PA Clean Slate: Delivering on Its Promises
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Pennsylvania's Clean Slate law, Act 56 of 2018, was passed to bring criminal record sealing to scale by the use of automation. Nine months into the automated sealing of cases, other states interested in replicating the model have inquired how its implementation has been going. The answer: Extremely well. Clean Slate has been effectively implemented and extraordinarily impactful both in sheer numbers and in its impact on people's lives.

Implementation of Automated Sealing

Prior to enactment of Clean Slate, extensive discussions were held with the agencies that would be charged with its implementation, the Administrative Office of Pennsylvania Courts (AOPC) and the Pennsylvania State Police (the PSP). The bill was modified to eliminate potential implementation barriers that they identified. Also, the agencies were given a year to prepare for automation, most notably to develop procedures and adapt existing software.

The preparations have worked out well. Automation went live on June 28, 2019, with nary an issue. Based on the statutory framework, each month, the AOPC runs an algorithm in their database to identify eligible cases. They transmit a "list" of misdemeanor convictions they believe to be eligible to the PSP for validation; if the PSP cannot validate a case, it is not eligible for automated sealing. Following the PSP's work, AOPC sends each county court a proposed order for the presiding judge to sign, sealing as many as hundreds of thousands of cases at a time.

After execution of that order, another algorithm run by AOPC and the PSP limits access of the cases to the public. To complete the removal of electronic information concerning the sealed cases, AOPC notifies its bulk data purchasers to remove these cases from their data (and that of their downstream vendors) through deployment of AOPC "LifeCycle file." Through these efforts, the sealed cases are eliminated from background checks produced by commercial screeners via AOPC data and by the PSP.

The simplicity and effectiveness of this procedure was demonstrated in March 2020. While the pandemic led to court closures that brought expungement practice to a standstill in virtually every jurisdiction around the country, Clean Slate continued to be implemented in all but a few counties in Pennsylvania. 2.8 million cases were sealed that month.

PA Clean Slate By the Numbers

When automated sealing began, AOPC estimated that more than 30 million cases and 40 million charges would be sealed by automation, including 41% of all charges and 51% of all cases in its database (in full or in part). As the pending inventory of cases eligible for sealing has been processed, even these lofty numbers are being surpassed.

As of April 1, 2020, and with three months to go before the deadline for completing retroactive sealing, AOPC reports the following overall results to date:
- Criminal cases sealed, statewide: 33,631,986
- Criminal offenses sealed, statewide: 45,416,064

Of the three types of cases currently eligible for automated sealing under Pennsylvania's Clean Slate law, the results are:
- Cases with arrests not leading to convictions: 15,375,885
- Summary convictions: 18,178,769
- Misdemeanor convictions: 75,869

While the number of misdemeanors are dwarfed by the other categories (reasons for that and pending corrective actions discussed in more details below), the effectiveness of Clean Slate is shown by comparison of the number of misdemeanors sealed by automation to those that have been sealed by petition. From November 2016 (the point that Pennsylvania law began to allow misdemeanor convictions to be sealed), until the present, only 1,463 petitions have been granted. **In other words, around 52 times as many misdemeanors have been sealed by automation as have been sealed by petition.**

These data can be found on AOPC's website, where they are update regularly: http://www.pacourts.us/learn/learn-about-the-judicial-system/clean-slate-expungement-and-limited-access

Finally, the PSP periodically provides the number of State Identification Numbers which have had at least one case sealed by automation since Clean Slate went into effect. As of last report, **the number of people helped statewide was 948,162.**

Real Benefits for Real People

While the data is impressive, Clean Slate also has had profound implications for real Pennsylvanians, many of whom have spent years struggling to move past their records.

In January, a father and son attended a free Clean Slate clinic hosted by Clean Slate lead sponsor Representative Jordan Harris. Both were eager to learn how they could clear their records, and were especially concerned about the young son's college prospects. While sitting down with volunteers at the legal clinic, they were both overjoyed to learn that their records had already been sealed under Pennsylvania's Clean Slate law. The son can now apply to college without worrying about his arrest record coming back to haunt him, and his dad can continue to pursue career opportunities that will allow him to better support his son's college journey.

Clean Slate has been life changing for Pennsylvanians who were found not guilty of charges, but are still haunted by lists of serious non-convictions on their rap sheet. Last June, the Philadelphia Inquirer profiled Khalia Robinson, who was pregnant at the time of her arrest in 2006. In a classic case of being in the wrong place at the wrong time, she inadvertently knocked over a stack of bootleg CDs while waiting for takeout food. While she was picking them up, a nearby police officer arrested her for counterfeiting. She was not found guilty, but she still struggled with the fact that employers could see the charges leveled against her every time she applied for a job. Today, her record has been sealed, and she is a business owner.

The law has also been helpful for those convicted of minor crimes. An individual named Eric had a 16-year-old misdemeanor on his record. He works in golf course management - a very niche industry where he says that employers run background checks before hiring "99% of the time." Despite his attempts to move beyond these charges, he found himself stuck for many years, unable to advance. He found it impossible to compete with other applicants with clean records, and even attempted to expunge his record before finding out expungement was not an option for him in Pennsylvania. "I was thrilled to find out my record was sealed, so I could move forward with my career and not have my past hanging over my head any longer," Eric said.

Challenges, and Likely Solutions

Not everything about Pennsylvania's Clean Slate implementation has gone perfectly. That is to be expected, given that a key premise of the automation model is to get the broadest impact possible while recognizing that demanding perfection in a world of imperfect data is the enemy of the very good. Nevertheless, there are solutions to the biggest of our obstacles, which we are working on.

Missing data

Cases are sealed by automation only when their electronic data is sufficient for them to be identified as eligible when the first algorithm is run. In general, the older the case, the less pristine the data. The most common missing data in Pennsylvania is grade of offense -- i.e., was the case a third-degree felony (not eligible), a second-degree misdemeanor (probably eligible), etc. The practice of the Philadelphia District Attorney's Office (the PDAO) for years to not enter grade data has exacerbated this problem.

The First Judicial District of Philadelphia has worked with us to backfill data where possible in cases with misdemeanor convictions that are potentially eligible for automated sealing. Stakeholders worked together to identify misdemeanor offenses which have only one possible grade under law. Based on an order entered on January 21, 2020 by the President Judge, Philadelphia cases with these convictions but missing grades will have the grades inserted by automation. (The order is published at 50 Pa. Bulletin 788.) According to AOPC, an estimated 1 million offenses in 300,000 cases will be inserted. We anticipate that many of these convictions will later be sealed by Clean Slate.

Outstanding legal financial obligations

This is a matter of policy design, not data failure. Pennsylvania's Clean Slate law requires all legal financial obligations connected with a case to be satisfied before that case can be sealed. As we

advocates worried during the legislative campaign, the reality has been that immense numbers of cases have been disqualified from sealing at this time because the debt has not been zeroed out. According to analysis by the PDAO, 50% of otherwise eligible misdemeanor convictions statewide and 75% in Philadelphia were eliminated from automated sealing by court debt.

Fortunately, the General Assembly appears to agree that this is not the outcome that it wanted for Clean Slate. On December 18, 2019, the House unanimously approved House Bill 440, which allows cases to be sealed, by petition or Clean Slate, notwithstanding fines and costs, unless restitution is owed. We are hopeful that HB 440 will pass in the Senate as the state legislature emerges from the unexpected crises of the pandemic.

Sealed cases appearing on FBI records

Even preceding Clean Slate, Pennsylvania's sealed cases continue to be reported on FBI background checks, because reporting of those cases could be avoided only for members of a "Compact Council" state -- membership which Pennsylvania had not elected. Fortunately, the FBI recently developed procedures for sealing cases for non-member states. While the pandemic has set back this work as well, we are justifiably optimistic that this flaw can and will be corrected, utilizing the new FBI procedures.

Moving Forward

The numbers of misdemeanors sealed by Pennsylvania Clean Slate have been suppressed for three main reasons:

- Missing grade data;
- Outstanding legal financial obligations; and
- Other policy design choices embedded in the statute -- a 10-year waiting period, exclusion of many offenses from eligibility, and other disqualifications.

Fortunately, Clean Slate is a model for which eligibility criteria can be custom fitted. Policy decisions need not be forever, if there is a will to change them. Clean Slate has become a very popular policy in Pennsylvania among stakeholders including the General Assembly, the Governor's Office, the Pennsylvania District Attorneys Association, the Pennsylvania Chamber of Business and Industry, and many others. The House's unanimous decision to roll back the legal financial obligations barrier is evidence of interest in expanding the law, now that its effectiveness and impact has been demonstrated.

We are confident that eligibility will continue to expand, and not only for misdemeanors. Hopefully, drug felonies and other non-violent felonies will be next in line. The hopes and dreams of millions of Pennsylvanians depend on it, particularly as so many of them will be looking for new jobs to support their families and themselves after our stay-at-home orders are relegated to history.

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