



1411 K Street N.W.
Suite 900
Washington, D.C. 20005
Free Markets. Real Solutions.
202-525-5717
www.rstreet.org

Statement from:

Sarah Anderson, Associate Director, Criminal Justice & Civil Liberties, R Street Institute

HJ 45: “Collateral consequences of criminal record expungement”

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Montana Criminal Justice Oversight Council

Members of the Council,

Thank you for the invitation to participate in this discussion, and thank you to the council for undertaking this study. I appreciate the opportunity to speak with an interbranch body that is explicitly focused on improving system performance, public safety, and the effective use of limited resources. As it should be, this conversation is squarely focused on how Montana’s justice system functions in practice—particularly after individuals have completed their sentences and are working to rebuild stability in their lives.

My name is Sarah Anderson, and I am the associate director of criminal justice and civil liberties at the R Street Institute, which is a nonprofit, nonpartisan, public policy research organization.¹ Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including criminal justice.

I want to start by emphasizing that the issues raised in House Joint Resolution 45 are not abstract.² They pose an important and pragmatic question: whether Montana’s current approach to criminal record sealing meaningfully mitigates the collateral consequences of criminal convictions, especially in a digital information environment. This affects how our justice system functions after a sentence has been completed, how people reenter their communities, and whether policy tools we already rely on, like record sealing, actually work as intended.

¹ “R Street Institute,” R Street Institute, last accessed January 2026. <https://www.rstreet.org/>.

² HJ 45, “Interim study on the impact collateral consequences have on criminal record expungement,” Montana House of Representatives, 2025 Legislative Session. <https://bills.legmt.gov/#/laws/bill/2/LC3562>

At R Street, we approach criminal justice reform through a public-safety lens.³ We prioritize accountability, due process, fiscal responsibility, and policies that can be implemented, sustained, and scaled. The issue here is not whether accountability matters—it does—but whether the legal relief mechanisms the state offers actually operate as intended.

Taking a smart approach to sealing criminal records and mitigating collateral consequences is not about erasing accountability. It is about objectively evaluating whether systems continue to impose penalties long after a sentence has been served, and whether doing so makes communities safer or less safe.

Research shows that criminal records have become one of the most significant and enduring barriers to successful reentry into society. Nationally, roughly 70 to 100 million Americans—about one in three adults—have a criminal record, many for low-level offenses or arrests that never resulted in conviction.⁴ More than half of Americans will experience an arrest by their early 20s, even though many will never be convicted. Even these records can follow someone for life. In fact, a criminal record—especially one that is publicly accessible—directly reduces access to employment, housing, and occupational licensing. Nationally, criminal-record-based exclusion is estimated to cost the U.S. economy between \$78 billion and \$87 billion in lost GDP each year.

Nationally, studies show that job applicants with a criminal record are up to 50 percent less likely to receive a callback, and the effect is often more pronounced for arrests that never led to conviction. At the same time, approximately 90 percent of employers, 80 percent of landlords and 60 percent of colleges use background checks, dramatically expanding the reach and consequences of criminal records.^{5,6,7} These flag individuals’ contacts with the justice system, regardless of age, severity, or legal outcome. As such, barriers persist even when a person has complied with all conditions imposed by the court and remained crime-free for years.

From a public safety perspective, this is a critical issue to examine. Stable employment and housing are among the strongest predictors of reduced recidivism.⁸ When criminal records unnecessarily block access to those stabilizing factors, they do not just harm the individuals themselves. They can also undermine public safety and increase the likelihood of more crime and more victimization across our communities. Expungement and record sealing are widely viewed as tools to address these problems. But in many states, including Montana, these tools are limited in scope and inconsistent in effect.

³ R Street Institute, “Criminal Justice and Civil Liberties,” R Street Institute, last accessed January 2026. <https://www.rstreet.org/home/our-issues/criminal-justice-and-civil-liberties>

⁴ “Poverty and Opportunity Profile: Americans with Criminal Records,” The Sentencing Project, August 2022. <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

⁵ Margaret Love, “The Power of a Clean Slate,” Cato Institute, Summer 2020. <https://www.cato.org/regulation/summer-2020/power-clean-slate#background-criminal-records-and-engagement>

⁶ David Thatcher, “The Rise of Criminal Background Screening in Rental Housing,” *Law & Social Inquiry*, Cambridge University Press, Winter 2008. <https://www.jstor.org/stable/20108747>

⁷ Judith Scott-Clayton, “Thinking Beyond the Box: The Use of Criminal Records in College Admissions,” Brookings Institution, September 2017. <https://www.brookings.edu/articles/thinking-beyond-the-box-the-use-of-criminal-records-in-college-admissions>

⁸ Leah A. Jacobs and Aaron Gottlieb, “The Effect of Housing Circumstances on Recidivism,” *Criminal Justice and Behavior*, August 2020. <https://journals.sagepub.com/doi/10.1177/0093854820942285>

Historically, expungement meant restricting access to a physical court file. Today, criminal history information is widely disseminated through digital databases and commercial background check companies. As noted, employers, landlords, and colleges rely on such background checks, and many commercial data brokers compile information from multiple sources. Yet these entities are often not legally required to proactively update or delete records when a case is sealed or expunged.⁹

As a result, many people who have legally cleared their records continue to face the same barriers as before. Employers and landlords may still see outdated or inaccurate information. Licensing agencies may rely on statutory provisions that are unclear about whether expunged records can be considered. And individuals are often left with no meaningful remedy when expunged information continues to surface. In fact, more than 40,000 state and federal laws impose collateral consequences tied to criminal history.¹⁰

From a policy standpoint, this creates a serious credibility problem. If the state offers expungement as a form of relief, but that relief does not function in the real world, then the system is not delivering what it promises.

Montana's current record-sealing and expungement framework is fairly narrow as compared to many other states. Eligibility is limited, processes are largely petition-based, and relief is often discretionary. That means access to record sealing depends heavily on legal knowledge, resources, and geography.

Petition-based processes place the burden on individuals, often years after their case has been closed, to navigate complex legal processes. National research shows that fewer than 10 percent of legally eligible individuals ever obtain record sealing when relief requires a petition, even in states where hundreds of thousands qualify.¹¹ This underutilization is not unique to Montana; it is a consistent feature of petition-based systems nationwide.

Importantly, this is not a reflection of individual courts or agencies. It is a structural reality of systems that depend on individual action rather than models that lead to predictable outcomes. It is also a recognition that systems designed around individual petitions tend to underserve the very population expungement is meant to help.

In evaluating the effectiveness of existing relief systems, three things should be top of mind. First is eligibility. Relief mechanisms cannot be expected to succeed if access is too narrow to begin with. Expanding the categories of offenses eligible for record sealing, particularly for nonviolent and low-level convictions and arrests that did not result in conviction, is a necessary starting point.

⁹ Ariel Nelson, "Broken Records Redux: How Errors By Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing," National Consumer Law Center, December 2019.

<https://www.nclc.org/wp-content/uploads/2022/09/report-broken-records-redux.pdf>

¹⁰ Chidi Umez-Rowley and Joshua Gaines, "National Inventory of Collateral Consequences of Conviction," Council of State Governments Justice Center, last accessed January 2026.

<https://csgjusticecenter.org/publications/the-national-inventory-of-collateral-consequences-of-conviction>

¹¹ J.J. Prescott and Sonja B. Starr, "Expungement of Criminal Convictions: An Empirical Study," *Harvard Law Review*, May 2020. <https://repository.law.umich.edu/facarticles/2165>

For Montana, there is good news. Non-conviction removal and sealing as well as misdemeanor expungement and many past marijuana convictions remain petition-based in the state, but legislators have already done good work to expand eligibility. Additionally, Montana's waiting periods are generally in line with those in other states. However, there is always room for improvement in adding more offenses to the eligibility pool as the state grows more and more comfortable with record sealing.

Across jurisdictions, states that have expanded eligibility and reduced procedural barriers have observed meaningful improvements in employment and wage outcomes for people who receive relief. Importantly, studies consistently show no increase in recidivism associated with record sealing or expungement. In one multi-year study of individuals who received expungement, the five-year recidivism rate was approximately 4 percent, well below baseline rates for similarly situated populations.¹²

Second is clarity, in both law and in process. This means clarity in the legal effect of expungement, particularly in employment, housing, and licensing contexts, in order to produce stronger real-world outcomes. The statute must clearly define what expungement or sealing actually means: who can see the record, who cannot, and how private actors should treat that information. Ambiguity creates loopholes that private background check companies can exploit, and it creates uncertainty for employers, licensing boards, and housing providers.

Best practice models tie statutory language to clear, enforceable standards for the handling of sealed records. Where the law is murky, employers and landlords often err on the side of exclusion, not because they are malicious but because they are uncertain about legal risk. Additionally, some incentives can also mitigate liability risk.¹³ Several states have explored safe harbor provisions for employers and landlords, reducing perceived liability risks associated with renting to or hiring people with sealed records. Others have looked at incentive-based models, particularly in housing, to encourage expungement-friendly practices. Further, it is worth noting that any changes to record sealing practices should not prohibit law enforcement or courts from accessing records for investigative, sentencing, and other purposes.¹⁴

Third is impact, in terms of how many eligible individuals actually access the record sealing that they are eligible for. This is where the question of petition-based processes versus automated eligibility and expungement comes into play. To its credit, Montana has easily-accessible pages on its Department of Justice website which explain the conviction expungement process and the non-conviction removal and

¹² Jillian Snider and Lisel Petis, "R Sheet On The Clean Slate Act of 2025," R Street Institute, July 2025. <https://www.rstreet.org/research/r-sheet-on-the-clean-slate-act-of-2025>

¹³ Joshua Gaines, "Limiting Employer Liability: Addressing the Perceived Risks of Hiring Workers with Criminal Histories," Council of State Governments Justice Center, March 2023. <https://csgjusticecenter.org/publications/limiting-employer-liability-addressing-the-perceived-risks-of-hiring-workers-with-criminal-histories>

¹⁴ Sarah Anderson and Jillian Snider, "Navigating a New Normal: Automated Criminal Record Sealing and Expungement," R Street Institute, April 2025. <https://www.rstreet.org/commentary/navigating-a-new-normal-automated-criminal-record-sealing-and-expungement>

sealing process.^{15,16} However, actually going through with the process is still time-intensive, labor-heavy, and complex, particularly for those already facing barriers.

HJ 45 addresses this head on as well, drawing attention to peer support. Expungement is not just a legal process; it is an administrative and logistical one. Individuals often need assistance understanding eligibility, navigating collateral consequences, and correcting errors that arise even after records are cleared. This is a good first step in helping improve impact in its system.

However, across jurisdictions, as mentioned earlier, single-digit uptake rates for petition-based systems still significantly limit the impact of current policies. There are many reasons for this, including lack of awareness, legal and procedural complexity, time and life instability, and discretion and uncertainty.

Many individuals simply do not know they are eligible for record sealing or expungement. Eligibility rules are often complex, change over time, and are not communicated at the point of case disposition. Years later, people may assume their record is permanent. Even if they are aware, though, petitioning for relief often requires navigating court systems, filing paperwork, paying fees, and sometimes securing legal assistance. Further, people most affected by collateral consequences are often juggling employment insecurity, housing challenges, and family responsibilities. Seeking record clearance competes with immediate survival needs.

Furthermore, petition-based systems frequently involve judicial and prosecutorial discretion, which can produce inconsistent outcomes. Uncertainty about success discourages people from applying at all. The result is that petition-based relief tends to reach the most resourced and legally savvy individuals, not necessarily those who would benefit most. For this reason, many states have pursued automated record sealing practices, known colloquially as “clean slate” policies.¹⁷

In such states, when record clearance is automatic rather than petition-based, access increases dramatically, disparities shrink, and administrative burdens decrease.¹⁸ Automation does not eliminate eligibility criteria, but simply ensures that eligible relief is delivered consistently without the added administrative and discretionary burden of considerations of individual petitions.

HJ 45 gives Montana an opportunity to take a clear-eyed look at how criminal records function after a sentence has been completed and whether current policies align with public safety goals.

¹⁵ Division of Criminal Investigation, “Conviction Expungement Process,” Montana Department of Justice, last accessed January 2026. <https://dojmt.gov/dci-home/conviction-expungement-process>

¹⁶ Division of Criminal Investigation, “Non-Conviction Removal and Sealing,” Montana Department of Justice, last accessed January 2026. <https://dojmt.gov/dci-home/non-conviction-removal-and-sealing>

¹⁷ Christi M. Smith, “The Pathway to Prosperity: How Clean Slate Legislation Enhances Public Safety and Stimulates the Economy,” R Street Institute, March 2023. <https://www.rstreet.org/research/the-pathway-to-prosperity-how-clean-slate-legislation-enhances-public-safety-and-stimulates-the-economy>

¹⁸ Logan Seacrest, “Clean Slate: Old Arrest Records Hurt Public Safety and Economic Stability,” R Street Institute, November 2022. <https://www.rstreet.org/2022/11/29/clean-slate-old-arrest-records-hurt-public-safety-and-economic-stability>

In our view, the most productive outcomes of this study would include:

- Data on employment, housing, and recidivism outcomes tied to record sealing practices
- Identification of statutory ambiguities that undermine access to relief
- Findings on where expungement currently breaks down in practice and who is benefiting
- Concrete, implementable policy recommendations for the legislature
- Evaluation of automation, incentives, and enforcement mechanisms used in other states

I'll close with this:

None of what is discussed today requires, nor should it mean, wholesale importation of another state's model, as every state has its own unique needs. What it does require, though, is honest evaluation and design with implementation in mind. In a data-driven world, criminal records are active barriers that shape access to opportunity long after a formal punishment ends. If record sealing is going to remain a part of Montana's justice toolset, as it should, then it must function in the real world—not only on paper. That means clarity, consistency, and full accountability.

This study and the goals set forth in HJ 45 are meaningful steps toward that end. I appreciate the council's willingness to engage seriously with these questions, and thank you again for the invitation to participate.

Thank you,

Sarah Anderson
Associate Director, Criminal Justice & Civil Liberties
R Street Institute
sanderson@rstreet.org
(703) 939-7047