramatically, it has become clear that it is simply not possible to meet the need for legal assistance through lawyers and law students.

Studies of the use of limited or “unbundled” services in eviction court have found more favorable outcomes from litigants with full legal representation compared with those using unbundled services.¹¹⁸ However, one of these authors hypothesized that unbundled services may be better tailored to certain types of cases, such as expungement, that relied primarily on the correct completion of forms and understanding the procedure, compared with a highly contested legal proceeding—such as eviction hearings. Ultimately, the effectiveness of unbundled legal services in the record relief area may depend on how much of a factual showing petitioners need to make. States that require strong evidence of rehabilitation, for example, may see similar results that these studies found in eviction cases.

As long as record relief continues to be petition-based and processes continue to be difficult to navigate without assistance, courts may need to consider more innovative approaches to making legal help available. Regulatory reform is still a relatively new approach (outside of some specific areas of law where it is well established, such as real estate), and data on its effectiveness is just starting to become available. Regulatory reform is complex and challenging to implement, but it may be the most promising avenue for increasing access to legal assistance.

¹¹⁸ Steinberg, J.K. (2011). In pursuit of justice? Case outcomes and the delivery of unbundled legal services. *Georgetown Journal on Poverty Law & Policy*, 18(3), 453 - 505.
Greiner, D.J., Pattanayak, C.W., Hennessy, J. (2013) The limits of unbundled legal assistance: A randomized study in a Massachusetts District Court and prospects for the future. *Harvard Law Review*, 126, 901-988.

Implementation Considerations

Courts that are looking to implement or improve existing record relief clinics and pro bono services should consider how they can reach more people and give people help with the most difficult parts of the process. For example, the accessibility of the services is a major factor in making them useful for participants. One approach, taken in Minnesota, is a “Clean Slate Tour,” in which the Attorney General’s Office travels across the state to host clinics. The amount of follow-up and engagement that participants receive from pro bono services is also important. In one study, for example, clients that received follow up after leaving the record relief clinic were much more likely to file the petition than those who didn’t get post-clinic support (93.3% versus 52%).¹¹⁹

Courts that are looking to explore regulatory reform can look to the distinct approaches used by [Utah](#) and [Arizona](#) and the growing body of guidance and evidence related to these programs.¹²⁰

¹¹⁹ One Justice (February 2020). [Evaluating the Case Outcomes of Clients Served at Clean Slate Clinics](#).

¹²⁰ Ricca, L. & Ambrose, G. (October 2022). [The High Highs and Low Lows of Legal Regulatory Reform](#). Engstrom, D., Ricca, L., Ambrose, G., Walsh, M. (2022), [Legal Innovation After Reform: Evidence from Regulatory Change](#).

Miller, A., Hananford-Agor, P., & Genthon, K. (2021). [An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice](#). National Center for State Courts.

Solution #5: Removal of court debt as a factor in eligibility or adjudication

Applicable Barriers



Applicable Considerations



Purpose and Effectiveness of the Approach

As discussed above, people who have outstanding court debts are often denied record relief on that basis. It is relatively common for unpaid fines and fees to be the only remaining barrier preventing a person from being eligible for record relief, after they have served their sentences, completed their community supervision, and waited out the minimum waiting period. In jurisdictions where the waiting period does not *begin* until all debts are paid, it is even harder for court users to achieve eligibility, or, in many cases, to know whether they are eligible.

Because the criminal record itself can make employment difficult, this puts people in a catch-22 situation in which record relief would make it easier to pay their court debts, but their court debts disqualify them from relief. For vulnerable populations who experience greater employment and housing instability, this barrier can be severe.

When individuals are granted record relief despite the existence of outstanding court debt, they have more opportunities to secure employment, and often better employment. They are then more likely to be able to fulfill their legal financial obligations.¹²¹

¹²¹ For an overview of court debt as a barrier to record clearing in each state as of 2022, see National Consumer Law Center and Collateral Consequences Resources Center (2022). [High Cost of a Fresh Start](#).

Implementation Examples

Note that the general issue of court fines and fees, and the ways in which they prevent justice-involved people from leaving the system, is an important issue, but broader than the focus here.¹²² This section focuses on initiatives that address court debt as a specific barrier to record relief.

Elimination of certain types of court debt, or reduction or waiver of debt, as part of the record clearing process

- [California](#)
- [Rhode Island](#)
- [Delaware](#)
- [Vermont](#)¹²³

Converting outstanding court debt to civil judgment

- [New Jersey](#)

Barring consideration of unpaid fines and fees in matters of expungement or sealing

- [Colorado](#)
- [Pennsylvania](#)

Challenges and Drawbacks

One concern that some courts express is whether they will be able to collect outstanding debts from court users whose records have been expunged or sealed. With thoughtful data governance practices, however, this issue can be addressed. Records that are sealed can be made narrowly accessible to court staff for the purposes of collection.¹²⁴ Records that are expunged can be moved to a specific database, outside of the court's primary case management system, preserving only the information needed to collect outstanding debt (e.g., name, contact information, and amount owed). These records can then be deleted when collection is complete.

Implementation Considerations

In several states, statutes covering petition-based record clearing do not specifically mention outstanding court debt as a point of consideration by judges. Determinations of record clearing in these states are typically based either on evidence of an individual's rehabilitation or on completion of their sentence, including the terms of probation. Some judges may interpret the existence of court debt as evidence that an individual is not yet rehabilitated. Similarly, some may interpret court debt as not having completed the sentence. Accordingly, to fully eliminate court debt as a factor impeding record relief, it may be necessary to clarify, in statute or court rules, that payment of court debts in full is not necessary for eligibility and that the existence of court debts may not be considered as evidence of non-rehabilitation.

¹²² For comprehensive resources about fines and fees, see the [Fines, Fees and Bail Practices Resource Center](#) at the National Center for State Courts and [Fines and Fees](#) at the National Center for Access to Justice.

¹²³ See also Vermont Statutes Annotated, Title 13, Section 7282.

¹²⁴ See examples of statutes with this provision in [Illinois](#) and [Virginia](#).

Solution #6: Reduction of waiting periods

Applicable Barriers



Applicable Considerations



Purpose and Effectiveness of the Approach

Research shows that most people who have been convicted of a crime once do not re-offend.¹²⁵ Because the likelihood of recidivism decreases over time, waiting periods for record relief are designed to ensure that a long enough time has passed since the individual's previous crime to decrease risk to public safety. Unfortunately, the waiting periods set out in most statutes are not grounded in the evidence relating to recidivism and are longer than necessary.

Recent research suggests that reducing waiting periods for record relief does not raise public safety concerns.¹²⁶ On the contrary, reducing waiting periods to be more consistent with the evidence on recidivism would make it possible to meet public safety goals while also providing record relief for more people and, crucially, providing that relief sooner. As discussed above, collateral consequences of court records contribute to problems, such as employment, housing, and health instability, that make recidivism more likely. Therefore, the fewer of these barriers people must experience before they obtain relief, the more likely they are to successfully reenter society and remain crime-free.

¹²⁵ Bushway, S. D., Vegetabile, B. G., Kalra, N., Remi, L., & Baumann, G. (2022). [Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks](#). RAND Corporation.

¹²⁶ Love, M., & Schlusel, D. (2022). [Waiting for relief: A national survey of waiting periods for record clearing](#). Collateral Consequences Resource Center.

Bushway, S. D., Vegetabile, B. G., Kalra, N., Remi, L., & Baumann, G. (2022). [Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks](#). RAND Corporation.

Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 47, 327-359.

Sampson, R.J. and Laub, J.H. (2003) Life-course desisters? Trajectories of crime among delinquent boys followed to age 70. *Criminology* 41:301-339.

Implementation Examples

Reduction in waiting periods

- [Maryland](#)
- [New Jersey](#)

Challenges and Drawbacks

Waiting periods are generally determined by legislatures, rather than the courts, although some statutes give judges discretion to waive them. There may be resistance to decreasing waiting periods among legislators if they are concerned about public safety. Ultimately, however, there is evidence to support these approaches, and there is no evidence to suggest that decreasing waiting periods harms public safety.

Implementation Considerations

Guidance on waiting periods for lawmakers is available from the [Clean Slate Initiative](#).¹²⁷

¹²⁷ See also Kelley, J., & Chavez, L. (2024). [Reforming waiting periods: Fostering equity and unleashing employment opportunities](#). Clean Slate Initiative.

Solution #7: Accountability for private parties disseminating court records

Applicable Barriers



Applicable Considerations



Purpose and Effectiveness of the Approach

As described above, one of the barriers that prevents records from being effectively cleared is the proliferation of criminal records across private parties outside of the courts.¹²⁸ Private parties that use, copy, and disseminate court records include background screeners, mugshot websites, and others.¹²⁹ External databases that house copies of court records are error-prone, out of date, and incomplete.¹³⁰ This means that many people are improperly denied employment, housing, and other services on the basis of records that were already cleared by the court. Although the Fair Credit Reporting Act¹³¹ regulates background checking agencies, enforcement under the Act is limited and has not solved the problem of high rates of background check errors.¹³²

State statutes or court rules may be avenues for addressing the specific issue of how court data are used or disseminated or for placing a greater burden on private entities to ensure that they are not using court records that have been cleared. At a minimum, courts' data governance policies should address the following questions when raw case-level data are released: 1) What is the mechanism to alert the user if criminal cases are later sealed or expunged? 2) How is the user's removal of the record verified or enforced?¹³³

¹²⁸ Jagunic, M. (2011). The unified sealed theory: Updating Ohio's record-sealing statute for the twenty-first century. *Cleveland State Law Review*, 59(1), 161-187.

¹²⁹ Love, M. (2011). Paying their debt to society: Forgiveness, redemption, and the Uniform Collateral Consequences of Conviction Act. *Howard Law Journal*, 54(3), 753-794.

¹³⁰ Consumer Financial Protections Bureau. (2022). [Justice-involved individuals and the consumer financial marketplace](#).

Boehner, J., Ginzberg, J., Gullen, J., & Svoboda-Kindle, K. (2021). [Breaking down barriers to record clearing: A survey of the field](#). National Record Clearing Project of Community Legal Services of Philadelphia.

Lageson, S. (2022). Criminal record stigma and surveillance in the digital age. *Annual Review of Criminology*, 5, 67-90.

Adams, E. B., Chen, E. Y., & Chapman, R. (2016). Erasing the mark of a criminal past: Ex-offenders' expectations and experiences with record clearance. *Punishment and Society*, 19, 23-52.

¹³¹ 15 U.S.C. §§ 1681-1681x.

¹³² Consumer Financial Protections Bureau. (2022). [Justice-involved individuals and the consumer financial marketplace](#).

¹³³ National Center for State Courts. [Data Governance Policy Guide](#).

Implementation Examples

- [NCJFCJ Resolution](#) regarding juvenile records

Challenges and Drawbacks

The public's access to court data is often regulated by a combination of state statutes and court rules. Courts may need to work closely with their legislatures to enforce private parties' deletion of copies of records that have been cleared.

Implementation Considerations

Even in jurisdictions where the public's use of court data is regulated through legislation, it is vital that courts are involved in informing any legislative effort to address these issues. As mentioned above, courts and legislatures should work closely together to identify the sources of record clearing errors and address them. They should also coordinate to ensure that statutes, court rules, and courts' data governance policies are aligned and consistent on these questions. Rules and policies may also need to consider practical and logistical questions, such as how to maintain updated contact information for users who obtain case-level data, so that they can be alerted when a record has been cleared.



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