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THE CASE FOR CLEAN SLATE IN NORTH CAROLINA

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INTRODUCTION

In North Carolina, 1.6 million North Carolinians, or close to one in five individuals, have a criminal record.¹ The collateral consequences are significant, blocking access to employment, housing and educational opportunities. These barriers often follow individuals for their entire life, even after they have served their time and paid their debt to society. For example, 90 percent of employers conduct background checks, and since North Carolina is not a ban-the-box state, they are permitted to do so early in the hiring process.² This means that even decades-old, minor arrests and convictions show up and cut callback rates for these individuals in half.³

Expungements (shielding records from public view) are the most effective method to address the stigma faced by justice-involved individuals. While North Carolina's laws do offer expungement relief in limited circumstances, many eligible individuals do not take advantage of the process, likely because it is difficult, cumbersome and expensive. A "clean slate" bill, which would automate expungements for eligible individuals could change that. In addition, North Carolina has an opportunity to expand expungement relief to more offenses, while maintaining public safety. What's more, doing so will not only assist directly impacted individuals

and their families, but will also enhance our communities and revitalize the local economy.

NORTH CAROLINA'S CURRENT EXPUNGMENT LAW

In North Carolina, expungements are called "expunctions" and require a petition to the clerk in the county in which the individual was charged or convicted. Depending on the locality, the expunction may require further processes, including a hearing with a judge.⁴ The form that must be submitted for expunction requires the individual to remember all the details of their arrest, charge and, if applicable, conviction, while also requiring a \$175 fee for the majority of cases. The process for filing an expunction is not uniform, though most require the individual to submit the petition form along with five affidavits from various individuals certifying their rehabilitation.⁵ The process typically takes close to a year (or longer) and can be very confusing, often requiring individuals to hire an attorney to help with the process, increasing the expense.⁶ Once an expunction order is entered, the destruction of most physical and electronic records about the case is required. However, the North Carolina Administrative Office of the Courts (AOC) retains a confidential file of those who have received an expunction, which they can access in the event of future prosecution.⁷

In 2017, Governor Roy Cooper signed a new expunction law (Senate Bill 445) that went into effect immediately.⁸ The legislation decreased waiting periods and removed the limit on how many dismissals could be expunged.⁹ The majority of expunctions granted in North Carolina are for charges that do not end in a conviction. For instance, between 2017 and 2018, North Carolina granted over 10,000 expunctions for dismissals, but only around 900 for convictions.¹⁰ The types of offenses eligible for expunction include nonviolent misdemeanors, nonviolent felonies, and misdemeanors involving alcohol and drugs, if the defendant was under 21 and a first-time offender.¹¹ The current waiting period ranges from immediately (for dismissals) to 10 years for felonies.¹² Certain offenses, including violent misdemeanors, Class A felonies and felonies requiring sex-offender registration are never eligible for expunction in North Carolina.¹³

The result of an expunction is to make it as if the criminal proceeding had never occurred.¹⁴ Expunctions in North Carolina do not show up on employment, education or housing background checks, but those who are seeking to be employed in law enforcement must disclose their past involvement with the criminal legal system.¹⁵ Additionally, judges, prosecutors and law enforcement personnel have access to records in future proceedings, even if they have been expunged.¹⁶

Right now, North Carolina’s statutory scheme is fairly complicated, with 18 different statutes governing different categories of expungement.¹⁷ Some apply depending on the offense itself, while others are determined based on a person’s age at the time of the offense, or the disposition. These statutes can provide eligibility criteria that only applies to that particular statute: for example, a felony conviction for breaking and entering is excluded from the definition of “nonviolent” felonies if it is committed by those over eighteen, but it is not excluded from that same definition in the case of felonies committed by minors.¹⁸ The result of all this complexity and ambiguity is that many people carry around criminal records for minor or old offenses that have little bearing on public safety, but an outsized impact on their ability to live, work and contribute to society.

THE HARM OF CRIMINAL RECORDS

A criminal record in North Carolina can harm property rights, civic rights, the ability to earn a professional license, admission to college and public benefits, among other things.¹⁹ There are 45,000 estimated collateral consequences under federal and North Carolina law.²⁰ Having a record can make it difficult to find housing, since leasing companies, private landlords and public housing often screen individuals with records, and are reluctant to rent to them.²¹ Nearly 72 percent of colleges require criminal history information during their application processes, and individuals with certain kinds of convictions are barred from federal loans and grants.²² Children are also significantly impacted by a parent’s criminal record—from their emotional and physical well-being, to their own long-term outcomes.²³ A parent’s poverty and employment insecurity is linked to a child’s reduced language development and negative educational outcomes.²⁴ Furthermore, family income is a strong predictor of economic mobility, and thus when parents face challenges to meet basic needs, children are negatively impacted.²⁵

The most significant harm a criminal record poses is to acquiring employment. In 2016, those who had entered the North Carolina workforce in 2011 had an employment rate of 76 percent. In the same year, those who were formerly incarcerated had an employment rate of only 34 percent five years after reentering society.²⁶ The same study found that the median yearly income for formerly incarcerated individuals was \$8,209 compared to a median income of about \$31,000 for those with no criminal record.²⁷ Criminal records have detrimental effects on those who are attempting to obtain employment to become productive members of society.²⁸ North Carolina resident Poet Williams has faced these difficulties firsthand, when his three misdemeanors—committed when he was just 21—come up every time an employer runs a background check. He says Burger King will not even hire him.²⁹ However, he cannot seek an expungement since

currently only first-time misdemeanor convictions (that are non-violent) qualify.

Additionally, close to a quarter of occupations require an occupational license: essentially a permission slip from the government to practice that profession.³⁰ However, prior to last year, North Carolina had some of the most onerous laws in this regard, permitting licensing boards to disqualify a person from obtaining a license because of a criminal conviction. Some improvements have been made. For example, licensing agencies are now required to consider whether a nexus exists between the past criminal conduct and the actual duties the individual would perform on the job.³¹ The state has also expanded eligibility to issue certificates of relief, which can help make some collateral consequences discretionary instead of mandatory.³² For example, with a certificate of relief, an occupational board that would otherwise mandatorily remove an occupational license upon finding a conviction, would now have discretion whether or not to do so. But, while these improvements are helpful, they are ultimately incremental compared to full, automatic expungement through clean slate.

THE BENEFITS OF CLEAN SLATE POLICIES

Expunction has clear immediate benefits for individuals, as well as their communities. By improving employment prospects, expunctions help to respect and restore one’s dignity. There is no question that employment and education can have a transformative effect on individuals and how they and their families view them. Thus, expunctions help to integrate individuals back into their community as full members in a way few other remedies can. There are clear, tangible gains as a result: for example, a recent study has demonstrated that wages increase by 25 percent following an expungement.³³ When individual wages go up, the overall economy also benefits. Right now, approximately \$78 billion in gross domestic product is lost every year because of criminal records, with over \$2 billion in North Carolina alone.³⁴

Expungements can also enhance public safety. This makes intuitive sense. After all, when individuals’ paths to employment are eased, they are less likely to resort to crime. Moreover, re-offense rates among those who receive expungements are very low—at just 6 percent, which compares favorably to the rate in the general population.³⁵ In fact, once individuals satisfy a waiting period, research demonstrates that their likelihood of committing further crimes is no higher than any other individual in the general population.³⁶ If individuals do face future criminal proceedings, an expunction is not a ‘get-out-of-jail-free card,’ as it can still be accessed by the courts. Additionally, clearing records might improve perceptions of the system and law enforcement, by helping to reduce the effects of overcriminalization.³⁷ If the majority of individuals in a community have records, are

stigmatized and feel excluded from the American Dream, they may be less likely to speak with police officers to help solve violent crimes, or participate in other community activities. Thus, clearing records is consistent with and, in fact, enhances, public safety.

Given the numerous benefits associated with clearing records, it is a shame that so few eligible individuals are able to take advantage of the process. One study found that only 6.5 percent of eligible individuals ever apply for an expungement.³⁸ This ‘uptake gap’ is likely for a number of reasons, including a lack of knowledge about the process, confusion about eligibility rules, difficulty in accessing an attorney, and the cost and time associated with the entire process.³⁹ Automating expungements helps to solve this uptake gap by taking the onus off of individuals to navigate the system. This improves access to justice so that the most vulnerable members of our society can receive a second chance.

And, while it is true that automation often includes start-up costs to ensure that eligible records are correctly identified and cleared, these structural issues can be surmounted with sufficient political will. Pennsylvania and Utah have already passed clean slate legislation, with other states like Michigan, Connecticut and Washington considering legislation this session. Organizations like Code for America have already developed core technology to help read criminal records and determine eligibility, which can also ease the process of implementation.⁴⁰ Once the decision has been made to automate record clearances, cost savings are likely to be realized. Already, one study has found that after automation, clearing a record costs approximately 5 cents compared to thousands in a petition-based model because of the court and petitioner’s time.⁴¹ Not only will this save taxpayer dollars, but those with expungements will be able to obtain jobs much easier, allowing them to be productive members of society and continue to invest in local economies.

A POTENTIAL CLEAN SLATE MODEL FOR NORTH CAROLINA

Last year, legislators introduced the “Second Chance Act,” which proposes to expand eligibility requirements for expunction in North Carolina, as well as to automate the process for charges that resulted in a dismissal or not guilty finding. Currently, individuals are also unable to expunge more than one misdemeanor in their lifetime, but the Second Chance Act would change the law to have no cap on misdemeanor expunctions.⁴² The bill would also add expunction eligibility for all nonviolent misdemeanors and would remove the requirement that petitioners not have any prior felony convictions in order to be eligible.⁴³ The bill also allows 16 and 17-year-olds who were convicted as adults before Raise the Age legislation to petition for relief. Finally, the expunction process would be more streamlined with no

more hearing requirements.⁴⁴ And finally, the bill preserves the public safety protections that already exist in law, allowing the court to consider past expunged records.

The measure has strong bipartisan support, including endorsements from the North Carolina Conference of District Attorneys, Chamber of Commerce, American Conservative Union, Americans for Prosperity, ACLU, NAACP, NC Justice Center, Forward Justice and others.⁴⁵ Additionally, polling this year in North Carolina revealed strong bipartisan approval—upwards of 80 percent—for automatic removal of non-conviction records, as well as automatic removal of non-violent misdemeanor convictions after a waiting period.⁴⁶

The Second Chance Act passed in the Senate in May 2019, and was approved by two House committees in July, but did not receive a vote on the House floor. However, the House bill remains active, and can be taken up by the legislature. In January, Speaker Tim Moore stated that he expects the bill to be considered by the House Floor during the General Assembly’s short session, which begins April 28, 2020.⁴⁷

While passage of the Second Chance Act will close the “uptake gap” for those with dismissals, it will not do the same for those with conviction records (even those that are minor). However, after passage, North Carolina can build on the Second Chance Act with subsequent legislation that seizes upon infrastructure that is put into place for automating the clearance of dismissals, and safely expand automatic relief to more people.

CONCLUSION

Years after they have been involved in the criminal justice system, North Carolina residents continue to pay a hefty price. Expungements are a powerful remedy, which substantially eliminate the collateral consequences, and help to enhance public safety. However, an “uptake gap” currently exists because of difficulty in understanding the process and in applying for an expunction, both of which are indicative of a fundamental access-to-justice issue.

The solution is to automate record clearances, so that a digitized system automatically identifies who is eligible for an expunction and grants them such relief. North Carolina is poised to start the process of automation with the ‘Second Chance Act,’ which would automate non-conviction records as a starting point. Ultimately, more North Carolinians can be served through automating the clearance of certain conviction records, as well as by expanding eligibility.

ABOUT THE AUTHORS

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ENDNOTES

1. Susan [last name withheld], "N.C. bill would help those with criminal records," *The News & Observer*, May 13, 2017. <https://www.newsobserver.com/opinion/op-ed/article150219672.html>.
2. See, e.g., Roy Maurer, "When Background Screens Turn Up Criminal Records," *Society for Human Resource Management*, May 5, 2014. <https://www.shrm.org/resourcesandtools/hr-topics/risk-management/pages/background-screens-criminalrecords.aspx>; Mona Tong, "Duke's move to 'ban the box' follows trend established by other universities, states," *The Chronicle*, Oct. 31, 2018. <https://www.dukechronicle.com/article/2018/11/dukes-move-to-ban-the-box-follows-trend-established-by-other-states-universities>.
3. Madeline Neighly and Ashleigh Fryer, "Clearing a Path, from Conviction to Employment," *The National Reentry Resource Center*, Oct. 1, 2016. <https://csjjusticecenter.org/nrrc/posts/clearing-a-path-from-conviction-to-employment>.
4. North Carolina Judicial Branch, "Expunctions," North Carolina Superior Court, last accessed March 10, 2020. <https://www.nccourts.gov/help-topics/court-records/expunctions>.
5. Administrative Office of the Courts, "Instructions for Petition and Order of Expunction Under G.S. 15A-145(a)," North Carolina Judicial Branch, July 2019. https://www.nccourts.gov/assets/documents/forms/cr286-instr_1.pdf?tt0NwVxmX1Cu2dAKdC2kRnvKFBXuBllr.
6. "North Carolina's New Expungement Law: What You Need to Know," Manning Law Firm, April 19, 2018. <https://www.manninglaw.com/criminal-law/north-carolinas-new-expungement-law-what-you-need-to-know>.
7. G.S. 15A-151. https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_15A/GS_15A-151.html.
8. Melissa Boughton, "Cooper signs Senate bill to help some North Carolinians expunge criminal records," *The Progressive Pulse*, July 28, 2017. <http://pulse.ncpoli-cywatch.org/2017/07/28/cooper-signs-senate-bill-help-north-carolinians-expunge-criminal-records>.
9. *Ibid.*
10. School of Government, "Relief from a Criminal Conviction (2018 edition)," The University of North Carolina at Chapel Hill, 2018. <https://www.sog.unc.edu/resources/microsites/relief-criminal-conviction/general-considerations-expunctions>.
11. Jessica Gillespie, "Record Sealing and Expungement in North Carolina," *Lawyers.com*, last accessed March 10, 2020. <https://www.lawyers.com/legal-info/research/north-carolina/north-carolina-expungement-and-record-sealing.html>.
12. *Ibid.*
13. *Ibid.*
14. See, e.g., G.S. 15A-145.5(c). https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_15a/gs_15a-145.5.html.
15. N.C. General Statute § 15A-153. https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_15A/GS_15A-153.html.
16. "North Carolina's New Expungement Law: What You Need to Know." <https://www.manninglaw.com/criminal-law/north-carolinas-new-expungement-law-what-you-need-to-know>.
17. "Expunctions," North Carolina Judicial Branch, last accessed March 10, 2020. <https://www.nccourts.gov/help-topics/court-records/expunctions>.
18. See, e.g., John Rubin, "Relief from a Criminal Conviction in North Carolina: Forgetting, Forgiving, and Forgoing," *Federal Reporter* 30:4-5 (April/June 2018). https://files.nc.gov/ncdps/documents/files/Rubin_Handout.pdf.
19. School of Government, "Collateral Consequences Assessment Tool," The University of North Carolina at Chapel Hill, 2020. <https://ccat.sog.unc.edu>.
20. John Rubin, "A Different Approach to 'Collateral' Consequences of a Conviction," *North Carolina Criminal Law Blog*, Nov. 15, 2018. <https://nccriminallaw.sog.unc.edu/a-different-approach-to-collateral-consequences-of-a-conviction>.
21. Sosha Lewis, "How people with criminal records struggle to get housing—and how they can get help," *The Charlotte Observer*, Aug. 24, 2017. <https://www.charlotteobserver.com/charlottefive/c5-people/article236152688.html>.
22. Robert Stewart and Christopher Uggen, "Criminal records and college admissions: A modified experimental audit," *Criminology* 58:1 (Oct. 23, 2019). <https://doi.org/10.1111/1745-9125.12229> <http://www.communityalternatives.org/wp-content/uploads/2020/02/use-of-criminal-history-records-reconsidered.pdf>.
23. Tanya Arditi, "RELEASE: Nearly Half of U.S. Children Have at Least 1 Parent With a Criminal Record, According to New Data From the Center for American Progress," Center for American Progress, Dec. 10, 2015. <https://www.americanprogress.org/press/release/2015/12/10/127088/release-nearly-half-of-u-s-children-have-at-least-1-parent-with-a-criminal-record-according-to-new-data-from-the-center-for-american-progress>.
24. Bryce Covert, "How The System Punishes Children If Their Parent Has A Criminal Record," *ThinkProgress*, Dec. 10, 2015. <https://thinkprogress.org/how-the-system-punishes-children-if-their-parent-has-a-criminal-record-ca9cac0c762>.
25. Arditi. <https://www.americanprogress.org/press/release/2015/12/10/127088/release-nearly-half-of-u-s-children-have-at-least-1-parent-with-a-criminal-record-according-to-new-data-from-the-center-for-american-progress>.
26. Andrew Berger-Gross, "The Employment and Wages of Offenders in North Carolina Before and After Incarceration," North Carolina Dept. of Commerce, Aug. 9, 2018. <https://www.nccommerce.com/blog/2018/08/09/employment-and-wages-offenders-north-carolina-and-after-incarceration>.
27. *Ibid.*
28. Lucius Couloute and Daniel Kopf, "Out of Prison and Out of Work: Unemployment among formerly incarcerated people," Prison Policy Initiative, July 2018. <https://www.prisonpolicy.org/reports/outofwork.html>.
29. "North Carolina moves to help offenders clear their records," *New York Post*, May 27, 2019. <https://nypost.com/2019/05/27/north-carolina-moves-to-help-offenders-clear-their-records>.
30. Ryan Nunn, "Occupational licensing and American workers," The Brookings Institution, June 21, 2016. <https://www.brookings.edu/research/occupational-licensing-and-the-american-worker>.
31. General Assembly of North Carolina Session, Session Law 2019-91 (2019). <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-91.pdf>.
32. H.B. 774, An Act to Amend the Law Regarding a Certificate of Relief for Criminal Convictions, North Carolina General Assembly (2017-2018). <https://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2017-2018/SL2018-79.html>.
33. Cherrie Bucknor and Alan Barber, "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," Center for Economic and Policy Research, June 2016. <https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>.
34. *Ibid.*

35. J.J. Prescott and Sonja B. Starr, “Expungement of Criminal Convictions: An Empirical Study,” *Harvard Law Review* (Forthcoming 2020), p. 13. <https://ssrn.com/abstract=3353620>.
36. Alfred Blumstein and Kiminori Nakamura, “Redemption in the Presence of Widespread Criminal Background Checks,” *Criminology* 47:2 (May 2009), p. 11. <https://www.ncjrs.gov/pdffiles1/nij/226872.pdf>.
37. Jeremiah Mosteller, “The Criminalization of Everything,” Charles Koch Institute, August 2019. <https://www.charleskochinstitute.org/issue-areas/criminal-justice-policing-reform/the-criminalization-of-everything>.
38. Prescott and Starr, p. 1. <https://ssrn.com/abstract=3353620>.
39. *Ibid.*, p. 14.
40. “Clear My Record,” Code for America, last accessed March 10, 2020. <https://www.codeforamerica.org/programs/clear-my-record>.
41. Colleen V. Chien, “The Second Chance Gap,” *Michigan Law Review* (Forthcoming 2020), p. 1. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3265335.
42. Senate Bill 562, The Second Chance Act, North Carolina General Assembly (2019-2020). <https://www.ncleg.gov/BillLookup/2019/S562>.
43. See, e.g., Mark Holden, “A second chance that would benefit North Carolina,” *The Charlotte Observer*, Nov. 21, 2019, p. 1. <https://www.charlotteobserver.com/opinion/article237584119.html>; SB 562, The Second Chance Act, North Carolina General Assembly (2019). <https://www.ncleg.gov/BillLookup/2019/S562>.
44. *Ibid.*
45. See, e.g., Julia Hawes, “MEDIA ADVISORY: Press event on July 10 to highlight, urge lawmakers to pass NC Second Chance Act,” North Carolina Justice Center, July 9, 2019. <https://www.ncjustice.org/media-advisory-press-event-on-july-8-to-highlight-urge-lawmakers-to-pass-nc-second-chance-act>; Tarrah Callahan and Logan Martin, “What has happened to SB 562—NC Second Chance Act?”, NC Second Chance Act Coalition, Jan. 13, 2020. https://www.ncjustice.org/wp-content/uploads/2020/01/LETTER_Second-Chance-Act-Support-1-3-20.pdf.
46. Paul Woolverton, “INSIDE POLITICS: NC wants to give criminals a second chance, survey says,” *The Fayetteville Observer*, Jan. 19, 2020. <https://www.fayobserver.com/news/20200119/inside-politics-nc-wants-to-give-criminals-second-chance-survey-says>.
47. Michael Hyland, “NC House intends to vote on Second Chance Act during April session,” CBS 17, Jan. 17, 2020. <https://www.cbs17.com/news/capitol-report/nc-house-intends-to-vote-on-second-chance-act-during-april-session>.