

Making the Promise of Expungement a Reality: A Guide to Record Relief in the State Courts

Executive Summary

Roughly 1 in 3 American adults (about 80 million people) have criminal records, and another 2.7 million households receive an eviction filing each year. These court records create barriers to employment, housing, college admission, student loans, professional licenses, government benefits and services, voting rights, family reunification, and more.

Not only do these collateral consequences of court records play a fundamental role in shaping people's lives, they also have serious implications for the courts and for the legal system broadly. Collateral consequences undermine the fundamental goals of the legal system by contributing to sentencing disproportionality, increasing recidivism and court caseloads, exacerbating racial disparities in justice system involvement and outcomes, and undermining public trust and confidence in the courts.

The [Guide to Record Relief in the State Courts](#) addresses this subject and provides support, recommendations and examples to help courts navigate this complex issue.

The full report includes:

- A summary of the current landscape for record relief, including **expungement**, **sealing**, **set-asides**, and **judicial certificates of relief**
- An in-depth look at five **barriers** to record relief that prevent expungement and other forms of record relief from achieving policy goals
- Detailed **solutions** and relevant **examples** of the different ways that courts have implemented these changes

This summary of the full report was written with support from the State Justice Institute under grant number SJI-23P039. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute or National Center for State Courts.

Major Barriers to Accessing Record Relief

Although record relief has expanded in recent years, less than 10% of people who are eligible for relief actually receive it.



Awareness of Eligibility

Many people who are eligible to petition for some type of record-clearing relief are not aware of available opportunities. For most, the question of clearing a court record arises because the individual has already experienced collateral consequences, such as being unable to find employment or housing.



Waiting Periods

People with court records typically must wait a certain period of time before they are eligible for record relief. On average, the length of these waiting periods is not supported by the evidence on recidivism, and long waiting periods prevent many from fully reintegrating into society by providing obstacles to legal employment and housing.



Financial Barriers

Eligibility for relief often requires all fines and fees stemming from the original charges to be paid. In some jurisdictions, judges may also consider outstanding court debt as an indicator of non-rehabilitation when granting relief. Finally, the costs associated with filing a petition for relief create additional financial barriers for many.



Availability of Legal Assistance

Record clearing is a complex process, and people who have legal representation are more likely to be successful. However, because legal aid organizations and expungement clinics have limited capacity, many people seeking relief do so without assistance. Existing self-help resources are not enough for many SRLs.



Effectiveness of Record Clearing

In criminal incidents with multiple charges, sometimes only some of the charges are cleared. Those that remain, along with any related appellate records, are still publicly accessible. Furthermore, third-party copies of court records that are used in background checks are error-prone, out of date, and incomplete.

Solutions to Promote True Record Relief

Some jurisdictions have begun to explore creative solutions to these problems. Depending on which of the above barriers a court is looking to address, the court may wish to prioritize different types of solutions.

Automatic record clearing



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. In some jurisdictions, automatic record clearing is also automated, which means that the eligible record is identified and verified using technology, rather than human labor. Early research on automatic record clearing is promising, suggesting that this approach is cost-effective for courts and results in many more cleared records for eligible individuals.

Outreach about record relief options and eligibility



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.

Process simplification and fee reduction



As in other case types with 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 without attorneys. Process simplification can go a long way toward making petition-based record relief accessible to more people. Plain-language guides, self-help toolkits, and well-designed forms can also make it easier to navigate those processes. Finally, fee reduction and waivers help to reduce financial barriers.

Increased access to legal assistance



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 free assistance from attorneys or law students. Other approaches include limited scope services (such as eligibility clinics), unbundled legal services, and regulatory innovation allowing non-lawyer legal services in certain circumstances.

Removal of court debt as a factor in eligibility or adjudication



When individuals are granted record relief despite the existence of outstanding court debt, they can obtain relief sooner and have more opportunities to secure employment (and this employment comes with higher wages, on average). They are then more likely to be able to fulfill their legal financial obligations. Courts can eliminate, waive, or reduce outstanding court debts as part of the record-clearing process. They can also bar the consideration of unpaid fines and fees in matters of expungement or sealing.

Reduction of waiting periods



Recent research suggests that reducing waiting periods for record relief does not increase recidivism or public safety risks. On the contrary, reducing waiting periods to be more consistent with the evidence on recidivism makes it possible to provide record relief for more people and, crucially, provide that relief sooner. The fewer employment, housing, and other barriers people must experience before they obtain relief, the more likely they are to successfully reenter society and remain crime-free.

Accountability for private parties disseminating court records



External databases that house copies of court records are error-prone, out of date, and incomplete. State statutes or court rules may be avenues for addressing the issue of how court data are used or disseminated by third parties, 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 how data users will be alerted if records are later cleared and how the user's removal of the record will be verified.

Approved for publication by the Blueprint for Racial Justice Steering Committee on July 11, 2024.