

## **CLS Releases Expungement Presentation**

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](mailto:jginzberg@clsphila.org)) or Sharon Dietrich ([sdietrich@clsphila.org](mailto: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



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

# 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:
  - Expungement: sometimes destroy materials.
  - 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>



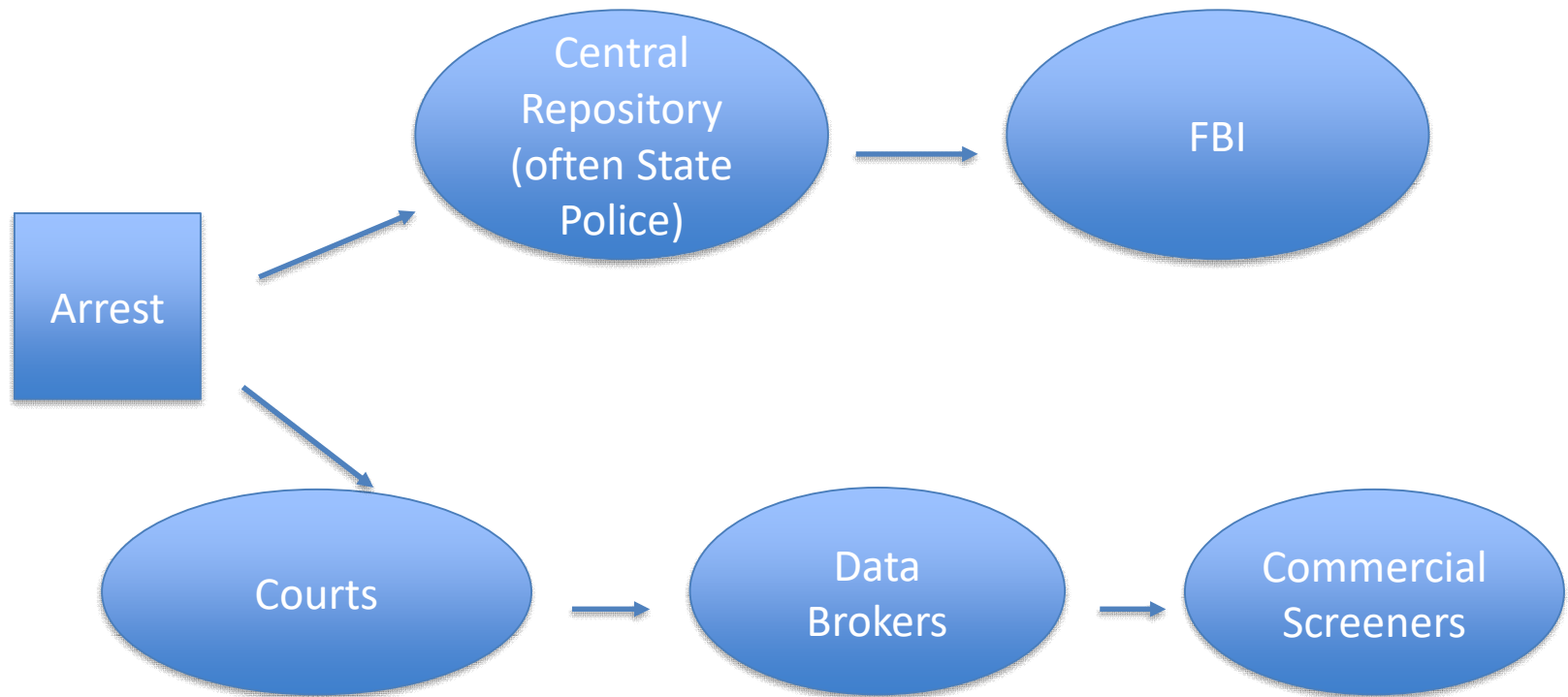
# What's Not So Great About Expungements?

- 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



# 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.



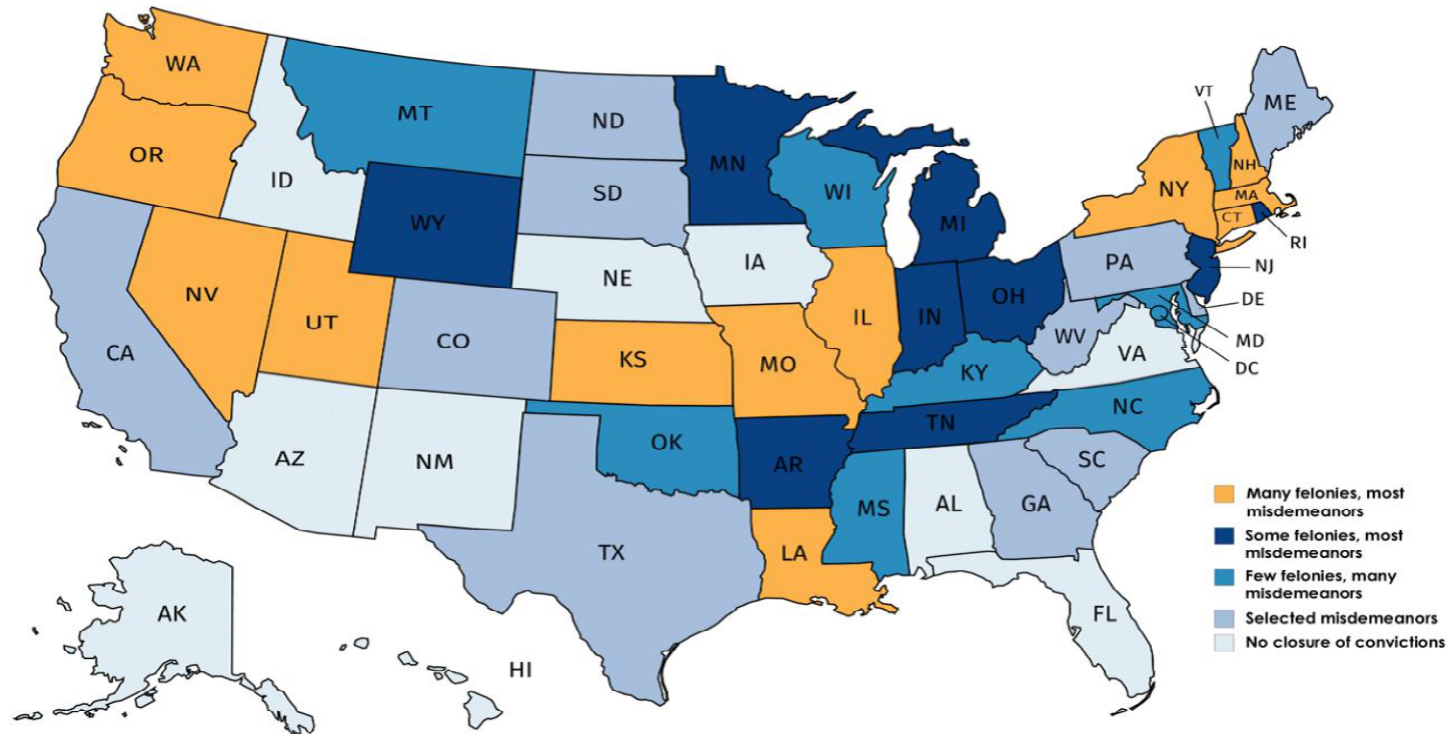
# What Studies Say about Expungements

- 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

Source: Forgiven and Forgetting in American Justice: A 50-State Guide to Expungement and Restoration of Rights (Aug. 2018 Revised), Collateral Consequences Resource Center



# 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.

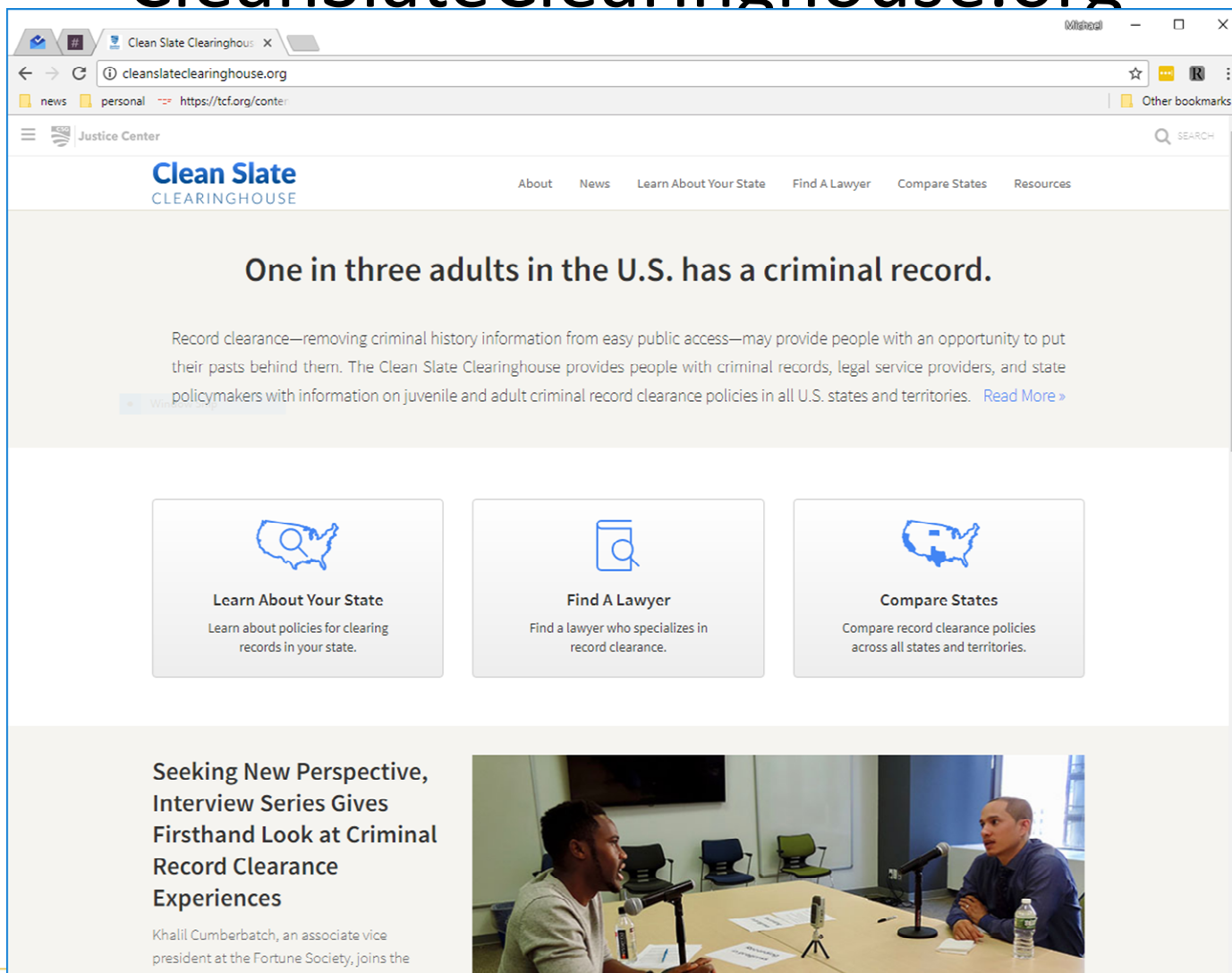


# Expanding Resources: Information

- CleanSlateClearinghouse.org – state law and resources, find a lawyer.
- Restoration of Rights Project – detailed state law on record-clearing, pardons, employment & licensing, etc.
- Join the ncsc.org list-serve!



# CleanSlateClearinghouse.org




The screenshot shows a web browser window with the URL [cleanslateclearinghouse.org](https://cleanslateclearinghouse.org). The page features a navigation bar with links: About, News, Learn About Your State, Find A Lawyer, Compare States, and Resources. The main heading reads "One in three adults in the U.S. has a criminal record." Below this, a paragraph explains record clearance and provides a "Read More" link. Three interactive cards are displayed: "Learn About Your State" (with a magnifying glass over a map icon), "Find A Lawyer" (with a magnifying glass over a book icon), and "Compare States" (with a map of the U.S. icon). At the bottom, a section titled "Seeking New Perspective, Interview Series Gives Firsthand Look at Criminal Record Clearance Experiences" includes a photo of two men in an interview setting and a brief description of the interviewee, Khalil Cumberbatch.

**Clean Slate CLEARINGHOUSE**

About News Learn About Your State Find A Lawyer Compare States Resources


## 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

The screenshot shows a web browser window with the URL [cleanslateclearinghouse.org/states/](https://cleanslateclearinghouse.org/states/). The page features a navigation bar with links: About, News, **Learn About Your State**, Find A Lawyer, Compare States, and Resources. Below the navigation bar, a text block instructs users to select a state from a map or list to learn more about its juvenile and adult criminal record clearance policies. A map of the United States is displayed, with a list of states/provinces to its right. The list includes: Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. At the bottom of the page, there is a footer with the text "Subscribe to Newsletter & Announcements".

Select a state from the map or list below to learn more about its juvenile and adult criminal record clearance policies. You will also find contact information for legal service providers and lawyer referral services, as well as links to court forms and state-specific guides.

Choose a State/Province

Alabama  
Alaska  
American Samoa  
Arizona  
Arkansas  
California  
Colorado  
Connecticut  
Delaware  
District of Columbia  
Florida  
Georgia  
Guam  
Hawaii  
Idaho  
Illinois  
Indiana  
Iowa  
Kansas  
Kentucky  
Louisiana  
Maine  
Maryland  
Massachusetts  
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Nevada  
New Hampshire  
New Jersey  
New Mexico  
New York  
North Carolina  
North Dakota  
Northern Mariana Islands  
Ohio  
Oklahoma  
Oregon  
Pennsylvania  
Puerto Rico  
Rhode Island  
South Carolina  
South Dakota  
Tennessee  
Texas  
Utah  
Vermont  
Virgin Islands  
Virginia  
Washington  
West Virginia  
Wisconsin  
Wyoming

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.

Subscribe to Newsletter & Announcements



# Restoration.ccresourcecenter.org



The screenshot shows a web browser displaying the Restoration of Rights Project website. The browser's address bar shows the URL [restoration.ccresourcecenter.org/#ks](https://restoration.ccresourcecenter.org/#ks). The website has a red header with navigation links: Home, About, and Contact. Below the header, the title "Restoration of Rights Project" is prominently displayed in red. To the right of the title are logos for the CCRC (Collateral Consequences Resource Center), NLADA (National Legal Aid & Defender Association), and the National HIRE Network. The main content area is divided into two columns. The left column features a section titled "50-state comparisons of relief mechanisms" with a bulleted list of topics including loss and restoration of civil rights, state law relief from federal firearms act disabilities, characteristics of pardon authorities, models for administration of the pardon power, judicial expungement, sealing, and set-aside, consideration of criminal records in licensing and employment, and relief from sex offender registration obligations. Below this is a section titled "Report: Forgiving and Forgetting in American Justice - Jan. 2018 Revision" with a thumbnail image of the report cover. The right column has a "Select a jurisdiction" dropdown menu with "Kansas" selected. Below this is a red header for the "Federal" section, followed by three paragraphs of text: "Loss & restoration of civil rights", "Firearms rights", and "Pardon policy & practice". A final paragraph, "Judicial expungement & sealing", is partially visible at the bottom of the right column.

Restoration of Rights Project

CCRC COLLATERAL CONSEQUENCES RESOURCE CENTER

NLADA NATIONAL LEGAL AID & DEFENDER ASSOCIATION

NATIONAL HIRE NETWORK

50-state comparisons of relief mechanisms

- Loss and Restoration of Civil Rights & Firearms Privileges
- State Law Relief from Federal Firearms Act Disabilities
- Characteristics of Pardon Authorities
  - Pardoning Practices
  - Models for Administration of the Pardon Power
- Judicial Expungement, Sealing, and Set-aside
- Consideration of Criminal Records in Licensing and Employment
- Relief from Sex Offender Registration Obligations

Report: Forgiving and Forgetting in American Justice - Jan. 2018 Revision

Forgiving and Forgetting in American Justice

A 50-State Guide to Expungement and Restoration of Rights

January 2018 (Revised)

Select a jurisdiction

Kansas

**Federal**

**Loss & restoration of civil rights:** Vote depends on state law for both state and federal offenders. Federal jury eligibility is lost upon conviction in state or federal court of a crime punishable by more than one year if a person's "civil rights have not been restored." The Constitution does not prevent individuals from holding federal office after conviction of any crime. Most states that do not restore the right to vote automatically give federal offenders access to their restoration procedures. Jury eligibility is only restored upon an affirmative act, such as pardon or expungement.

**Firearms rights:** Persons with convictions in any court of a crime punishable by imprisonment for a term exceeding one year are subject to the prohibition on possession of firearms under federal law, as are persons convicted of domestic violence offenses; restoration by presidential pardon only for federal offenders; restoration for state offenders under 18 U.S.C. §§ 921(a)(20) & (33) (defining triggering offense) or 18 U.S.C. § 925 (ATF relief). (Section 925 has not been funded since 1990.)

**Pardon policy & practice:** President decides; no reporting or notice requirement. Eligibility five years after sentence or release from confinement. No public hearing, paper record review, unlimited time. Relieves all legal disabilities but does not expunge. Pardons infrequent and irregular since 1990.

**Judicial expungement & sealing:** No federal expungement, except where arrest or conviction invalid or subject to clerical error. Deferred adjudication and expungement for first misdemeanor



# 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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Jessa Boehner [jboehner@clsphila.org](mailto:jboehner@clsphila.org) – join the list!

