



Why Clear a Record? *The Life-Changing Impact of Expungement*

Photo by Mark Strandquist of the People's Paper Co-op.

David Garvin and Omar Bey, Spring 2018 Reentry Think Tank fellows, prepare to welcome people with records to an expungement clinic at the Village of Arts & Humanities. The greeting on the door was chosen by previously incarcerated individuals as part of their efforts to transform legal clinics into more welcoming, trauma-informed spaces.

Research, data, and most importantly, the lived experiences of people with criminal records show that expungement and sealing can be life-changing for the vast number of people who qualify. This paper features the stories of people whose lives were improved even by having minor criminal cases expunged. It also examines policy initiatives that can expand the effectiveness of record clearance, most notably automated sealing through the new "Clean Slate" model.

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I. Introduction

For more than two decades, Community Legal Services, Inc. of Philadelphia (CLS) has been at the forefront of removing barriers to opportunity for people with criminal records, having served more than 10,000 clients whose records prevented their full employment. A major focus of that work has been to help as many people as possible expunge their records.¹

In Pennsylvania, expungement and sealing are fairly limited. With a few exceptions, only charges that did not lead to convictions (such as those that were withdrawn, dismissed, or for which individuals were found not guilty) and summary offense convictions can be expunged. Sealing of some misdemeanor convictions was implemented in 2016. But with a new Clean Slate law expanding eligibility for sealing misdemeanors,² Pennsylvania has joined other states around the country in expanding the types of records that are eligible for expungement or sealing. However, many types of records remain ineligible for any record clearing remedy, in even the states with the most generous record-sealing laws.³

With a limited scope, one may fairly wonder whether expungement is really a useful remedy for the one in three Americans with a criminal record.

Based on research, data, and most importantly, the lived experiences of the clients and community members with whom we work every day, CLS is convinced: **Expungement can be life-changing for the huge number of people who qualify. This paper features the stories of people whose lives were improved even by having minor criminal cases expunged.**

While expungement is certainly not the only remedy worth pursuing, the dramatic effect of expungement on the lives of individuals, families, and communities makes it an important focus for those providing direct legal services, as well as those seeking to improve law and policy to expand opportunities.

¹ Every state defines record clearing differently. Even terms like expungement versus sealing can mean different things in different states. This paper uses the term expungement broadly to encompass a variety of record clearing remedies.

² Clean Slate is better known for its automated sealing of millions of cases that will be implemented in 2020, as discussed later in this paper. But it also expanded eligibility. Learn more about Clean Slate at www.clsphila.org/CleanSlate.

³ The majority of states now allow some misdemeanor and felony convictions to be sealed or expunged under some circumstances.

James’s Story

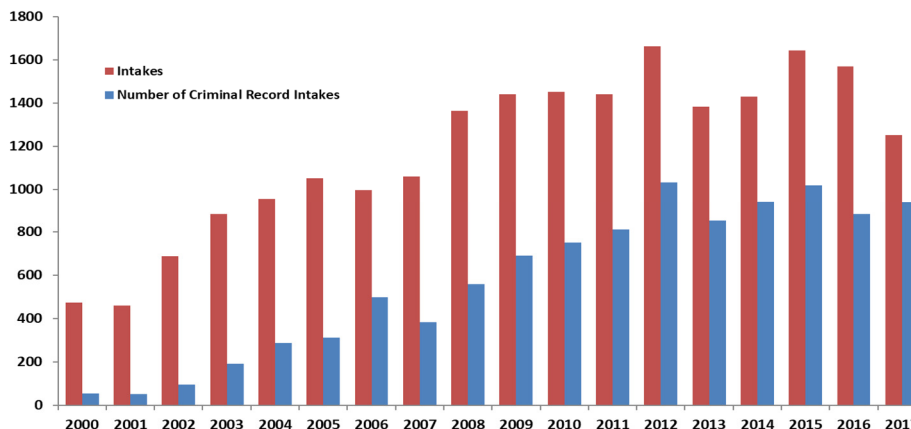
In the fall of 2006, James was arrested twice and charged with several drug offenses. The charges were withdrawn, but the two cases made it nearly impossible for James to find steady work, even a decade later. He was denied almost every job he applied for—hotel jobs, factory jobs, restaurant jobs. He settled for a dishwashing position, but it didn’t pay enough to provide for his family. In March 2017, James came to an expungement clinic with a youth basketball league where his children played. CLS filed expungement petitions and cleared the charges from James’s record. Shortly after the expungements went through, James applied for a job at United Parcel Service. The expunged cases did not come up on the background report and UPS offered him the job. Finally, James had found a job that he and his family could rely on.

“My husband has been trying to find jobs for years and he has been rejected time after time because of his criminal record. Although people change your past haunts you! Well last season we spoke to the people from Community Legal Services... they made arrangements with my husband to have his cases reviewed and dropped. So he applied for UPS and they did a background check and it came back that he didn’t have any of those things on his criminal record anymore. Just this morning he gets a phone call and UPS offered him a position, he starts next week!!! Thank you guys for all that you do to try and help families and our community in general!” – a message from James’s wife

II. Why Clear a Record?

At CLS, more than two thirds of clients who come in through our employment unit intake every year are seeking help with their criminal records. Most of them are asking for their record to be expunged. We often hear from clients after their expungements are completed that they have been able to obtain employment or advance their careers. It is not uncommon for clients to cry out of happiness and relief when they learn their expungements have been granted.

CLS Employment Unit Intakes 2000-2017



Yet questions linger about the efficacy of record clearing, especially in the digital age. With remedies varying widely from state to state, and with so many different databases and websites containing criminal records information, critical thinking is warranted about the value of record clearing to clients and communities.

Several research studies that have taken a close look at this issue have found record clearing to be effective in improving employability.

- Preliminary findings of a study out of Michigan show that in the first year after record clearing, the probability of employment rose by 6.5% and wages rose by about 22%.⁴ In addition, fewer than 4% of participants were rearrested within five years of having their records cleared.
- A study in California, where some convictions can be expunged, found that participants who had their records expunged reported an average increase in yearly income of \$6,190. In addition, 93% of participants reported confidence in their future job prospects.⁵

Why does record clearing have these impacts, when there are laws, such as state and local Ban-the-Box laws and Title VII of the Civil Rights Act of 1964, which prohibit employer consideration of certain types of criminal records? Unfortunately, those laws must be regularly and accurately applied to have their intended effect. Employers, landlords, and other users of background checks often do not understand how to read and evaluate records or do not apply the law correctly.

Challenging such violations on a case-by-case basis is not only costly, time-consuming, and sometimes unsuccessful; broad enforcement of these laws is a daunting, and as yet unrealized, prospect. In this context, **record clearing becomes an enormously valuable remedy because it eliminates human judgment and bias.** Clearing records can be a more effective broad way to ensure that individuals are not wrongfully denied opportunities.

Large numbers of people with criminal records would qualify for expungement or sealing of some or all of their records. Based on CLS’s analysis of data in Philadelphia and Pennsylvania, the amount of criminal record information that is eligible for record clearing is staggering. Of the 1.16 million criminal cases initiated in Pennsylvania between 2010-14, 978,000, or about 85%, have at least some charges on which the person was not convicted that can be expunged. Moreover, in Philadelphia, 53% of summary cases (which are akin to “quality of life” citations) brought end up being dropped and are immediately expungable.

⁴ Description of study can be found at: <http://www.psc.isr.umich.edu/research/project-detail/34902>)

⁵ To read more about this study, visit: <https://publicpolicy.stanford.edu/publications/cost-benefit-analysis-criminal-record-expungement-santa-clara-county>.

But most of the people who qualify for expungement or sealing do not obtain that remedy. The Administrative Office of Pennsylvania Courts reports removing 79,210 cases by expungement from November 2014 to October 2015. This number does not even measure up against the approximately 195,000 cases per year that are expungable, much less the number of expungable cases from across the decades.

In sum, record-clearing has the potential to improve the lives of vast numbers of people with criminal records, by eliminating the discretion of employers and other users of criminal background checks to use those records against them. But for the remedy to be effective, it must be brought to a much larger scale.

Patricia's Story

In 2009, Patricia was arrested for theft and assault charges. In September 2017, she was again arrested on assault charges. In both cases, all of the charges against her were dropped shortly after her arrest without a conviction.

Patricia has 8 years of experience as a cook and is currently attending culinary school. Despite her good work history, her arrest records have made it very difficult to find jobs. Patricia has applied to numerous restaurants that have checked her criminal record and told her to have her record expunged before applying again.

Because of the difficulty of finding work in her field, she moved on to less lucrative jobs in other fields. In November, she took a job as a store manager with a large chain retail store. Despite working there for four months without any problems, her employer fired her when they finalized her criminal background check. They told her that, although she was a good employee, she couldn't work there with a record. She also recently applied for an event job at a local stadium, but was also told that she needed to clear her record.

Patricia came to CLS in March 2018 seeking help in clearing her record. CLS filed two expungement petitions for her, completely clearing her record. Because of the expungement, an employer agreed to hire Patricia. While non-conviction arrest records should not be lawfully considered by employers in the hiring process, unfortunately many employers do request proof of expungement before being willing to hire people with records.

III. Presumption of Guilt

Often, individuals with arrest records are surprised to learn that even if they are fully acquitted or found “not guilty” of the charges brought against them, their arrest records can still haunt them for years. Although our criminal justice system is

supposed to be built on a premise of “innocent until proven guilty,” the prevalence of criminal record information now means that employers, landlords, schools, and the general public have easy access to arrest information. Unfortunately, employers and landlords are prone to drawing their own conclusions from such records. They may infer that a crime was in fact committed, even when someone is found “not guilty.”

Gary's Story

Gary is a 56 year old man, a father of a 26-year-old son, and a husband. In recent years, he has been a bus operator, a job that he loves. Today, he has a wonderful life—one that couldn't be more drastically different from his life in in early 20s.

Gary grew up in South Philadelphia, with a mother and six brothers and sisters, but without a father. In his youth, Gary could sometimes be found at the wrong place at the wrong time. On June 27, 1984, he was arrested for murder.

The allegations were that Gary provided a gun for a robbery of a drug dealer, who was then killed. Though Gary was not involved in the robbery or shooting, he faced the terrifying prospect of the death penalty. He decided to go to trial. After two years spent in jail, his trial finished and a jury quickly found him to be “not guilty.” Gary thought that his ordeal had ended and he could move on.

After he was released from prison, Gary found a job doing administrative work. After 26 years in that role, his employer downsized and he decided to accept a buy-out package.

Gary was only 50 years old at the time, so he was in the position of looking for another career, rather than retiring. Gary decided to look for jobs in the driving field, but soon found that the world had changed since he had last been job hunting. His arrest record on murder charges was now popping up as employers performed background checks on him, and he was denied opportunity after opportunity.

At that point, Gary took steps to expunge his arrest record. After several months of advocacy with various law enforcement agencies to ensure that his arrest was fully expunged, Gary finally had confirmation that his acquittal would no longer haunt him.

“I was very happy to get confirmation of the completion of the [expungement] process. Again, I appreciate you for everything you have done, especially associated with my case. You are providing a valuable service to the community and assisting people with transitioning to further their lives in a positive way.... [Y]ou have allowed me the opportunity to realize that a bright future is possible....” – Gary's note to his attorney

Soon after, Gary got a job driving for the Inquirer and Daily News. It was a union position with union wages and good benefits. But he really wanted to be a bus driver.

That chance finally came in December 2014, when Gary started working for SEPTA as a bus driver. He loved his job. He found the work rewarding, and it allowed him to give back to his community. In 2018, Gary relocated to Washington, DC for his wife's work. Gary is now a bus driver there, for the MTA.

Gary's expungement meant the world to him. Before the expungement, every time he applied for a job he would relive the anxiety of his criminal case decades after he was found not guilty.

IV. Impact of Expungement on Vulnerable Populations

Expungement can be an especially valuable remedy for people who are in particularly precarious situations. Because of the disproportionate policing and criminalization of certain groups, including people of color, youth, LGBTQ+ individuals, and people with disabilities, those who are already most likely to face discrimination and poverty are also most likely to have arrest records. When these arrest records act as barriers to employment, education, housing, family stability, and more, they serve to further entrench inequities in our society.

Ryan's Story

Ryan, a 20-year-old man, had aged out of foster care into homelessness, but was working hard to take positive strides forward in his life. He was about to start college and a new job. He also was trying to enroll in the military when he learned he had a bench warrant for a retail theft citation issued to him when he was just 12 years old and hanging out in a store with some friends. He never received the notice for court because his family was homeless at the time.

Ryan came to a legal clinic at a local youth homeless shelter. He had been told that he would not be able to stay at the shelter unless he got the warrant lifted. Working with the District Attorney's office, his attorney got the warrant lifted and the case withdrawn within a matter of days. His attorney then was able to file for immediate expungement of the record. Ryan has since been able to secure employment, start college, and find stable housing.

Expungement can also be an important remedy for survivors of human trafficking, sexual assault, and domestic violence. Often, when individuals have experienced physical or sexual abuse or exploitation, they end up with records. Such records can originate from forced prostitution, domestic disputes, or from the trauma that stems from abuse, which can often result in drug and alcohol addiction. Sometimes, when they call the police, they are the ones who are arrested.

For survivors, having records can be particularly damaging, compounding challenges they may face in accessing employment, housing, and other necessities they need to stay safe and stable.

Maria’s Story

Maria is a 37-year-old mother of three children who had experienced years of domestic violence at the hands of her children’s father. After he put her in the hospital several times, Maria decided she needed to leave him. While she was in the process of getting legal help to get a Protection from Abuse order against him, he showed up at her house and began physically attacking her. Afraid for her life, Maria grabbed the closest item she could find – a glass bottle – and hit him on the head with it so she could get away. He then ran to the police station with a bleeding cut on his head and accused her of assaulting him.

This led to Maria being arrested. Fortunately, the charges were quickly dropped. Soon after, Maria began a new job working as a receptionist at a hospital. The hospital conducted a background check and Maria’s arrest record came up. Afraid of losing her new job, Maria sought expungement help.

Maria’s lawyer was able to give her proof that the expungement process was underway, which Maria then passed on to her employer. This helped Maria to keep her job while awaiting final confirmation that her record was fully cleared. Within two months, Maria’s arrest record was fully expunged and she was able to provide the final confirmation to her employer, saving her job. Her job allowed her to afford housing for herself and her children, so that they could stay safe and survive without assistance from her abuser.

V. Expanding Expungement and Sealing

While expunging arrest records that did not lead to convictions is critically important for the many thousands of people who have non-conviction records and face substantial barriers to employment, housing, and more, expungement and sealing laws must continue to be expanded. They must expand eligibility both to cover more individuals who have been convicted of misdemeanor and felony

offenses, and to provide automatic relief to people who qualify, rather than requiring that people like Gary, Ryan, Maria, Patricia, and James somehow find their way to a lawyer.

A flurry of legislation around the country has expanded eligibility for record expungement and sealing. In 2017 alone, twelve states enacted or expanded expungement or sealing laws.⁶ All but nine states allow expungement or sealing of some adult convictions, with 29 states allowing at least some felonies to be closed.⁷

Prospects for broader application of expungement and sealing laws also are improving. Exciting legislation that will provide for automated record sealing under a policy known as “Clean Slate” was recently passed in Pennsylvania.⁸

Clean Slate is based on the idea that the same technology that makes records so widely available in the first place should be used to seal those records from public access in certain situations. All non-conviction charges should be sealed automatically as soon as the case becomes final. This means that people like Gary will no longer have to worry that cases where they were acquitted will haunt them decades later. The Pennsylvania law will also automatically seal summary offense convictions and some misdemeanor convictions after 10 years.

Clean Slate automated sealing is a model that can be adopted in many states and Congress, which can customize it to their own policy preferences. Many types of misdemeanors and even felonies could be automatically sealed if certain criteria is met, like a number of years conviction free. In addition to passing in Pennsylvania, Clean Slate legislation is being considered around the country to ensure that the benefits of record sealing reach everyone who can benefit from it.

VI. Conclusion

While record clearing does not address all the challenges that people who have been arrested face, it is clearly a crucial mechanism for many people to be able to access necessities like jobs, housing, education, and more. Even in the age of Google, the vast majority of people who have records do not have criminal cases that show up in a Google search. Rather, most criminal record information is provided to employers, landlords, and others through court and law enforcement databases and commercial

⁶ Collateral Consequences Resource Center, *Second Chance Reforms in 2017: Roundup of new expungement and restoration laws* (December 2017), available at <http://ccresourcecenter.org/wp-content/uploads/2017/12/Second-Chance-Reforms-in-2017-CCRC-Dec-2017.pdf>.

⁷ Collateral Consequences Resource Center, *Forgiving and Forgetting in American Justice: A 50-State Guide to Expungement and Restoration of Rights* (revised April 2018), at 7-8, available at <http://ccresourcecenter.org/wp-content/uploads/2017/10/Forgiving-Forgetting-CCRC-Apr-2018.pdf>.

⁸ Act 56 of 2018, available at <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=56>.

background check companies—all of which should be subject to record clearing orders.

Because of the life-changing benefits record clearing can offer, states around the country should both continue to expand who is eligible to have their records cleared and make the process as streamlined and automated as possible so that all who qualify can benefit.

This expansion will extend the benefits beyond the individuals whose lives have been changed to entire communities that need increased access to economic opportunities.