Community Legal Services, Inc. (CLS) has prepared a presentation on issues about criminal record-clearing (often called “expungement,” but also including sealing, and the like). The power point presentation is being made available for use by the public. It is geared toward legal advocates who may provide expungement representation, but it may also be useful to the broader public.

Although each state has its own record-clearing rules and procedures, there are common themes throughout the country. This presentation addresses issues such as:

- What is record clearing, and why does it matter?
- What is the life cycle of criminal record data?
- What studies say about expungement and desistance
- Record clearing around the country
- Using technology to facilitate expungements
- Expanding an expungement practice
- Resources – people, information & funding

The power point is open source, so all are welcome to use some or all of the slides or to modify the presentation to their own uses. Attribution of CLS as the source is preferred.

CLS may be available to deliver this presentation at conferences, other large meetings, and webinars. Requests can be made to Janet Ginzberg (jginzberg@clsphila.org) or Sharon Dietrich (sdietrich@clsphila.org).

CLS handles expungement cases in Philadelphia. However, this presentation does not address Pennsylvania law or practice.
Expungement and Sealing: Clearing a Path to the Future

Community Legal Services, Philadelphia, PA
What We Will Cover

• What is record clearing, and why does it matter?
• Record clearing around the country
• What is the life cycle of criminal record data?
• What studies say about expungement and desistance
• Using technology
• Expanding an expungement practice
• Resources – people, information & funding
Setting the Stage About Criminal Records

• One in three Americans has a record (100 million). Half of US children have a parent with a record.

• Having a record increases unemployment and depresses lifetime earnings.

• Minorities have records at disproportionate rates. African Americans are 14% of the population, but 28% of all arrests.
What is “Record Clearing”? 

• It depends on state laws, which are greatly varied. Common names/models:
  – Sealing: often limiting dissemination publicly.
  – “Set asides” sometimes vacate cases.
• We will use the term “expungements” in this presentation to encompass all these remedies.
What About Pardons?

• A traditional form of clemency in each state.
• Usually through the executive branch, but models differ.
• Not remotely at the scale of expungements. Some states grant very few.
• Sometimes, don’t remove cases from records.
What’s So Great About Expungements?

• Erasing a record means you don’t need to rely on others following the laws (civil rights laws, ban the box, etc.).
• Expungements tend to help in all contexts – employment, housing, education, etc.
• They provide a remedy for people who have had a period of desistance or who were not convicted.
• Unlike pardons, which are discretionary, clear standards are more likely to apply.
• It’s what the people want.  https://ampr.gs/2qJ1NNe
What’s Not So Great About Expungements?

• They are a remedy only for a small percentage of the population with records, and only after they most need help.

• They are not necessarily 100% effective. Cases may remain in commercial databases; search engines may pick up news stories, “mugshots.”

• Philosophical disagreements: “forgetting” is not truthful.
Life Cycle of a Criminal Case: Arrest/Disposition/Expungement

- Arrest
- Central Repository (often State Police)
- Courts
- FBI
- Data Brokers
- Commercial Screeners
Most Likely Sources of Background Checks

- Commercial screeners (usually compile data derived from court data)
- Central Repository (usually in safety sensitive jobs)
- FBI (authorization in state or local law is required for access)
Challenges In Effectuating Expungements

• Commercial screeners – rely on their old data and don’t learn of expungements. See “Ants Under the Refrigerator.”

• FBI records – Central Repository does not alert FBI of expungement, or they don’t implement it (sometimes intentionally, such as refusing certain sealing remedies).
“Desistance” Studies Support Expungements

• Social science research supports a point of “redemption” (when a former offender presents similar risk as others) – around 4-7 years.

• But many of the collateral consequences are life-long bans.

• Expungements are consistent with desistance research – cases are removed when they are not predictive of re-offending.
What Studies Say about Expungements

• CA study: average increase in yearly income of $6,190 for those who had records cleared; 93% of participants reported confidence in future job prospects.

• Early results of MI study: significant increase in employment and earnings, mostly in first year. Employment increased from 58.6% to 65.1%; wages rose by 22%.
Expungements Nationwide

Expungements Nationwide: Breaking it Down

- Many felonies, most misdemeanors: 12 states (WA, OR, NV, UT, KS, MO, IL, LA, NY, CT, MA, NH)
- Some felonies, most misdemeanors: 9 states (WY, MN, AR, TN, IN, MI, OH, NJ, RI)
- Few felonies, many misdemeanors: 8 states (MT, OK, MS, WI, KY, NC, MD, VT)
- Selected misdemeanors: 11 states (CA, CO, TX, ND, SD, GA, SC, WV, PA, DE, ME)
- No closure of convictions: 10 states (AK, HI, ID, AZ, NM, NE, IA, AL, FL, VA)
Expungements Around the Country: Other Issues

- Separate procedures for juvenile expungements.
- Impact on immigrants is complicated. They should not be undertaken without knowledge of these complications and/or consultation with an immigration attorney.
- Expungements often a feature of diversion programs.
- There is NO expungement for federal cases (even for non-convictions).
Trending Nationally: Broadened Expungement Laws

• From 2013-17, more than 20 states expanded their laws or enacted new ones. Similar numbers were enacted from 2009-13.
• In 2017, IL, MT and NY enacted new sealing laws. Nine states overhauled their laws, most notably NV.
• Notable trend: permitting felonies to be covered.
Using Technology: Expungement Practice

- “Expungement Generator”: Automated petition building from electronic data.
- Automated case identification.
- Mapping arrest/conviction data to target expungement outreach.
Using Technology: “Clean Slate” – The Future of Sealing Will Be Automated

• Clean Slate is the mass sealing of minor convictions and non-convictions. It is enabled by automatic computer queries, instead of the filing of individual petitions.
• Clean Slate bills under consideration in PA; campaigns underway in MI, CO, SC.
• Enables sealing at an enormous scale. But design depends on data environment.
So Many Potential Clients...
Ideas to Make a Meaningful Difference

• Adopt technology: develop petition-building software, push for Clean Slate.
• Start community-based clinics.
• Develop pro bono partnerships.
• Advocate to eliminate procedural barriers.
• Convene a working group of stakeholders.
• Focus on one neighborhood or area.
• Preselect good candidates and solicit them.
• Expand your statute.
Expanding Resources: People

• Outreach and prescreening by community partner organizations.
• Use law students, paralegals and non-lawyer staff more extensively.
• Good fit for project for pro bono lawyers.
Why Is An Expungement Practice Good for Legal Services/Pro Bono/Law Schools?

- Expungements are very popular services with clients and can be life-changing.
- Also build bridges in the community.
- Relatively short term and easy cases.
- Get less experienced lawyers into court.
- Everyone is happy after an expungement! Great for morale.
Expanding Resources: Information

- CleanSlateClearinghouse.org – state law and resources, find a lawyer.
- Restoration of Rights Project – detailed state law on record-clearing, pardons, employment & licensing, etc.
- Joint the ncsc.org list-serve!
One in three adults in the U.S. has a criminal record.

Record clearance—removing criminal history information from easy public access—may provide people with an opportunity to put their pasts behind them. The Clean Slate clearinghouse provides people with criminal records, legal service providers, and state policymakers with information on juvenile and adult criminal record clearance policies in all U.S. states and territories. Read More

Learn About Your State
Learn about policies for clearing records in your state.

Find A Lawyer
Find a lawyer who specializes in record clearance.

Compare States
Compare record clearance policies across all states and territories.

Seeking New Perspective, Interview Series Gives Firsthand Look at Criminal Record Clearance Experiences
Khalil Cumberbatch, an associate vice president at the Fortune Society, joins the
Learn About Your State

Choose a State/Province

The Clean Slate Clearinghouse does not provide legal advice. To determine whether a specific record is eligible for clearance, seek legal advice from a qualified professional.
Expanding Resources: Funding

• Federal grants (USDOJ/USDOL)
• Workforce development/welfare-to-work funds
• Cy pres awards
• TIG grants from LSC
• Fellows
For More Information

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