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Summary



Clean slate legislation enhances public safety, helps fill the labor market, and stimulates the economy.



Incremental approaches to automated record sealing preserve public safety while restoring the rights of individuals who have long repaid their debt to society.



Modernizing criminal record data systems and centralizing repositories benefit the individual, the system, and the public.

EXPLAINER

Passing Clean Slate: Three Things Lawmakers Can Do To Improve Legislation and Avoid Implementation Pitfalls

July 2024

Background

Since 2018, [12 states](#) have passed comprehensive clean slate laws to facilitate automated record sealing for individuals charged with or convicted of certain criminal offenses. [Clean slate](#) is a policy model used to automatically expunge, or seal from the public purview, the criminal records of eligible candidates. Individuals who were arrested but not convicted and those convicted of a low-level, non-violent offense who completed their sentence and remained crime-free for a specified number of years are typically eligible.

While the majority of states already provide petition-based record sealing or expungement, [fewer than 10 percent](#) of eligible individuals pursue it due to the cumbersome, time-intensive, and costly processes involved. Automated record sealing decreases the petition-based burden on court officials while restoring the rights and opportunities of those who have earned a second chance.

In addition to the 12 states that have already enacted clean slate legislation, [five states](#) have active clean slate coalitions, and [25 states, the District of Columbia, and the U.S. Virgin Islands](#) have enacted laws specific to the expungement or record sealing of cannabis convictions. As more states pass or consider passing this type of legislation, examining collective experiences offers critical insight into how states and the federal government can thoughtfully craft bill language and ensure the legislation achieves its intended effect.

Three Easy Ways To Improve Clean Slate Legislation and Implementation

1. Think Big, but Start Small

An incremental approach increases the likelihood that the law will pass and allows jurisdictions to identify overlooked implementation barriers and policy areas. In Pennsylvania, the first state to enact clean slate, [the initial 2018 law](#) did not include a notification provision. Additionally, a lack of communication between state and federal repositories negatively affected [implementation](#), resulting in records being cleared from the state system but remaining in the federal records.

Pennsylvania's original clean slate eligibility criteria focused on offenses that posed the lowest risk to public safety. This approach garnered bipartisan support and later allowed for gradual expansion. The state's [Clean Slate 2.0](#) removed the requirement to satisfy court debt, and [Clean Slate 3.0](#) now permits non-serious drug and property felonies to be sealed after 10 years. This most recent iteration also reduced the wait period for misdemeanor conviction sealing from seven years to five. Pennsylvania was originally [one of the most restrictive states](#) for record sealing; now, its clean slate laws are hailed as "[model legislation](#)."

2. Digitize and Centralize Records

Two common concerns expressed by legislators and court personnel who support clean slate policy are [funding and technology](#). Thus, to lay the groundwork for clean slate legislation, states with dated recordkeeping practices should first digitize and centralize records to [modernize the system, streamline processes](#), and improve accuracy. It would also make states eligible for [proposed federal clean slate grant-funding programs](#).



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Digitizing records and establishing a multiphase implementation plan can also reduce the likelihood of court backlogs for petition-based and/or automated record sealing, which can create myriad problems. Take Michigan's clean slate implementation issues, for example. Passed in October 2020, [HB 4984](#) exacerbated existing case backlogs stemming from pandemic-related court closures by expanding eligibility for Michigan's petition process and introducing automatic expungement. Despite the two-year gap between implementation timelines, the state could not keep up with the increase in petitions and the additional cases that were later eligible for automatic expungement. It was not until the second phase of implementation that the law called for the creation of a computer algorithm to identify and expunge records.

Michigan's failure to prevent system overwhelm resulted in many records [becoming fully inaccessible](#) for a time until the issue was resolved. Specifically, employers were unable to access records [needed for background checks](#) and individuals with records were held in limbo, losing employment opportunities. By anticipating and avoiding process delays, legislators can better avoid these issues.

3. Determine Whether Records Should Be Sealed or Expunged

Although the terms "expunged," "cleared," "sealed," and "destroyed" are often used interchangeably, they mean different things in both policy and practice. [Record sealing](#) typically refers to removing criminal records from public access. This means that while they do not appear on most employment, housing, or other background checks, government officials can still access the records in [limited circumstances](#). Records that are [expunged](#), cleared, and destroyed no longer exist and cannot be accessed by anyone. Very few records are eligible for expungement. Legislation should be drafted with these distinctions in mind. Sealing records [offers more advantages](#) unless the record is the result of a [wrongful arrest](#) or a cannabis conviction in a state that has since legalized the substance.

Conclusion

Few would argue that a person wrongfully arrested, arrested but not convicted, or with incomplete or inaccurate records should face lifelong disadvantages or that employers struggling to staff their businesses would benefit from a wider pool of law-abiding, qualified candidates.

To enhance public safety, stimulate the economy, and fully staff the workforce with valuable, resolute employees, people should be considered on their current merits rather than past mistakes. Clean slate legislation restores opportunities for individuals to fully reintegrate into society, free of the scarlet letter that bars access to the resources they need to remain law-abiding. Legislation that expands incremental record-sealing processes (both petition-based and automated), facilitates the modernization of criminal-record storage, and recognizes the need to prioritize sealing eligible records over destroying them is critical to this effort.