



The Pathway to Prosperity: How Clean Slate Legislation Enhances Public Safety and Stimulates the Economy

By Christi M. Smith

Communities are safer and our economy is stronger when formerly arrested, convicted or incarcerated individuals are employed.

Executive Summary

One in three Americans, roughly 70 to 100 million, have a criminal record that limits their earning capacity and options for suitable housing, as well as makes it more challenging to remain law-abiding. These records are often not the result of serious or violent crime, but rather due to the ever-widening net of “tough-on-crime” legislation that criminalizes poverty, substance use and mental illness. Socioeconomic and behavioral health issues combined with the collateral consequences of an arrest or criminal record make it nearly impossible for individuals to secure or maintain minimum standards of social stability. Absent legitimate opportunities to provide for themselves and their families, some may feel compelled to resort to crime to mitigate stress and account for their most basic needs. This situation subjects law-abiding members of the community to additional crime and escalating product costs associated with increased security-related expenses.

Taxpayers also incur the ballooning expense of funding low-level law violator involvement in the justice system and bear the burden of the social costs of record-based discrimination, including a rise in homelessness, a lack of generational mobility and the need for various forms of public assistance.

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Record-based discrimination is extremely costly to taxpayers and the overall economy, resulting in an estimated \$78-\$87 billion loss in the national gross domestic product. While the majority of states offer some form of petition-based record sealing, fewer than 10 percent of eligible individuals pursue the option, owing to the cost and complexity of the process. Clean Slate legislation bridges the gap between eligibility and opportunity by automating the process of sealing old records at no cost to the individual. Public safety carve-outs that exclude certain convictions from eligibility; provide access to the records under specific and limited circumstances; and include provisions for employer immunity reduce the risk of sealing records from community access. When these records are not available to the general public, the collateral consequences of arrest or conviction no longer present a pervasive barrier to the resources people need to fully reintegrate into the community.

Armed with the ability to provide for oneself and thrive in mainstream society, individuals are less likely to return to crime and better equipped to contribute to the overall economy. Clean Slate legislation is the pathway to prosperity for all Americans. It is a model policy with bipartisan, bicameral and public support. Free, automatic record clearing is smart public policy that reduces recidivism, increases public safety and stimulates the economy.

Key Points:

1. Individuals with prior arrests or conviction records experience a host of collateral consequences that limit their access to stable housing, employment, education, food and financial assistance. These barriers unduly burden the individual, their families and communities long after the initial sentence has been served and the debt to society has been repaid.
2. The majority of states offer petition-based record sealing to remove these records from public view, though fewer than 10 percent of eligible individuals take advantage of this opportunity owing to the complexities and costs associated therewith.
3. Individuals who have demonstrated the ability to remain law-abiding in the years following the completion of their sentence are no more likely to reoffend than their counterparts without criminal histories. Automatic record sealing through Clean Slate legislation prioritizes public safety and ends the cycle of punishment in perpetuity for eligible people by allowing them to fully reintegrate into their communities and contribute to the overall economy.

Introduction

When President Richard Nixon declared a “war on drugs” in 1971, he ignited a five-decade firestorm of “get tough on crime” legislation that criminalized offenses such as possession of a controlled substance or welfare violations, which often stem from deeper issues like substance misuse, mental health challenges or poverty.¹ While some laws addressed violent crime, many others targeted nonviolent property crimes, petty thefts and public-order offenses. Investments in the criminal justice system came at the expense of divestment in community-based social

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loss in the national gross domestic product.



1. Jamila Hodge, “Fifty Years Ago Today, President Nixon Declared the War on Drugs,” Vera Institute for Justice, June 17, 2021. <https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs>.

services, especially in the areas where these services were needed most. Instead of addressing the root causes of crime with the deployment of appropriate social services, punitive approaches were adopted under the guise of deterrence. Arrest and incarceration only exacerbated individual and familial life circumstances, ensnaring entire communities in a cycle of poverty, arrest, release and repeat. This process continues today and is experienced disproportionately among underrepresented ethnic and racial groups.

Without lawful means to support oneself and one's dependents, some may feel compelled to return to crime, which jeopardizes public safety and contributes to the burgeoning costs of the criminal justice system.² Successful reentry enhances public safety and saves taxpayer expenditures on police, jails and prisons for the cyclical judicial processing of minor offenders and parole failures. But successful reentry, full integration into society and the promise of a second chance remain elusive goals for millions of Americans with a criminal record. Without Clean Slate automated public record clearing, these individuals will continue to be disenfranchised from law-abiding opportunities to contribute to the overall economy and build stability for themselves, their families and future generations.

The purpose of this paper is to highlight the legislation that significantly expanded the net of the criminal justice system and resulted in a cascade of collateral consequences of arrest and conviction that continue to punish people in perpetuity, long after their charges have been dismissed or their debt to society has been repaid. Particular attention will be paid to legislation that contributed to a 14-year increase in arrests and incarceration despite declining crime rates and research demonstrating that the approach was resulting in more harm than good. Similarly, we discuss the initial policy recommendations from the mid-1990s, the government's acknowledgement of the harms of those policies, and its attempts to ameliorate them via federal investment in reducing barriers to reentry and reintegration. We also review how some legislative efforts, including the Prisoner Reentry Initiative, the Second Chance Act and "ban the box" initiatives, have attempted to create opportunities for those who are trying to stay on the right side of the law but have proven insufficient to combat the stigma of a criminal record and the ease with which this information is accessed by the general public.

Sweeping Policies and Shifting Practices Drive Arrest Records

Legislative changes and altered police and prosecutorial practices in the 1970s, 1980s and 1990s—rather than an increase in violent crime—have driven a 500 percent increase in carceral populations, the fallout of which we still grapple with today.³ Beginning with the Nixon administration's Controlled Substances Act of



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2. See, e.g., "Collateral Consequences," Prison Policy Initiative, last accessed Feb. 2, 2023. <https://www.prisonpolicy.org/collateral.html>; "Collateral Consequences of Criminal Convictions: Judicial Bench Book," American Bar Association, March 2018, pp. 2-8. <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf>; John G. Malcolm and John-Michael Seibler, "Collateral Consequences: Protecting Public Safety or Encouraging Recidivism?," The Heritage Foundation No. 200, March 7, 2017, p. 4. <https://www.heritage.org/sites/default/files/2017-03/LM-200.pdf>; "Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities," U.S. Commission on Civil Rights, June 2019, pp. 1-12. https://www.cga.ct.gov/lab/tfs/20190827_Council%20On%20The%20Collateral%20Consequences%20Of%20A%20Criminal%20Record/Research%20Subcommittee%20Materials/06-13-19-Collateral-Consequences%20USCommissionHuman%20Rights%20-%20Findingsand%20Recommendations.pdf.
3. Christi Smith and Jillian Snider, "Clean Slate Record Sealing and Expungement," The R Street Institute, Feb. 11, 2022. <https://www.rstreet.org/research/clean-slate-record-sealing-and-expungement>.

1970 and escalated by policies of the Reagan and Clinton administrations, federal authorities used “fear and thinly veiled racial rhetoric to push increasingly punitive policies.”⁴ In 1970, 196,429 people were in jail or prison.⁵ Today, there are more than 2 million people in jail or prison, most of whom are housed at the state and local levels.⁶ An additional 4 million adults are on some form of probation, parole or community supervision, representing a 240 percent increase since 1980.⁷ While some legislative efforts may have aspired to reduce the violence of the early 1980s and 1990s, overly broad, sweeping legislative policies have ensnared entire communities and generations of families into cyclical processes of arrest, release and repeat.

The explosive growth in arrest, conviction and incarceration rates—and the associated collateral consequences that eliminate access to basic life resources—are attributed to harsher sentencing laws and federal legislation that incentivized state adoption of similar policies.⁸ Examples include, but are not limited to, the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Bail Reform Act of 1984, and the 1994 Violent Crime Control and Law Enforcement Act.

The rapid expansion of the criminal justice system and the politicization of crime began with the Comprehensive Drug Abuse Prevention and Control Act of 1970, which significantly expanded the number and type of substances that were under governmental control.⁹ The law provided a uniform framework for regulation and penalties by assigning substances to five schedules allegedly based on medical utility, risk of abuse and likelihood of dependence.¹⁰ John Erlichman, an aide to President Nixon, later admitted, however, that the placement of marijuana, along with heroin and LSD, as a Schedule I prohibited substance was based on race and the anti-war counterculture, rather than science.¹¹ The law circumvented the 13th amendment prohibition against involuntary servitude and subjected drug users and dealers to the harshest penalties allowed by law.¹² The efforts of enforcement that targeted minority communities instigated an avalanche of collateral consequences through convictions that eliminated access to government assistance for basic life necessities like housing, education and food.¹³

Next, the Bail Reform Act of 1984 expanded pretrial detention for alleged law violators and subjected them to additional arrests for violating the conditions of their release, and similarly contributed to the exponential growth in incarceration

Beginning with the Nixon administration’s Controlled Substances Act of 1970 and escalated by the Reagan and Clinton administrations, federal authorities used “fear and thinly veiled racial rhetoric to push increasingly punitive policies.”



4. James Cullen, “The History of Mass Incarceration,” Brennan Center for Justice, July 20, 2018. <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>.

5. “Growth in Mass Incarceration,” The Sentencing Project, last accessed Nov. 10, 2022. <https://www.sentencingproject.org/research>.

6. Ibid.

7. “Policy Reforms Can Strengthen Community Supervision,” The Pew Charitable Trusts, April 2020, p. 4. https://www.pewtrusts.org/-/media/assets/2020/04/policyreform_communitysupervision_report_final.pdf.

8. Jeremy Travis et al., eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (The National Academies Press, 2014), pp. 71-85.

9. “The Controlled Substances Act (CSA): A Legal Overview for the 116th Congress,” Congressional Research Services, Oct. 9, 2019. <https://crsreports.congress.gov/product/pdf/R/R45948/2>.

10. Ibid., p. 5.

11. Christi Smith and Jillian Snider, “How Federal Cannabis Legalization Can Restore Police Legitimacy and Enhance Public Safety,” *R Street Policy Study* No. 261, July 2022, p. 5. <https://www.rstreet.org/wp-content/uploads/2022/07/Final-Study-No.-261.pdf>.

12. U.S. Const., Sec. 2 § 13. <https://constitution.congress.gov/constitution/amendment-13/#amendment-13-section-1>.

13. Ta-Nehisi Coates, “The Black Family in the Age of Mass Incarceration,” *The Atlantic*, October 2015. <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246>.

rates.¹⁴ Under this legislation, the percentage of people incarcerated for federal offenses skyrocketed from 29 percent to 75 percent, costing taxpayers \$1 billion per year to jail people who had not been convicted of a crime.¹⁵ Between 1970 and 2015, the number of people held in pretrial detention increased by 433 percent.¹⁶ By definition, these individuals are legally innocent and have not been convicted of a crime; yet they are more likely to plead guilty, face harsher sentences and come in contact with the criminal justice system again compared to their counterparts who are not incarcerated while their case outcomes are pending.¹⁷ Pretrial detainees represent two-thirds of local jail populations and can be permanently impacted by even short-term incarceration.¹⁸

Finally, despite declines in the overall crime rate and violent crime rate, of 21 and 25 percent, respectively, in the early 1990s, the federal government doubled down with the largest crime bill in the history of the United States: the 1994 Violent Crime Control and Law Enforcement Act.¹⁹ The law imposed mandatory minimum sentences, three-strike laws and mandatory life sentences for a broad range of offenses, including nonviolent and minor convictions.²⁰ The law also incentivized states to do the same by providing historic levels of funding to encourage increasingly punitive state-level legislation, harsher police and prosecutorial approaches and investments in the prison industrial complex.²¹

As early as 1997, researchers concluded that the overuse of arrest and incarceration were not effective deterrents, especially for nonviolent individuals and inmates suffering from mental illness, poverty and substance abuse. But, by then, the damage was done.²² The four-fold increase and changing composition of the inmate population was straining limited prison resources, and the removal rate of individuals from communities was disrupting families and social cohesion—factors associated with increased criminality.²³ The inmate profile changed dramatically as well, as large numbers of otherwise socially integrated men (especially those of color) were removed from their homes, jobs, families and communities. In addition, the financial costs of incarceration shifted onto women, children and the community, as single-parent, female-led homes and juvenile crime increased.

The Bail Reform Act of 1984 contributed to the exponential growth in incarceration rates.

Between 1970 and 2015, the number of people held in pretrial detention increased by

433%.

14. H.R.5865 - Bail Reform Act of 1984, 98th Congress. <https://www.congress.gov/bill/98th-congress/house-bill/5865>.

15. Alison Siegler, "Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis," The University of Chicago Law School Federal Criminal Justice Clinic, October 2022, pp. 1-280. <https://freedomdenied.law.uchicago.edu/report>.

16. Léon Digard and Elizabeth Swavola, "Justice Denied," Vera Institute for Justice, April 2019. <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>.

17. Ibid.

18. Ibid.

19. Jenni Gainsborough and Marc Mauer, "Diminishing Returns: Crime and Incarceration in the 1990s," The Sentencing Project, September 2000, pp. 1-31. <https://www.prisonpolicy.org/scans/sp/DimRet.pdf>; H.R. 3355, Violent Crime Control and Law Enforcement Act of 1994, 103rd Congress. <https://www.congress.gov/bill/103rd-congress/house-bill/3355>.

20. "A Living Death—Life without Parole for Nonviolent Offenses," ACLU, November 2013, pp. 1-240. https://www.aclu.org/sites/default/files/field_document/111813-lwop-complete-report.pdf.

21. Gainsborough and Mauer, p. 3-4. <https://www.prisonpolicy.org/scans/sp/DimRet.pdf>.

22. James P. Lynch and William J. Sabol, "Did Getting Tough on Crime Pay?," The Urban Institute, Aug. 1, 1997, pp. 1-13. <https://www.urban.org/sites/default/files/publication/70411/307337-Did-Getting-Tough-on-Crime-Pay-.pdf>.

23. Amy L. Solomon et al., "Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio," The Urban Institute, January 2006, pp. 1-26. <https://www.urban.org/research/publication/understanding-challenges-prisoner-reentry>; Lynch and Sabol, p. 5. <https://www.urban.org/sites/default/files/publication/70411/307337-Did-Getting-Tough-on-Crime-Pay-.pdf>.

Armed with the knowledge that the current model was ineffective and unsustainable, researchers suggested reforms to hold individuals accountable for law violations while remediating the harms of the previous policies.²⁴ Recommendations included more effectively addressing motivations for crime, like economic instability and substance dependence.²⁵ But little was done until escalating prison costs and the high rate of recidivism among reentrants became impossible to ignore. The sweeping policy changes and the shift toward increasingly punitive practices contributed to soaring prison populations over the next 14 years, the ramifications of which are still being felt today.²⁶

The legislative context and changes in professional practice are critical to understanding why and how so many millions of Americans have an arrest or conviction that impacts their ability to obtain and maintain basic necessities, like food or housing. One in three adults has a criminal record and half of all children have a parent with a criminal record. Exponential increases in the number of Americans with an arrest or conviction were not the cause of the “tough-on-crime” legislation; they were the result.²⁷ Long after the initial, brief crime spikes that led to the legislation and their subsequent declines, the default policies still remain in place, including aggressive law enforcement and prosecutorial practices; overuse of pretrial detention; and draconian sentencing schemes that subject people to excessive terms of incarceration and community supervision.

The net return on investment for the punitive model is atrocious: crime is only marginally reduced; many formerly incarcerated people will end up back in jail or prison; and the social costs of a publicly available arrest or conviction record including adverse health, lost earning potential and family disruption total nearly \$1.2 trillion each year.²⁸ Because approximately 95 percent of the inmate population will ultimately be released, it is in everyone’s best interests—governments and communities alike—to ensure that the formerly incarcerated have access to the resources needed to reintegrate into society fully and successfully.²⁹

The Reckoning: Diminishing Returns and the Legacy of Punitive Policy Failures

The detrimental impact of the “get tough on crime” movement was evident shortly after the turn of the century. The operating costs needed to arrest, process, incarcerate and supervise the exponential increase in the criminal population skyrocketed from \$84 billion to \$265 billion per year between 1982 and 2012.³⁰ The United States currently spends an estimated \$300 billion on direct criminal justice

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One in three adults has a criminal record.



Half of all children have a parent with a criminal record.

24. Ibid., pp. 7-8.

25. Ibid.

26. Udi Ofer, “How the 1994 Crime Bill Fed the Mass Incarceration Crisis,” ACLU, June 4, 2019. <https://www.aclu.org/news/smart-justice/how-1994-crime-bill-fed-mass-incarceration-crisis>.

27. “Joint Statement on Supporting Clean Slate Initiatives,” Fair and Just Prosecution, April 2021, pp. 1-7. <https://fairandjustprosecution.org/wp-content/uploads/2021/04/FJP-Clean-Slate-Statement-April-2021.pdf>.

28. Tara O’Neill Hayes, “The Economic Costs of the U.S. Criminal Justice System,” American Action Forum, July 16, 2020. <https://www.americanactionforum.org/research/the-economic-costs-of-the-u-s-criminal-justice-system>.

29. Office of Minority Health, “Reentry Resources,” U.S. Department of Health and Human Services, June 1, 2021. <https://www.minorityhealth.hhs.gov/omh/content.aspx?ID=10326>.

30. Lily Gleicher and Caitlin Delong, “The Cost of Justice: The Impact of Criminal Justice Financial Obligations on Individuals and Families,” Illinois Criminal Justice Information Authority Center for Justice Research and Evaluation, Aug. 1, 2018, pp. 1-20. https://researchhub.icjia-api.cloud/uploads/CJFO_PDF_08012018-191011T20091908.pdf.

operating costs per year in addition to the \$1.2 trillion estimated indirect social costs associated with the collateral consequences of a criminal record—even if the arrest did not result in a criminal conviction.³¹

Researchers, policymakers and criminal justice professionals have long realized that the Herculean task facing those released after arrest, incarceration and conviction was leading them toward recidivism, not away. In a 2000 study for the United States Department of Justice (DOJ), one researcher urged policymakers and professionals to rethink reentry and structure efforts around providing opportunities for reintegration:

According to the Department of Justice Bureau of Justice Statistics, two out of three ex inmates will be re-arrested for new crimes within three years of their release from prison, and more than half of those arrested will be re-incarcerated [...] released prisoners face myriad challenges that foster a return to criminal activity, re-arrest, and re-incarceration, including limited job skills and education, substance abuse, mental health problems, lack of stable housing, and weak family support systems.³²

Similarly, in a study of reentry trends from 1990 to 2002, the DOJ concluded that changes in the inmate and parole populations were the result of sentencing and parole policy changes that held people in prison longer, which made it more difficult for them to reintegrate fully upon release.³³ Larger gaps in employment history, changing social norms, lack of daily structure and advances in modern technology are just a few of the challenges reentrants experience.³⁴

The proliferation of studies similar to these have prompted federal reentry reform efforts like the federal Prisoner Reentry Initiative, The Serious and Violent Offender Reentry Initiative (SVORI) and the Second Chance Act.³⁵ While these initiatives are important, they are limited in their impact, in part because the majority of criminal records occur at the local and state level. This is an issue because local- and state-level organizations may not have the fiscal capacity to enhance reentry practices in the way that is modeled by the federal government, or they may lack the human capacity to apply for grant funding to support improved reentry. Reentry reforms also do little to address the needs of individuals who were arrested or charged but not convicted, nor are there concerted efforts to address the barriers to the millions of adults who are sentenced to probation and thus presumed to already be fully integrated in society. With national recidivism rates remaining consistently high, a reasonable conclusion is that these efforts have failed thus far.³⁶

The Reckoning: Diminishing Returns and the Legacy of Punitive Policy Failures

Current United States Costs

\$265 million

on direct criminal justice operating costs per year

\$1.2 trillion

estimated indirect social costs associated with the collateral consequences of a criminal record—even if the arrest did not result in a criminal conviction

31. O'Neill Hayes, p.1. <https://www.americanactionforum.org/research/the-economic-costs-of-the-u-s-criminal-justice-system>.

32. Jeremy Travis, "But They All Come Back: Rethinking Prisoner Reentry," U.S. Department of Justice, May 2000, pp. 1-11. <https://www.ojp.gov/pdffiles1/nij/181413.pdf>; "Prisoner Re-entry Fact Sheet," White House Archives, last accessed Jan. 25, 2023. https://georgewbush-whitehouse.archives.gov/government/fbci/pdf/prisoner_reentry_factsheet.pdf.

33. Bureau of Justice Statistics, "Reentry Trends in the United States," U.S. Department of Justice, Apr. 14, 2004, p. 1. <https://bjs.ojp.gov/content/pub/pdf/reentry.pdf>.

34. "The Challenges of Prisoner Re-Entry Into Society," Simmons University, last accessed, Jan. 25, 2023. <https://online.simmons.edu/blog/prisoner-reentry>.

35. Matthew Crow and John Ortiz Smykla, eds., *Offender Reentry: Rethinking Criminology and Criminal Justice* (Jones & Bartlett Learning, 2014), pp. 147-243; Nathan James, "Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism," Congressional Research Service, Jan. 12, 2015, pp. 17-20. <https://sgp.fas.org/crs/misc/RL34287.pdf>.

36. Danielle Kaebler, "Probation and Parole in the United States, 2020," U.S. Department of Justice, December 2021. <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>.

Public Safety, Economics and the Collateral Consequences of Arrest and Conviction

The United States incarcerates more people per capita than that of any other industrialized nation and our recidivism crisis—wherein more than 75 percent of our prisoners are rearrested within five years—is more alarming than any other democratic nation in a similar tax bracket.³⁷ In response to the persistent reentry failure rates that lead to rearrest, the director of the Prisoner Reentry Institute at the John Jay College of Criminal Justice argues that successful reentry is determined by “how adequately [reentrants] are able to meet six basic life needs: livelihood, residence, family, health, criminal justice compliance and social connections.”³⁸ These critical elements of reentry and full reintegration into society are the very factors that are compromised by the collateral consequences of a criminal record, past or present.³⁹ Without access to resources, people with criminal records are either unable, or no longer motivated, to pursue lawful means to support themselves and their families.

Punishment in Perpetuity

The collateral consequences of a criminal record follow people long beyond the time their debt has been paid to society and their risk to the community has dissipated. Some people learn their lesson, and others age out of crime, but the penalties continue to block nearly every opportunity that is needed to achieve stability and increase social capital.⁴⁰

Collateral consequences—which are defined by the National Inventory of Collateral Consequences of Conviction (NICCC) as the “legal and regulatory restrictions that limit or prohibit people with criminal records from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities”—are extremely costly to all Americans, jeopardizing public safety and the national economy.⁴¹ The rate of recidivism for people on community supervision and the increased likelihood of rearrest among this population is largely attributed to the criminogenic nature of prison and the lack of access to a social safety net upon release.⁴²

Some of these restrictions reflect public safety interests or the nature of the crime, but many are not related to the offense, nor do they consider the time that has passed between arrest or conviction and the opportunity being sought.⁴³ Individuals who were or are arrested but not convicted are also not exempt from the associated barriers. Data harvesters and other commercial entities exploit published arrests without reporting on the disposition of the case.⁴⁴ When charges are pending,



Some people learn their lesson, and others age out of crime, but the penalties continue to block nearly every opportunity that is needed to achieve stability and increase social capital.

37. Liz Benecchi, “Recidivism Imprisons American Progress,” Harvard Political Review, Aug. 8, 2021. <https://harvardpolitics.com/recidivism-american-progress>.
38. Matt Ferner, “These Programs Are Helping Prisoners Live Again on the Outside,” HuffPost, July 28, 2015. https://www.huffpost.com/entry/if-we-want-fewer-prisoners-we-need-more-compassion-when-they-re-enter-society_n_55ad61a5e4b0caf721b39cd1.
39. Ibid.
40. Howard N. Snyder, “Arrest in the United States, 1990-2010,” U.S. Department of Justice, October 2012, pp. 1-26. <https://bjs.ojp.gov/content/pub/pdf/aus9010.pdf>.
41. National Inventory of Collateral Consequences, last accessed Jan. 25, 2023. <https://niccc.nationalreentryresourcecenter.org>.
42. O’Neill Hayes, p.5. <https://www.americanactionforum.org/research/the-economic-costs-of-the-u-s-criminal-justice-system>.
43. National Inventory of Collateral Consequences of Conviction, last accessed March 8, 2023. <https://niccc.nationalreentryresourcecenter.org>.
44. Ram Subramanian et al., “Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014,” Vera Institute of Justice, December 2014, p. 5. <https://www.vera.org/downloads/publications/states-rethink-collateral-consequences-report-v4.pdf>.

dismissed, withdrawn or otherwise do not result in a conviction, innocent people and their dependents are unduly penalized.

The NICCC database includes 45,000 collateral consequences, and the negative impact of these collateral consequences on reentry are well documented.⁴⁵ These collateral consequences are pervasive because technology allows the general public easy access to records that may limit employment and other opportunities. For example, 90 percent of employers, 80 percent of landlords and 60 percent of colleges commonly use these records to screen applicants, regardless of whether other considerations are met.⁴⁶ An estimated 70 to 100 million adults, or one in three Americans, has a publicly available record that limits their stability, self-sufficiency and desire to remain law-abiding.

Employment Barriers, Recidivism and the Economy

Multiple research studies indicate that individuals who are employed and earn sufficient wages are less likely to recidivate than others.⁴⁷ Employment with sufficient earnings emerges as a critical factor because it is needed to secure housing, transportation, food and healthcare. Yet suitable employment, which is necessary to cover one's basic needs, remains largely out of reach for reentrants and individuals with a criminal record, as does government assistance, which can be withheld based on a person's arrest or conviction.

The challenges of finding suitable employment are reflected in data from key organizations. Data from the American Bar Association indicates that, one year after release from jail or prison, 60 percent of formerly incarcerated people are still unemployed.⁴⁸ Similarly, data from the U.S. Chamber of Commerce suggests that the unemployment rate beyond that first year is 27 percent, and that those who are employed earn 40 percent less than their counterparts without a record.⁴⁹ Black American men with a criminal record often fare even worse; they receive 65 percent fewer employment call backs than others who do not report an arrest on a job application.⁵⁰ In addition, African Americans are more than twice as likely to be unemployed compared to their white counterparts, and there is no state in the nation where the unemployment rates for the two groups are equal.⁵¹

In a 2022 study of unemployed men in their 30s, researchers found that more than half (64 percent) had been arrested for a crime and that 46 percent had been convicted of a crime.⁵² Despite historic labor shortages and extensive training,

KEY TAKEAWAY

Technology allows the general public easy access to records that limit employment and other opportunities.

Employers (90 percent), landlords (80 percent) and colleges (60 percent) commonly use these records to screen applicants, regardless of whether the other considerations are met.

45. American Bar Association. <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf>.

46. Logan Seacrest, "Clean Slate: Old Arrest Records Hurt Public Safety and Economic Stability," The R Street Institute, Nov. 29, 2022. <https://www.rstreet.org/2022/11/29/clean-slate-old-arrest-records-hurt-public-safety-and-economic-stability>.

47. See, e.g., Crystal S. Yang, "Labor Markets and Criminal Recidivism," *Journal of Public Economics* 147 (March 2017), pp. 16-29. <https://doi.org/10.1016/j.jpubeco.2016.12.003>; Kevin T. Schnepel, "Good Jobs and Recidivism," *The Economic Journal* 128:608 (June 9, 2017), pp.447-469. <https://doi.org/10.1111/eoj.12415>; J.J. Prescott and Sonja B. Starr, "The Power of a Clean Slate," *Regulation* 43:2 (2020), pp. 28-34. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3474&context=articles>.

48. "Collateral Consequences of Criminal Convictions: Judicial Bench Book." <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf>.

49. "The Business Case for Criminal Justice Reform: Second Chance Hiring," U.S. Chamber of Commerce, Aug. 18, 2021. <https://www.uschamber.com/workforce/education/the-business-case-criminal-justice-reform-second-chance-hiring>.

50. Ibid.

51. Jaboa Lake, "Preventing and Removing Barriers to Housing Security for People With Criminal Convictions," Center for American Progress, April 14, 2021. <https://www.americanprogress.org/article/preventing-removing-barriers-housing-security-people-criminal-convictions>; Kyle K. Moore, "Economic Indicators: State unemployment by race and ethnicity," Economic Policy Institute, December 2022. <https://www.epi.org/indicators/state-unemployment-race-ethnicity>.

52. Shirin Ali, "More than half of unemployed US men in their 30s have a criminal record, study says," *The Hill*, Feb. 21, 2022. <https://thehill.com/changing-america/respect/accessibility/595178-more-than-half-of-unemployed-young-men-in-the-us-have>.

individuals with records, some more than a decade old, were unable to obtain employment because of occupational licensing limitations.⁵³ As the United States attempts to recover from the pandemic and the Great Resignation, there are currently more than 3 million fewer employees in the labor market compared to February 2020.⁵⁴ Food service and hospitality; durable goods manufacturing; and wholesale and retail trade have experienced significant setbacks, struggling to hire and retain entry level or skilled workers.⁵⁵

Our workforce and the nation suffer when willing, able and qualified people are barred from employment based solely on a prior record. The national economy loses an estimated \$87 billion per year by excluding these potential employees from the workforce, leaving law-abiding taxpayers to pick up the fiscal and social deficits.⁵⁶ Unsurprisingly, unemployment is associated with higher rearrest rates, which threatens the safety of our communities and drives up criminal justice costs.⁵⁷ Without sufficient earnings, individuals are more likely to experience housing instability and homelessness; food insecurity; stress-related substance use and abuse; and an increased reliance on crime to support themselves—all of which fuels the cycle of arrest, release and repeat.⁵⁸ Communities are safer and our economy is stronger when formerly arrested, convicted or incarcerated individuals are employed. Increased employment is correlated with decreased criminal activity, including drug dealing, property crime and violent crime.⁵⁹ Statistics show that, after a person with a record has remained arrest free for a reasonable period of time, they are less likely than their counterparts without a record to be charged with a crime.⁶⁰



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Homelessness, Recidivism and the Taxpayer Burden

The revolving door of incarceration that stems from a lack of access to suitable employment and other critical resources also drives cyclical homelessness. The modern age of mass homelessness began in the early 1980s, following the tough-on-crime policies of the 1970s and the disinvestment in community resources in lieu of punitive legal sanctions for public-order offenses. Citing a report from the United States Conference of Mayors, the African American Planning Commission attributes the rise in homelessness to a lack of social services for mental health and substance use; jobs that do not provide a livable wage; and bad public policy that perverts the use of the legal system, which exacerbates homelessness.⁶¹


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53. Stephanie Ferguson, "Understanding America's Labor Shortage: The Most Impacted Industries," U.S. Chamber of Commerce, Feb. 22, 2023. <https://www.uschamber.com/workforce/understanding-americas-labor-shortage-the-most-impacted-industries>; Roby Chavez, "Louisiana pushes to reduce 'unnecessary' barriers to employment," PBS News Hour, Oct. 19, 2022. <https://www.pbs.org/newshour/nation/how-louisiana-is-easing-roadblocks-for-people-with-criminal-histories-to-work>.
54. Felix Richter, "The 'Great Resignation' Isn't Over Yet," Statista, Jan. 5, 2023. <https://www.statista.com/chart/26186/number-of-people-quitting-their-jobs-in-the-united-states>; Ferguson. <https://www.uschamber.com/workforce/understanding-americas-labor-shortage-the-most-impacted-industries>.
55. Ibid.
56. Smith and Snider, "Clean Slate Record Sealing and Expungement." <https://www.rstreet.org/research/clean-slate-record-sealing-and-expungement>.
57. Ibid.
58. Gary Hunter, "Destined to Fail: The Negative Effect of Collateral Consequence Laws," Prison Legal News, Aug. 10, 2016. <https://www.prisonlegalnews.org/news/2016/aug/10/destined-fail-negative-effect-collateral-consequence-laws>.
59. Solomon et al., p.5. <https://www.urban.org/research/publication/understanding-challenges-prisoner-reentry>.
60. Prescott and Starr, p. 32. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3474&context=articles>.
61. "Homeless Stats in America," African American Planning Commission, last accessed Jan. 25, 2022. <https://aapci.org/homeless-stats-in-america>.


The NICCC has identified more than 1,300 criminal record-based barriers to affordable housing for alleged law violators and their family members.⁶² Federal law bans individuals with certain types of convictions (typically felony drug convictions) from benefiting from subsidized housing, which means those individuals cannot reside in public housing. These barriers extend beyond public housing, however, and may also include private rentals, temporary housing in hotels or motels, college campuses and other congregate housing.⁶³ Individuals with pending charges—who are legally innocent at that phase of judicial processing—or those who have been convicted are often forced to choose between violating a housing agreement, losing their housing to retain the family unit or pursuing private housing agreements that also screen, and often deny, applicants on the basis of their criminal record.⁶⁴ In a 2020 survey of inmates that asked what would have kept them out of jail, 36 percent of the respondents reported that affordable housing would have prevented them from committing the crime(s) that led to their incarceration.⁶⁵ Thirty-three percent of the respondents indicated that living wages would have made the difference.⁶⁶ This is not surprising, as 79 percent of community-based, formerly incarcerated persons and their families reported being denied housing based on a criminal conviction.⁶⁷

In fact, people who have been incarcerated just once are seven times more likely than the general public to be homeless, and those who have been incarcerated more than once are 13 times more likely to be homeless.⁶⁸ In addition, the public-order laws that punish homelessness, like sleeping in public spaces, result in increased arrests among the homeless and fuel an endless cycle of incarceration and homelessness.⁶⁹ In 2019, the ninth circuit appeals court ruled that it is unconstitutional to punish homelessness under these circumstances, but only if sufficient housing alternatives are available.⁷⁰ Because most states do not offer adequate housing alternatives, and because homeless individuals often do not know their rights and lack the resources for a defense, they continue to rotate between jail cells and the streets.

While being homeless in and of itself does not cause crime, the repetitive cycle of incarceration and homelessness can contribute to stress, mental health issues and substance misuse that can serve as underlying drivers for crime. Notably, a systematic review of the relationship between crime, severe mental illness and homelessness found that severely mentally ill individuals with stable housing were significantly less likely to commit crime or be victims of crime.⁷¹ For the estimated 20 to 50 percent of the homeless population who are mentally ill, access to stable housing could reduce police contacts, the need for victim-medical services and

2020 Inmates Survey Findings

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62. Lake. <https://www.americanprogress.org/article/preventing-removing-barriers-housing-security-people-criminal-convictions>.

63. Ibid.

64. “Collateral Consequences of Criminal Convictions: Judicial Bench Book,” p. 5. <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf>.

65. Nicole Lewis et al., “What Could Have Kept Me Out of Prison,” The Marshall Project, Oct. 27, 2020. <https://www.themarshallproject.org/2020/10/27/what-could-have-kept-me-out-of-prison>.

66. Ibid.

67. Lake. <https://www.americanprogress.org/article/preventing-removing-barriers-housing-security-people-criminal-convictions>.

68. Lucius Couloute, “Nowhere to Go: Homelessness among formerly incarcerated people,” Prison Policy Initiative, August 2018. <https://www.prisonpolicy.org/reports/housing.html>.

69. Ibid.

70. Cassidy Waskowicz, “Homeless Persons Cannot Be Punished for Sleeping in Absence of Alternatives, 9th Circuit Decision Establishes,” National Homelessness Law Center, April 1, 2019. <https://homelesslaw.org/homeless-persons-cannot-be-punished-for-sleeping-in-absence-of-alternatives-9th-circuit-decision-establishes>.

71. Laurence Roy et al., “Criminal Behavior and Victimization Among Homeless Individuals With Severe Mental Illness: A Systematic Review,” *Psychiatric Services* 65:6 (June 2014), pp. 707-839. <https://ps.psychiatryonline.org/doi/epdf/10.1176/appi.ps.201200515>.

the number of arrests and jails stays—the costs of which all fall on taxpayers.⁷² For example, one person who cycled repeatedly through the system for 90 days cost Denver taxpayers \$4,000; similarly, booking and jailing homeless individuals in Los Angeles tallied more than \$70 million in the fiscal year 2014-2015.⁷³ The diversion of police resources from more serious crime to address homelessness is incalculable and could be mitigated by ending record-based housing barriers.

Importantly, the Department of Housing and Urban Development asserts that overly broad, blanket bans against applicants with criminal records disproportionately impact people of color and those with disabilities, like co-occurring disorders, which violates the Fair Housing Act.⁷⁴ Fair-housing advocates cite eliminating the overuse of criminal records as the key to reducing homelessness and recidivism.⁷⁵ Individualized interviews, rather than online applications, allow applicants to provide more context for the criminal record, including how old it is, how old they were when the offense was committed and how they have since changed.⁷⁶

Food Insecurity, Fiscal Instability and Violent Crime

In addition to affecting employment and housing, increasingly punitive social welfare policies enacted during the 1990s also make it exceedingly difficult for people with criminal records to access food and financial-assistance programs. Under the 1996 Personal Responsibility and Work Opportunity Reconciliation Act, people with felony convictions for drug charges, including use and possession, are banned from receiving food stamps or Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF), which help low-income families achieve economic independence.⁷⁷

Half of all of the children in the United States have at least one parent with a criminal record, which eliminates the child's access to these resources as well. The adverse childhood experience of having a parent with a criminal record, especially one that involves incarceration and indicates substance abuse, combined with the lack of access to welfare resources and familial stability, predisposes the next generation to poor health and school outcomes and increased the likelihood of substance use, arrest and violence.⁷⁸ In a study assessing the role of housing, food and financial instability in childhood neglect and future violence, researchers found that childhood neglect predicted violent arrests and housing, financial, and food insecurities in middle adulthood.⁷⁹ Further, housing,



In addition to affecting employment and housing, increasingly punitive social welfare policies enacted during the 1990s also make it exceedingly difficult for people with criminal records to access food and financial-assistance programs.

72. Ibid.

73. Emily Peiffer et al., "Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It," Urban Institute, Sept. 16, 2020. <https://www.urban.org/features/five-charts-explain-homelessness-jail-cycle-and-how-break-it>.

74. Aastha Uprety, "How Criminal Background Checks Can Prevent People with Disabilities from Finding Stable Housing," Equal Rights Center, Sept. 19, 2019. <https://equalrightscenter.org/criminal-record-disability-housing>.

75. See, e.g., "Fair Housing for People with Criminal Records," Fair Housing Center for Rights & Research, last accessed Feb. 2, 2023. <https://www.thehousingcenter.org/resources/criminal-history>; Reentry Housing Committee, "A Never-Ending Sentence: The Impact of Criminal Conviction in Project-Based Section 8 Housing Tenant Selection Plans in Cuyahoga County," The Leadership Coalition, January 2020, pp. 20-22. <https://www.thehousingcenter.org/wp-content/uploads/2019/12/A-Never-Ending-Sentence-2020.pdf>; "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions," U.S. Department of Housing and Urban Development, Apr. 4, 2016, pp. 5-8. https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDOCR.PDF; Testimony of Phyllis Chamberlain, et al., House Democratic Policy Committee Hearing, "Topic: Fair Chance Housing," The House of Representatives of Pennsylvania, July 20, 2016, pp. 2-24. https://www.pahouse.com/files/Documents/Testimony/2016-07-26_12-43-50__hdpc072016.pdf.

76. Uprety. <https://equalrightscenter.org/criminal-record-disability-housing>.

77. Cynthia A. Golembeski et al., "Food Insecurity and Collateral Consequences of Punishment Amidst the COVID-19 Pandemic," *World Medical & Health Policy* 12:4 (December 2020), pp. 357-373. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7753628>.

78. "Fast Facts: Preventing Adverse Childhood Experiences," Centers for Disease Control and Prevention, April 6, 2022. <https://www.cdc.gov/violenceprevention/aces/fastfact.html>.

79. Amie M. Schuck and Cathy Spatz Widom, "The roles of housing, financial, and food insecurities in understanding the relationship between childhood neglect and violence in adulthood," *PLoS ONE* 16:3 (March 3, 2021), p. 5. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7928485/pdf/pone.0246682.pdf>.

financial and food insecurities predicted future arrests for violence. Childhood neglect was defined as “the lack of adequate food, clothing, shelter, and medical attention as a child” and the recommendations of the researchers included the need for improved efforts to “provide basic housing, financial, and food support for neglected children to reduce their risk for violent criminal behavior.”⁸⁰ From this lens, it is evident that the barriers that parents with criminal records experience in accessing resources that are necessary for human survival are displaced, shifting the burden onto the subsequent generation and increasing ongoing levels of violent crime in the community.

Reparative Efforts: Mitigating the Damage of Collateral Consequences

Fair Chance Opportunities

To address the needs and challenges that people with public arrest records face in trying to secure employment and establish housing stability, ban-the-box, fair chance housing and fair chance hiring laws have been proposed and adopted in a number of cities and states.⁸¹ These measures request that the inquiry about a prior or current criminal record be removed from job, school and housing applications, and that the laws implore individuals to first consider applicants on their merits, using record checks as a last precaution, rather than as an initial screening tool.

Unfortunately, the social stigma of a criminal record has undermined the efficacy of ban-the-box legislation and fair chance opportunities. Studies of the two-decades-old campaign indicate that ban-the-box legislation produced unintended disparities in hiring based on race, rather than record.⁸² Advocates for true, meaningful second chances look to record sealing and expungement processes to overcome these challenges while also calling for the enforcement of equal opportunity housing and hiring laws.⁸³ Expungement and sealing processes have been in use for decades, and they are a relatively low-cost option for removing old arrest or conviction records from public view. The records are often retained by court agencies, with access preserved for specific law enforcement, security clearance or research purposes.

Petition-Based Record Sealing and Expungement

Though the terms record sealing and expungement are often used interchangeably, expungement generally means that a record is either deleted entirely or that it is only available to the prosecuting authority and their central repository.⁸⁴ Though state protocols vary widely, expunged records are typically harder to access and may require a court order. Importantly, even when a person has been fully pardoned, the record may not be automatically expunged. Record sealing simply removes the arrest or conviction record from public view.⁸⁵



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Key Definitions

Record Sealing:

Removes the arrest or conviction record from public view

Expungement:

A record is either deleted entirely or is only available to the prosecuting authority and their central repository

80. Ibid.

81. Beth Avery and Han Lu, “Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies,” National Employment Law Project, Oct. 1, 2021. <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide>.

82. Kimberly Saltz, “Thinking Outside of the Box: Ethical Implications of the Unforeseen Backfire of Ban the Box Policies,” *The Georgetown Journal of Legal Ethics* 34 (Aug. 24, 2023), pp. 1301. <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2022/08/GT-GJLE210073.pdf>.

83. Ibid.

84. “Expungement and Sealing of Criminal Records,” Justia, October 2022. <https://www.justia.com/criminal/expungement-record-sealing>.

85. Ibid.

The vast majority of states have established petition-based record sealing processes or expungement for eligible individuals.⁸⁶ Eligibility criteria vary, but people convicted of offenses involving the sex offender registry, persons with multiple felonies or those convicted of violent offenses are typically not eligible because of public safety priorities. Fourteen states allow for broader felony and misdemeanor relief; 23 states provide limited felony and misdemeanor relief; six states will seal misdemeanors and pardoned felonies; three states and the District of Columbia have procedures for misdemeanor relief; and only four states and the federal government have no general laws or policies to seal or set aside prior records.⁸⁷ In addition, most states provide some mechanism for sealing at least some non-conviction records, or charges that did not result in a conviction.⁸⁸ Some states provide statutory relief, some grant the authority to judges, some provide mandatory expungement and others are discretionary.⁸⁹

State timelines for record sealing also vary. In some states, people have to remain law-abiding for a certain number of years after their sentence has been fully served, whereas other states begin the clock of consideration at the time of sentencing, so long as that sentence is completed and the individual remains arrest free for a specified period of time.⁹⁰ The waiting period is often longer for felonies (five to 10 years) than misdemeanors (three to five years). Some states require a court hearing to consider the petition for expungement; others do not.⁹¹

Unfortunately, fewer than 10 percent of eligible people pursue the petition process for a variety of reasons, including, but not limited to, a lack of awareness of the opportunity; the cost and complexity of the process; and the time needed to complete the petition process.⁹²

In order to bridge the gap between eligibility and expungement, some states have joined a national movement, known as the Clean Slate Initiative, which seeks to provide an automated record-sealing process for eligible individuals at no cost to them.⁹³ Clean Slate is a bipartisan, bicameral policy model that has the support of more than 70 percent of American voters.⁹⁴ Having served the time for their crime, individuals who demonstrate their ability to remain law-abiding deserve to have their rights restored so that they can remain fully integrated, contributing members of society. The benefits of such extend well beyond the individual, as those who have had their records sealed are less likely to be arrested, which translates to safer communities, and more likely to enjoy better employment outcomes, including increased earnings, which enhances familial stability and a stronger economy.⁹⁵

Petition-Based Record Sealing and Expungement

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86. “50 State Comparison: Expungement, Sealing & Other Record Relief,” Restoration of Rights Project, January 2023. <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside-2>.

87. Ibid.

88. Ibid.

89. Ibid.

90. “50 State Comparison: Expungement, Sealing & Other Record Relief.” <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside-2>.

91. Ibid.

92. Prescott and Starr, p. 31. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3474&context=articles>.

93. “About,” Clean Slate, last accessed Jan. 25, 2023. <https://www.cleanslateinitiative.org/about>.

94. Smith and Snider, “Clean Slate Record Sealing and Expungement.” <https://www.rstreet.org/research/clean-slate-record-sealing-and-expungement>.

95. Prescott and Starr, p. 32. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3474&context=articles>.

Clean Slate Legislation: The Pathway to Prosperity

There is a wealth of evidence that demonstrates the punitive approach's lack of efficacy and the collateral damage of a publicly available criminal record for the individual, their dependents, the economy, taxpayers, the criminal justice system, the social welfare system and the safety of the community. While Clean Slate legislation is comparably newer than existing strategies that assist people with criminal records, including petition-based record sealing and expungement, the early results are promising. So, too, is the rate with which states have passed and implemented the automated record-sealing processes for eligible individuals. It is with consideration of what has not worked and what might work that policymakers should consider the potential opportunities of Clean Slate laws in restoring the workforce, strengthening the economy and building safer communities.

Clean Slate is a policy model that uses technology to automate arrest- and conviction-record clearance if a person stays crime-free for a specified period of time.⁹⁶ In order to meet the minimum legislative criteria as established by the initiative, state and federal Clean Slate laws must do the following:

- Automate record clearance
- Initiate automatic record clearance upon eligibility *as determined by the state or federal law
- Include the clearance of arrest records
- Include the clearance of misdemeanor records⁹⁷

The Clean Slate Initiative also strongly recommends that laws include eligibility of at least one felony.⁹⁸

In order to balance the restoration of rights with the concerns of public safety, each state and the federal government determines the specific eligibility criteria beyond the minimum requirements described above. Most Clean Slate laws exclude violent and serious offenses, including domestic violence, most felonies, crimes of treason and convictions that require registration on sex offender registries.⁹⁹ Similarly, records are accessible only under limited circumstances, like when purchasing a firearm or applying for a job in law enforcement. In addition, to mitigate the concerns of employers who are not privy to the sealed record, there are often liability protections built into the legislation.¹⁰⁰

The first Clean Slate law was passed in Pennsylvania in 2018, and the Clean Slate Initiative was established in 2019 to provide resources and support for other states to do the same.¹⁰¹ Since that time, it has grown into a national movement, with legislation passed in 10 states and active campaigns in a number of states and the federal government.¹⁰²



Clean Slate is a policy model that uses technology to automate arrest- and conviction-record clearance if a person stays crime-free for a specified period of time.

96. "Introducing Clean Slate," Clean Slate, last accessed, Jan. 25, 2023. <https://www.cleanslateinitiative.org/about>.

97. "Criteria for Clean Slate Legislation," Clean Slate, last accessed, Jan. 25, 2023. <https://www.cleanslateinitiative.org/states#criteria>.

98. Ibid.

99. Smith and Snider, "Clean Slate Record Sealing and Expungement," p. 2. <https://www.rstreet.org/research/clean-slate-record-sealing-and-expungement>.

100. Ibid.

101. *Clean Slate Annual Report: July 2021 to June 2022*. Clean Slate, last accessed Jan. 25, 2023, p. 3. <https://www.cleanslateinitiative.org/about/report22>.

102. Ibid.

Existing Clean Slate Legislation

- **California**

The state of California made history when it passed Clean Slate legislation on Sept. 29, 2022, allowing for the automatic sealing of arrest and conviction records for most ex-offenders who have not been convicted of a new felony within four years of their last completed sentence.¹⁰³ The law is the most expansive to date. People convicted of serious and violent felonies, as well as those with registerable sex offenses, are excluded from eligibility, and background checks for jobs in education, law enforcement and public service will still reveal the prior record.¹⁰⁴ The process is scheduled to begin in July 2023.



California
Clean Slate Legislation
Passed: 2022

- **Colorado**

Colorado passed Clean Slate legislation in 2022 and is scheduled to begin in 2024. The law includes automatic record sealing for petty offenses, misdemeanors and low-level felonies and other felonies, with waiting periods of one year, three years and five years, respectively.¹⁰⁵ Fines and fees do not need to be paid in full prior to eligibility. Uncharged arrests must be sealed after one year.¹⁰⁶



Colorado
Clean Slate Legislation
Passed: 2022

- **Connecticut**

Connecticut's Clean Slate law went into effect Jan. 1, 2023, allowing for certain misdemeanors to be sealed after seven years and eligible felonies after 10 years conviction-free.¹⁰⁷ Connecticut estimates that roughly 300,000 people will benefit from the law once it is fully implemented.¹⁰⁸



Connecticut
Clean Slate Legislation
Effective: 2023

- **Delaware**

Delaware's Clean Slate law passed in 2021, with a mandatory expungement process scheduled to begin in August 2024.¹⁰⁹ Most misdemeanors and a small number of minor felonies will be eligible. The waiting period varies from three to 10 years.



Delaware
Clean Slate Legislation
Passed: 2021

- **Michigan**

Michigan passed Clean Slate legislation in 2020, and implementation is set to begin on April 11, 2023.¹¹⁰ Eligible individuals will be able to seal up to four qualifying misdemeanors and two nonviolent felonies if they qualify under the law. Assaultive crimes, serious misdemeanors and crimes of dishonesty are excluded from eligibility, as are any convictions punishable by 10 years in prison or more. The waiting period is three years for non-serious misdemeanors and seven years for multiple felonies. There is also an expedited process for misdemeanor marijuana convictions.¹¹¹



Michigan
Clean Slate Legislation
Passed: 2020

103. Soumya Karlamangla, "California Will Soon Have the Nation's Most Expansive Record-Clearing Law," *The New York Times*, Nov. 28, 2022. <https://www.nytimes.com/2022/11/28/us/california-criminal-record-law.html#:~:text=The%20new%20law%20makes%20California,%2C%20housing%2C%20schooling%20and%20more.>

104. Ibid.

105. Ibid.

106. Ibid.

107. "Get Clean Slate CT facts," Clean Slate CT, last accessed Jan. 25, 2023. <https://cleanslatect.org/about-clean-slate>.

108. Ibid.

109. "50 State Comparison: Expungement, Sealing & Other Record Relief." <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2>.

110. "Frequently Asked Questions: Michigan's Clean Slate Legislation," Safe and Just Michigan, last accessed Jan. 25, 2023. https://www.safeandjustmi.org/wp-content/uploads/2022/02/Clean-Slate-FAQ-Fact-Sheet_update-February-15-2022.pdf.

111. Ibid.

• New Jersey

New Jersey passed Clean Slate legislation on December 18, 2019.¹¹² Individuals who have remained free of criminal conviction for 10 years following the completion of their most recent sentence are able to expunge their prior record.¹¹³ Serious offenses, like murder, robbery and aggravated sexual assault, are not eligible for this relief.¹¹⁴ Individuals have to electronically file to have their charges expunged. Marijuana charges can be expunged immediately after the sentence has been served and all fines, costs and fees have been paid. Acquittals and the completion of Recovery Court also qualify for immediate, automatic expungement.¹¹⁵



New Jersey
Clean Slate Legislation
Passed: 2019

• Oklahoma

Oklahoma's Clean Slate law went into effect on May 2, 2022. The law allows non-conviction records and misdemeanors to be expunged after five years. Felonies, including pardoned felonies, are not eligible for automatic expungement.¹¹⁶ The process is scheduled to commence in 2025.



Oklahoma
Clean Slate Legislation
Passed: 2022

• Pennsylvania

Pennsylvania became the first state to adopt Clean Slate legislation in 2018.¹¹⁷ Since 2019, when the law was implemented, over 40 million cases have been sealed, benefiting 1.2 million of the nearly 3 million individuals who have a criminal record.¹¹⁸ The process is free and automated; eligible records are identified and sealed, without an attorney or petition, even if the person does not know they qualify for record sealing.¹¹⁹ Pennsylvania currently allows arrests not resulting in conviction, diversion program completion, and summary and misdemeanor offenses to be sealed after 10 years without a new conviction.¹²⁰ Petition-based expungement is also an option. From November 2016, when first-time misdemeanors were eligible for petition-based sealing, to May 2020, after automatic sealing processes were implemented, 52 times as many misdemeanors were sealed by automation than were sealed by petition.¹²¹



Pennsylvania
Clean Slate Legislation
Passed: 2018

In 2020, outstanding fines and fees were eliminated as a barrier to qualify as long as there is no unpaid restitution.¹²² A current challenge is that the record is expunged from the state record but still appears on Federal Bureau of Investigations (FBI) background checks. The Pennsylvania State Police and the

112. "Governor Murphy Signs Major Criminal Justice Reform Legislation," State of New Jersey, Dec. 18, 2019. <https://www.nj.gov/governor/news/news/562019/20191218a.shtml>.

113. Ibid.

114. "Expungement Reform Law Brings Sweeping Changes," LSJ, last accessed Jan. 25, 2023. <https://www.lsnj.org/KeyDevelopments/ExpungementReformLaw.aspx#:~:text=Clean%20Slate%20Eligibility%2C%20E%2Dfiling%20and%20Automated%20Expungement&text=It%20will%20allow%20individuals%20to,from%20incarceration%2C%20whichever%20comes%20later>.

115. Ibid.

116. Ibid.

117. "The Clean Slate Movement," My Clean Slate PA, last accessed Jan. 25, 2023. <https://mycleanslatepa.com/movement>.

118. Ibid.

119. Ibid.

120. "The Clean Slate Movement." <https://mycleanslatepa.com/eligibility>.

121. Sharon M. Dietrich, "PA Clean Slate: Delivering on Its Promises of Philadelphia," Community Legal Services, May 1, 2020, p. 2. <https://clsphila.org/wp-content/uploads/2020/05/Clean-Slate-implementation-report-final.pdf>.

122. Ibid.

FBI are collaborating to remedy this issue.¹²³ Another issue is that people are not notified when their record has been sealed.¹²⁴

Future iterations of the legislation seek to build upon these concerns, as well as expand the criteria for qualifying. HB 1826, sponsored by Rep. Sherlyn DeLozier (R-88th.) and Rep. Jordan Harris (D-106th) would expand eligibility to include the sealing of felony drug convictions and some property-related felonies after 10 years without another conviction.¹²⁵ Both HB 1826 and SB 1314, the companion bill in the Senate, have bipartisan support and the support of the PA Chamber and the Pennsylvania District Attorney’s Association.¹²⁶

• Utah

Utah passed Clean Slate legislation in 2019 and was scheduled to implement the law on May 1, 2020.¹²⁷ Automatic record clearing was delayed until the end of 2021 because of the COVID-19 pandemic. Record sealing is for misdemeanors only, but felony convictions can be expunged via petition. Certain criminal charges that do not result in conviction are eligible for automated expungement. The general waiting periods vary from five to seven years based on the offense grade of the misdemeanor. The time of eligibility is based on the years a person is conviction-free in the state of Utah from the date of adjudication, rather than the date the sentence was completed. Exclusions include driving under the influence, registerable sex offenses, certain weapons-related offenses and domestic violence offenses.¹²⁸



Utah
Clean Slate Legislation
Passed: 2019

• Virginia

Virginia passed Clean Slate legislation in 2021, and it is scheduled to go into effect in 2025. Most misdemeanors and low-level felonies are eligible, as are deferred dismissals for underage alcohol and marijuana possession. Misdemeanors can be sealed after seven years, and qualifying felonies after 10 years conviction-free.¹²⁹



Virginia
Clean Slate Legislation
Passed: 2021

There are also active campaigns for Clean Slate legislation in Illinois, Missouri, New York, North Carolina and Texas, in addition to federal bills H.R. 2864 and S. 1380.¹³⁰ While all of the laws are too new to be fully evaluated, the early indicators are promising. The primary goal of the initiative is to bridge the gap between eligibility and opportunity, as evidenced by the Pennsylvania implementation. Because so few cities report crime data to the FBI’s Uniform Crime Report, it is difficult to draw firm conclusions on the impact of the new law on public safety, yet crime rates in Pennsylvania appear stable and below the national average.¹³¹

123. Ibid.

124. Ibid.

125. “Expand Clean Slate. Expand PA’s Workforce,” My Clean Slate PA, last accessed Jan. 25, 2023. <https://mycleanslatepa.com/expand>.

126. Ibid.

127. “What is Utah’s Clean Slate Law?” Clean Slate Utah, last accessed Jan. 25, 2023. <https://www.cleanslateutah.org/about#Law>.

128. Ibid.

129. Ibid.

130. “Clean Slate in the States,” Clean Slate, last accessed, Jan. 25, 2023. <https://www.cleanslateinitiative.org/states>; Smith and Snider, “Clean Slate Record Sealing and Expungement,” p. 1. <https://www.rstreet.org/research/clean-slate-record-sealing-and-expungement>.

131. Rebecca Edwards, “The State of Safety in Pennsylvania 2022,” Safewise, Sept. 29, 2022. <https://www.safewise.com/blog/safest-cities-pennsylvania>.

Conclusion

The United States is currently facing multiple epidemics. Historic labor shortages, rising homelessness, economic instability and the crises of reentry and recidivism strain every conceivable resource that is publicly or privately available. After 50 years of failed “tough-on-crime” policies that widen the criminal justice net and punish people in perpetuity, too many Americans are excluded from fully participating in contemporary society. The penalties established by the War on Drugs and the companion social welfare policies that barred access to critical basic life necessities are not only punishing those who wish to contribute to society after a conviction but are also punishing law-abiding citizens who are left responsible for funding the cycles of arrest, release and repeat.

Despite the aforementioned efforts to combat the collateral consequences of arrest, conviction or incarceration, the stigma of a criminal record, no matter how minor and how old, continues to produce life-long instability in housing, employment and upward mobility for the individual, their family and the subsequent generation.¹³² Considering the substantial role the federal government played in erecting these barriers, it is imperative that Clean Slate legislation is enacted and advanced in every state and at the federal level to remove the criminal records of eligible persons from public view. Other remedies, including petition-based record sealing or expungement, have proven insufficient to remedy the harms of the crime bills passed from 1970 until the mid-1990s. Advocates for Clean Slate legislation and automatic record sealing see the legislation as a natural and necessary remedy to the federal legislation that disenfranchised such a large portion of the population and that costs our national economy an estimated \$87 billion per year.

We concede that the research on automated record sealing processes is limited, owing to the newness of the laws that have passed and the complexities of the pandemic that impacted implementation. But what we do not know about the potential of Clean Slate laws pales in comparison with what we do know about the lifelong impact of the punitive policies of the past. When the collateral consequences of a criminal record are removed, the social handcuffs that limit the full potential of millions of people can finally come off, giving all of us a second chance for safer communities and a stronger economy.

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Considering the substantial role the federal government played in erecting barriers, it is imperative that Clean Slate legislation is enacted and advanced in every state and at the federal level to remove the criminal records of eligible persons from public view.

132. Rebecca Vallas et al., “A Criminal Record Shouldn’t Be a Life Sentence to Poverty,” Center for American Progress, May 28, 2021. <https://www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2>.

About the Author

Christi Smith is a senior fellow for the R Street Institute’s criminal justice and civil liberties team, where she focuses on special offender populations, community corrections and reentry. She is a former adult probation and parole officer and retired assistant professor of criminal justice.