Expungement of Criminal Convictions: An Empirical Study

Community Legal Services of Philadelphia
& National Record Clearing Project
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Google search:
“Prescott Starr Expungement SSRN”

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Rapid Growth in Expungement Policies

Many Dozens of States
Adopted or expanded expungement laws over last few years

Automatic Expungement:
• Pennsylvania (2018)
  • Utah (2019)
  • California (2019)
  • New Jersey (2019)
  • Michigan (2020)
Eligibility Restrictions Vary...

**WAITING PERIODS:** range from 0 to 20 years, running from either sentence completion or conviction

**CLASS OF CRIME:** e.g., misdemeanors only

**TYPE OF CRIME:** e.g., nonviolent offenses

**NUMBER OF CONVICTIONS:** limits on total number applicant can have, as well as number allowed to be expunged
Motivation:
Lots of Americans Have Criminal Records!

• FBI count (arrests—mainly felonies): 1/3 of adults
• Felony convictions: about 8% of adults; 33% of black men (Shannon et al. 2017)
• Misdemeanor arrests and convictions: ??? (more than felonies)
Have you ever been convicted of (or pleaded guilty to) any crime in the past 5 years?

- Yes
- No

(If Yes, please specify the offense and the date of conviction.)

Explain each conviction (and guilty or nolo contendere plea):
Criminal background checks are used by...

- Colleges: 66%
- Employers: 87%
- Landlords: 80%

Graphic Source: Center for American Progress
Collateral Legal Consequences of Convictions

• Occupational Licensing: especially security guards, health care, long term care, day care, schools/school services, firefighters, banks/financial services
• Federally subsidized housing
• Federal student loans and small business loans
• Some public benefits
• Parental rights
• Firearms
• Sex offender registration
• Deportation
• Public office
Many Unanswered Empirical Questions?

- How many people obtain expungements, and who tends to get them?
- What are the effects on employment and other socioeconomic outcomes?
- At what rate do people who obtain expungements subsequently reoffend?
- Does expungement affect recidivism rates?
Our Data

De-identified, Statewide Dataset Covering:
• All Michigan expungement ("set-aside") recipients through 2014
• Large comparison groups of people with similar records (including those legally eligible for set-asides) for 1999-2008 conviction cohorts

Data Sources (linked by state agency):
• Michigan State Police: full criminal histories through 2014
• Workforce Development Agency/Unemployment Insurance Agency: quarterly wage/employment data
Criminal Record Set-Asides in Michigan

• Conviction removed from databases (divulging it is a misdemeanor)

• For most purposes, can legally answer:
  NO conviction.

• Eliminates some collateral legal consequences
But record isn’t *completely* expunged

The Michigan State Police retain the record and share it for:

- Sentencing of subsequent felonies
- Subsequent set-aside and pardon requests
- Occupational licensing by the judicial branch (i.e., the bar!)
- Background checks for law enforcement hiring
- Enforcement of rules governing sex offenders
M.C.L. 780.621: Eligibility Requirements (Pre-2011)

• One conviction on one count, ever
• 5 years after sentencing or prison release, whichever is later
• Exclusions: offenses carrying potential life terms, most sex offenses, driving offenses
Petition-Based System

• Applicant must apply and pay $50 fee (plus some additional costs)
• Prosecutor notified and may oppose
• If applicable, victim notified and may appear
• Judge *may* grant set-aside if warranted by defendant’s subsequent behavior and if “consistent with public welfare”
Key Findings

1. **LOW UPTAKE:** Very few of those eligible for set-asides receive them.

2. **LOW RECIDIVISM:** Set-aside recipients have extremely low subsequent rearrest and reconviction rates.

3. **EMPLOYMENT/WAGE IMPROVEMENTS:** Recipients see substantial increases in employment rates and wages.
“Uptake Rate” Analysis
(Probability of Set-Aside Receipt If Eligible)

Our main analysis sample

• Those we can identify as becoming legally eligible for set-asides from 2004 through mid-2006

• Limited to those *never incarcerated*

• Limited to those with a specific list of set-aside-eligible statutory offenses

• Excludes people with out-of-state licenses
OVERALL 5-YEAR UPTAKE RATE
Balance Includes Non-Applicants, Unsuccessful Applicants, and those who wait more than 5 years

Best estimate: about 6.5%

Sources of uncertainty
• Need to impute some missing set-aside dates
• Incarcerated defendants excluded
• Eligibility coding misses out-of-state offenses
• Some offenses excluded from sample
Table 1. Uptake Rates: Receipt of Set-Aside Within 5 Years of Eligibility

<table>
<thead>
<tr>
<th>Version</th>
<th>5-Year Uptake</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Main</td>
<td>6.5%</td>
<td>9,103</td>
</tr>
<tr>
<td>2. Accounting for Unknown Date Set-Asides: Lower Bound</td>
<td>5.7%</td>
<td>9,103</td>
</tr>
<tr>
<td>3. Accounting for Unknown Date Set-Asides: Upper Bound</td>
<td>6.7%</td>
<td>9,103</td>
</tr>
<tr>
<td>4. Add Incarcerated (&lt; 1 Year)</td>
<td>5.4%</td>
<td>14,223</td>
</tr>
</tbody>
</table>
Why is Uptake so Low?
Insights from expert interviews

• Lack of information
• Administrative complexity/hassle
  • Fees
  • Fear and distrust
  • Lack of counsel
• Not everyone is highly motivated to remove conviction
Findings: Recidivism
Within 5 Years of Set-Aside

Rearrested: 7.1% (2.6% violent, 2.7% felony)
Reconvicted: 4% (0.6% violent, 1% felony)

[Based on all set-aside recipients through 2008, except MI non-residents.]
<table>
<thead>
<tr>
<th></th>
<th>2-Yr Arr.</th>
<th>2-Yr Conv.</th>
<th>5-Yr Arr.</th>
<th>5-Yr Conv.</th>
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</thead>
<tbody>
<tr>
<td><strong>A. Full Sample</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overall Arrest/Conviction Rates</td>
<td>3.4%</td>
<td>1.8%</td>
<td>7.1%</td>
<td>4.2%</td>
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<tr>
<td>Violent Arrest/Conviction Rates</td>
<td>1.0%</td>
<td>0.2%</td>
<td>2.6%</td>
<td>0.6%</td>
</tr>
<tr>
<td>Felony Arrest/Conviction Rates</td>
<td>1.2%</td>
<td>0.3%</td>
<td>2.7%</td>
<td>1.0%</td>
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<tr>
<td><strong>B. Subsamples (Overall Rate Unless Specified)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Set-Aside &lt;6 Years from Conv./Release</td>
<td>3.8%</td>
<td>2.1%</td>
<td>8.1%</td>
<td>4.9%</td>
</tr>
<tr>
<td>Set-Aside 10-11 Years from Conv./Release</td>
<td>2.6%</td>
<td>1.6%</td>
<td>6.1%</td>
<td>3.4%</td>
</tr>
<tr>
<td>Set-Aside Conviction Was Felony</td>
<td>4.0%</td>
<td>1.9%</td>
<td>8.1%</td>
<td>4.6%</td>
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<tr>
<td>Set-Aside Conviction Was Misdemeanor</td>
<td>3.1%</td>
<td>1.8%</td>
<td>6.4%</td>
<td>3.8%</td>
</tr>
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<td>Incarcerated for Set-Aside Offense</td>
<td>3.2%</td>
<td>1.7%</td>
<td>6.7%</td>
<td>3.9%</td>
</tr>
<tr>
<td>Not Incarcerated for Set-Aside Offense</td>
<td>3.5%</td>
<td>1.8%</td>
<td>7.2%</td>
<td>4.3%</td>
</tr>
<tr>
<td>Set-Aside Offense Was Violent</td>
<td>4.4%</td>
<td>2.2%</td>
<td>8.4%</td>
<td>4.4%</td>
</tr>
<tr>
<td>Set-Aside Offense Was Violent: Violent Rate</td>
<td>1.6%</td>
<td>0.3%</td>
<td>4.0%</td>
<td>0.8%</td>
</tr>
</tbody>
</table>
Recidivism: Comparison to the General Population
(Metric is Total Number of Arrests in Two Years)

SET-ASIDE RECIPIENTS: 4.7 Arrests/100 Persons

GENERAL ADULT POPULATION OF MICHIGAN: 6.6 Arrests/100 Persons
Two possible explanations for these low rates
(Our data can’t disentangle these)

1. SET-ASIDE RECIPIENTS HAVE A LOW BASELINE CRIME RISK.
   • Supported by research on desistance from crime
   • People who have gone 5 years from their last conviction rarely reoffend
   • Limited records + self-selected pool

2. SET-ASIDES REDUCE CRIME RISK.
   • Supported by research on risk factors for recidivism, including unemployment and housing instability
   • No research supports the expectation that set-asides would increase crime risk on balance.
Employment and Wage Analysis

We estimate within-person changes in employment and wage trends after receipt of a set-aside, with controls for Michigan economic conditions in the calendar quarter.

\[ Employed_{it} = \alpha + \gamma \text{Elapsed}_{it} + \delta \text{Elapsed}_{it} \times Post_{it} + \theta \text{TotalEmployment}_{t} + \vartheta \text{URate}_{t} + \epsilon_{it}. \]
Sample: Employment and Wage Analysis

• Received set-aside on known date, Jan. 1998-May 2011
• Matched to UIA data during at least one quarter in 1997-2013
• No out-of-state driver’s license
• For the time window used in the particular regression:
  ➢ Whole window falls within the time range of our UIA data
  ➢ Individual was between 18 and 64 years old
Key Findings: Employment and Wages

Within one year of receiving a set-aside conviction, on average:

• Employment probability goes up by factor of 1.13 (about 8pp)
• Probability of earning at least $100/week goes up by factor of 1.23
• Quarterly wages go up by 23% (combines higher employment, more hours, higher pay)

These gains remain pretty stable after 1 year.
Figure 3a. Employment Rate (Any Wages in Quarter) Before and After Set-Aside
Figure 3b. Employment Rate (> $100/week) Before and After Set-Aside
Figure 3c. Average Quarterly Wages Before and After Set-Aside
## A. Employment Rate (Any Wage)

<table>
<thead>
<tr>
<th></th>
<th>Pre</th>
<th>Post</th>
<th>Pre Post</th>
<th>Post Post</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Elapsed × Post</strong></td>
<td>0.0247***</td>
<td>0.0198***</td>
<td>0.00945***</td>
<td>0.00559***</td>
</tr>
<tr>
<td></td>
<td>(0.004)</td>
<td>(0.002)</td>
<td>(0.001)</td>
<td>(0.001)</td>
</tr>
<tr>
<td><strong>Elapsed</strong></td>
<td>-0.00610*</td>
<td>-0.00649***</td>
<td>-0.00346***</td>
<td>-0.00247***</td>
</tr>
<tr>
<td></td>
<td>(0.003)</td>
<td>(0.001)</td>
<td>(0.001)</td>
<td>(0.000)</td>
</tr>
<tr>
<td><strong>Net Gain</strong></td>
<td>0.049</td>
<td>0.079</td>
<td>0.076</td>
<td>0.067</td>
</tr>
<tr>
<td><strong>Proportional Net Gain</strong></td>
<td>8.0%</td>
<td>12.8%</td>
<td>12.3%</td>
<td>10.9%</td>
</tr>
<tr>
<td><strong>No. of Observations</strong></td>
<td>57,596</td>
<td>125,451</td>
<td>226,525</td>
<td>301,500</td>
</tr>
<tr>
<td><strong>Window (Quarters)</strong></td>
<td>+/- 2</td>
<td>+/- 4</td>
<td>+/- 8</td>
<td>+/- 12</td>
</tr>
</tbody>
</table>
### B. Employment Rate (>\$100/week)

<table>
<thead>
<tr>
<th></th>
<th>Estimate 1</th>
<th>Estimate 2</th>
<th>Estimate 3</th>
<th>Estimate 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Elapsed × Post</strong></td>
<td>0.0367***</td>
<td>0.0308***</td>
<td>0.0149***</td>
<td>0.00838***</td>
</tr>
<tr>
<td></td>
<td>(0.003)</td>
<td>(0.002)</td>
<td>(0.001)</td>
<td>(0.001)</td>
</tr>
<tr>
<td><strong>Elapsed</strong></td>
<td>-0.0144***</td>
<td>-0.0124***</td>
<td>-0.00562***</td>
<td>-0.00320***</td>
</tr>
<tr>
<td></td>
<td>(0.002)</td>
<td>(0.001)</td>
<td>(0.001)</td>
<td>(0.000)</td>
</tr>
<tr>
<td><strong>Net Gain</strong></td>
<td>0.073</td>
<td>0.123</td>
<td>0.119</td>
<td>0.101</td>
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<tr>
<td><strong>Proportional Net Gain</strong></td>
<td>13.9%</td>
<td>23.1%</td>
<td>22.4%</td>
<td>18.9%</td>
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<tr>
<td><strong>No. of Observations</strong></td>
<td>71,899</td>
<td>125,451</td>
<td>226,525</td>
<td>301,089</td>
</tr>
<tr>
<td><strong>Window (Quarters)</strong></td>
<td>+/- 2</td>
<td>+/- 4</td>
<td>+/- 8</td>
<td>+/- 12</td>
</tr>
</tbody>
</table>
### C. Wages

<table>
<thead>
<tr>
<th></th>
<th>Post 1</th>
<th>Post 2</th>
<th>Post 3</th>
<th>Post 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Elapsed × Post</strong></td>
<td>314.5***</td>
<td>277.8***</td>
<td>154.2***</td>
<td>92.22***</td>
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<tr>
<td></td>
<td>(36.77)</td>
<td>(18.12)</td>
<td>(10.38)</td>
<td>(7.80)</td>
</tr>
<tr>
<td><strong>Elapsed</strong></td>
<td>-160.5***</td>
<td>-113.5***</td>
<td>-43.57***</td>
<td>-14.95*</td>
</tr>
<tr>
<td></td>
<td>(22.26)</td>
<td>(11.78)</td>
<td>(7.32)</td>
<td>(6.10)</td>
</tr>
<tr>
<td><strong>Net Gain</strong></td>
<td>$629.00</td>
<td>$1,111.20</td>
<td>$1,233.60</td>
<td>$1,106.64</td>
</tr>
<tr>
<td><strong>Proportional Net Gain</strong></td>
<td>12.7%</td>
<td>22.5%</td>
<td>24.9%</td>
<td>22.2%</td>
</tr>
<tr>
<td><strong>No. of Observations</strong></td>
<td>71,899</td>
<td>125,451</td>
<td>226,525</td>
<td>301,089</td>
</tr>
<tr>
<td><strong>Window (Quarters)</strong></td>
<td>+/- 2</td>
<td>+/- 4</td>
<td>+/- 8</td>
<td>+/- 12</td>
</tr>
</tbody>
</table>
Causal Identification Concerns

People are somewhat likelier to apply for set-asides when they have recently lost a job/experienced wage decline.

Two related concerns:

• **MOTIVATION:** If set-aside applicants are also applying for jobs, the job search—not the set-aside—could drive subsequent gains.

• **MEAN REGRESSION:** Even without motivation effects, if these recent declines are essentially random, we would expect subsequent bounce-back on average.
Reasons to think a substantial part of the effect is causal

(1) **TIMING OF GAINS**: The trend turnaround begins in the quarter the set-aside is *received*, not when it is applied for (~1-2 quarters earlier)

(2) **EFFECTS ON EARLY SET-ASIDE RECIPIENTS**: Those who apply right after becoming eligible show extremely similar gains, despite:
   - No pre-period negative trend
   - Application timing seemingly driven by arbitrary 5-year rule

(3) **THEORY/OTHER RESEARCH PREDICTS IT**: Ample evidence has shown that records impair employment prospects.
The Policy Upshot

THE GOOD NEWS: Expungement seems to have substantial benefits for recipients and raises no real public safety concern.

THE BAD NEWS: Hardly anyone (even among those eligible) actually receives expungement.

SO: Make expungements easier to obtain—especially procedurally. Strong case for automatic expungement (like PA, UT). Waiting periods don’t need to be longer than 5 years.
Further research is still needed

- Pilot interventions (or timing of them) could be randomized to study the effects, allowing strong causal inference
- Effects of automatic set-asides
- Effects with expanded eligibility requirements
- Effects on outcomes other than crime and employment
(1) Still minimal record, but you can now have:
   • One conviction only
   • OR two misdemeanors (can set aside both)
   • OR one felony plus up to two misdemeanors (set aside only felony)
(2) Only the conviction(s) you seek to set aside must be 5 years old
(3) But the 5 year period now runs from completion of ALL sentence components
(4) Slightly expanded excluded-offense list
Who *does* get set-asides?

**Individual Characteristics**

Black 30%, White 66%, Other 4%

Male 61%

Employed when became eligible 66%

Employed quarter before set-aside 61%

Average quarterly wages ~$5000
Who *does* get set-asides?

Case Characteristics

Felony 44%
Incarcerated 29%
Incarcerated more than 1 year 2%

*Crime Type:*
• Violent 15%
• Drug 18%
• Property 53%
• Other 18%
Figure 1. Years Elapsed Between Sentencing and Set-Aside
Figure 2. Uptake Rates by County
Significant Predictors of Increased Set-Aside Probability Among Those Eligible (from Table 3 Uptake Regressions)

- Female
- Younger age at conviction
- Felony
- Not a violent offense
- Not sentenced to incarceration
- Employed in preceding quarter [but see next one!]
- Recent wage (or employment) loss
<table>
<thead>
<tr>
<th></th>
<th>5-Year Uptake</th>
<th></th>
<th>Set-Aside Received in a Given Quarter</th>
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</thead>
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<tr>
<td></td>
<td>(Male)</td>
<td></td>
<td>(Female)</td>
</tr>
<tr>
<td>Male</td>
<td>0.663**</td>
<td>0.654**</td>
<td>0.671**</td>
</tr>
<tr>
<td></td>
<td>(0.064)</td>
<td>(0.067)</td>
<td>(0.058)</td>
</tr>
<tr>
<td>Black</td>
<td>0.989</td>
<td>0.825</td>
<td>0.846*</td>
</tr>
<tr>
<td></td>
<td>(0.109)</td>
<td>(0.098)</td>
<td>(0.086)</td>
</tr>
<tr>
<td>Age at conviction</td>
<td>0.988**</td>
<td>0.986**</td>
<td>0.986**</td>
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<tr>
<td></td>
<td>(0.004)</td>
<td>(0.004)</td>
<td>(0.004)</td>
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<tr>
<td>Felony</td>
<td>2.552**</td>
<td>2.129**</td>
<td>2.211**</td>
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<tr>
<td></td>
<td>(0.284)</td>
<td>(0.262)</td>
<td>(0.227)</td>
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<tr>
<td>Violent Offense</td>
<td>0.464**</td>
<td>0.545**</td>
<td>0.525**</td>
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<td>(0.068)</td>
<td>(0.085)</td>
<td>(0.070)</td>
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<tr>
<td>Drug Offense</td>
<td>1.243</td>
<td>1.487**</td>
<td>1.306*</td>
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<tr>
<td></td>
<td>(0.170)</td>
<td>(0.221)</td>
<td>(0.171)</td>
</tr>
<tr>
<td>Public Order/Other Offense</td>
<td>1.272*</td>
<td>1.297*</td>
<td>1.331*</td>
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<tr>
<td></td>
<td>(0.153)</td>
<td>(0.175)</td>
<td>(0.150)</td>
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<tr>
<td>Incarcerated</td>
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<td>0.553***</td>
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<tr>
<td></td>
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<td></td>
<td>(0.057)</td>
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<tr>
<td>Wage (Previous Quarter)</td>
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<td>(0.007)</td>
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<td>Employed (Previous Quarter)</td>
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<td>1.768**</td>
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<td>(0.158)</td>
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<tr>
<td>Past-year 20% wage loss</td>
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<td>2.268**</td>
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<td>Conviction Year FE</td>
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<tr>
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</tr>
<tr>
<td>Years since conviction</td>
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