

THE HIGH COST OF A FRESH START

A STATE-BY-STATE ANALYSIS OF COURT DEBT
AS A BAR TO RECORD CLEARING



February 2022

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EXECUTIVE SUMMARY

For the nearly one-third of adults in the U.S. with a record of arrest or conviction, their record is not simply part of their past but a continuing condition that impacts nearly every aspect of their life. Their record makes it hard to get a job and support a family, secure a place to live, contribute to the community, and participate fully in civic affairs.

In recent years, most states have passed laws aimed at restoring economic opportunity, personal freedoms, and human dignity to millions of these individuals by providing a path to clear their record. But for too many, this relief remains out of reach because of monetary barriers, including not only the cost of applying for record clearing but also the requirement in many jurisdictions that applicants satisfy debt incurred as part of the underlying criminal case before they can have their record cleared. This can be a high bar: the total amount of fines and fees can run to thousands of dollars for even minor infractions and can be considerably higher for felonies.

People prevented from clearing their record because they cannot afford to pay are usually those most in need of relief. And, perversely, because a record significantly impairs economic opportunity, having an open record makes it harder to pay off fines and fees and therefore harder to qualify for record clearing. This burden falls especially heavily on Black and Brown communities, which are more likely to have high concentrations of both criminal records and poverty because of structural racism in criminal law enforcement and in the economy. Ability-to-pay tests and similar waiver approaches to reduce or eliminate monetary barriers to record clearing have been shown to be poor safeguards in many contexts.

FINDINGS: NATIONWIDE SURVEY OF COURT DEBT AS A BARRIER TO CLEARING A CONVICTION RECORD

This report explores the extent to which restricting access to record clearing based on outstanding criminal fines, fees, costs, and restitution—collectively known as “court debt”—may prevent poor and low-income people from getting a second chance. After surveying research on the importance of record clearing and the mushrooming financial burdens imposed on criminal defendants, it analyzes the extent to which outstanding court debt is a barrier to record clearing under the laws of each of the 50 states, the District of Columbia, and the federal system. Our study focuses in particular on generally applicable statutory authorities for clearing adult criminal convictions; it excludes record-clearing

authorities available for other categories of records (e.g., non-conviction records) or for specific categories of individuals (e.g., victims of human trafficking).

We found considerable variation and complexity in how jurisdictions treat outstanding court debt in the context of conviction record clearing. We identified six general categories into which jurisdictions fall, and we analyzed the specific details of each jurisdiction's law.* The map below shows how we categorized each state, with a legend describing in general terms the criteria for inclusion in each category.

Our research revealed the following:

- In almost every jurisdiction, outstanding court debt is a barrier to record clearing in at least some cases, either rendering a person entirely ineligible for record relief or making it difficult for them to qualify for this relief.
- At the same time, however, only 6 of the 50 states require payment of all court debt in order to qualify for record clearing—evidence that most state policymakers do not think that all court debt should have to be paid off for an individual to benefit from record clearing.
- While some of the states that have enacted automatic record clearing laws do not restrict eligibility based on outstanding court debt, others do, such that making record clearing automatic does not necessarily obviate this monetary barrier.
- In many states it is difficult to determine the relevance of outstanding court debt in the record-clearing context, and even more difficult to predict whether a person with outstanding court debt will be successful in obtaining relief. This uncertainty makes it difficult both to understand eligibility for record clearing and to successfully navigate the application process, and it creates the potential for inconsistencies in how the law is applied and who obtains relief.

Although this report focuses on how court debt operates as a barrier to record clearing for those without the means to pay, it also describes the variety of filing and administrative fees that often must be paid to apply for record clearing. The high cost of application also creates a barrier to a fresh start.

*The criteria for inclusion in each category are described in greater detail in the “Findings” section of the report, and the Appendix analyzes the law in each of the jurisdictions.

RECOMMENDATIONS

Based on our research, we offer the following recommendations:

1. **Court debt should never be a barrier to record clearing:** Qualification for record clearance should not be conditioned on payment of court debt, and outstanding court debt should not be a basis for denying relief, regardless of whether record clearing is petition-based or automatic.[†]
2. **Application-related costs, including filing fees, should never be a barrier to record clearing:** States should adopt automatic record-clearing processes that do not require individuals to incur costs to have their records cleared. States with petition-based record clearing should not require people seeking relief to pay any filing fees or other costs to submit a petition or to obtain or effectuate relief.
3. **Jurisdictions should collect and report data on monetary barriers to record clearing:** Jurisdictions where record clearing may be denied on the basis of outstanding court debt should collect and report data reflecting the impact of these barriers on record clearing. Jurisdictions should also collect data reflecting the impact of filing fees and other application-related costs on obtaining relief.

[†] Whether states should waive outstanding court debt at the time of record clearing is a separate policy issue that is beyond the scope of this report.

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I. INTRODUCTION

For the nearly one-third of adults in the United States with a record of arrest or conviction, their record is not simply a history of their past but a continuing condition that impacts nearly every aspect of their life. Their record makes it hard to get a job and support a family, secure a place to live, contribute to the community, and participate fully in civic affairs.

In recent years, most states have passed laws aimed at restoring economic opportunity, personal freedoms, and human dignity to millions of these individuals by providing a path to clear their record.¹ But for too many, this relief remains out of reach because of monetary barriers, including not only the cost of applying for record clearing but also the requirement that an applicant satisfy debt incurred as part of the criminal case. For example, a man in Tennessee seeking record-clearing assistance at a legal clinic gave up after finding out that he would first have to pay \$500 in court costs owed from his criminal case, and then, just to be considered for expungement, an additional \$700 in filing fees. He knew “immediately that he [could not] afford to pay over \$1000 for expungement relief with the income from his minimum wage construction job.”² A woman in Iowa learned she was ineligible for expungement of domestic abuse charges that had been dismissed a decade before, because she still owed the state \$550 for the cost of her court-appointed defense attorney, an amount she could not afford to pay.³

Those who are prevented from clearing their record because they are too poor to pay are usually those most in need of relief. And, perversely, because a record significantly impairs economic opportunity, having an open record makes it harder to pay off fines and fees and therefore qualify for record clearing. This burden falls especially heavily on Black and Brown communities, which are more likely to have high concentrations of both criminal records and poverty because of structural racism in criminal law enforcement and in the economy.

In this report, we explore the extent to which restricting access to record clearing based on criminal fines, fees, costs, and restitution—collectively known as “court debt”⁴—may prevent poor and low-income people from getting a second chance. After surveying research on the importance of record clearing and the mushrooming of court debt, we analyze the extent to which outstanding court debt bars record clearing under the laws of each of the 50 states, the District of Columbia, and the federal system. As discussed in Section IV of this report, we found that all but one of the states that offer general record clearing for adult convictions require payment of at least some court debt to qualify for relief, or they permit a court or agency to consider court debt in deciding whether to grant relief. **Our research leads us to recommend that jurisdictions reform their**

laws so that court debt is never a barrier to record clearing. Whether states should also waive outstanding court debt at the time of record clearing is a separate policy issue that is beyond the scope of this report.

While this report focuses primarily on court debt, we also note that fees to apply for record clearing, including filing fees, create a similar barrier to a fresh start, and we therefore recommend eliminating such fees.

II. RECORD-CLEARING LAWS MITIGATE THE HARM THAT FLOWS FROM HAVING A CRIMINAL RECORD, BUT ACCESS TO SUCH RELIEF IS LIMITED

A. The Collateral Consequences that Flow from Arrest or Conviction Harm Individuals, Their Families, and Our Society in Profound and Myriad Ways

1. People with a Criminal Record and Their Families Face Severe and Pervasive Collateral Consequences

Today, about 80 million people in the United States—or almost one in three adults—have an arrest or conviction record.⁵ This record can mean a sentence to lifelong poverty due to the myriad collateral consequences that follow an arrest or conviction, creating “lasting financial impacts.”⁶

In addition to formal statutory and regulatory collateral consequences—of which there are hundreds in every state⁷—many informal barriers magnify the harm that people with a record experience. For example, background checks are now ubiquitous in the employment and rental housing contexts: about 94% of employers and 90% of landlords run a criminal background check on prospective employees and tenants.⁸ In the employment context, research has shown that an individual who has a criminal record is only half as likely to get a callback or job offer as a result.⁹ The negative effect of having a record is roughly twice as large for Black job-seekers as it is for their white counterparts.¹⁰ Similarly, in the rental housing context, many landlords refuse to rent to individuals with a criminal record, often based on speculative concerns about public safety or unsupported assumptions about whether tenants with a record will be able to meet rental obligations.¹¹

A criminal record can follow a person for life. For example, federal law permits employment and tenant screening companies to report convictions indefinitely unless they are sealed, expunged, or subject to similar relief.¹²

These repercussions are felt not just on an individual level. Rather, “[t]he reach of each collateral consequence extends past people with criminal records to affect families and communities.”¹³ According to the Center for American Progress, nearly half of U.S. children (33 million) have at least one parent with a criminal record.¹⁴ Having a parent with a record can have severe negative impacts on children, including preventing them from accessing federal public nutrition assistance programs¹⁵ and making it impossible for the parent to physically or legally rejoin the family.¹⁶ A parent’s record can also adversely affect their child’s cognitive and emotional development, school performance, and even their employment prospects in adulthood.¹⁷

2. Collateral Consequences Exacerbate Existing Systemic Inequities

The burdens of collateral consequences are not borne equally. People of color—and Black people in particular—are subjected to bias at every stage of the criminal justice system, which makes them disproportionately likely to have a criminal record and to suffer negative consequences as a result of that record. Studies have found that Black individuals are more likely to be stopped by the police, detained pretrial, and charged with more serious crimes.¹⁸ In 2017, for example, Black people represented 13.4% of the U.S. population but 27.2% of all arrests by law enforcement, whereas white people represented about 76.6% of the population and 68.9% of arrests.¹⁹ Further, histories “of structural racism and inequality of opportunity” mean that Black people are more likely to be living in poor communities, which in turn exposes them “to risk factors for both offending and arrest.”²⁰ Lost wages for people touched by the criminal justice system amount to more than \$372 billion annually,²¹ and these losses further aggravate existing racial and economic disparities in the United States.²²

Criminal records also have a significant impact on women, and particularly on women of color.²³ For instance, although women represent only about 25% of people arrested, multiple studies have shown that they represent nearly half of those seeking record clearance, suggesting that criminal records act as a particular impediment to women.²⁴ Professor Colleen Chien suggests this difference may be due in part to women’s desire to enter caregiving fields, such as nursing and geriatric care, which have licensing requirements that often bar individuals with a criminal record.²⁵

People with disabilities²⁶ and members of the LGBTQ community²⁷ are disproportionately harmed by collateral consequences as well due to their overrepresentation in the criminal justice system. Because people with disabilities have a more limited range of employment opportunities available to them, the difficulties they face when reentering society with a record of arrest or conviction may be exacerbated.²⁸ And, according to the U.S. Commission on Civil Rights,

the incarceration rate of LGBTQ individuals is more than three times that of the U.S. adult population.²⁹

B. Record-Clearing Laws Can Reduce the Negative Collateral Consequences of Arrest or Conviction

Although not a panacea, laws that allow people to expunge, seal, or otherwise limit public access to their criminal record can reduce the harmful collateral consequences of arrest or conviction. Record-clearing laws can help individuals overcome disabling collateral consequences, improve employment prospects, and find housing.³⁰ These positive effects also ripple outward to benefit individuals' families and communities, and even the national economy.³¹

What Is Record Clearing?

- **Record clearing:** We define “record clearing” as limiting access to criminal records for the purposes of promoting rehabilitation, reintegration, economic opportunity, and other related purposes. Other terms used to describe record clearing include “annulment,” “confidentiality,” “erasure,” “expunction,” “expungement,” “sealing,” and “shielding.”

The two most frequently used terms—sealing and expungement—do not have a single definition. “Expungement” is commonly thought to involve destruction or deletion of the record or a complete denial of access, while “sealing” is commonly thought to mean a more temporary enclosure of the record that could easily be undone. However, the two terms are sometimes used interchangeably even within the same jurisdiction, and actual destruction of all archival copies of records is rare.^a

- **Record relief:** “Record relief” is a broader term that refers both to record clearing and other remedies to mitigate the adverse effect of an individual’s criminal record, such as judicial set-aside, certificates of relief, diversion, and executive pardons.

In the employment context, a recent empirical study of Michigan’s record-clearing laws by Professors J.J. Prescott and Sonja B. Starr found that individuals with sealed records “gain access to more and better-paying jobs,” and that “at least a large fraction of th[is] improvement” can be causally attributed to the fact of a clean record.³² Moreover, a growing body of research demonstrates that “individuals with a criminal record perform equally to or better than their counterparts with no criminal records.”³³ Employees with a criminal record are also “less likely to leave the job voluntarily, more likely to have a longer tenure, and no more likely than people without records to be terminated involuntarily.”³⁴

Importantly, available evidence shows that these positive effects of record-clearing laws do not come at a cost to public safety and can indeed promote it.³⁵ The Prescott and Starr study found that expungement recipients in Michigan posed a *lower* risk of committing a crime than did

members of Michigan’s general population. This finding can “help to defuse an otherwise potentially convincing policy argument against expungement laws: that the public (including employers and landlords) has a safety interest in knowing about the prior records of those with whom they interact.”³⁶ The finding is also consistent with broader literature showing that there is a period of time after which an individual who commits a crime will be no more likely to commit another crime than someone who has never committed a crime, a concept referred to as “desistance from crime.”³⁷

Available evidence shows that the positive effects of record-clearing laws do not come at a cost to public safety and can indeed promote it.

C. Record-Clearing Laws Vary in Scope, Accessibility, and Effect

Record-clearing laws vary widely from jurisdiction to jurisdiction, in terms of their eligibility criteria, accessibility, and effectiveness.³⁸ Even the terms used in state laws to describe record clearing vary widely. In a few states, eligibility extends broadly to nearly any offense. In others, it is limited to individuals convicted of minor offenses with no prior record, or to non-conviction records only. Most states fall somewhere in the middle, adopting a seemingly random patchwork of eligibility criteria that are frequently difficult to interpret and apply. Waiting periods to apply for relief can be quite brief, several years, or more than a decade after completion of the sentence.

Procedures for obtaining record clearing may be straightforward and easy to navigate. In a few states, this relief may even be automatic. More often, procedures are dauntingly complex, burdensome, and expensive—with a multi-step process culminating in a discretionary decision by a judge or agency.³⁹ As later sections of this report

For more information on expungement, sealing, and other forms of record relief, see the Collateral Consequences Resource Center’s [Restoration of Rights Project](#), which provides frequently updated state-by-state summaries and 50-state comparisons of record relief law and policy.

demonstrate, monetary barriers to record clearing can put this relief—and its attendant economic and civic benefits—out of reach for those without the means to pay.

Moreover, the effects of record clearing differ from one jurisdiction to the next. At a basic level, these laws restrict access to criminal records and in a few cases even provide for their destruction, but more specific policies vary greatly.⁴⁰ Clearance may apply to records held by law enforcement or other agencies but not by courts, and vice versa. Some states may require a court order for access to cleared records, or limit access to law enforcement, while others carve out a broad range of exceptions allowing access by various public and private entities.

For example, it is common for record-clearing laws to allow access to any entity required by law to conduct a background check. Many record-clearing laws authorize a person to deny having been arrested or convicted, but there are exceptions—particularly when dealing with federal authorities, as federal law often does not give effect to state record clearing.⁴¹ Some state laws specify their effect on firearms dispossession or other mandatory restrictions, but many leave doubt about a recipient’s rights and responsibilities. Finally, due to the proliferation of records on the internet, and the limited regulation of private dissemination of cleared records, many records continue to appear in Google searches and persist on websites and in databases.⁴²

Though limited in many jurisdictions in scope, procedural access, and effect, record-clearing laws can nonetheless be a powerful legal and policy tool for improving the lives of those who obtain this relief. These benefits extend to recipients’ families and communities, as well as to society more broadly in the form of advancing economic and racial justice goals.

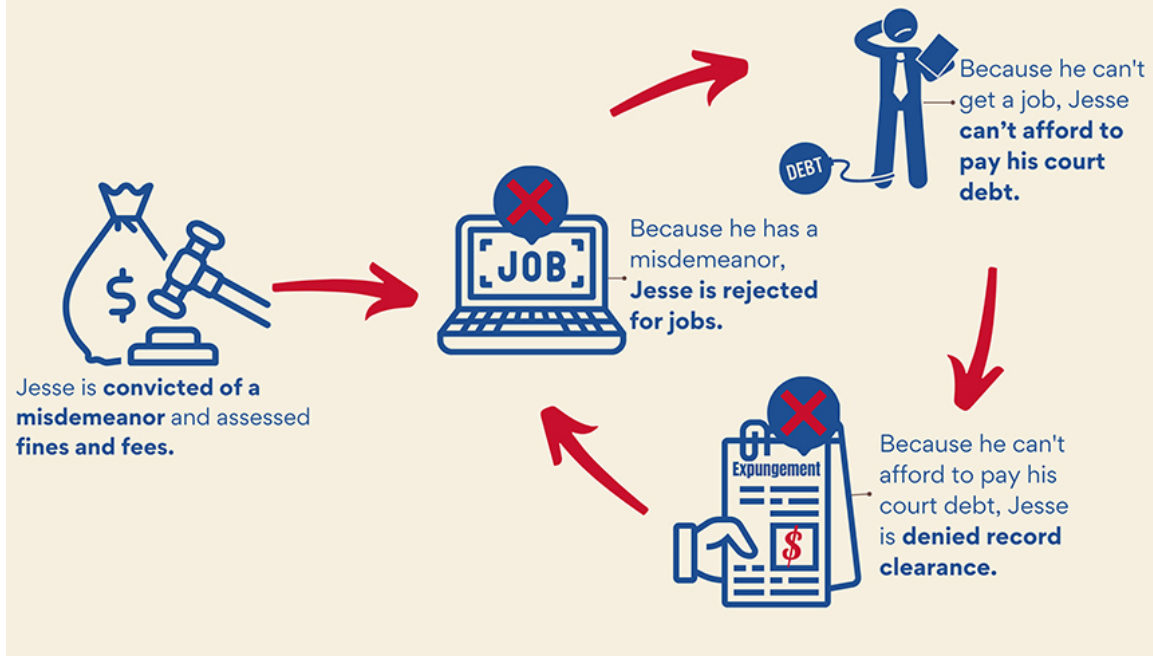
III. COURT DEBT AS A BARRIER TO RECORD CLEARING

Given the importance of record clearing to economic opportunity, security, and successful reintegration, making it readily accessible to those struggling to secure good jobs or make ends meet should be a priority. But, paradoxically, record-clearing systems in most states erect a number of monetary barriers to relief that prevent those with limited financial resources from getting their records cleared.

This report focuses on the laws that require individuals to pay off criminal fines, fees, and restitution—collectively known as “court debt”⁴³—in order to qualify for record clearing, or that permit judges to deny record clearing on the basis of outstanding court debt. The total amount of court debt imposed on an individual can be in the thousands of dollars for even minor infractions and may be considerably higher for felonies.⁴⁴

In jurisdictions where court debt must be paid to clear a record, the amount of court debt owed varies substantially from individual to individual based on past charging and sentencing decisions, administrative costs charged, and interest and fees subsequently accrued. In many cases, just determining the existence and amount of outstanding court debt can be, in the words of one federal judge, “an administrative nightmare.”⁴⁵ For these reasons, even determining whether this additional monetary barrier exists in a case—and if so, the extent of that barrier—may require a complicated individualized inquiry.

When Court Debt Is a Barrier to Record Clearing



A. Court Debt and the Consequences of Nonpayment

Monetary sanctions such as fines, once conceived as an alternative punishment to incarceration and supervision, have exploded in type, number, and amount over the last several decades, and are now regularly imposed in addition to, rather than in lieu of, other punishments.⁴⁶ In addition to fines, which are imposed as sanctions for criminal offenses, and restitution, which is generally conceived as compensation for the victim of an offense, states have added an array of fees, assessments, and surcharges, which may be used to fund various aspects of the criminal justice system or simply to generate revenues for unrelated government operations.

Court debt is often imposed by statute, and may bear no relationship to the criminal offense.⁴⁷ In many jurisdictions, people who cannot afford to pay these amounts immediately are assessed “poverty penalties” in the form of late fees, payment plan fees, interest, and collection charges.⁴⁸

Those who cannot afford to pay court debt may face a range of harmful consequences, including driver’s license suspensions, extensions or revocations of probation, frequent payment hearings in court, additional fees and charges,

arrest warrants and incarceration, seizure of wages or tax refunds,⁴⁹ and deprivation of the right to vote.⁵⁰ Nonpayment may result in additional, cascading negative financial repercussions.⁵¹ These practices disproportionately burden the poorest Americans, and particularly communities of color, contributing to the accumulation of disadvantage for marginalized communities and deepening of the racial wealth gap.

Types of Court Debt

- **Fines** are monetary sanctions imposed as a penalty after a criminal conviction or admission of guilt to a civil infraction.^a
- **Fees** are financial obligations generally imposed on defendants as a means of raising funds for the government in general or specific government functions such as a jurisdiction’s court or corrections system. Fees may be assessed based on the specifics of a case (e.g., fees imposed for representation by a public defender, for every month in probation or on GPS monitoring, or for the prosecution’s use of a DNA test) or may be unrelated to case specifics.^b (For more information on fees, see the call-out box discussing “The Problem of Fees in the Criminal Justice System” below.)
- **Surcharges** are typically a flat fee or a percentage added to a fine, and act as a tax to raise revenues for a particular government function or the general fund. They are an example of a type of fee that is often mandatorily imposed without regard to case specifics.
- **Interest and payment fees and penalties** can add to the court debt balance over time.
- **Restitution** refers to financial obligations usually intended to compensate victims of a crime for their losses. Although restitution is typically assumed to consist of money actually transmitted to individual victims of crime, in many instances it is paid to government agencies or insurance companies. Individual eligibility to receive restitution funds may also depend on a victim’s application for funds, cooperation with law enforcement, or even their own criminal record.^c

The Problem of Fees in the Criminal Justice System

Fees are one of the major components of court debt, along with fines and restitution. Fees have grown significantly over the last several decades and accumulate from arrest through reintegration, including pre-disposition fees (such as arrest fees, public defender fees, DNA testing fees, and jury fees), and fees associated with incarceration and community supervision (“room-and-board” fees, drug testing fees, and probation fees). Fees generate revenues to fund the court system, the criminal justice system, or often the government more generally. While

this is sometimes justified as a means of placing the costs of “using” the legal systems on “users,” this ignores that these systems are core government functions underlying public safety, due process, and protection of rights that all of society benefits from and should support through general revenues.

Funding government through fees imposed on those charged with or convicted of a crime raises a number of problems, particularly because this subset of the population is disproportionately poor, disproportionately Black and Brown, and disproportionately faces significant obstacles to employment and financial security. These fees thus act as a regressive tax, exacerbate racial inequities, and make it more difficult for those convicted of crimes to successfully reintegrate—at a cost not only to the individuals, but to communities and society more broadly. Fees may also create conflicts of interest when courts and officers that rely on the fees for funding are also those with the power to impose, waive (or not waive), and punish nonpayment of fees.^a Moreover, court-imposed fees fail at efficiently raising revenues, both due to the high costs of attempting to collect and enforce them and because many people lack the means to pay them.^b

For these reasons, many leading experts recommend eliminating fees from the criminal justice system entirely.^c For example, in revising the Model Penal Code, the American Law Institute recently recommended abolition of all costs, fees, and assessments imposed on those convicted of crimes, explaining that “persons convicted of crimes should not be regarded as a special class of taxpayers called upon to make up for inadequate legislative appropriations for criminal-justice agencies and programming” and noting that burdening those convicted of crimes with unrealistic financial costs threatens successful reintegration and fails to improve public safety.^d

B. Ways That Court Debt May Limit Access to Record Clearing

This report highlights yet another potential consequence of outstanding court debt: access to record clearing may be put at risk, delayed, or denied entirely, depending on the law of the jurisdiction where the record originated. In a recent survey of legal aid attorneys who provide record-clearing assistance in over thirty states, 90% of respondents reported that requirements to pay outstanding court debt are a barrier to record clearing.⁵² This may happen in at least three ways.

First, a state’s record-clearing laws may require that an individual have paid off some or all of the fines, fees, and/or restitution related to the underlying criminal case—or even some fines and fees related to other cases⁵³—to be eligible for record clearing.

Second, even if a state’s record-clearing laws do not require payment of court debt to be eligible for relief, the law may nonetheless authorize judges to deny record clearing on the basis of such outstanding debts. At best, this indebtedness

puts those seeking relief at the mercy of a judge’s discretion as to whether to deny a petition based on the outstanding debt—a risk those with the means to readily pay off court debt can avoid. When coupled with other barriers in the petition process, it may discourage people from pursuing record clearing at all and contribute to what has been described as the “second chance gap.”⁵⁴ This may be particularly true for those whose past experiences with courts and the legal system have been negative, and who recall instances in which the criminal legal system has treated them with bias, suspicion, or lack of empathy

Problems with Relying on Ability-to-Pay Tests and Payment Waivers

One way in which jurisdictions have attempted to provide a path to record clearing despite outstanding court debt is through laws that allow the court to waive a requirement to pay court debt upon a finding that the individual lacks the ability to do so. In theory, a waiver process may seem like a plausible way to ensure that payment requirements do not act as a barrier to record clearing.

However, in practice **ability-to-pay tests and similar waiver approaches for court debt have been shown to be poor safeguards in the many contexts in which they have been used.** These approaches regularly fail to recognize and protect those who cannot pay or for whom payment would be a significant hardship, particularly where the individual does not have assistance of counsel.^a In related contexts where relief has been premised on a finding of “inability to pay”—including relief from imposition of discretionary fees, incarceration for nonpayment, and driver’s license suspensions—court watchers, attorneys, and researchers have reported that assessments of ability to pay are often ad hoc, cursory, or simply non-existent, even when required.^b In the discretionary record-clearing context, where some view record clearing as a “reward” for good behavior

and otherwise successful reentry,^c petitioners may reasonably worry that presenting evidence of their financial insecurity and inability to keep up with bills may be used against them.

Further, **even if payment waiver standards were better designed and implemented, simply having to identify and navigate the waiver process would be an extra barrier standing between those with lesser financial means and relief.** This is particularly true for the many low-income people with a record who are unable to secure assistance of counsel. Again, along with other barriers in the petition process, these added hurdles may discourage low-income people from pursuing the record-clearing process at all, contributing to the significant “second chance gap.”^d Requiring petitioners to jump through additional procedural and evidentiary hoops to confirm that they are unable to pay poses unnecessary burdens not only on those seeking record clearing but also on the courts.

As discussed in the following section, there is significant evidence that most people who still have outstanding court debt when they become otherwise eligible for record clearing are unable to afford the debt.

or understanding. At worst, a state law that allows courts to deny record clearing based on outstanding court debt may turn satisfaction of court debt into a de facto requirement.

Third, even when outstanding court debt is not considered directly as a qualification for record clearing, it may still indirectly pose a barrier to relief if it delays eligibility or leads to further legal issues. For example, in many states, probation may be extended or revoked for falling behind on court debt payments, which may delay eligibility for record clearing.⁵⁵ Or, in states in which falling behind on court debt payments results in automatic driver's license suspension, a conviction for driving on a suspended license may impact eligibility for clearing an earlier record. Advocates and policymakers should be aware that eliminating *direct* monetary barriers to record clearing may not address all of the ways that court debt interferes with record relief.⁵⁶

C. Linking Record Clearing to Payment of Court Debt Reinforces a Two-Tiered System of Justice

Considerable evidence indicates that most justice-impacted individuals are unable to afford to pay their court debt.⁵⁷ This is perhaps unsurprising given that people would likely take steps to avoid the many negative consequences of owing court debt if they had the means to do so.

Thus, linking payment of court debt to qualification for record clearing deprives a large segment of otherwise eligible individuals from relief and reinforces our two-tiered system of justice: one for people with financial means, and one for people without. A legal system that conditions a second chance on payment of hundreds or even thousands of dollars is a system in which the well-off can easily escape the criminal justice system and its formal and informal constraints, and move on with their lives, while the poor remain indefinitely trapped in that system. In addition to doubling down on disadvantage, treating people differently based on their access to money undermines the integrity of the legal system.

A legal system that conditions a second chance on payment of hundreds or even thousands of dollars is a system in which the well-off can easily escape the criminal justice system, while the poor remain indefinitely trapped in that system.

Recent surveys of formerly incarcerated people and their families make clear that many are struggling just to get by and pay for the basic necessities of life, and have little to no extra income or savings that they can put toward court debt.⁵⁸ Some report that they have made court debt payments only by sacrificing on basic needs like food and medicine, or making desperate choices like using expensive and predatory payday loans or even engaging in illegal earning activity.⁵⁹ Many report feeling hopeless about their ability to ever pay off

their court debt entirely.⁶⁰ In a 2018 survey of individuals seeking record clearing, nearly 40% of respondents reported owing fines that they were unable to pay.⁶¹ This survey information is further supported by government collection data analyses indicating that the total amount of outstanding court debt keeps growing and a substantial portion is never expected to be collected.⁶²

That many people are unable to afford their court debt is unsurprising given that fine and fee amounts have increased dramatically in recent decades while wages of those at the lower end of the income scale have stagnated. A recent analysis estimated that the average annual earnings of people with a criminal record ranges from \$6,700 for those who were previously incarcerated for a felony to \$26,900 for those with only misdemeanor convictions.⁶³

Further, some fines and fees are set statutory amounts and are not tailored to individual financial circumstances, and courts may not assess whether a defendant has the ability to pay court debt before imposing it.⁶⁴ For example, a woman in Oklahoma reported that after a drug conviction, the judge told her: “I’m releasing you on seven years['] probation and a \$50,000 fine. I don’t expect you to ever pay it off, but just keep making your payments.”⁶⁵ After fifteen years of paying what she could while earning minimum wages, raising children and eventually supporting two grandchildren, and battling health problems, she still owed over \$40,000—and the debt was the sole barrier standing between her and record clearing. Her story had a happy ending—a sympathetic judge waived the outstanding balance, explaining that “she deserves a chance to go off and do

something good with her life, far greater than what she’s able to do today because we’re the thing that’s holding her back.” But even so, because she was low-income and did not have family money to draw on, her shot at a second chance was delayed by over a decade.

Erecting monetary barriers to record clearing disadvantages low-income Americans of all races and ethnicities but is particularly problematic for people of color. Low-income communities of color disproportionately bear the costs of criminal justice debt, in part because these communities, and Black communities in particular, are disproportionately targeted for enforcement of minor crimes and infractions that generate

fines and fees.⁶⁶ The harm of this racial targeting is compounded by the fact that Black families have less wealth to draw upon than white families when hit with unexpected fines and fees. The longstanding racial wealth gap, caused by deeply entrenched public and private discrimination and wealth stripping,⁶⁷ means that the typical white family has eight times the wealth of the typical Black family and many Black families have minimal or no assets to draw on.⁶⁸ Black families are

Low-income communities of color disproportionately bear the costs of criminal justice debt, in part because they are disproportionately targeted for enforcement of minor crimes and infractions that generate fines and fees.

thus less likely to be able to quickly pay down the amounts of fines and fees assessed. As a result, Black families are more likely to experience court debt payment requirements for record clearing as a barrier that may delay or preclude their opportunity for a fresh start.

Finally, while this report focuses on record clearing, requirements to satisfy court debt in order to obtain other forms of record relief—including executive pardon and judicial set-aside or certificates—also reinforce a two-tiered system of justice.

IV. FINDINGS: A STATE-BY-STATE ANALYSIS OF HOW COURT DEBT BARS RECORD CLEARING

A. Methodology

We analyzed legal authorities governing record clearing in each state, in the District of Columbia, and at the federal level, to determine whether and to what extent each jurisdiction requires the payment of court debt to qualify for record clearing. Detailed research results are included in an Appendix and the findings are discussed in the next section.

Because laws governing the availability of record clearing are complex and varied, to provide a useful base for comparison we focused our study on generally applicable statutory authorities for clearing adult criminal convictions. As a result, this study excludes laws and policies that offer relief for other categories of records (e.g., juvenile records⁶⁹ and non-conviction records such as uncharged arrests, dismissed charges, and diversionary dispositions).⁷⁰ Our study also excludes specialized record-clearing authorities available for specific categories of convictions or individuals (e.g., decriminalized marijuana offenses, first-time drug offenses, and victims of human trafficking). Unless otherwise noted in the Appendix, the state laws that require payment of court debt to obtain record clearing extend only to court debt related to the case whose record is sought to be cleared. It is unclear whether courts in states that permit discretionary consideration of court debt may also look to court debt attributable to other cases, although anecdotal evidence suggests that some do.⁷¹

Our analysis is based on the letter of the law, as stated in statutes and regulations, and interpreted in case law, with some reference to court forms or executive branch informational documents as indicated. Our research includes laws that have been enacted but are not yet effective or operational. In states where the relationship between court debt and record clearing is not explicitly defined in statutory or regulatory text, or in case law, a summary of our interpretive reasoning is in the Appendix. We chose not to exhaustively survey or attempt to describe how laws are applied in practice because there was too much potential for variation within each state.

Other limitations bear noting. While our research takes account of authorities that allow for waiver or reduction of court debt as part of the sealing or expungement process, it does not cover waiver or reduction authorities outside the context of record clearing.⁷² In addition, our research does not cover U.S. territories due to lack of information. Finally, it does not survey monetary barriers in the form of application-stage fees and costs, which are discussed in a following section.⁷³

B. Findings

There is considerable variation and complexity in how jurisdictions treat outstanding court debt in the context of general conviction record clearing. As a result, we could not simply categorize jurisdictions into those that require payment and those that do not. Instead, we assigned jurisdictions to one of six categories, described below.

In assigning jurisdictions that have different payment requirements for different types of offense or circumstance, we invariably chose the stricter category. Thus, for example, Michigan law does not require payment of court debt to obtain an automatic set-aside and sealing, but does seemingly allow courts to consider court debt in reviewing a petition for set-aside and sealing. Accordingly, we assigned Michigan to the *Court debt does not disqualify but may be considered* category, as opposed to the *Court debt has no effect on access to record clearing* category.

1. All court debt associated with the case for which relief is sought must be paid to qualify (6 states)

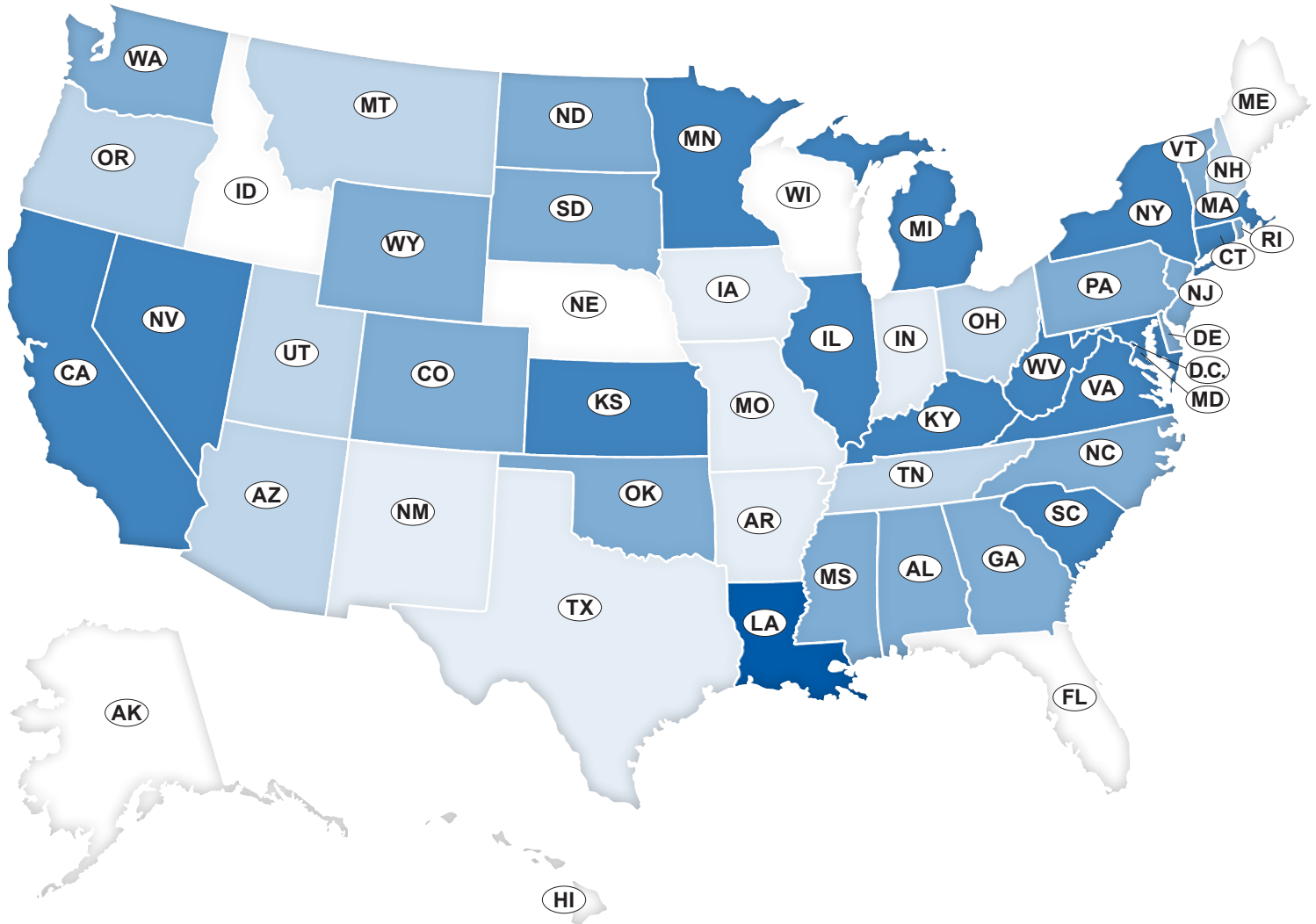
States in this category specifically require payment of all court debt as a condition of seeking record clearing. Six states fall into this category: Arkansas, Indiana, Iowa, Missouri, New Mexico, and Texas.

Requiring payment of all court debt to obtain record clearing means that those unable to afford payment face an absolute bar to relief—and to a better shot at employment and financial stability—simply because of their financial circumstances.

2. Court debt that is part of the sentence must be paid to qualify (7 states)

States in this category require payment of all court debt imposed by a criminal court during the criminal case that is legally considered part of the “sentence,” but these states may not require payment of fees or costs imposed by the court that are not considered part of the “sentence” or that are imposed by other means (such as supervision fees and administrative surcharges).

COURT DEBT AS A BARRIER TO CLEARING A CONVICTION RECORD



- Court debt has no effect on relief (1 state)
- Court debt may be considered in qualifying for relief (14 states and DC)
- Some court debt must be paid to qualify (15 states)
- Court debt that is part of the sentence must be paid to qualify (7 states)
- All court debt must be paid to qualify (6 states)
- No general conviction record clearing (7 states and federal system)

Seven states fall into this category: Arizona, Montana, New Hampshire, Ohio, Oregon, Tennessee, and Utah.

Determining whether certain types of court debt are legally considered part of the “sentence” can be difficult, adding complexity to the record-clearing process for applicants and courts alike. And because courts may differ in whether they impose fees and costs as part of a sentence, there is potential for arbitrariness and inequity among applicants for record clearing within the same jurisdiction. Most problematically, these laws impose an absolute bar to relief to those unable to afford to pay certain court debts.

3. Some court debt must be paid to qualify for relief (15 states)

States in this category require payment only of certain types of court debt or require payment only for certain convictions. Common examples are requiring payment of restitution but not of other court debt, requiring payment of court debt associated with felonies but not misdemeanors, or requiring payment for petition-based procedures but not for automatic record clearing.⁷⁴ Also included are states that authorize the expungement court to convert court debt to a civil judgment or waive the requirement to pay outstanding court debt upon a finding of indigency.

Fifteen states fall into this this category, in which there is considerable variation. The fifteen states are: Alabama, Colorado, Delaware, Georgia, Mississippi, North Carolina, North Dakota, New Jersey, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, and Wyoming.

Some of these states require payment of a particular type of court debt. For example, North Carolina, North Dakota, Pennsylvania, Vermont, and Wyoming require payment of restitution but not of other court debt such as fines and fees. Delaware mandates that restitution be paid in all cases, but it allows the court to waive fines and fees that otherwise would bar eligibility in cases not involving willful non-compliance, or to convert them to a civil judgment and grant expungement. In contrast, Georgia appears to require payment of court-imposed fines but not of other court debt, although the court may consider the latter in deciding whether to grant relief. Alabama and South Dakota both have complex requirements that require payment of court debt imposed as a condition of supervision, and Alabama also requires payment of all other court debt absent a finding of indigency by the expungement court.

Another set of states in this category require payment of court debt to clear some categories of conviction but not others. For example, Colorado requires payment of court debt to clear state convictions but not municipal violations. Mississippi requires payment of court debt to clear felonies but not misdemeanors, while in Washington (somewhat anomalously) the opposite is the case. For traditional

Pennsylvania: Removing Most Court Debt as a Barrier to Record Clearing

Pennsylvania passed a bill (H.B. 440) in October 2020 removing court debt other than restitution as a barrier to record clearing in otherwise eligible cases. With the help of advocates like Community Legal Services of Philadelphia—a chief architect and driver of H.B. 440—the bill passed with broad bipartisan support. Pennsylvania’s Republican-controlled legislature passed the bill with no dissenting votes,^a and the Democratic governor signed the bill into law days later.^b

H.B. 440 applies both to cases sealed or expunged automatically—via Pennsylvania’s “Clean Slate” law, adopted in 2018—and to cases sealed or expunged via petition. After Pennsylvania implemented Clean Slate,

however, outstanding court debt remained a major barrier to automatic record clearance. According to an analysis by the Philadelphia District Attorney’s Office, court debt disqualified a large number of misdemeanor convictions in Philadelphia from automatic sealing,^c and only a small percentage of these convictions had outstanding restitution.^d These findings drove advocates to continue to push for legislation that would remove court debt as a barrier to record clearing, ultimately culminating in H.B. 440, which eliminated non-restitution court debt as a barrier.^e Although restitution remains a barrier, H.B. 440 nevertheless constitutes an important step in the right direction.

petition-based record clearing, New Jersey requires payment of court debt to clear both state convictions and municipal violations; however, for state convictions, a court may grant clearance upon a finding of indigency, in which case it must convert the debt to a civil judgment. (Another standard applies under the state’s “clean slate” petition-based and automatic record clearing authority, where courts are required to grant record clearance and convert the debt to a civil judgment.)

Lastly, a few of these states specifically authorize the decision maker to waive otherwise mandatory payment of court debt as a condition of eligibility based on hardship or inability to pay. For example, Rhode Island law provides that any outstanding court debt may be waived or reduced by court order where an applicant has shown “good character.” As noted above, New Jersey also allows waiver of mandatory payment obligations in some cases.

These laws, while posing less complete monetary barriers to record clearing than laws in states that require payment of all court debts, still present barriers to record clearing and to a fresh start for those unable to afford payment of the specified debts.

4. *Court debt does not disqualify but may be considered by a court or administrative body (14 states and D.C.)*

Jurisdictions in this category do not expressly require payment of court debt to qualify for record clearing, but the decision to grant relief is discretionary. The court or administrative body responsible for considering applications may consider a variety of criteria that implicate court debt, such as degree of rehabilitation, victim objection, or “interests of justice.”

Fourteen states and the District of Columbia fall into this category. The fourteen states are: California, Connecticut, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New York, South Carolina, Virginia, and West Virginia.

In a few of these states, outstanding court debt is specifically mentioned as one factor that a court may consider in deciding whether to grant relief. In others, court debt is not included on the menu of discretionary factors for the court to consider—but it is not excluded. Illinois is the only state in this category that prohibits consideration of certain types of court debt, although it permits consideration of restitution.⁷⁵

Laws authorizing discretionary denial of record clearing based on outstanding court debt may give rise to substantial inconsistency and potential for bias and arbitrariness depending on how judges and prosecutors exercise their discretion.

According to practitioners who shared their experiences with us, courts in some jurisdictions so rarely exercise their discretion to ignore outstanding court debt as to make payment a de facto requirement. For example, according to an Ohio attorney, even though courts have the discretion to seal records despite nonpayment of court debt, in practice, courts effectively make payment a requirement by routinely finding that nonpayment is evidence that a defendant has not been adequately rehabilitated.⁷⁶ An attorney in Kansas indicated that most prosecutors object to record clearing if the petitioner owes any court debt.⁷⁷ An Oregon attorney similarly noted that some prosecutors will oppose record clearing on the ground of outstanding court debt, though sometimes they limit their opposition to outstanding court debt owed in their own jurisdiction.⁷⁸

Also included in this category are three states—Connecticut, Michigan, and Virginia—that have dispensed with requiring payment of court debt entirely in the context of recently-enacted automatic record-clearing schemes. However, these three states still continue to allow outstanding court debt to be considered for petition-based relief. Similarly, in California a person who owes court debt might or might not be eligible for automatic record clearing but, if ineligible, may still qualify for petition-based relief.⁷⁹

Laws authorizing discretionary denial of record clearing based on outstanding court debt may give rise to substantial inconsistency and potential for bias and arbitrariness.

Michigan: Court Debt Not Considered in Clearing Certain Records

In September 2020, the Republican-controlled Michigan legislature voted overwhelmingly to approve H.B. 4980, establishing a fully automatic record-clearing scheme applicable to a range of felonies, most misdemeanors, and non-conviction records. At the same time, the legislature approved a series of additional bills extending eligibility for petition-based set-aside and sealing to a broader range of offenses, and facilitating the application process. Democratic Governor Gretchen Whitmer signed the bills two weeks later.

Notably, a restitution and other court debt need not be paid for a conviction to be eligible for automatic sealing. However, a key to obtaining this provision was the addition of a restitution

“clawback” provision, authorizing a court to unseal the conviction if a person “has not made a good-faith effort to pay” restitution.^a The fact that a person has outstanding court debt is also not disqualifying under Michigan’s petition-based scheme, although the court is not prohibited from considering court debt as a factor in assessing the “circumstances and behavior of the applicant” for purposes of deciding whether to grant relief.^b

The advocacy efforts of a coalition of state and national organizations and business leaders in Michigan, coordinated and led by Safe & Just Michigan, proved vital to persuading legislators of the importance of eliminating court debt to facilitate automation.^c

5. Court debt has no effect on access to record clearing (1 state)

Jurisdictions are included in this category if they do not make court debt a barrier to record clearing. That is, a court or administrative agency may not consider the fact that a person has outstanding court in deciding whether to clear that person’s record.

Only one state, Louisiana, falls into this category. Louisiana’s law does not directly address the relevance of court debt, but it appears that eligibility for record clearing depends entirely on the passage of time. Louisiana’s laws alone therefore prevent court debt from being a barrier to record clearing.⁸⁰

6. No general conviction record clearing (7 states and the federal system)

Jurisdictions in this category have no general record clearing law. Some of these states in this category offer forms of record relief that are beyond the scope of this study, such as set-aside authority (Idaho and Nebraska), or narrowly focused laws that apply only to specific categories of individuals, such as victims of human trafficking or participants in drug treatment, youth offense programs, or other specialized intervention programs. They may also offer executive pardon with or without resulting record clearance.

We determined that seven states and the federal system have no generally applicable provision for record clearing. The seven states are: Alaska, Florida, Hawaii, Idaho, Maine, Nebraska, and Wisconsin.

What Happens to Court Debt after Sealing?

States that authorize record clearing despite outstanding court debt do not always indicate what happens, if anything, to these obligations after the record is cleared. Those that do take varying approaches. For example, California law provides that court debt that constitutes a “penalty or disability” is extinguished after sealing.^a In a handful of states, the law authorizes the court to reduce or waive entirely court debt owed to the government as part of the clearance process (in Rhode Island for any court debt, and in Delaware and Vermont for certain types of court debt).^b In New Jersey, after record clearance is granted, the court must convert outstanding court debt to a civil judgment.^c Illinois and Virginia explicitly authorize access to sealed records for the purpose of collecting court debt.^d Whether court debt should continue to be collected or should be waived or reduced after record relief is beyond the scope of this report.

C. Key Takeaways from the State-by-State Analysis

With the caveat that some laws are so unclear as to defy firm conclusions, our analysis of legal authorities governing how court debt is treated in the context of record clearing across the country leads to the following general conclusions:

- In almost every jurisdiction we studied, outstanding court debt is a barrier to record clearing in at least some cases, either rendering a person entirely ineligible for relief or making it difficult for them to qualify. Law reforms in almost every jurisdiction are therefore needed to ensure that people are not prevented from getting a second chance simply because of their limited financial means.
- Over half the jurisdictions studied (28) mandate payment of court debt in some or all cases in order to qualify for record-clearing relief.
- At the same time, however, only 6 states require payment of *all* court debt in all cases in order to qualify for record clearance—evidence that most state policymakers do not think that all court debt should have to be paid off for an individual to benefit from record clearing.

In almost every jurisdiction we studied, outstanding court debt is a barrier to record clearing in at least some cases, either rendering a person entirely ineligible for relief or making it difficult for them to qualify.

- While some states that have enacted automatic record clearing do not consider court debt, others do, such that making record clearing automatic does not necessarily obviate this monetary barrier.
- In many states, it is difficult to determine the relevance of outstanding court debt in the record-clearing context, and even more difficult to predict whether a person with outstanding court debt will be successful in obtaining relief. This uncertainty makes it difficult both to understand eligibility for record clearing and to successfully navigate the application process, and creates the potential for inconsistencies in how the law is applied and who obtains relief.

V. APPLICATION-RELATED FEES AS AN ADDITIONAL BARRIER TO RECORD CLEARING

While this report focuses on court debt as a monetary barrier to record clearing, a more explicit barrier is application-related fees and costs. In many states, people who wish to submit a petition to the court to clear their record must either pay a specific expungement filing fee (which can amount to several hundred dollars), or a general civil filing fee (which can also amount to several hundred dollars, can consist of both state and local fees, and may vary by locality).⁸¹ Petitioners may also be required to pay the cost of obtaining copies of required court documents; docketing fees; record-clearing fees to entities such as a police department or state agency; fingerprint processing fees; notary fees; and/or the cost of serving government agencies with petitions and orders.⁸² Recent scholarship has identified many of the application-related fees and costs that may be levied in each state,⁸³ but the sheer variety of such fees and costs, and their variability in different localities within states, can make them difficult to calculate on a comprehensive basis.⁸⁴ Sometimes individuals unable to pay these fees may seek a waiver, but waivers are not always available, and are often limited to individuals that the state deems indigent rather than all those for whom payment is a hardship.⁸⁵

Additionally, due to the complexity of record-clearing laws and processes, many applicants must rely on the assistance of a lawyer. Because free legal services are severely limited or inaccessible in much of the country, the cost of legal assistance to petition for record clearing is yet another monetary barrier.⁸⁶ Further, court-appointed defense counsel are unlikely to have authority to assist with conviction record clearance.

Finally, applicants may have to bear financial burdens imposed by logistical realities, such as the cost of transportation to court proceedings and various agency offices, lost wages, and the cost of childcare services.⁸⁷ The many and varied monetary barriers within a petition-based record-clearing system have fueled calls to make relief automatic.

How Does the Treatment of Outstanding Court Debt Relate to Automatic Record Clearing?

Removing court debt as a barrier to record clearing not only extends eligibility for relief, but also facilitates the use of automatic record-clearing systems (i.e., record clearing that occurs without the need for an individual to file a petition). As a general matter, eligibility criteria that turn on highly specific facts make it more difficult for states to automate their record-clearing systems.

In the case of court debt in particular, it can be especially challenging for states to clear records automatically if they must identify which cases include outstanding court debt. In at least some states, there are multiple and inconsistent sources of data concerning who owes what fines, fees, and costs, particularly in the states without a unified court system. Even if there is data about court debt in a single central database, there are often errors in this data. As one scholar has noted, there is an administrability challenge when eligibility for automatic record clearing depends upon “sentence completion” because it “is often unclear whether or not

outstanding fines and fees must be paid and whether they have been.”^a

Several states have adopted automatic processes that clear records notwithstanding outstanding court debt: California, Connecticut, Michigan, New Jersey, and Virginia.^b Pennsylvania has charted an intermediate path: outstanding fines and fees are not a barrier to automatic record clearing, but restitution is. (For more information about Pennsylvania, see the call-out box in Section IV.B.3.)

Although it is easier for states to effectuate automatic record-clearing processes if paying off court debt is not an eligibility requirement, the two do not necessarily go hand in hand. Utah and Delaware have both adopted automatic record clearing that is available only to individuals who have paid off their court debt. And South Dakota’s automatic record-clearing law requires payment of any court debt that is a “court-ordered condition[] on the case.”^c

Importantly, the monetary barriers posed by application-stage record-clearing fees and requirements to pay outstanding court debt interact in ways that further limit access to record clearing. A requirement to pay both a high-dollar filing fee and additional high-dollar court debt from the underlying case will put access to record clearing out of reach for more people than would either of these financial burdens alone. **Even in states where outstanding court debt does not automatically bar relief but may be a factor resulting in denial, a requirement to pay a hefty nonrefundable filing fee just to be considered for record clearing may be too big a gamble for a petitioner with**

Supreme Court of Kentucky: Application-Related Expungement Fees Can Limit the Ability to Access the Courts and to Benefit from State Record-Clearing Laws

Kentucky’s expungement regime requires (1) people to pay a \$50 filing fee to apply to have their record expunged; and (2) then, if a court orders that they are entitled to expungement, they must pay an additional \$250 expungement fee before their record will actually be expunged.^a In December of 2021, the state supreme court held that the state’s *in forma pauperis* (IFP) statute,^b which allows for waiver of fees based on inability to pay, applied to both

of these fees.^c The court was particularly critical of the government’s argument that the IFP statute should not apply to the \$250 expungement fee, explaining: “**We can identify no other situation in our Commonwealth where a judge renders a judgment that a litigant is entitled to a benefit under the law, but that litigant cannot obtain the benefit of that judgment unless and until he pays a fee.**”^d

outstanding debt and little to no savings. And even where a state allows a court to waive application fees and outstanding court debt based on judicial discretion or demonstrated inability to pay, legal counsel is generally required to identify and successfully navigate the waiver process—but those unable to pay fees are likewise unable to pay for an attorney.

We recommend that applicants for record clearing not be required to pay application fees for the same reason we make this recommendation where court debt is concerned: record clearing should not be predicated on a person’s financial means. Providing a waiver process based on inability to pay is not an effective solution because, among other reasons, such processes are inefficient and potentially unfair and arbitrary. (For more information about waiver processes, see the call-out box called “Problems with Relying on Ability-to-Pay Tests and Payment Waivers” in Section III.B.)

A requirement to pay a hefty nonrefundable filing fee just to be considered for record clearing may be too big a gamble for a petitioner with outstanding debt and little to no savings.

VI. CONCLUSION & RECOMMENDATIONS

Equity is fundamental to any system of justice. Yet linking record clearing (or any form of record relief) to the ability to pay court debt and application-related fees—as most states do—creates a system that favors the rich and punishes the poor. Monetary barriers to record clearing also disproportionately affect people of color, who are disproportionately targeted by law enforcement for crimes that generate court debt and, due to the longstanding racial wealth gap, are less likely to be able to pay assessed amounts.

Moreover, most monetary barriers to record clearing are counterproductive. Having a publicly accessible criminal record makes it very difficult to secure a job. Without a job, it is almost impossible to pay outstanding court debt or afford the cost of applying for record clearing. And without the means to make these payments, it can be impossible to clear a record.

To ensure meaningful and equitable access to record clearing, states should adopt the following recommendations.

1. Court debt should never be a barrier to record clearing.

- State laws providing for record clearing should not condition qualification for relief on the absence of outstanding court debt and should specify that outstanding court debt may not be considered as a basis for denying relief.
- Court debt should not bar relief regardless of whether the record-clearing scheme is automatic or petition-based.

States should not require payment of court debt to clear a record, by law or by practice, nor should states permit discretion to deny record clearing on the basis of outstanding court debt. **If, however, a state persists in requiring the payment of any court debt, it should:**

- ▶ Ensure that those seeking relief can **easily determine** what they have paid and what they still owe.
- ▶ Mandate **waiver of the court debt requirement** for those who cannot afford to pay.
- Petitioners should not need an attorney to assert inability to pay. Court forms or procedures should incorporate an opportunity for petitioners to explain why any court debt is unpaid. Instruction forms and informational materials should explain that the court may waive payment based on inability to pay.
- The process for assessing ability to pay (ATP) should reflect that many, if not most, people who do not pay their court debt in full are unable to afford to do

so. Therefore, most people should receive a waiver. There should be clear and objective criteria dictating when individuals should receive a waiver.

- One source to help craft ATP standards is the [Fines and Fees Justice Center's First Steps Toward More Equitable Fines and Fees Practices: Policy Guidance on Ability-to-Pay Assessments, Payment Plans, and Community Service](#) (2020).

2. Application-related costs, including filing fees, should never be a barrier to record clearing.

- States should adopt automatic record-clearing processes that do not require individuals to incur any application-related fees or costs to have their records cleared.
- State processes for petition-based record clearing should not require a person seeking relief to pay any filing fees or other costs to submit a petition or obtain relief, regardless of the person's ability to pay.

States should adopt record-clearing systems that do not require eligible individuals to file an application. **However, if automatic record clearing is not available or imminently attainable, states should:**

- Eliminate entirely the **fees and costs** associated with the application process.
- Establish **clear guidelines and procedures** for obtaining record clearing that a non-lawyer can easily understand.
- Ensure that the process for obtaining relief is **as simple as possible** (i.e., does not require an individual to complete multiple steps, make in-person visits to different government agencies, or appear in court for a hearing) and **does not depend on the applicant's ability to find and afford an attorney**.
- Ensure that **courts and agencies are responsible for administrative tasks** such as serving agencies and obtaining copies of records.

3. States should collect and report data related to monetary barriers to record clearing.

- States where record clearing may be denied on the basis of outstanding court debt should collect and publicly report data reflecting the impact of these barriers to record clearing.
 - ▶ In states where outstanding court debt renders people ineligible for record clearing, states should collect and report data on the number of people who are ineligible for record clearing due to outstanding court debt. In states where outstanding court debt may be a basis for denial of a record-clearing petition, states should collect and report

data on the number of people who applied for record clearing, the number who were approved, and the number who were denied, with categories broken down by whether the petitioner had outstanding court debt. States should also collect and report demographic information, which may include zip code data and data on eligibility for appointed counsel or application fee waiver, to assess the impact of such barriers on disadvantaged populations, including people of color and low-income people.

- States should collect data reflecting the impact of filing fees and other petition-related costs on obtaining relief.
 - ▶ States should collect and report data that will enable them to assess the extent to which filing fees and other petition-related costs prevent or discourage individuals from applying for record clearance. This data collection should also include available demographic information, which may include zip code data and data on eligibility for appointed counsel or legal services, to assess the impact of these barriers on disadvantaged populations, including people of color and low-income people.

ENDNOTES

1. This report focuses on record clearing as the past decade's most frequently enacted way of overcoming the collateral consequences of arrest or conviction, and on the monetary barriers to this form of criminal record relief. However, its arguments and recommendations should apply to monetary barriers that disqualify individuals from other forms of record relief (e.g., pardon, set-aside, and certificates of relief). For an overview of criminal record relief mechanisms enacted in recent years, see Margaret Love & David Schlüssel, *Collateral Consequences Res. Ctr., The Many Roads from Reentry to Reintegration: A 50-State Report on Laws Restoring Rights and Opportunities After Arrest or Conviction* (forthcoming 2022); see also *id.* at Section II.A (documenting how executive pardon is the exclusive form of record relief available for many kinds of convictions in many states).
2. Joy Radice, [Access-to-Justice Challenges for Expungement in Tennessee](#), 30 Fed. Sent'g Rep. 277, 277 (Apr. 1, 2018).
3. *Doe v. Iowa*, 927 N.W.2d 656 (Iowa 2019).
4. See Crim. Just. Pol'y Program at Harvard L. Sch., [Confronting Criminal Justice Debt: A Guide for Policy Reform](#) 6 (2016).
5. Fed. Bureau of Investigation, [July 2021 Next Generation Identification \(NGI\) System Fact Sheet](#) 1 (2021) (reporting 78.4 million records pertaining to unique individuals based on fingerprints); [QuickFacts: United States](#), U.S. Census Bureau (July 1, 2019) (reporting that as of July 2019, there were 328 million people living in the United States, 77.5% of whom were 18 years or older, which equates to about 254 million adults).
6. Consumer Fin. Prot. Bureau, [Justice-Involved Individuals and the Consumer Financial Marketplace](#) 27 (2022). The immense scope and impact of collateral consequences have been the topic of considerable academic and policy literature. We therefore provide only a brief summary of that body of work here. Additional authorities are collected on the [website](#) of the Collateral Consequences Resource Center.
7. Chidi Umez & Joshua Gaines, Council of State Gov'ts & Nat'l Reentry Res. Ctr., [After the Sentence, More Consequences: A National Report of Barriers to Work](#) 3 (2021) (noting that across the 53 non-federal jurisdictions included in the National Inventory of Collateral Consequences of Conviction (NICCC) database, the average number of consequences per jurisdiction is nearly 750, which is in addition to the 950 federal consequences that apply across the board, making the average number of consequences closer to 1,700 per jurisdiction). Collateral consequences include limitations on a person's ability to vote; serve on a jury or in public office; access public benefits; qualify for government jobs, student loans, and licensed professions; obtain a driver's license; gain admission to public housing; obtain or retain immigration status; maintain parental rights; enlist in the military; and possess a firearm. Margaret Colgate Love et al., *Collateral Consequences of Criminal Conviction: Law, Policy and Practice* Ch. 2 (4th ed. 2021). Record clearing may or may not remove these formal legal barriers and is generally most effective in overcoming less formal consequences such as private discrimination in employment and housing. See Section II.B.
8. Ariel Nelson, Nat'l Consumer L. Ctr., [Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing](#) 3, 8 (2019). The demand for background checks also has proliferated in the relatively new gig economy. *Id.* at 8.
9. Devah Pager & Bruce Western, Nat'l Crim. Just. Reference Serv., [Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young](#)

Men (2009).

10. Devah Pager et al., [Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records](#), *Annals of the Am. Acad. of Pol. & Soc. Sci.* 195, 199 (2009).
11. See Cael Warren, Wilder Found., [Success in Housing: How Much Does Criminal Background Matter?](#) ii, 19–22 (2019) (in a study of more than 10,500 households living in 4 nonprofit housing providers, (1) finding that out of 15 broad categories of offense, conviction records for 11 have no statistically significant consequences for housing outcomes; and even within the 4 remaining categories, a misdemeanor conviction has no statistically significant predictive effect after 2 years, and a felony has no statistically significant predictive effect after 5; and (2) stating “the study results overall tend to overstate the magnitude and significance of the impact of criminal background on housing outcomes,” in part because the researchers were unable to control for a number of factors (emphasis in original)); see also Tex Pasley et al., Shriver Ctr. On Poverty L., [Screened Out: How Tenant Screening Reports Deprive Tenants of Equal Access to Housing](#) (2020); Rebecca Vallas & Sharon Dietrich, Ctr. For Am. Progress, [One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records](#) 19 (2014).
12. 15 U.S.C. § 1681c(a)(5) (providing that “no consumer reporting agency may make any consumer report containing . . . [a]ny other adverse item of information, *other than records of convictions of crimes* which antedates the report by more than seven years” (emphasis added)); *id.* § 1681e(b) (consumer reporting agencies must ensure “maximum possible accuracy”); see also Sharon Dietrich, [May Background Screeners Lawfully Report Expunged Records?](#), *Collateral Consequences Res. Ctr.* (Feb. 6, 2018).
13. U.S. Comm’n on Civ. Rts., [Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities](#) 3 (2019) [hereinafter U.S. Comm’n on Civ. Rts., *Collateral Consequences*].
14. Rebecca Vallas et al., Ctr. for Am. Progress, [Removing Barriers to Opportunity for Parents with Criminal Records and Their Children: A Two-Generation Approach](#) 1 (December 2015).
15. More specifically, the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 includes a lifetime ban on receiving federal public assistance—through the Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF)—for individuals with felony drug convictions. *Id.* at 5. Although federal law gives states the option to modify or waive these bans, more than half the states have retained a ban in part or in whole for TANF, SNAP, or both. See Darrel Thompson & Ashley Burnside, Ctr. for L. & Soc. Pol’y, [No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions](#) (2021). The Center for American Progress writes that “[t]his outdated and harsh policy . . . deprives struggling families of vital nutrition assistance and pushes them even deeper into poverty at precisely the moment when they are seeking to regain their footing. . . . [S]afety net programs such as SNAP not only alleviate hunger, reduce poverty, and improve children’s health in the short run but also improve children’s long-term educational, economic, and health outcomes.” Vallas & Dietrich, *supra* note 11, at 9; see also U.S. Comm’n on Civ. Rts., *Collateral Consequences*, *supra* note 13, at 134 (“Restrictions on public housing and public benefits, including TANF and SNAP, make people acutely vulnerable upon leaving prison. Many people who leave prison do so without money and resources for basic living expenses, which are not easily obtained in part due to the restrictions on public benefits and housing. These consequences fail to protect the public safety and can lead the formerly incarcerated person toward unlawful means to earn subsistence money. . . . [P]ersons subject to these bans are

- overwhelmingly women.”).
16. Vallas et al., *supra* note 14 at 9 (explaining that “‘one strike and you’re out’ public housing policies . . . can make it impossible for an individual with a criminal record to physically rejoin his or her family”); Natalie Goulette, [Revisiting Collateral Consequences: Their Impact In and Outside of the Courtroom](#), Robina Inst. of Crim. L. & Crim. Just. Blog (Sept. 14, 2020).
 17. Vallas et al., *supra* note 14, at 5–13. See also Philip M. Genty, [Damage to Family Relationships as a Collateral Consequence of Parental Incarceration](#), 30 Fordham Urb. L.J. 1671, 1671 (2003) (“Imprisonment undermines families and has a detrimental impact upon children, caretakers, and the communities in which they live. Unlike other collateral consequences, family separation has an irreversible impact upon both parents and children. The time apart is lost forever, because a childhood can never be recovered.”); Laura M. Maruschak et al., U.S. Dep’t of Just., [Parents in Prison and Their Minor Children: Survey of Prison Inmates, 2016](#) (2021) (providing a statistical review of issues concerning incarcerated parents and their minor children). See generally Philip M. Genty, *Family-Related Consequences*, in Love et al., *supra* note 7, §§ 2:25–2:28.
 18. Nelson, *supra* note 8, at 8; see also, e.g., U.S. Comm’n on Civ. Rts., *Collateral Consequences*, *supra* note 13, at 19 (“People of color are more likely to be arrested, convicted, and sentenced more harshly than are white people, which amplifies the impact of collateral consequences on this population.”); U.S. Equal Emp’t Opportunity Comm’n, [Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964](#) 1 (2012) (“National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.”); Marsha Weissman et al., Ctr. For Community Alternatives, [The Use of Criminal History Records in College Admissions: Reconsidered](#) 8 (2010) (“[I]t has now been well-documented that racial disparities infect the entire criminal justice system, from policing to sentencing. Such disparities have been documented in the processing of every type of crime, from juvenile delinquency to low-level misdemeanors to the imposition of the death penalty. . . . [R]acial bias, whether deliberate or inadvertent, occurs at every stage of the criminal justice system. . . .” (citations omitted)).
 19. U.S. Comm’n on Civ. Rts., *Collateral Consequences*, *supra* note 13, at 19.
 20. Elizabeth Hinton et al., Vera Inst. of Just., [An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System](#) 1 (2018).
 21. Terry-Ann Craigie et al., Brennan Ctr. for Just., [Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality](#) 7 (2020).
 22. *Id.* at 18–19; see also J.J. Prescott & Sonja B. Starr, [Expungement of Criminal Convictions: An Empirical Study](#), 133 Harv. L. Rev. 2460, 2554 (2020) (“Long after they have served their sentences, tens of millions of Americans and their families face the serious challenges of life with a criminal conviction record, and this number increases daily. Collectively, these challenges contribute to many significant public policy concerns, making it harder for these families to avoid poverty and contributing to racial disparities in employment and other domains.”); Leslie C. Levin et al., [The Questionable Character of the Bar’s Character and Fitness Inquiry](#), 40 L. & Soc. Inquiry 51, 54 (2015) (“The focus on past criminal conduct may perpetuate racial and class biases, as people of color and the poor are subjected to differential treatment in the criminal justice system.”).
 23. U.S. Comm’n on Civ. Rts., *Collateral Consequences*, *supra* note 13, at 81 (noting that in

2016, the incarceration rate for Black women was almost double that for white women, and in 2014, the incarceration rate for Latina women was 1.2 times the rate for white women); see also *id.* (suggesting women of color are hit especially hard by lifetime bans on federal public nutrition assistance programs, given that: approximately 85% of adult recipients of Temporary Assistance for Needy Families (TANF) are women, and most TANF recipients are people of color; and twice as many women as men have received Supplemental Nutrition Assistance Program (SNAP) benefits at any time in their life, and women of color are much likelier than their white counterparts to have received SNAP benefits).

24. Colleen Chien, [America's Paper Prisons: The Second Chance Gap](#), 119 Mich. L. Rev. 519, 524, 587 (2020).
25. *Id.*
26. See U.S. Comm'n on Civ. Rts., Collateral Consequences, *supra* note 13, at 21 ("Incarcerated people are twice as likely to have an intellectual disability, four to six times more likely to have a cognitive disability, twice as likely to have a mobility disorder, three to four times more likely to be blind or have a vision impairment, and two to three times more likely to have a hearing impairment than the general population."); see also *id.* (listing additional statistics concerning the overrepresentation of people with disabilities in the criminal justice system).
27. See *id.* at 22. ("Although 4.1 percent of American adults identify as LGBT, 9.3 percent of male prisoners and 42.1 percent of female prisoners identified as LGBT or reported having same-sex encounters before incarceration. . . . Twenty-one percent of transgender women and 10 percent of transgender men report that they have spent time in jail or prison.").
28. *Id.* at 21.
29. *Id.*
30. Prescott & Starr, *supra* note 22, at 2463–65.
31. U.S. Comm'n on Civ. Rts., Collateral Consequences, *supra* note 13, at 5 (discussing the "potential economic value of lowering hurdles to employment for people with criminal records"); see also Cherrie Bucknor & Alan Barber, Ctr. for Econ. & Pol'y Rsch., [The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies](#) 13 (2016) (estimating that the U.S. economy loses \$78 billion to \$87 billion in GDP each year due to the adverse effects of criminal records on employment).
32. Prescott & Starr, *supra* note 22, at 2467.
33. Caroline Cohn et al., Stanford Ctr. on the Legal Pro. & Stanford Crim. Just. Ctr., [Unlocking the Bar: Expanding Access to the Legal Profession for People with Criminal Records in California](#) 5 (2019); see also *id.* at 20 & n.49–50 (discussing (1) a Charles Koch Institute survey in which a majority of managers and human resources professionals rated the quality of their workers with criminal records as equal to or better than the quality of those without a record; and (2) a study of people with a felony record who served in the U.S. military that found these individuals were promoted more quickly and to higher ranks than others, and were no more likely than people without records to be discharged for negative reasons).
34. *Id.* at 20.
35. Prescott and Starr found that expungement-recipients in Michigan in fact posed a *lower* risk of committing a crime than members of Michigan's general population. Prescott & Starr, *supra* note 22, at 2466 ("We find very low rates of recidivism: just 7.1% of all expungement recipients are rearrested within five years of receiving their expungement (and only 2.6% are rearrested for violent offenses), while reconviction rates are even lower: 4.2% for any crime and only 0.6% for a violent crime. Indeed, expungement recipients' recidivism rates

compare favorably with those of the Michigan population as a whole.”); see also *id.* at 2521–22 (“[N]o similarly plausible empirical support exists for the opposite claim . . . that sealing records increases recidivism risk. To our knowledge, those raising this objection have never presented evidence supporting it, and its rationale is not obvious.” (emphasis omitted)).

36. *Id.* at 2467.
37. See, e.g., Kiminori Nakamura & Kristofer Bret Bucklen, [Recidivism, Redemption, and Desistance: Understanding Continuity and Change in Criminal Offending and Implications for Interventions](#), 8 Soc. Compass 384, 385 (2014).
38. For more information about current U.S. law and practice concerning restoration of rights following arrest or conviction in all 50 states, D.C., and the federal system, see [Restoration of Rights Project](#), Collateral Consequences Res. Ctr. (last visited Nov. 18, 2021), [50-State Comparison: Expungement, Sealing & Other Record Relief](#), Collateral Consequences Res. Ctr. (last visited Nov. 18, 2021) (research in summary form in series of 50-state charts), and Love & Schlüssel, [The Many Roads from Reentry to Reintegration](#), *supra* note 1 (survey of national landscape).
39. See, e.g., Bridget McCormack, [Let’s Move Criminal Justice Reforms Upstream: A Perspective from the Bench](#), 74 SMU L. Rev. 575 (2021); Chien, *supra* note 24. Prescott and Starr found that only 6.5% of those eligible for relief in the years they studied were successful in navigating the application process. See Prescott & Starr, *supra* note 22, at 2466, 2489–92. For in-depth studies of access barriers in two states, see Noella Sudbury, Collateral Consequences Resource Center, [Access Barriers to Felony Expungement in Utah](#) (2021); Beth Johnson et al., Collateral Consequences Resource Center, [Access Barriers to Felony Expungement: The Case of Illinois](#) (2021).
40. See Section II.B, *supra*, defining “record clearing.”
41. *Compare*, e.g., disclosure requirements in the U.S. Small Business Administration’s application forms, SOP 50-10-6, pt. 2, § A, ch. 3.B (effective Oct. 1, 2020) (requiring disclosure of expunged convictions), with the Federal Deposit Insurance Corporation’s recently revised regulations on bank employment, 12 C.F.R. §§ 303.221–231, 308.156–158 (adopting recommendation to preclude consideration of sealed and expunged records). See also Margaret Love, [Will restrictions on banking jobs be relaxed for people with a record?](#), Collateral Consequences Res. Ctr. (Mar. 25, 2020).
42. See, e.g., Alessandro Corda & Sarah E. Lageson, [Disordered Punishment: Workaround Technologies of Criminal Records Disclosure and the Rise of a New Penal Entrepreneurialism](#), 60 Brit. J. of Criminology 245 (2020).
43. See Crim. Just. Pol’y Program at Harvard L. Sch., *supra* note 4, at 6.
44. See, e.g., Pub. Affs. Rsch. Council of Alabama, [Unified But Not Uniform: Judicial Funding Issues in Alabama](#) 17–18 (2014) (for a defendant charged with possession of one ounce of marijuana in Shelby County, Alabama “[a] conservative estimate of the court costs, fees and fines on this single charge would be \$2,611”—not including probation fees of \$40 per month, fees for drug testing and counseling, and a six-month suspension of the driver’s license with a \$300 reinstatement fee); Alexes Harris et al., [Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States](#), 115 Am. J. Socio. 1753, 1767 (2010) (finding that for a sample of 500 people convicted of a felony in Washington state in 2004, LFO assessments ranged from \$500 to \$305,145, with a median debt of \$7,234).
45. Lawrence Mower & Langston Taylor, [Florida Ruled Felons Must Pay to Vote. Now, It Doesn’t Know How Many Can](#), *Tampa Bay Times* (Oct. 7, 2020) (describing the requirement that fines and fees be repaid to restore Floridians’ right to vote, in combination with a lack of

a central database of court fees or fines, as causing an “administrative nightmare,” in the words of U.S. District Judge Robert Hinkle).

46. April D. Fernandes, Michele Cadigan, Frank Edwards, & Alexes Harris, [Monetary Sanctions: A Review of Revenue Generation, Legal Challenges, and Reform](#), 15 Ann. Rev. L. & Soc. Sci. 397, 397–402 (2019); Brittany Friedman & Mary Pattillo, [Statutory Inequality: The Logics of Monetary Sanctions in State Law](#), 5 Russell Sage Found. J. Soc. Scis. 173, 173–78 (2019); Karin D. Martin, Bryan L. Sykes, Sarah Shannon, Frank Edwards, & Alexes Harris, [Monetary Sanctions: Legal Financial Obligations in US Systems of Justice](#), 1 Ann. Rev. Criminology 471, 472 (2018); Kasey Henricks & Daina Cheyenne Harvey, [Not One but Many: Monetary Punishment and the Fergusons of America](#), 32 Sociol. F. (Special Issue) 930, 930–51 (2017) (estimating that in 2012, state and local revenue from monetary punishments was \$15.7 billion, a 650% increase from 1977); Alicia Bannon et al., Brennan Ctr. for Just., [Criminal Justice Debt: A Barrier to Reentry](#) 4 (2010).
47. See Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, [The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties](#) 7 (2019).
48. Crim. Just. Pol’y Program at Harvard L. Sch., *supra* note 4.
49. See *id.*; Abby Shafroth, Nat’l Consumer L. Ctr., [Criminal Justice Debt in the South: A Primer for the Southern Partnership to Reduce Debt](#) (2018). For information about why an unfavorable credit report and lowered credit score are not listed as additional collateral consequences, see Carolyn Carter, Ariel Nelson, & Abby Shafroth, Nat’l Consumer L. Ctr., [Collecting Criminal Justice Debt Through the State Civil Justice System: A Primer for Advocates and Policymakers](#) 30–31 (2021).
50. Margaret Love & David Schlusell, Collateral Consequences Res. Ctr., [Who Must Pay to Regain the Vote: A 50-State Survey](#) (2020).
51. See, e.g., Sarah Shannon, Beth M. Huebner, Alexes Harris, Karin Martin, Mary Patillo, Becky Pettit, Bryan Sykes, & Christopher Uggen, [The Broad Scope and Variation of Monetary Sanctions: Evidence From Eight States](#), 4 UCLA Crim. L.J. 269, 275 (2020) (noting that interviewees reported experiencing a variety of negative financial consequences when they were unable to pay court debt, including “barriers to opening savings and checking accounts, loan denials, bankruptcy, fear of filing taxes, and insurance denials”); Melissa Sanchez & Sandhya Kambhampati, [How Chicago Ticket Debt Sends Black Motorists into Bankruptcy](#), ProPublica & Mother Jones (Feb. 27, 2018).
52. See Jessa Boehner, Janet Ginzberg, Jamie Gullen & Katie Svoboda-Kindle, Cmty. Legal Servs. of Philadelphia Through the Nat’l Record Clearing Project, [Breaking Down Barriers to Record Clearing: A Survey of the Field](#) 21 (2021).
53. See *id.*
54. See Chien, *supra* note 24, at 526, 524 (defining the “second chance gap” as “the difference between eligibility for and receipt of a given second chance” and finding that (1) “an estimated 30–40 percent of people with records . . . are eligible to clear their criminal records partially or fully on the basis of nonconvictions expungement policies but have not done so” and (2) “uptake rates of convictions relief below 10–20 percent were the norm” in the states studied (footnote omitted)); see also Boehner et al., *supra* note 52, at 1.
55. Sharon Brett, Neda Khoshkhoo, & Mitali Nagrecha, Crim. Just. Pol’y Program at Harvard L. Sch., [Paying on Probation: How Financial Sanctions Intersect with Probation to Target, Trap, and Punish People Who Cannot Pay](#) 27–36 (2020).
56. See, e.g., Beth A. Colgan, [Wealth-Based Penal Disenfranchisement](#), 72 Vand. L. Rev. 55 (2019) (cataloguing the various ways that outstanding court debt may delay restoration of

the vote in each state).

57. According to the National Legal Aid & Defender Association, millions of Americans cannot afford counsel. In New Orleans, for example, more than 80% of people charged with criminal offenses are represented by public defenders. [Right to Counsel](#), Nat'l Legal Aid & Defender Ass'n (last visited Nov. 9, 2021). And involvement with the criminal justice system only causes people to become even worse off financially. See Craigie et al., *supra* note 21, at 1420 (finding that having a conviction or being imprisoned negatively impacts people's annual and lifetime earnings).
58. Ala. Appleseed Ctr. for Law & Just., Univ. of Ala. at Birmingham Treatment Alternatives for Safer Cmtys. (UAB-TASC), Greater Birmingham Ministries, & Legal Servs. Ala., [Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide](#) (2018); Saneta deVuono-powell, Chris Schweidler, Alicia Walters, & Azadeh Zohrabi, Ella Baker Center, Forward Together, & Research Action Design, [Who Pays? The True Cost of Incarceration on Families](#) (2015).
59. See Ala. Appleseed, *supra* note 58.
60. See, e.g., Harris et al., *supra* note 44, at 1753–99.
61. Jenny Montoya Tansey & Katherine Carlin, Code for Am., [Closing the Delivery Gap](#) 23 (2018) (reporting based on a survey of 569 expungement seekers).
62. See, e.g., U.S. Gov't Accountability Off., [Federal Criminal Restitution: More Debt Is Outstanding and Oversight of Collections Could be Improved](#) (2018) (“GAO’s analysis of Department of Justice (DOJ) data showed that USAOs collected \$2.95 billion in restitution debt in fiscal years 2014 through 2016. . . . However, at the end of fiscal year 2016, \$110 billion in previously ordered restitution remained outstanding, and USAOs identified \$100 billion of that outstanding debt as uncollectible due to offenders’ inability to pay.”); Menendez et al., *supra* note 47, at 13 (concluding that the increase in outstanding LFO debt in the three states studied and limited collection indicate that much of the debt is unlikely to ever be collected).
63. Craigie et al., *supra* note 21, at Tbl. 3.
64. Sharon Brett & Mitali Nagrecha, Crim. Just. Pol’y Program at Harvard L. Sch., [Proportionate Financial Sentences: Policy Prescriptions for Judicial Reform](#) 1–2, 6 (2019).
65. Corey Jones, *Day 1: How one woman’s story depicts Oklahoma’s struggle with fines, fees and costs in the justice system*, Tulsa World (Dec. 2, 2019).
66. See, e.g., U.S. Comm’n on Civ. Rts., [Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications](#) 72 (2017); Michael W. Sances & Hye Young You, [Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources](#), 79 J. Pol. 1090, 1090–94 (2017) (finding that “municipal governments with higher black populations rely more heavily on fines and fees for revenue” and interpreting results of their study to show that “cash-strapped cities target poor and minority voters” through policing “simply because they are less likely to complain and not due to any inherent bias,” or, alternatively, because “fines and other law enforcement policies are intended as methods of social control”); see also Kenitra Brown et al., SMU Dedman Sch. of L., [The ABCs of Racial Disparity: Enforcement of Low-Level Drug Crimes in Dallas County in 2018](#) (2021).
67. See, e.g., Racial Justice & Equal Econ. Opportunity Project, Nat’l Consumer L. Ctr., [Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination](#) (2016) (describing racial disparities in credit reporting and credit scores); see also Chi Chi Wu, [Reparations, Race, and Reputation in Credit: Rethinking the Relationship Between Credit Scores and Reports with Black Communities](#), Medium (Aug. 7, 2020).

68. Neil Bhutta et al., [Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances](#), Bd. of Governors of the Fed. Reserve Syst. (Sept. 28, 2020). Notably, these statistics relied on data from 2019, before the COVID-19 financial crisis, which disproportionately harmed communities of color. See Emily Moss, et. al, [The Black-white wealth gap left Black households more vulnerable](#), Brookings Inst. (Dec. 8, 2020).
69. For more information on juvenile record clearing, see Juvenile L. Ctr., [Failed Policies, Forfeited Futures, National Scorecard](#) (last visited Nov. 24, 2021).
70. For background on non-conviction record clearing and model legislation, see Collateral Consequences Res. Ctr., [Model Law on Non-Conviction Records](#) (2019). For more information on diversionary dispositions, see the [Restoration of Rights Project](#) and national surveys, such as Center for Health and Justice at TASC, [No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives](#) (2013), and Michela Lowry & Ashmini Kerodal, Center for Court Innovation, [Prosecutor-Led Diversion: A National Survey](#) (2019).
71. See Email from Lisa Minutola & Dawn Williams, Del. Pub. Def. Offs., to Andrew Pizor, Nat. Consumer L. Ctr. (Jan. 4, 2021) (on file with authors); Email from Kelsey Heilman, Or. L. Ctr., to Andrew Pizor, Nat. Consumer L. Ctr. (Apr. 15, 2021) (on file with authors); see also Boehner et al., *supra* note 52.
72. Many states do, however, have authorities for waiver or reduction of court debt outside of the context of record clearing, which are beyond the scope of this report. See, e.g., La. Code Crim. Proc. Ann. art. 875.1(d)(3) (“If . . . the defendant’s circumstances and ability to pay his financial obligations change, the defendant or his attorney may file a motion with the court to reevaluate the defendant’s circumstances and determine, in the same manner as the initial determination, whether under the defendant’s current circumstances payment in full of the aggregate amount of all the financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents.”). For the reasons discussed in the call-out box called “Problems with Relying on Ability-to-Pay Tests and Payment Waivers” in Section III.B, such ability-to-pay tests and similar waiver approaches are often ineffective, whether they occur inside or outside of the context of record clearing.
73. There are of course also many non-monetary barriers to record clearing, embodied in restrictive eligibility criteria, lengthy waiting periods, burdensome document production and service requirements, intimidating hearings, etc. Many of these barriers are collected and analyzed in the state-by-state profiles from the Collateral Consequences Resource Center’s [Restoration of Rights Project](#); see also [50-State Comparison: Expungement, Sealing & Other Record Relief](#), *supra* note 38, at pt. 5.
74. Even for those other types of court debt or types of offenses that do not *require* payment, judges generally may consider the debt in deciding whether to grant relief.
75. 20 Ill. Comp. Stat. Ann. 2630/5.2(d)(6)(C). Illinois law states that unpaid restitution may be the basis for denial of sealing “unless the restitution has been converted to a civil judgment.” See *id.* It is unclear whether Illinois law authorizes such a conversion. Even if it does, however, the person who is owed restitution would have to file a petition in the sentencing court, and conversion would be discretionary with the court. See 730 Ill. Comp. Stat. Ann. 5/5-6-2(e-5); see also 730 Ill. Comp. Stat. Ann. 5/5-5-6(m).
76. See Email from Adam Vincent, Se. Ohio Legal Servs., to Andrew Pizor, Nat. Consumer L. Ctr. (Jan. 7, 2021) (on file with authors).
77. Email from Marilyn Harp, Kan. Legal Servs., to Andrew Pizor, Nat. Consumer L. Ctr. (Jan. 12, 2021) (on file with authors).
78. Email from Heilman, *supra* note 71.

79. As noted in the Appendix, California's automatic sealing law includes various eligibility criteria, including the following requirements that may in some instances pose a barrier for a person with outstanding court debt: the person either completed probation without revocation; or, if convicted of an infraction or misdemeanor was not granted probation and, based on the disposition date and the state DOJ's records, "appears to have completed their sentence." Cal. Penal Code § 1203.425(a)(B)(v).
80. It should be noted that in Louisiana (and in most if not all other states), court debt may lead to an extension of a person's period of supervision, which in turn may delay eligibility for record clearing. However, a recent amendment to Louisiana law prohibits extension of probation based solely on inability to pay court debt. La. Code Crim. Proc. Ann. art. 894.4.
81. See Amy F. Kimpel, *Paying for a Clean Record*, 112 J. Crim. L & Criminology (forthcoming 2022) (50-state survey of the costs of record-clearing); [Record Clearing Fees and Waivers](#), Nat'l Conf. of State Legislatures (Aug. 14, 2020) (including a table of direct statutory record-clearing fees and noting that the chart does not include non-statutory fees and thus "may be an underestimate of the total cost to seek record clearing").
82. See Kimpel, *supra* note 81 (documenting the costs of a criminal record check and other additional costs); Boehner et al., *supra* note 52, at 10 (84% of respondents reported that there were "sometimes" or "always" fees to obtain criminal records needed to submit a record-clearing petition).
83. A forthcoming article collects state-by-state information on statutory record-clearing filing fees and a variety of additional costs applicable in record-clearing cases (such as the cost of fingerprints or obtaining a criminal record), including whether these fees and costs may be waived. See Kimpel, *supra* note 81.
84. See *id.* For an analysis of monetary barriers in the application process in Illinois and Utah, see the studies cited in note 39, *supra*.
85. See Kimpel, *supra* note 81 (documenting whether statutory costs associated with expungement can be waived for indigency); compare, e.g., Colo. Rev. Stat. § 24-72-706(1)(h) (\$65 sealing processing fee, waivable upon a determination of indigency), with La. Code Crim. Proc. Ann. art. 983 (\$550 expungement fee, not waivable, except for certain non-conviction dispositions where the person also has no prior felony convictions or pending felony cases); see also [Record Clearing Fees and Waivers](#), *supra* note 81 (identifying only 7 states that waive record-clearing fees, with waiver typically limited to those who can demonstrate "indigency").
86. See, e.g., Prescott & Starr, *supra* note 22, at 2505 (identifying lack of access to counsel as one of five explanations for the expungement uptake gap, and noting that criminal defense attorneys are "typically long since out of touch" by the time a client is eligible for expungement, "[p]aid attorneys are out of reach for most people with records," and that legal aid organizations are overwhelmed); U.S. Comm'n on Civ. Rts., Collateral Consequences, *supra* note 13, at 135 ("The processes people must undertake to restore rights, for example through applications for pardon or for judicial record sealing, are often complicated, opaque, and difficult to access. They often require hiring a lawyer, court filing fees, collecting evidence and several appearances in court before the state will grant such restoration.").
87. Gus Tupper, Jaboa Lake, & Akua Amaning, Ctr. for Am. Progress, [Fines and Fees Are a Barrier to Criminal Record-Clearing](#) (2021).

BOX REFERENCES

What Is Record Clearing?

- a. See Collateral Consequences Res. Ctr., [Model Law on Non-Conviction Records](#) § 1 (“General Provisions”) (2019).

Types of Court Debt

- a. Crim. Just. Pol’y Program at Harvard L. Sch., [Confronting Criminal Justice Debt: A Guide for Policy Reform](#) 6 (2016). For more detailed definitions, see Abby Shafroth et al., National Consumer Law Center, [Confronting Criminal Justice Debt: A Guide for Litigation](#) 4 (2016).
- b. Some jurisdictions use the term “costs,” which are a type of fee.
- c. Beth A. Colgan, Beyond Graduation: Economic Sanctions and Structural Reform, 69 Duke L.J. 1529, 1561 (2020); Nat’l Ass’n of Crime Victim Comp. Bds., Eligibility Requirements (Feb. 11, 2020).

The Problem of Fees in the Criminal Justice System

- a. See, e.g., Crim. Just. Pol’y Program at Harvard L. Sch., [Confronting Criminal Justice Debt: A Guide for Policy Reform](#) 1 (2016); see also Nat’l Task Force on Fines, Fees, & Bail Pracs., Conf. of Chief Justs. & Conf. of State Ct. Admin’rs, [Principles on Fines, Fees, and Bail Practices](#) 3 (2017) (“Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate.”).
- b. Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, [The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties](#) 5 (2019).
- c. See, e.g., *id.*; [Model Penal Code: Sentencing](#) § 6.08 cmt. B (Am. L. Inst., Proposed Final Draft 2017); [Resolution adopting ABA Ten Guidelines on Court Fines and Fees](#) (Am. Bar Ass’n 2018); [Eliminating Fines and Fees](#), PolicyLink (last visited Nov. 19, 2021); Cortney Sanders & Michael Leachman, Ctr. on Budget & Pol’y Priorities, [Step One to an Antiracist State Revenue Policy: Eliminate Criminal Justice Fees and Reform Fines](#) (2021); [About Us](#), Fines & Fees Just. Ctr. (last visited Nov. 19, 2021).
- d. [Model Penal Code: Sentencing](#) § 6.08 cmt. B (Am. L. Inst., Proposed Final Draft 2017).

Problems with Relying on Ability-to-Pay Tests and Payment Waivers

- a. Theresa Zhen, [\(Color\)blind Reform: How Ability-to-Pay Determinations Are Inadequate to Transform a Racialized System of Penal Debt](#), 43 N.Y.U. Rev. L. & Soc. Change 175, 175–222 (2019).
Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, [The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties](#) 8–9 (2019); Alicia Bannon et al., Brennan Ctr. for Just., [Criminal Justice Debt: A Barrier to Reentry](#) 13–14 (2010). Additionally, as the American Law Institute recognized, the very idea of protecting only those who lack “ability to pay” “sets too low a floor for public-policy purposes,” which are better served by ensuring that those convicted of crimes are able to meet higher reasonable subsistence standards for themselves and their dependents. [Model Penal Code: Sentencing](#) § 6.04 cmt. B (Am. L. Inst., Proposed Final Draft 2017).
- b. See Brian Murray, [Retributive Expungement](#), 169 U. Pa. L. Rev. 665 (2021).

- c. Colleen Chien, [America's Paper Prisons: The Second Chance Gap](#), 119 Mich. L. Rev. 519, 524, 526 (2020).

Pennsylvania: Removing Most Court Debt as a Barrier to Record Clearing

- a. [Senate Roll Calls, Session of 2019–2020 Regular Session: Details for Senate RCS No. 694](#), Pa. State Senate (last visited Nov. 23, 2021) (showing the Pennsylvania Senate passed the bill with 0 nays); [House Roll Calls, Session of 2019–2020 Regular Session: Details for House RCS No. 1717](#), Pa. House of Representatives (last visited Nov. 23, 2021) (showing the same, for the Pennsylvania House of Representatives). The state legislature's "Criminal Justice Reform Caucus"—a coalition of bipartisan state senators and representatives—helped push the bill forward. [Pa. Legis. Crim. Just. Reform Caucus](#) (last visited October 20, 2021).
- b. Bill Information – History: House Bill 440; Regular Session 2019–2020, Pa. Gen. Assembly (last visited Nov. 23, 2021).
- c. Sharon Dietrich, Cmty. Legal Servs. of Phila., [PA Clean Slate: Delivering on Its Promises 3–4](#) (May 1, 2020).
- d. Meeting between First Jud. Dist., Phila. Dist. Att’y’s Off., & Cmty. Legal Servs. of Phila. to Discuss Clean Slate Implementation in Phila. (Mar. 12, 2019) (notes provided by Phila. Dist. Att’y’s Off.).
- e. See Sharon Dietrich, Cmty. Legal Servs. of Phila., [PA Clean Slate: Delivering on Its Promises 3–4](#) (May 1, 2020).

Michigan: Court Debt Not Considered in Clearing Certain Records

- a. Mich. Comp. Laws § 780.621h.
- b. *Id.* § 780.621d(13).
- c. The law and some of the background of the law’s enactment are described on the website of [Safe & Just Michigan](#). Some of the other organizations involved in the advocacy effort are listed in a press release from the Clean Slate Initiative. Press Release, [Clean Slate Initiative, Clean Slate Initiative Celebrates Passage of Michigan’s Automated Criminal Record Expungement Legislation](#) (Sept. 24, 2020). For more information about implementation, see Mich. Dep’t of Att’y Gen., [Expungement of Criminal Offenses in Michigan](#), Michigan.gov (last visited Nov. 14, 2021), and Mich. Dep’t of Att’y Gen., [Expungement of Criminal Offenses in Michigan, April of 2023 Moving Forward](#), Michigan.gov (last visited Nov. 23, 2021).

What Happens to Court Debt after Sealing?

- a. See *People v. Guillen*, 160 Cal. Rptr. 3d 589, 605–06 (Cal. Ct. App. 2013) (the granting of relief under Cal. Penal Code § 1203.4 results in the elimination of outstanding court debt that constitutes a “penalty or disability,” which includes at least a “restitution fine” (a type of fine imposed in almost every case)).
- b. R.I. Gen. Laws §§ 12-1.3-3(b)(1)(ii); Del. Code Ann. tit. 11, § 4372(l); Vt. Stat. Ann. tit. 13, §§ 7180, 7282.
- c. N.J. Stat. Ann. § 2C:52-2(a).
- d. 20 Ill. Comp. Stat. Ann. 2630/5.2(d)(9)(e); Va. Code Ann. §§ 19.2-392.13(C)(xi), 19.2-349(C).

How Does the Treatment of Outstanding Court Debt Relate to Automatic Record Clearing?

- a. Colleen Chien, *America's Paper Prisons: The Second Chance Gap*, 119 Mich. L. Rev. 519, 570 (2020). As noted in connection with the category of states that make eligibility for record clearance turn on payment of debt that is part of the sentence, determining whether certain types of court debt are considered legally part of the “sentence” can be difficult. Further, because courts may differ in whether they impose fees and costs as part of a sentence, there is potential for arbitrariness and inequity among applicants for record clearing even within the same jurisdiction.
- b. Michigan law includes a “clawback” provision, authorizing a court to unseal the conviction if a person “has not made a good-faith effort to pay” restitution. Mich. Comp. Laws § 780.621h. California’s automatic record-clearing law, scheduled to go into effect in 2022, includes various eligibility criteria, including the following requirements that may in some instances pose a barrier to record clearing for a person with court debt: the person either completed probation without revocation, or if convicted of an infraction or misdemeanor, was not granted probation, and based on the disposition date and the state DOJ’s records, “appears to have completed their sentence.” Cal. Penal Code § 1203.425.
- c. At the time this report was published, only the automatic conviction record-sealing systems in Pennsylvania and South Dakota were operational, though Utah’s system was close. None of the other systems is scheduled to become operational until 2023 at earliest. See *50-State Comparison: Expungement, Sealing & Other Record Relief*, at pt. 2, 5, Collateral Consequences Res. Ctr. (last visited Nov. 18, 2021).

Supreme Court of Kentucky: Application-Related Expungement Fees Can Limit the Ability to Access the Courts and to Benefit from State Record-Clearing Laws

- a. Ky. Rev. Stat. Ann. § 431.0795.
- b. An “in forma pauperis” statute is one that permits an indigent person to proceed in court without paying filing fees or court costs. See “In Forma Pauperis,” Black’s Law Dictionary (11th ed. 2019). Kentucky’s IFP statute provides, in relevant part: “A court shall allow a poor person . . . to file or defend any action . . . without paying costs . . . and shall have from all officers all needful services and process . . . without any fees, except such as are included in the costs recovered from the adverse party.” Ky. Rev. Stat. Ann. § 453.190(1).
- c. *Jones v. Commonwealth*, No. 2019-SC-0651-DG, 2021 WL 5984854, at *3–4 (Ky. Dec. 16, 2021).
- d. *Id.* at 4.

APPENDIX

COURT DEBT AS A BARRIER TO CLEARING A CONVICTION RECORD

Note: for methodology and an explanation of categories, see Section IV. Following this chart are state-by-state summaries of the relevant legal authorities.

All court debt must be paid to qualify (6)	Arkansas Indiana Iowa	Missouri New Mexico Texas
Court debt that is part of the sentence must be paid to qualify (7)	Arizona Montana New Hampshire Ohio	Oregon Tennessee Utah
Some court debt must be paid to qualify (15)	Alabama Colorado Delaware Georgia Mississippi North Carolina North Dakota New Jersey	Oklahoma Pennsylvania Rhode Island South Dakota Vermont Washington Wyoming
Court debt does not disqualify, but may be considered by the court or agency (14, D.C.)	California Connecticut District of Columbia Illinois Kansas Kentucky Maryland Massachusetts	Michigan Minnesota Nevada New York South Carolina Virginia West Virginia
Court debt has no effect on relief (1)	Louisiana	
No general conviction record clearing (7, Fed.)	Alaska Federal Florida Hawaii	Idaho Maine Nebraska Wisconsin

Alabama requires payment of certain types of court debt as a condition of eligibility for expungement: (1) for misdemeanor conviction expungement, court debt that becomes a requirement of probation or parole must be paid; (2) for expungement of any conviction, all other court debt must be paid, absent a finding of indigency by the court; and (3) for expungement of pardoned felonies, all court debt that is part of the sentence must be paid. First, a person

convicted of misdemeanor or violation “may file a petition . . . to expunge records relating to the charge and conviction if all the following occur: . . . all *probation or parole requirements* have been completed, including payment of all fines, costs, restitution, and other court-ordered amounts.” Ala. Code § 15-27-1(b) (1) (emphasis added). Second, “[n]o order of expungement shall be granted unless all terms and conditions, including court ordered restitution, are satisfied and paid in full, including interest, to any victim, or the Alabama Crime Victims’ Compensation Commission, as well as court costs, fines, or statutory fees ordered by the sentencing court to have been paid, absent a finding of indigency by the court.” *Id.* § 15-27-12. Third, sealing of pardoned felonies requires that “[t]he person has paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases.” *Id.* §§ 15-22-36.1, 15-27-2(c).

Arizona’s new sealing law—enacted in 2021 and effective in 2023—requires that “the person completes all of the terms and conditions of the person’s sentence, including paying all fines, fees and restitution that are ordered by the court,” in order to petition for sealing. See Ariz. Rev. Stat. Ann. § 13-911(E). In addition to this new record clearance authority, Arizona law authorizes courts to “set aside” or “vacate” most state convictions, and to dismiss the charges upon “fulfillment of the conditions of probation or sentence and discharge by the court,” without providing for sealing. *Id.* § 13-905(A). It is not clear if all court debt must be paid in order to petition for set-aside, but among the factors that the court may consider in deciding whether to grant relief are “the victim’s input and the status of victim restitution, if any.” *Id.* § 13-905(C)(4).

In **Arkansas** a person is eligible for sealing certain felony convictions and misdemeanors or violations after “completion of sentence.” Ark. Code Ann. §§ 16-90-1405(a), 16-90-1406(a). “Completion of sentence” is defined in § 16-90-1404(1) to include payment of “fine, court costs, or other monetary obligation as defined in § 16-13-701 in full, unless the obligation has been excused by the sentencing court.” Section 16-13-701 provides, in relevant part: “(b) As used in this subchapter, ‘fine’ means a monetary penalty imposed by a court, including without limitation: (1) A monetary fine; (2) Court costs; (3) Court-ordered restitution; (4) Probation fees; (5) Supervision fees; (6) Public service supervisory fees; and (7) Other court-ordered fees.”

Under **California** law, certain court debt may be required to be paid in order to qualify for mandatory or automatic relief; however, people with outstanding court debt may still apply for discretionary relief. California’s primary form of relief is a set-aside and sealing under California Penal Code § 1203.4, known colloquially as an expungement (there are also other similar set-aside authorities). Courts have interpreted § 1203.4 as providing for three types of relief, two of which are mandatory upon eligibility, and the third is discretionary:

- (1) A person is entitled to expungement as of right if the person has “fulfilled the conditions of probation for the entire period of probation,” Cal. Penal Code § 1203.4(a)(1), which includes, for example, payment of court-ordered restitution during the probationary period, see *People v. Chandler*, 250 Cal. Rptr. 730, 787–90 (Cal. Ct. App. 1988), but not, for example, attorney fees and the costs of probation, which “cannot legally be imposed as conditions of probation,” see *People v. Bradus*, 57 Cal. Rptr. 3d 79, 82 (Cal. Ct. App. 2007);
- (2) A person is also entitled to expungement as of right if they have “been discharged before the termination of the period of probation,” regardless of whether they have paid their court debt, see, e.g., *People v. Allen*, 254 Cal. Rptr. 3d 134, 141 (Cal. Ct. App. 2019); and
- (3) A person may be granted expungement “in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted” relief, Cal. Penal Code § 1203.4(a)(1).

In *People v. Allen*, the Court of Appeal held that the trial court could deny discretionary expungement, the third type of relief, because of unpaid victim restitution, without violating due process or equal protection, even if the person could not afford to pay the amount. 254 Cal. Rptr. 3d at 142–47. In *People v. Guillen*, the Court of Appeal held that the granting of relief under § 1203.4 results in the elimination of outstanding court debt that constitutes a “penalty or disability,” which includes at least a “restitution fine” (a type of fine imposed in almost every case). 160 Cal. Rptr. 3d 589, 605–06 (Cal. Ct. App. 2013).

In 2019, California authorized a system for automatic record clearance, which is scheduled to go into effect in 2022. That law includes various eligibility criteria, including the following requirements that may in some instances pose a barrier for a person with outstanding court debt: the person either completed probation without revocation, or if convicted of an infraction or misdemeanor was not granted probation and, based on the disposition date and the state DOJ’s records, “appears to have completed their sentence.” Cal. Penal Code § 1203.425(a)(B)(v).

In **Colorado**, convictions for state misdemeanor and felony offenses that are otherwise eligible for sealing “may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the motion to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees vacated the order.” Colo. Rev. Stat. § 24-72-706(e). In contrast, convictions for municipal offenses are not subject to this requirement. See *id.* § 24-72-708. Nonetheless, the court, in weighing various listed factors to decide whether such a municipal conviction should be sealed, is not prohibited from considering outstanding court debt. See *id.*

Presently, in **Connecticut** a pardon must be obtained to “erase” a conviction record. While outstanding court debt had in the past been disqualifying, the board website has now deleted any mention of court debt from its eligibility criteria, leaving only the other three disqualifying criteria (pending charges, nolle within 13 months, and current supervision) in addition to the passage of time since conviction. See *Eligibility*, State of Conn. Bd. of Pardons & Paroles (last visited Nov. 24, 2021). The board has discretion to grant or deny pardon, and while there is no mention of court debt in a long list of circumstances to be considered (e.g., rehabilitation, community service), the board is not prohibited from considering them. *Pardon FAQs*, State of Conn. Bd. of Pardons & Paroles (last visited Nov. 24, 2021). Under an automatic erasure law enacted in 2021, many misdemeanor convictions and some felony convictions will be sealed by operation of law without consideration of outstanding court debt. See Conn. Gen Stat. § 54-142a(e) (effective Jan. 1, 2023).

Delaware requires payment of court debt to be eligible for discretionary, mandatory, and automatic expungement, but gives the court authority to waive fines or fees or convert them to a civil judgment: “To be eligible for an expungement under this subchapter, all fines, fees, and restitution associated with a conviction must be paid. However, if an outstanding fine or fee is not yet satisfied due to reasons other than willful noncompliance, but the person is otherwise eligible for an expungement, the court may grant the expungement and waive the fines or fees or convert outstanding financial obligations to a civil judgement.” Del. Code Ann. tit. 11, § 4372(l). However, neither this law nor any other appears to authorize waiver or conversion of restitution. In addition, because automatic and mandatory expungement do not involve court review, a person seeking to waive or convert fines or fees will presumably have to petition a court for relief.

Under the **District of Columbia** Code, a person is eligible for sealing after expiration of a waiting period “since the completion of the movant’s sentence.” D.C. Code § 16-803(a)(2). “Completion of the sentence” is defined to mean that the person has been “unconditionally discharged from incarceration, commitment, probation, parole, or supervised release, whichever is latest.” *Id.* § 16-801(2). The statute does not define “unconditional discharge” or indicate that payment of court debt is required to obtain it. In considering whether to grant a motion to seal, the court is required to weigh various interests and may consider the applicant’s circumstances and history, including the applicant’s “efforts at rehabilitation,” and is not prohibited from considering outstanding court debt. *Id.* § 16-803(h).

In **Georgia**, record restriction and sealing is available for misdemeanors and most pardoned felonies. Ga. Code Ann. §§ 35-3-37(j)(7), (m). A pardon requires

that a person “has completed his/her full sentence obligation, including serving any probated sentence and paying any fine. . . .” Ga. Comp. R. & Regs. 475-3-10(3)(b). Record restriction and sealing for misdemeanors depends on completion of one’s sentence. Ga. Code Ann. §§ 35-3-37(j)(4)(A), (m). Completion of one’s sentence requires payment of certain fines. See Ga. Att’y Gen., Opinion Letter to Sec’y of State, Op. No. 84-33, 1984 WL 59904 (May 24, 1984) (“[W]here a fine is imposed where authorized by statute in addition to and independent of any sentence of probation, a person may not register and vote *until his sentence is complete in all aspects including the completion of the payment of the fine imposed.*” (emphasis added)). The law does not address the effect of other court debt, including restitution, but the court has discretion to deny relief if it finds that “the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.” Ga. Code Ann. §§ 35-3-37(j)(4), (j)(6), (m).

While **Idaho** does not authorize expungement or sealing, it does authorize set aside and dismissal of charges for those who successfully complete probation. Idaho Code Ann. § 19-2604. A person is not eligible if the court finds or the person admits “in any probation violation proceeding that the defendant violated any of the terms or conditions of any probation that may have been imposed.” *Id.* § 19-2604(1)(b).

Illinois courts may not deny a petition for sealing due to outstanding court debt, except that unpaid restitution may be the basis for denial “unless the restitution has been converted to a civil judgment.” 20 Ill. Comp. Stat. Ann. 2630/5.2(d)(6)(C). It is unclear whether Illinois law authorizes such a conversion. Even if it does, however, the person who is owed restitution would have to file a petition in the sentencing court and conversion would be discretionary with the court. See 730 Ill. Comp. Stat. Ann. 5/5-6-2(e-5); see also 730 Ill. Comp. Stat. Ann. 5/5-5-6(m).

Indiana’s expungement laws require the court to find that “the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence.” Ind. Code §§ 35-38-9-2(e)(3), 35-38-9-3(e)(3), 35-38-9-5(e)(3).

Iowa’s misdemeanor sealing law requires payment of all court costs, fees, fines, restitution, and any other financial obligations ordered by the court or assessed by the clerk of the district court. Iowa Code § 901C.3(1)(d); see also *id.* § 907.9 (full payment of court debt is required for discharge from probation).

In **Kansas** the eligibility waiting period for expungement runs from when the defendant “(A) satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, post-release

supervision, conditional release or a suspended sentence.” Kan. Stat. Ann. § 21-6614. While discharge does not appear to require payment of court debt, the court presumably may consider outstanding court debt as a factor in determining whether “the circumstances and behavior of the petitioner warrant the expungement” and whether “the expungement is consistent with the public welfare.” *Id.* § 21-6614(h).

Kentucky conditions expungement on “the completion of the person’s sentence, or . . . probation.” Ky. Rev. Stat. Ann. § 431.073(2)(a). The court has discretion to grant a petition to expunge felonies, including discretion to inquire into the petitioner’s “behavior since the conviction or convictions, as evidenced that he or she has been active in rehabilitative activities in prison and is living a law-abiding life since release,” *id.* § 431.073(4)(a), and does not prohibit consideration of outstanding court debt, *see id.* (“[T]he applicant must prove . . . [a]ny other matter deemed appropriate or necessary by the court to make a determination regarding the petition for expungement is met.”). However, expungement of misdemeanors and violations appears to be mandatory upon a determination of eligibility. *Id.* § 431.078(4). Application forms for pardon and restoration of civil rights ask whether the applicant has outstanding restitution or unpaid fines, suggesting that these may remain after completion of sentence or probation.

In **Louisiana**, it does not appear that payment of court debt is a part of qualification or consideration for expungement. The eligibility waiting period runs from when “the person completed any sentence . . . or period of probation or parole.” La. Code Crim. Proc. Ann. arts. 977, 978 (emphasis added). For persons who satisfy eligibility criteria, relief appears to be mandatory. *See id.* art. 980(E)–(F) (“The objecting agency must show by a preponderance of the evidence why the motion of expungement should not be granted. If no objection is filed by an agency listed under Article 979 of this Code, the defendant may waive the contradictory hearing, and the court shall grant the motion to expunge the record if the court determines that the mover is *entitled* to the expungement in accordance with law.” (emphasis added)); *State v. Kosden*, 34 So. 3d 521, 524 (La. Ct. App. 2010) (under a previous non-conviction expungement statute, with language similar to the current conviction expungement statutes regarding entitlement to relief, holding the trial court lacked authority under Louisiana law to deny expungement to an eligible petitioner, after trial court denied expungement on the grounds that “it would be contrary to public policy . . . [to grant the expungement based on] the circumstances and egregious nature of [the petitioner’s] involvement in the crime”).

In **Maryland**, the waiting period for expungement of specified misdemeanor and felony convictions runs from when “the person satisfies the sentence . . . including parole, probation, or mandatory supervision.” Md. Code Ann.,

Crim. Proc. § 10-110(a), (c). *Inter alia*, the court must consider the history and character of the person, the person’s success at rehabilitation, and whether the person is a risk to public safety. *Id.* § 10-110(f)(2). Eligibility for “shielding” (earlier relief available to a narrow set of misdemeanors) also depends on whether petitioner “satisfies the sentence . . . including parole, probation, or mandatory supervision.” *Id.* § 10-303(a). The court may grant a petition for shielding without a hearing “after taking into consideration any objections or additional information provided by the State’s Attorney or the victim.” *Id.* § 10-303(d)(2). Neither law prohibits the court from considering outstanding court debt.

In **Massachusetts**, waiting periods for sealing run from completion of “any period of incarceration, custody or probation” for most offenses. Mass. Gen. Laws ch. 276, §§ 100A, 100I. A court has “the discretion to grant or deny the petition based on what is in the best interests of justice,” and is not prohibited from considering outstanding court debt. *Id.* § 100G.

In **Michigan** eligibility waiting periods for set-aside and sealing run from imposition of the sentence, completion of the term of probation, discharge from parole, or release from incarceration, whichever is latest. Mich. Comp. Laws § 780.621d(1)–(3). The court presumably may consider outstanding court debt as a factor in assessing the “circumstances and behavior of [the] applicant” in deciding whether to grant relief, and is not expressly prohibited from doing so. *Id.* § 780.621d(13). Payment of court debt will not be required for set-aside and sealing under the new automatic relief law (enacted in 2020 and not yet implemented), where the eligibility waiting period runs from imposition of the sentence or release from confinement, except that a court may unseal the conviction if a person “has not made a good-faith effort to pay” restitution. *Id.* §§ 780.621g, 780.621h.

Minnesota courts are authorized to expunge (or seal, a term used interchangeably) the record after a waiting period running from “discharge,” Minn. Stat. Ann. § 609A.02 subdiv. 3, which may be “by order of the court following stay of sentence or stay of execution of sentence” or “upon expiration of sentence,” *id.* § 609.165 subdivs. 1, 2. Fines and restitution may be imposed as part of the sentence, and outstanding court debt may survive for a 10-year period after the “due date,” or until the end of probation, whichever is later. *Id.* §§ 609.10, 609.104, subds. 1, 2; Minn. Jud. Council, Minn. Jud. Branch Pol’y No. 209, Collection and Distribution of Revenues Policy (July 15, 2010). In making a discretionary determination on relief, the court will consider “the amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted.” Minn. Stat. Ann. § 609a.03 subdiv. 5(b)(11).

Mississippi authorizes a petition to expunge a felony conviction upon payment of “all criminal fines and costs of court imposed in the sentence,” with an eligibility waiting period running from “the successful completion of all terms and conditions of the sentence.” Miss. Code Ann. § 99-19-71(2). Section 99-19-71(1) authorizes petitions to expunge a misdemeanor without similar qualifications.

Missouri law requires that a person seeking expungement must have “completed any authorized disposition,” and “satisfied all obligations relating to any such disposition, including the payment of any fines or restitution.” Mo. Rev. Stat. § 610.140(5)(1) and (3).

Montana’s eligibility period for misdemeanor convictions in which expungement is “presumed” runs from completion of the sentence “including payment of any financial obligations or successful completion of court-ordered treatment.” Mont. Code Ann. § 46-18-1107(1). Expungement for certain more serious misdemeanors will not be “presumed,” and the court shall consider certain factors including rehabilitation and “any . . . factor the court considers relevant.” *Id.* § 46-18-1108. The Montana Department of Justice interprets both of these statutes to require payment of court debt to qualify for expungement. See *Conviction Expungement Process*, Mont. Dep’t of Just. (last visited Dec. 1, 2021).

Nebraska does not authorize expungement or sealing, but it does authorize set-aside for those sentenced to probation, to a fine only, or to a term of imprisonment of one year or less, under certain conditions. Neb. Rev. Stat. § 29-2264.

Nevada’s eligibility waiting period for sealing runs from “discharge from parole or probation” or release from custody, whichever is later. Nev. Rev. Stat. § 179.245(1). There is a rebuttable presumption in favor of sealing, but this presumption does not apply if a person was dishonorably discharged from probation. *Id.* §§ 179.2445, 176A.850. A person whose probation expires without payment of restitution is dishonorably discharged unless nonpayment was due to economic hardship. *Id.* § 176A.850. Unpaid restitution becomes a civil obligation regardless of economic hardship. *Id.* § 176A.850(3).

In **New Hampshire**, waiting periods for annulment run from completion of “all the terms and conditions of the sentence,” N.H. Rev. Stat. Ann. § 651:5(III), and restitution and fines may be imposed as part of the sentence, *id.* § 651:63. The State of New Hampshire Judicial Branch’s current form requires applicants to check that “All the terms and conditions of the sentence listed above have been completed, including the payment of any fine, restitution or other cost . . .” See *Petition of Eligibility for Annulment of Record Conviction: For Offenses Resolved 01/01/2019 or Later*, State of N.H. Jud. Branch, NHJB-3057-DSe (08/06/2019).

In **New Jersey**, the waiting period for traditional petition-based expungement runs “from the date of . . . most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later.” N.J. Stat. Ann. §§ 2C:52-2(a) (indictable offenses), 2C:52-3(b) (petty and disorderly offenses). A 2019 amendment to the expungement law provides that if the court-ordered financial assessment is “not yet satisfied due to reasons other than willful noncompliance,” and the waiting period is otherwise satisfied, the court may grant an expungement, and, if it does, it “shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment.” *Id.* § 2C:52-2(a). In addition, violations of municipal ordinances may only be expunged if fines have been paid. *Id.* § 2C:52-4.

For petitions for expungement under a new “clean slate” expungement law, the court “shall” grant an expungement for an eligible petition despite outstanding court debt, and “shall” convert unpaid court-ordered financial assessments to a civil judgment. *Id.* §§ 2C:52-5.1, 2C:52-5.3. Under an authorized, but not yet implemented system for automatic “clean slate” expungements, when the court issues a sealing order it “shall also enter a civil judgment for the unpaid portion” of court-ordered financial assessments. *Id.* § 2C:52-5.2(a)(2).

New Mexico requires full payment of court debt as a condition of petitioning for expungement. N.M. Stat. Ann. § 29-3A-5(A) (“A person convicted of a violation of a municipal ordinance, misdemeanor or felony, following the completion of the person’s sentence and the payment of any fines or fees owed to the state for the conviction, may petition the district court in which the person was convicted for an order to expunge arrest records and public records related to that conviction.”). Restitution may also be a court-imposed condition of supervision along with fines, fees, and costs. *Id.* §§ 31-20-6, 31-21-10(E).

New York’s eligibility waiting period for sealing runs from “the imposition of the sentence on the defendant’s latest conviction or, if the defendant was sentenced to a period of incarceration . . . the defendant’s latest release from incarceration.” N.Y. Crim. Proc. Law § 160.59(5). The court has discretion to deny an application based on standards that include the applicant’s extent of rehabilitation and the views of the victim, and is not prohibited from taking into account outstanding court debt. *Id.* § 160.59(7).

North Carolina expunction procedures require the court to find that the petitioner “has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.” N.C. Gen. Stat. § 15A-145.5(c2) (5); see also *id.* §§ 15A-145.6, 15A-145.9, 15A-1374. While there is no similar requirement for other court debt, courts have discretion to deny expungement on the merits for felonies, see *State v. Neira*, 840 S.E.2d 890, 892 (N.C. Ct. App. 2020), and are not prohibited from considering outstanding court debt.

North Dakota law provides eligibility for sealing after a conviction-free waiting period. N.D. Cent. Code § 12-60.1-02. A petitioner must have “completed all terms of imprisonment and probation for the offense” and “paid all restitution ordered by the court for commission of the offense.” *Id.* § 12-60.1-04(1). The court has discretion to grant expungement if it finds, after applying specific criteria, that “the benefit to the petitioner outweighs the presumption of openness of the criminal record,” and is not prohibited from considering other outstanding court debt. *Id.*

Ohio’s sealing eligibility waiting periods range from three to five years after “final discharge” for felonies and misdemeanors. Ohio Rev. Code Ann. § 2953.32(A) (1)(b). “Final discharge” requires payment of restitution, and any other fine or fee imposed as a “sentencing requirement.” *State v. Aguirre*, 41 N.E.3d 1178, 1182 (Ohio 2014); see also *id.* at 1179 (“[A] trial court may not seal an offender’s record before the offender has completed all sentencing requirements, including any order to make restitution to third parties.”).

Oklahoma’s eligibility waiting period for felony expungement runs from the “completion of the sentence,” and for misdemeanor expungement from the “end of the last misdemeanor sentence.” Okla. Stat. tit. 22, § 18(A)(11)–(14). Misdemeanor fines less than \$501.00 must be paid to be eligible for expungement, *id.* § 18(A)(10); for larger fines and nonviolent felonies, the court debt requirements are unclear, *id.* § 18(A)(11)–(12); and for nonviolent felonies reclassified as misdemeanors, restitution is required and other types of court debt are not mentioned, *id.* § 18(A)(15). The court has discretion to grant or deny the petition, and is not prohibited from considering court debt, but the burden is on the state to show harm to the public outweighs harm to the defendant. *Waters v. State*, 472 P.3d 705, 707 (Okla. Civ. App. 2020).

Oregon authorizes set-aside and sealing, requiring that the person has “fully complied with and performed the sentence of the court.” Or. Rev. Stat. § 137.225(1)(a); but see, e.g., *Set Aside (Expunge) an Adult Criminal Record*, Linn County Circuit Court (last visited Nov. 24, 2021) (County court instructions stating that a person “must not owe money associated with criminal cases to the courts (restitution, court ordered fines, probation fees, etc.) when they apply to have their conviction set aside,” which uses broader language than the language of the statute (“fully complied with and performed the sentence of the court”)).

Pennsylvania in 2020 repealed a requirement that sealing (both petition-based and automatic) of misdemeanor convictions depends on payment of “each court-ordered financial obligation of the sentence,” but payment of restitution is still explicitly required for both petition-based and automatic sealing. 18 Pa. Cons. Stat. §§ 9122.1, 9122.2.

Rhode Island requires payment of court debt for expunging the record of a felony or misdemeanor conviction, but also provides that any outstanding court debt may be waived or reduced by court order where an applicant has shown “good character.” 12 R.I. Gen. Laws § 1.3-3(b)(1)(i) (“there are no criminal proceedings pending against the person; that the person does not owe any outstanding court-imposed or court-related fees, fines, costs, assessments, or charges, unless such amounts are reduced or waived by order of the court; and he or she has exhibited good moral character”). All applicants must also show that their “rehabilitation has been attained to the court’s satisfaction and the expungement of the records of his or her conviction is consistent with the public interest.” *Id.* § 1.3-3(b)(2).

In **South Carolina** the eligibility period for expungement for certain conviction records (carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, excluding traffic offenses) runs from the date of conviction. S.C. Code Ann. § 22-5-910(A). The court has discretion whether to grant or deny relief, but no specific standards are provided and the court is not prohibited from considering outstanding court debt. *Id.* § 22-5-910(C).

South Dakota authorizes automatic removal from a defendant’s public record of any charge or conviction resulting from minor misdemeanors and petty offenses after five years, “if all court-ordered conditions on the case have been satisfied.” S.D. Codified Laws § 23A-3-34. Payment of fines, fees, and restitution may be ordered as conditions of probation or parole and, if they are, they must be satisfied in order to qualify for relief. *Id.* §§ 23A-27-18.3, 24-15-11, 24-15A-50. Compliance with the restitution plan, if any, is required for completion of probation or deferred adjudication, *id.* § 23A-28-7, and restitution obligation may be enforced by the court after the end of supervision. *Id.* § 23A-28-8.

In **Tennessee**, eligibility for expungement requires the person to have “fulfilled all the requirements of the sentence imposed by the court . . . including (i) Payment of all fines, restitution, court costs and other assessments.” Tenn. Code Ann. § 40-32-101(g)(2)(C)(i).

Texas requires an applicant for an Order of Non-Disclosure to complete the period of community supervision “including any term of confinement imposed and payment of all fines, costs, and restitution imposed.” Tex. Gov’t Code. Ann. §§ 411.073(b), 411.0735(b).

Utah requires all those seeking expungement by petition to show payment in full of “all fines and interest ordered by the court related to the conviction for which expungement is sought” and “all restitution ordered by the court under Section 77-38b-205 [“the court shall order a defendant, as part of the sentence imposed under Section 76-3-201, to pay restitution to all victims”].” Utah Code Ann. §

77-40-105(4). In addition, automatic “clean slate” expungement is unavailable if a “criminal judgment accounts receivable” has not been satisfied or has been entered as a civil judgment and turned over to the state debt collection office. *Id.* § 77-40-102(c).

In **Vermont**, an applicant for expungement or sealing must have “successfully completed the terms and conditions of the sentence,” and “paid in full” any “restitution and surcharges.” Vt. Stat. Ann. tit. 13, § 7602(b)(1)(A), (C). Fines and costs are not imposed as part of the sentence, and they are separately subject to collection by the court. *Id.* § 7180. By virtue of 2021 legislation, surcharges (but not restitution) may be waived “as part of an expungement or sealing proceeding where the petitioner demonstrates an inability to pay.” *Id.* § 7282.

Virginia enacted a sealing bill in 2021, effective in 2025, authorizing discretionary sealing for a broad range of misdemeanors and low-level felonies, and automatic sealing of a handful of minor misdemeanor convictions. A provision making satisfaction of court debt a prerequisite for relief was omitted from the final bill, and a provision added giving “any person authorized to engage in the collection of court costs, fines, or restitution” access to sealed records, which together indicate that debt is not an absolute barrier to sealing. See Va. Code Ann. § 19.2-392.13(C)(xi); see also *id.* § 19.2-392.5(F) (“An order to seal . . . shall not relieve the person . . . of any obligation to pay all fines, costs, forfeitures, penalties, or restitution in relation to the offense that was ordered to be sealed.”). While a court reviewing a petition for sealing could presumably consider outstanding court debt in determining whether or not to grant relief, convictions eligible for automatic sealing will not be subject to such a review.

In **Washington**, court debt need not be paid to obtain a certificate of discharge necessary to vacate a felony conviction if five years have passed since completion of non-financial conditions of the sentence. Wash. Rev. Code § 9.94A.637(4). Somewhat anomalously, all court debt must be paid for vacatur of misdemeanor convictions. *Id.* § 9.96.060(f)(iv).

West Virginia requires petitioners for expungement to have completed “any sentence of incarceration or . . . period of supervision.” W. Va. Code § 61-11-26(b)(1). Petitioner must establish “by his or her behavior since the conviction or convictions . . . that he or she has been rehabilitated and is law-abiding.” *Id.* § 61-11-26(h)(4). The application must inform the court whether there is “any current order for restitution, protection, restraining order, or other no contact order,” but the court is neither required to nor forbidden from taking outstanding court debt into account. *Id.* § 61-11-26(d)(7).

Wyoming requires a petitioner for expunging a felony to show “the expiration of the terms of sentence imposed by the court, including any periods of probation,” the “completion of any program ordered by the court,” and that “[a]ny restitution ordered by the court has been paid in full.” Wyo. Stat. Ann. § 7-15-1502(a)(i)(A), (C). The misdemeanor expungement statute requires only that an applicant have completed their sentence including probation. *Id.* § 7-13-1501.



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