The Expungement Process: Survey Evidence on Applicant Experiences

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ABSTRACT

Tens of millions of Americans with publicly accessible criminal convictions face significant collateral consequences that affect their employment, housing, and family life, which not only harm these individuals but also limit society's access to their skills, productivity, and participation. In response, policymakers have enlarged the scope and enhanced the accessibility of criminal-record expungement laws. Little is known, however, about how individuals perceive, navigate, and take advantage of these new, broader laws. This Article presents findings from a large-scale survey of 1,439 expungement applicants and recipients in Detroit, conducted in partnership with Project Clean Slate (PCS), a city initiative assisting residents with expungement. We complement our quantitative survey results with administrative data from PCS and detailed interviews with PCS staff and other experts on various aspects of criminal records and expungement in Michigan. Our study explores how individuals learn about expungement and eligibility criteria, their motivations for seeking record relief, the challenges they face in the process, and how, if at all, they overcome these barriers. Our results reveal both the successes and limitations of the petition-based expungement process, including positive evaluations of the process but also barriers to awareness and procedural difficulties that prevent many eligible individuals from obtaining relief. Despite generally positive experiences among PCS clients, challenges such as state-level administrative errors,

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process delays, and uncertainty about the visibility of expunged records persist. While the recent move in some states toward automated expungement represents progress, petition-based expungement remains crucial in most jurisdictions, requiring continued efforts to improve access and reduce burdens. Our findings contribute to ongoing policy discussions by highlighting the role of legal services, advocacy organizations, and local governments in making record relief more effective and equitable.

INTRODUCTION

Nearly one in five Americans has a criminal conviction, triggering well-documented collateral consequences that affect many areas of life, including employment, housing, family, public-benefits eligibility, and occupational licensing.[1] In recent years, policymakers have considered and adopted a variety of interventions designed to alleviate the obstacles facing people with conviction records. A centerpiece of this policy agenda has been the expansion of laws allowing expungement or sealing of records—an intervention that offers the potential of wiping out many collateral consequences at once, providing recipients a "clean slate."[2] Although access to some variety of record relief has existed in many jurisdictions for decades, state legislatures have created and expanded these opportunities at a rapid pace throughout the country over the past decade or so. Today, all but a handful of states have laws allowing conviction expungement in some form, and the possibility of future federal legislation providing relief under certain conditions appears realistic.[3] Many states have recently relaxed eligibility requirements,[4] and some have introduced automated expungement for certain eligible offenses, eliminating the need for the traditionally burdensome petition process.[5] Although advocacy efforts to expand and automate expungement continue to be very active across the country, expungement laws that require a petition for

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[1] *See generally The Clean Slate Initiative's Data Dashboard*, THE CLEAN SLATE INITIATIVE, https://www.cleanslateinitiative.org/data [https://perma.cc/49X9-YAA4] (last visited Aug. 14, 2024); *see infra* note 64 and accompanying text (reviewing literature on the effects of convictions).

[2] While terminology and details vary across states, we use the term "expungement" in this Article as a generic term for interventions that eliminate most public access to criminal records as well as most legal effects of those records. Other common terms include "sealing" and "set-asides." Whatever the terminology, most such laws do not really entail the complete destruction of records. *See Expungement, Sealing & Set-Aside of Convictions: A National Survey,* COLLATERAL CONSEQUENCES RES. CTR. (Sept. 1, 2020), https://ccresourcecenter.org/2020/09/01/expungement-sealing-set-aside-of-convictions-a-national-survey/ [https://perma.cc/JQ9G-BKGV].

[3] Eligibility requirements vary, but most states allow misdemeanors and at least some felonies to be expunged upon petition. For details on all states as of July 2024, see *50-State Comparison: Expungement, Sealing & Other Record Relief*, RESTORATION OF RTS. PROJECT, https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside-2-2/ [https://perma.cc/S8HK-F8YA] (last visited Mar. 11, 2025). We also review expungement laws in Part I below.

[4] *See id*. Federal law does not allow for the expungement of federal convictions, but active reform efforts in Congress persist. *See generally* Clean Slate Act, H.R. 2930, 118th Cong. (2023).

[5] People often refer to laws that implement automated expungement processes (in which state authorities themselves proactively identify those eligible for expungement and carry it out, generally via computer algorithms) as "Clean Slate" legislation. *See* THE CLEAN SLATE INITIATIVE, https://www.cleanslateinitiative.org/about [https://perma.cc/JP7Z-F389] (last visited Aug. 14, 2024); *see also infra* Part I (discussing these laws).

relief remain the only avenue for many individuals with a record of a criminal conviction.

How well are these petition-based laws working for those eligible to receive relief? Here, we explore that question by presenting the results of a large-scale survey of 1,439 expungement applicants and recipients in Detroit. To our knowledge, our survey is the first of its kind—likely because, for obvious reasons, it is usually hard to identify and reach out to a population with expunged records.[6] We were able to do so thanks to a unique partnership with the City of Detroit's Project Clean Slate (PCS), which has assisted thousands of Detroit residents with the expungement process and retains their contact information. Survey methods have their limitations. For example, respondents' recollections may sometimes be inaccurate, and not everyone responds to surveys, introducing sample selection biases of various sorts. Yet surveys also provide the ability to explore a broader range of outcomes—and outcomes that are more specific to record relief and relevant to justice-impacted individuals—than other data sources. Indeed, existing research on expungement is limited in part because expunged records are difficult to access. Most of the research that does exist, which we review below, relies on administrative data—for example, criminal records and wage data—that are thin in many respects. Existing state data resources cannot tell us, as just one example, why people apply for expungement—but applicants themselves can explain their reasoning to us. Moreover, people's subjective experiences are important to our understanding of whether expungement has succeeded in making their lives better. While a couple of smaller-scale interview-based studies have focused on these subjective experiences, ours is the first study to do so for a large sample.

In this Article, we present survey results relating to respondents' experiences with the petition process: how they learned about expungement and eligibility, why they applied for record relief, what difficulties they encountered in the process, how (if at all) they overcame those difficulties, and how PCS and other actors in the justice system, in their view, handled their case.[7] We complement our quantitative survey results with administrative data from PCS (covering its full pool of clients rather than just survey-takers) and qualitative information from more detailed

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[6] One survey by an advocacy group included 554 people with criminal records and asked them about their life experiences generally but was not specifically focused on expungement; their report touched only briefly on the topic, stating that 76% of those with records reported that they had obtained no record relief, and that among those who had received relief, 51% found the process difficult. *Voices of Redemption: A National Survey of People with Records*, ALL. FOR SAFETY & JUST. 5 (2023), https://asj.allianceforsafetyandjustice.org/wp-content/uploads/2023/05/ 2023-05-15-2023-TimeDone Survey-Full.pdf [https://perma.cc/9ETU-YNPR].

[7] In ongoing work, several of us explore the self-reported consequences of receiving an expungement for recipients' lives going forward, including effects on employment, housing, social stigma, family involvement, and attitudes about the legal system. Mira Edmonds, J.J. Prescott & Sonja Starr, *The Self-Reported Effects of Criminal Record Expungement* (Apr. 1, 2025) (unpublished manuscript) (on file with authors).

interviews with PCS staff as well as other experts on various aspects of expungement and criminal records in Michigan.

One important policy concern illuminated by our results relates to expungement "uptake." Several studies document that when the law requires people with records to file a petition or go through a series of administrative steps to clear those records or redress their adverse consequences, very few complete the process. For example, Prescott and Starr's prior research in Michigan shows that only 6.5% of residents who are legally eligible for petition-based expungements manage to obtain them.[8] Accordingly, some of our survey questions focus on how people learn about expungement and what actions help them to surmount hurdles that might otherwise have stopped them from applying for and persisting in their quest for record relief. Experts report that awareness of expungement opportunities is low among those who are eligible for relief, but even for those who know about the process and are confident of their eligibility, numerous practical and psychological hurdles stand in the way of success.[9] Legal service providers and advocacy organizations (including PCS) employ a variety of approaches to promote awareness and make it easier for people to navigate the expungement petition process. Our findings show that these strategies can educate and assist applicants in ways that matter, both by increasing their likelihood of obtaining record relief and by reducing the overall toll of the process.

Our survey instrument also explores the reasons applicants seek expungement and why they apply for expungement at the time that they do. The information these questions generate is important because it generally advances the discussion of how to improve uptake, but also because these data can make existing and future research on other questions more valuable. When researchers study outcomes of petition-based expungement (for example, employment outcomes), as some of us have done or are doing in other work, crucial interpretive questions arise from the issue of the sample's self-selection, and applicants' motivations provide valuable insight into how best to address these questions. In addition, by documenting what individuals with records view as the most compelling reasons for seeking expungement, our survey produces evidence that adds to the growing body of research on the collateral consequences of criminal convictions.[10] Many respondents emphasize not just concrete socioeconomic objectives like finding employment or housing but also other harms that tend to attract less policy attention: stigma, shame, and other psychological burdens, for example, or the interference of a criminal record with family relationships and activities.

As to the expungement process, respondents mostly report quite positive experiences. This is perhaps not surprising, given that PCS clients receive strong

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[8] J.J. Prescott & Sonja Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2466 (2020). *See infra* Part I for additional literature.

[9] Prescott & Starr, *supra* note 8, at 2501–06.

[10] *See infra* Section I.B.

support from capable and experienced representatives and usually obtain relief when eligible. PCS provides a level of service not available to residents of most jurisdictions, who face greater obstacles to expungement, as some of our interviews flesh out. In this Article, we highlight what other jurisdictions that are interested in helping residents obtain petition-based expungements might be able to learn from PCS's approach.

Despite the overall positive picture, our survey analysis also brings to light challenges that arise for PCS clients and those seeking expungement more generally. In 12% of cases, respondents report encountering delays in the expungement process (or still not having received an expungement) because of incomplete or erroneous segments in the state's official criminal records database—for example, charges that prosecutors had dropped years earlier appear as pending and therefore as expungement-disqualifying charges in applicants' records.[11] Similarly, errors in implementation can arise even after a court grants an expungement;[12] 10% of respondents report the appearance of an expunged conviction during a subsequent background check, while 47% report that they are not sure whether their expunged conviction is visible during such checks. Problems like these are presumably at least as prevalent (and likelier to go undetected) among those eligible for automated expungement and those who apply for expungement without legal assistance; they also may occur in other jurisdictions. In the Discussion, we briefly outline possible policy remedies.

Our survey's primary focus on individuals who pursue petition-based expungement may seem surprising given that Michigan has a new, widely heralded automated expungement law. But petition-based expungement is still important even in Michigan because it is available for a broader range of records and with shorter waiting periods. In one sense, our focus on those who pursue this remedy is a limitation: those willing to jump through the hoops of an expungement petition process are a self-selected sample who may be very different from the much larger group of individuals eligible for any form of record relief. This selection bias may be even more pronounced in a study of the subset of applicants who receive services from organizations like PCS, who may differ from the broader population of eligible individuals to an even greater extent or along more dimensions. Consequently, care in drawing inferences from our results is a must. Some of what we find may easily extrapolate to other groups, such as recipients of automated expungement or

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[11] Kamau Sandiford & John S. Cooper, *Clean Slate Year 3: The First Year of Automatic Expungements – Looking Back & Looking Ahead,* SAFE & JUST MICH. 9–10 (Apr. 11, 2024), https://www.safeandjustmi.org/wp-content/uploads/2024/04/Clean_Slate_Year_3_Report.pdf [https://perma.cc/BBQ9-X42T] (describing the "hanging charge" problem).

[12] *See* Amy Myrick, *Facing Your Criminal Record: Expungement and the Collateral Problem of Wrongfully Represented Self*, 47 LAW & SOC'Y REV. 73, 80 (2013) (explaining the room for error in implementing expungement in an example county, which requires coordination between many different city, county, and state officials, and across both digital and paper records).

expungement applicants without access to similar levels of support, but other findings may not, as we discuss.

Nevertheless, the experiences of our survey respondents are relevant to policies that target broader populations. Despite the recent growth in automated expungement relief, petition-based opportunities continue to be the dominant form of expungement policy in the United States. Twenty-seven states have *only* petition-based expungement available, while nineteen states plus the District of Columbia have or will soon have (thanks to recently passed legislation) some form of automated expungement of convictions.[13] Even among this latter group, almost all retain a petition system that is open to many individuals whose conviction records cannot be cleared (or cannot be fully cleared) through an automated process.[14] More generally, the two basic models for administering expungement are each limited in different ways. If effective,[15] automated systems can efficiently provide expungement to everyone who is eligible, yet eligibility requirements tend to be tight; many are limited to misdemeanors and/or have long waiting periods.[16] Meanwhile, petition-based expungement tends to be legally available to wider groups of people, yet in practice, those who are eligible overwhelmingly do not undertake the onerous process.[17]

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[13] RESTORATION OF RTS. PROJECT, *supra* note 3. Only twelve states' expungement laws meet the Clean Slate Initiative's criteria for "Clean Slate" legislation, including: automated expungement upon eligibility, inclusion of conviction and non-conviction records, inclusion of misdemeanor records, and eligibility for expungement of at least one felony record. *Clean Slate in the States*, THE CLEAN SLATE INITIATIVE, https://www.cleanslateinitiative.org/states#states [https://perma.cc/Q3D2-GKGN] (last visited Aug. 19, 2024).

[14] The notable exception is South Dakota, which allows for automated conviction record relief under certain circumstances but has no formal petition process for conviction expungement; only non-conviction records may be expunged via a petition process. *See South Dakota: Restoration of Rights & Record Relief*, RESTORATION OF RTS. PROJECT, https://ccresourcecenter.org/state-restoration-profiles/south-dakota-restoration-of-rights-pardon-expungement-sealing/#III_Expungement_sealing_other_record_relief [https://perma.cc/XPS7-QT69] (last visited Mar. 3, 2025).

[15] One important challenge for automated expungement regimes is notice. Individuals who file successful petitions are generally aware that their criminal-record status has (or may have) changed. Individuals who receive automated record clearing may never learn of it, however, and as a result, are less likely to take advantage of opportunities that a clear record offers them. *See* Jana Hrdinová & Hannah Miller, *Automatic Record Relief in Ohio: Recommendations for Minimizing Implementation Challenges and Maximizing Impact*, 16 OHIO STATE LEGAL STUD. RSCH. PAPER NO. 837 at 16 (Apr. 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4788016 [https://perma.cc/4XWU-EYLU].

[16] *See, e.g.*, Katherine Ganick, *Increasing Access to Expungements: Expungement Statutes Are Intended for the Greater Good. But Are They Working?*, 98 U. DET. MERCY L. REV. 1, 20–21 (2020) (describing restrictions for automated expungement in Michigan, including eligibility seven years and ten years after sentencing for misdemeanor and felony convictions, respectively).

[17] Prescott & Starr, *supra* note 8. Expanding the availability of automated expungement (for example, to all those legally eligible for petition-based expungement) is the most powerful solution to

Accordingly, developing and validating innovations that make petition-based record relief less burdensome and more effective remains a pressing policy and public-interest goal. Refining the legal process and improving access to legal assistance and other self-help tools are natural candidates to explore. Project Clean Slate's services offer a potential model, as the positive experiences of most of our survey respondents attest. Cities and counties have no authority on their own to change state-level expungement law, but as Detroit illustrates, they can support their citizens in obtaining expungements through public education, outreach, and legal services. Similarly, nonprofit advocacy groups, law school clinics, and legal aid organizations can also play important roles in reducing access barriers and improving experiences and outcomes.[18] Understanding the challenges that individuals confront, and how people can successfully rise above those challenges, is essential to any entity that seeks to shorten and smooth the long and bumpy road to petition-based record relief.

We begin in Part I with a brief review of the literature and an overview of expungement laws in the United States, including in Michigan. In Part II, we turn to our study's specific setting, describing Project Clean Slate, our survey method, and our sample population. In Part III, we present the survey results regarding two main areas of inquiry: (a) how and why PCS's clients undertake the expungement process; and (b) their experiences with the process, including the challenges they encounter. In Part IV, the Discussion, we contextualize these data by reference to interviews with PCS leaders and various Michigan-based experts and stakeholders; we also consider some interpretive questions and limitations of our approach as well as a few policy implications of our findings.

I. EXPUNGEMENT: POLICY BACKGROUND AND LITERATURE

A large body of research and advocacy work in recent years catalogs the many challenges that people with criminal records endure.[19] While expungement is by no means the only policy intervention designed to address these challenges, it is arguably the most powerful one.[20] Expungement reaches beyond alleviating any

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this dilemma. In practice, however, it seems unlikely that automated expungement will make petition-based expungement irrelevant or even unimportant in the near term.

[18] *See, e.g.*, Dale Margolin et al., *Empowerment, Innovation, and Service: Law School Programs Provide Access to Justice and Instill a Commitment to Serve*, 48 FAM. CT. REV. 672, 673 (2010); Ganick, *supra* note 16, at 26–33 (discussing how law schools can be a critical part of expanding access to expungement); Joy Radice, *Access-to-Justice Challenges for Expungement in Tennessee*, 30 FED. SENT'G REP. 277, 280 (2018) (highlighting that limited legal assistance from legal aid organizations and law schools is helpful but insufficient to meet demand in Tennessee).

[19] *See infra* Section I.B.

[20] For example, Ban-the-Box laws, the subject of another major wave of legislation in recent years, bar employers or landlords from asking about criminal records in an initial application form or

particular collateral legal consequence (for example, by restoring a particular civil right like voting or removing a licensing restriction) and sets its sights on more than a single economic objective like job or housing access (the most common targets of Ban-the-Box laws and other regulations of employers and landlords).[21] Expungement instead addresses the status or visibility of the criminal record itself, effectively eliminating its existence for most purposes, and thus wiping out many collateral consequences at once. To set the stage for the analysis of our survey data, we quickly summarize the current policy and research landscape regarding expungement, emphasizing gaps in what we know and motivating both the methods we use and the research questions we address.

A. *The Legal Landscape Nationally and in Michigan*

Expungement laws vary in their specifics, but most share several key features. First, the legal effect of an expungement is to seal a conviction from public view and remove it from an individual's record for most purposes. Assuming a state

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interview. Beth Avery & Han Lu, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, NAT'L EMP. L. PROJECT (Oct. 1, 2021), https://www.nelp.org/insights-research/ban-the-box-fair-chance-hiring-state-and-local-guide/ [https://perma.cc/H8EU-VKHT]; Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, 133 Q. J. ECON. 191, 192–93 (2018). Other reform efforts focus on restoring specific civil or political rights or eliminating specific collateral legal consequences of convictions. *See, e.g.*, *Voting Rights Restoration*, BRENNAN CTR. FOR JUST., https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-rights-restoration [https://perma.cc/SDE3-9EBB] (advocating for restoration of voting rights for people with felony convictions); *End Jury Disenfranchisement in New York*, NYCLU (Mar. 8, 2023), https://www.nyclu.org/resources/policy/one-pagers/end-jury-disenfranchisement-new-york [https://perma.cc/S7HW-9R35] (advocating for the repeal of New York's ban on jury service by individuals with felony convictions); *Fair Chance Licensing Project: States Expand Access to In-Demand Jobs*, JUST. CTR.: THE COUNCIL OF STATE GOV'TS, https://csgjusticecenter.org/projects/fair-chance-licensing/ [https://perma.cc/7RUJ-FNZW] (expanding access to jobs requiring a government license). Others center on providing concrete support to people with records, especially to those reentering society from prison. *See, e.g.*, *Workforce Innovation and Opportunity Act*, DEP'T OF LABOR: EMP. & TRAINING ADMIN., https://www.dol.gov/agencies/eta/wioa [https://perma.cc/8RC6-ST5B] (job training); *Housing Opportunities for People Reentering*, NAT'L HOUS. L. PROJECT, https://www.nhlp.org/initiatives/housing-opportunities-for-people-reentering/ [https://perma.cc/Z4SR-5VRR] (transitional re-entry housing).

[21] *See* Benjamin David Pyle, *Negligent Hiring: Recidivism and Employment with a Criminal Record* (May 7, 2024) (unpublished manuscript at 1–4), http://benpyle.com/docs/Negligent_Hiring_Pyle.pdf [https://perma.cc/BC3V-KL3T] (last visited Aug. 20, 2024); Just Housing Amendment to the Human Rights Ordinance, COOK CNTY GOV'T, https://www.cookcountyil.gov/content/just-housing-amendment-human-rights-ordinance [https://perma.cc/4ND7-4LD6] (last visited Aug. 24, 2024) (describing Ordinance No. 19-2394, which amends the Cook County Human Rights Ordinance to prohibit housing discrimination based on criminal history and to require landlords to perform an individualized assessment).

effectively implements an expungement,[22] the conviction will disappear from the state-level records databases that employers, landlords, and members of the public generally use—directly or indirectly—to verify or learn about an individual's background. The state restricts access to the conviction record in its databases and may require that private record-check companies destroy the record or remove it from public view.[23] The individual, meanwhile, has (with possible exceptions) a legally protected right to treat the expunged conviction as nonexistent for the purpose of answering criminal-records questions put to them in interviews and on application forms.[24] Some states forbid employers from relying on an expunged conviction in hiring decisions even if they somehow learn about it,[25] and the law often insulates them from negligent-hiring liability for failing to consider the conviction.[26] Finally, expungement precludes most collateral legal consequences of the conviction, at least at the state level—for example, occupational licensing restrictions.[27]

There are, however, limitations to expungement's legal effects. Expungement does not eliminate a conviction for all federal-law purposes; for example, for most immigration-law purposes, expunged convictions continue to exist. Expunged state convictions may sometimes appear in the FBI's fingerprint-based criminal history database. States may also build exceptions into their laws so that certain state

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[22] *See* Sarah Lageson & Robert Stewart, *The Problem with Criminal Records: Discrepancies Between State Reports and Private Sector Background Checks*, 62 CRIMINOLOGY 5 (2024) (explaining that state agencies and private background-check companies often have discrepancies in their understanding of what is on a person's criminal record, an issue our survey also explores).

[23] For examples of state laws enforcing expungement of criminal records among private background-check companies, *see* 18 PA. CONS. STAT. §§ 9101–83 (1980) (amended 2018); MINN. STAT. § 332.70 (2014); CAL. CIV. CODE §§ 1786.18(a)(7) (West 2010).

[24] *See* STATE BAR OF MICHIGAN, QUICK GUIDE, GOT A RECORD? KNOW YOUR RIGHTS: EMPLOYMENT 3 (2015), https://www.michbar.org/programs/cii/pdfs/employment_rights.pdf [https://perma.cc/5R69-GZZZ].

[25] *See, e.g.*, Illinois Employee Background Fairness Act, H.B. 3056, 101st Gen. Assemb. (Ill. 2020), available at https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=108&GA=101&DocTypeId=HB&DocNum=3056&GAID=15&LegID=&SpecSess=&Session= [https://perma.cc/EMP9-SWAY] (barring employers from basing "an[y] adverse [employment] action" on, or making any "inquiry" about, an expunged or sealed conviction unless authorized by law).

[26] To date, 16 states have passed legislation protecting employers from negligent-hiring liability stemming from hiring applicants with expunged criminal records. Joshua Gaines, *Addressing the Perceived Risks of Hiring Workers with Criminal Histories*, JUST. CTR.: THE COUNCIL OF STATE GOV'TS 1, 4–5 (Mar. 2023), https://csgjusticecenter.org/wp-content/uploads/2023/03/LimitingEmployerLiability-1.pdf [https://perma.cc/5ZAQ-FR7G]. In general, negligent-hiring liability lawsuits are relatively rare. David McElhattan, *The Exception as the Rule: Negligent Hiring Liability, Structured Uncertainty, and the Rise of Criminal Background Checks in the United States*, 47 LAW & SOC. INQUIRY 132, 151 (2022).

[27] *But see* Matt Saleh, *Civil Death and Labor Market Alienation: Occupational Restrictions and Inadequate Relief in Clean Slate Efforts*, 22 OHIO ST. J. CRIM. L. 311, 334 (2025).

officials can consult expunged records for statutorily defined purposes. For example, in Michigan, applicants for law enforcement positions or for admission to the state bar must disclose expunged convictions, and judges may consider expunged convictions when sentencing someone who is convicted of a new crime and when weighing future applications for pardons and expungements.[28] The Michigan State Police retain a nonpublic record of the expunged conviction for these purposes.

While the legal effects of an expungement are fairly similar across states, the requirements for a criminal conviction to be *eligible* for expungement vary widely. Typically, an individual must make it to the end of a statutory waiting period with no subsequent convictions to become eligible, but the lengths of these waiting periods differ significantly (from no waiting period to as much as 20 years) across states and sometimes within states for different categories of offenses.[29] Moreover, the waiting period's effective length is also shaped by whether it begins to run after the conviction, after sentencing, after completion of any carceral term, or after completion of the entire sentence.[30] The types of convictions that may be expunged also vary widely: some states allow only misdemeanors, others misdemeanors and minor felonies, and others more serious felonies as well.[31] To avoid conflict with sex offender registration laws (including federal law), expungements are generally not available for sex offense convictions, and states sometimes exclude other categories of crimes (for example, domestic violence, human trafficking, or violent crimes).[32]

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[28] MICH. COMP. LAWS § 712A.18e(13) (2024).

[29] *Compare Massachusetts Restoration of Rights & Record Relief*, RESTORATION OF RTS. PROJECT, https://ccresourcecenter.org/state-restoration-profiles/massachusetts-restoration-of-rights-pardon-expungement-sealing/ [https://perma.cc/KDE8-GFJV] (last visited Aug. 18, 2024) (no waiting period for expungement of decriminalized marijuana offenses, three-year waiting period for a misdemeanor, and seven-year waiting period for a felony) *and North Carolina Restoration of Rights & Record Relief*, RESTORATION OF RIGHTS PROJECT, https://ccresourcecenter.org/state-restoration-profiles/north-carolina-restoration-of-rights-pardon-expungement-sealing/ [https://perma.cc/4VRM-C63P] (last visited Aug. 18, 2024) (explaining there is a ten-year waiting period for one felony and a twenty-year waiting period for two or three felonies).

[30] *Compare Delaware Restoration of Rights & Record Relief*, RESTORATION OF RTS. PROJECT, https://ccresourcecenter.org/state-restoration-profiles/delaware-restoration-of-rights-pardon-expungement-sealing/ [https://perma.cc/DPP2-2UHF] (last visited Aug. 20, 2024) (noting that in Delaware the waiting period for expungement begins after conviction) *and Illinois Restoration of Rights & Record Relief*, RESTORATION OF RTS. PROJECT, https://ccresourcecenter.org/state-restoration-profiles/illinois-restoration-of-rights-pardon-expungement-sealing/ [https://perma.cc/PV5N-DHMP] (last visited Aug. 20, 2024) (noting that in Illinois the waiting period for conviction sealing begins after the completion of the sentence).

[31] Three states allow criminal record relief for misdemeanor convictions only; five states allow record relief for misdemeanor and pardoned felony convictions only; twenty-one states allow record relief for misdemeanor and less serious felony convictions; and seventeen states, plus Washington, D.C., allow record relief for misdemeanor and a broader range of felony convictions. RESTORATION OF RTS. PROJECT, *supra* note 3.

[32] *Id.*

Some states also limit the total number of certain types of convictions (e.g., felonies) that an individual may successfully expunge.[33]

Traditionally, states insist that individuals who are legally eligible for expungement must apply for relief if they want it. Judges usually have discretion to deny expungement even if the applicant meets all of the eligibility requirements. This petition-based model still dominates expungement opportunities across the United States and often requires that the applicant successfully navigate an arduous process. The movement for automated expungement is a response to these hurdles and the uptake problems associated with them.[34] The so-called Clean Slate Campaign advocates for automated expungement (or "clean slate") laws.[35] Supporters contend that, in an era of modern, digital criminal records, state databases are easily searchable, and algorithms can filter out and seal eligible convictions en masse. Individuals no longer need to fill out forms or go to court to prove their eligibility to ensure accurate outcomes. Rather, the state can simply determine whose records are eligible on its own and expunge them automatically.[36] The passage of clean slate laws usually seals a large number of older convictions soon after the law goes into effect. For example, in Michigan, over a million convictions were reportedly cleared on April 11, 2023, the effective date of the new clean slate law's automated provision.[37] After the effective date, convictions continue to be cleared

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[33] *Id.*

[34] *See* Moka Ndenga, *Collateral Consequences: Why the Consequences of Criminal Convictions Affect Much More than the Individual, and a Case for Automatic Expungement*, 46 T. MARSHALL L. REV. 199, 214 (2022).

[35] *See* THE CLEAN SLATE INITIATIVE, *supra* note 13. Despite this moniker, petition-based and automated expungement generally have the same "slate-cleaning" effects; the difference lies in the process that ends in the expungement. *Compare Illinois: Restoration of Rights & Record Relief*, *supra* note 30 (petition-based expungement for most non-juvenile or cannabis offenses in a state without clean slate legislation) *and Michigan: Restoration of Rights & Record Relief*, RESTORATION OF RTS. PROJECT, https://ccresourcecenter.org/state-restoration-profiles/michigan-restoration-of-rights-pardon-expungement-sealing/ [https://perma.cc/J8DV-DP6L] (last visited Aug. 17, 2024) (a "Clean Slate" state where a greater number of offenses are eligible for automated expungement). The "clean slate" metaphor has also long been used in the expungement world, and, for example, entities like Detroit's Project Clean Slate use it even though their focus is not limited to automated expungement. *See Project Clean Slate*, CITY OF DETROIT, https://detroitmi.gov/government/mayors-office/mayors-initiatives-and-programs/project-clean-slate [https://perma.cc/QYU5-MZPT] (last visited Aug. 17, 2024). While "automatic" is frequently used to describe the non-petition-based process, we use the term "automated" in this Article, as we believe it more clearly conveys the nature of the process, in which state agencies deploy algorithms to clear convictions without any involvement by the affected individuals.

[36] *See* CODE FOR AM., RECOMMENDATIONS FOR AUTOMATIC RECORD CLEARANCE POLICIES IN LEGALIZATION AND DECRIMINALIZATION LEGISLATION 3–4 (2022), https://files.codeforamerica.org/2022/01/19092410/recommendations-for-automatic-record-clearance-policies-jan-2022-1.pdf [https://perma.cc/YP8H-V644].

[37] Laina G. Stebbins, *Convictions Cleared for Nearly 850K Michiganders as "Clean Slate" Program Takes Effect*, MICH. ADVANCE (Apr. 19, 2023, 5:13 AM), https://michiganadvance.

automatically on a rolling basis as soon as they become old enough to meet the statute's waiting-period requirement.

Even in states with clean slate laws, however, petition-based expungement generally remains available for a broader swath of criminal records. The tighter eligibility restrictions and longer waiting periods for automated expungements reflect the fact that there is no judicial discretion associated with them and no ability for the state or crime victims to oppose them. Because petition-based expungement incorporates discretion to oppose by potentially interested parties as a constraint, many states employ fewer mandatory requirements in defining eligibility for their petition-based processes.

Michigan has allowed criminal conviction expungement by statute, MCL 780.621, since the 1960s.[38] Until 2011, Michigan's expungement law limited eligibility to only those people who had a single criminal conviction and no other criminal history.[39] In 2011, the legislature expanded eligibility to permit expungement of one felony even if the applicant had up to two other minor offenses (non-serious misdemeanors) but removed possession of child pornography from the list of eligible convictions.[40] In 2014, the legislature rebalanced once again, expanding eligibility to individuals with a history of serious misdemeanors but restricting eligibility on other dimensions: specifically, certain types of abuse-related convictions became ineligible, convictions discharged through court diversion programs began to count toward the two-misdemeanor limit, and if a court denied an expungement petition, the applicant had to exhaust a new three-year waiting period before they could reapply.[41]

In 2020, the Michigan Legislature enacted what may be the most significant expansion of expungement opportunities in the state to date. The bundle of bills passed that year, as well as a further bill signed into law a year later, effected several significant changes.[42] First, the reforms significantly expanded eligibility from one felony and up to two misdemeanors to up to three felonies and an unlimited number of misdemeanors.[43] Second, the legislation added eligibility for certain traffic offenses and, with the passage of the separate 2021 bill, eligibility for a first

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com/2023/04/19/convictions-cleared-for-nearly-850k-michiganders-as-clean-slate-program-takes-effect/ [https://perma.cc/H7D8-2Q6C].

[38] *A Brief History of Expungement in Michigan*, SAFE & JUST MICH. (Aug. 22, 2018), https://www.safeandjustmi.org/2018/08/22/a-brief-history-of-expungement-in-michigan/ [https://perma.cc/DT47-LSJJ].

[39] *Id.*

[40] 2011 Mich. Pub. Acts 64.

[41] 2014 Mich. Pub. Acts 463.

[42] *Michigan: Restoration of Rights & Record Relief*, *supra* note 35.

[43] *Id*.

Operating While Impaired/Intoxicated (OUI) offense.[44] Third, the package included an automated expungement provision that applied to a subset of eligible records and took effect in April 2023.[45] Fourth, the bills created a separate, streamlined process for expungement of marijuana offenses that would not have been crimes after the date of marijuana legalization (Dec. 6, 2018).[46] In separate legislation, the state also reformed the juvenile record expungement process.[47]

Michigan's new expungement regime is complex.[48] For example, the waiting period for petition-based expungement is three years for petty misdemeanors, five years for a single serious misdemeanor or felony, or seven years for multiple felonies.[49] The waiting period for automated expungement is seven years for misdemeanors and ten years for felonies, and automated expungement is available for no more than four misdemeanors punishable by imprisonment for ninety-three days or more and for no more than two felonies.[50] Some ambiguity in the phrasing of the waiting-period provision in the statute has led many courts to require that individuals expunge more recent "intervening" convictions before they can seek to expunge older convictions.[51] The law also includes a "One Bad Night" provision that counts multiple offenses committed within the same twenty-four hour period as a single conviction for eligibility purposes.[52] There are certain other restrictions on eligibility, such as a provision that prevents expungement of more than one of the "same offense" if punishable by ten years or more in prison.[53] Many of these provisions aim at expanding eligibility and creating more uniformity, but they also increase the complexity of assessing eligibility and extend the processing time of petitions.

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[44] *Id*.

[45] *Id.*

[46] *Id.*

[47] *See* MICH. COMP. LAWS § 712A.18t (2024) (changing a petition-based process into an automated expungement process for certain juvenile offenses); MICH. COMP. LAWS § 712A.28 (2024) (sealing cases brought before a juvenile court from public view with limited exceptions).

[48] *See Michigan Clean Slate*, MICH. STATE POLICE, https://www.michigan.gov/msp/services/chr/conviction-set-aside-public-information/michigan-clean-slate [https://perma.cc/354M-MQ9R] (last visited Aug. 17, 2024).

[49] MICH. COMP. LAWS § 780.621d (2024).

[50] MICH. COMP. LAWS § 780.621g (2024). There is no apparent limit to the number of misdemeanors with a maximum punishment of imprisonment of fewer than ninety-three days that can be automatically expunged.

[51] Sandiford & Cooper, *supra* note 11, at 11–12.

[52] MICH. COMP. LAWS § 780.621b (2024).

[53] MICH. COMP. LAWS § 780.621c (2024).

Time delays were especially severe early in the implementation of Michigan's new law. The expansion of expungement eligibility understandably led to a flood of new expungement petitions in the Michigan courts, which in turn caused backlogs in the processing of certified conviction record requests and the scheduling of hearings.[54] The Michigan State Police also experienced a pronounced surge in its workload due to a statutory requirement that the department generate and send an applicant's criminal history to each court in which the applicant files an expungement petition.[55] The Michigan Attorney General's Office, which receives every expungement petition along with the opportunity to respond, also found itself buried in a months-long backlog.[56] Now, four years post-reform, the involved agencies and courts appear to have resolved the most severe delays, and workloads have stabilized.[57]

When the automated process became effective on April 11, 2023, approximately 1.2 million convictions were immediately expunged, including "105,000 felony convictions and more than 1 million misdemeanors."[58] The initial automated expungements affected 850,000 Michiganders, of whom 252,417 had their records completely cleared as a result, while the remaining nearly 600,000 people had their records partially cleared but were left with other non-expunged convictions on their record.[59] Despite the impressive reach of Michigan's automated process, implementation remains a challenge. Because Michigan has a non-unified (that is, locally managed) court system,[60] observers have expressed concerns about the difficulty of ensuring that all eligible convictions are in fact expunged.[61] People

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[54] Anna Liz Nichols, *Three years later: The wins and wait times of Michigan's 'Clean Slate' expungement laws*, MICH. ADVANCE (Apr. 11, 2024, 3:33 PM), https://michiganadvance.com/2024/04/11/three-years-later-the-wins-and-wait-times-of-michigans-clean-slate-expungement-laws/ [https://perma.cc/S4HY-MV4E].

[55] MICH. COMP. LAWS § 780.621d(8) (2024).

[56] Chad Livengood, *Waiting Game: Michigan has a Groundbreaking Felony Expungement Law. Why Have So Few Benefited from It?,* CRAIN'S DETROIT BUSINESS (May 31, 2022), https://www.crainsdetroit.com/crains-forum/new-michigan-felony-expungement-law-faces-backlog [https://perma.cc/ZH3X-VDJ9].

[57] Sandiford & Cooper, *supra* note 11, at 7.

[58] Stebbins, *supra* note 37.

[59] *Id.*

[60] MICH. JUST. FOR ALL COMM'N, REIMAGINING OUR COURTHOUSES: REPORT AND RECOMMENDATIONS, 17 (2023), https://www.courts.michigan.gov/492644/siteassets/reports/special-initiatives/justice-for-all/final-reimagining-courthouses-report.pdf [https://perma.cc/U4SP-PFTF] ("Michigan's trial courts currently use 20 different case management systems.").

[61] ANDREA L. MILLER & NIKOLE HOTCHKISS, NAT'L CTR. FOR STATE CTS., MAKING THE PROMISE OF EXPUNGEMENT A REALITY: A GUIDE TO RECORD RELIEF IN THE STATE COURTS 23 (2024), https://cdm16501.contentdm.oclc.org/digital/api/collection/accessfair/id/1070/download [https://perma.cc/YVS3-E2Y6].

have also understandably questioned whether those who *have* had convictions expunged are aware of the change in their status.[62] Even if automated expungement operates perfectly, petition-based expungement is still the only option for those with certain categories of convictions,[63] for those who have more than two felonies or more than four misdemeanors, and for those who wish to obtain expungement within the shorter petition-based waiting periods. Our survey sample includes some petitioners who fall into these categories and many individuals who petitioned for expungement before automated expungement went into effect. PCS, for its part, began providing services to the citizens of Detroit in 2016.

B. *Empirical Research on Expungement*

Research extensively documents the significant deleterious effects of a criminal conviction on employment, housing, voting rights, and family life.[64] These findings highlight many of the reasons that people might want to pursue expungement opportunities by implicitly identifying the many potential benefits that record relief might confer upon them. However, historically, there has been little empirical understanding of the actual operation and impact of expungement laws, in part because expungement and the life trajectories of those who receive record relief are hard to observe—almost by definition. After all, these laws aim to give people a

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[62] *See* Hrdinová & Miller, *supra* note 15, at 16; Sandiford & Cooper, *supra* note 11.

[63] *See Michigan: Restoration of Rights & Record Relief*, *supra* note 35 (clarifying that offenses that may not be automatically expunged include assaultive crimes; serious misdemeanors; crimes of dishonesty; certain offenses punishable by ten years or more imprisonment; criminal offenses involving a minor, vulnerable adult, injury or serious impairment, or death; human trafficking offenses; and certain traffic offenses (e.g., operating while intoxicated, CDL-related offenses, and offenses causing injury or death)).

[64] *See, e.g.*, Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, 270 NAT'L INST. JUST. J. 42, 44 (June 2012), https://www.ncjrs.gov/pdffiles1/nij/238488.pdf [https://perma.cc/2VKE-DDRF]; SCOTT H. DECKER ET AL., CRIMINAL STIGMA, RACE, GENDER, AND EMPLOYMENT: AN EXPANDED ASSESSMENT OF THE CONSEQUENCES OF IMPRISONMENT FOR EMPLOYMENT 1–2 (2014), https://www.ojp.gov/ pdffiles1/nij/grants/244756.pdf [https://perma.cc/3G 9V-46FC]; Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. OF SOC. 937, 937–38 (2003); Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1811–14 (2012); Elaina R. McWilliams & Bronwyn A. Hunter, *The Impact of Criminal Record Stigma on Quality of Life: A Test of Theoretical Pathways*, 67 AM. J. CMTY. PSYCH. 89, 89 (2021); Meghan L. Smith et al., *Arrest history, stigma, and self-esteem: a modified labeling theory approach to understanding how arrests impact lives*, 57 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1849, 1849 (2022); JAMES B. JACOBS, THE ETERNAL CRIMINAL RECORD 4 (2015). For a useful compilation of state collateral legal consequences of criminal convictions, *see* NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, https://niccc.nationalreentryresourcecenter.org [https://perma.cc/MCD9-BY5D] (last visited Aug. 17, 2024) (compiling various collateral consequences, including housing, employment, voting, education, and others); *see generally* MARGARET COLGATE LOVE ET AL., COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: LAW, POLICY AND PRACTICE (2018).

"fresh start" by sealing their records and identities, which has the indirect but very consequential effect of making it formidable for researchers to identify them.

In recent years, however, a small body of expungement research has begun to accumulate. In a major study of expungement in Michigan,[65] which this research complements and extends, J.J. Prescott and Sonja Starr use deidentified criminal records from the Michigan State Police (including expunged convictions) and wage data from the state's Unemployment Insurance Agency to assemble a comprehensive sample of expungement recipients and comparable nonrecipients. Prescott and Starr use these data and Michigan's expungement policies to study the empirical relationship between expungement receipt and policy-relevant outcomes like recidivism and employment status. Their analysis produces three key empirical findings: first, just 6.5% of people legally eligible for expungement obtain it within five years of eligibility; second, recidivism rates are extremely low for expungement recipients, comparing favorably to the general adult population; and third, those who do receive expungements experience sharp improvements to their wage and employment trajectories.[66]

Several smaller studies using different research methodologies yield consistent results about the challenges posed by complex petition-based expungement processes and the positive effects of expungement for those who are successful in navigating those challenges. A 2018 study by Jeffrey Selbin, Justin McCrary, and Joshua Epstein finds employment gains for 235 clients of a law school clinic who sought expungements or the related relief of reducing felonies to misdemeanors.[67] Ericka B. Adams, Elsa Y. Chen, and Rosella Chapman conducted semi-structured interviews with forty individuals who sought record clearance in California.[68] Their results reflect expungement-driven employment gains and indicate changes in recipients' self-perceptions and their opinions about the legal system.[69] Simone Ispa-Landa's study, based on semi-structured interviews, underscores the importance of the stigma effects experienced by those unable to obtain the expungements they seek.[70]

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[65] Prescott & Starr, *supra* note 8.

[66] *Id*. at 2461.

[67] Jeffrey Selbin, Justin McCrary & Joshua Epstein, *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. CRIM. L. & CRIMINOLOGY 1, 40, 46 (2018).

[68] Ericka B. Adams, Elsa Y. Chen & Rosella Chapman, *Erasing the Mark of a Criminal Past: Ex-offenders' Expectations and Experiences with Record Clearance*, 19 PUNISHMENT & SOC'Y 23, 23 (2017).

[69] *Id*. *See also* Elsa Y. Chen & Ericka B. Adams, *"I've Risen Up from the Ashes That I Created": Record Clearance and Gendered Narratives of Self-Reinvention and Reintegration*, 14 FEMINIST CRIMINOLOGY 143, 160 (2019).

[70] Simone Ispa-Landa, *Believing in a Positive Future as a Form of Stigma Resistance: Narratives of Denied Expungement Seekers*, 40 DEVIANT BEHAV. 1428, 1428–29 (2017).

The uptake gaps that Prescott and Starr uncover in their work align with the findings of other studies that use different methods in other states—for example, the multi-state evaluations of several different record-relief policies by Colleen Chien and collaborators,[71] and the work by Alex Fraga and Jana Hrdinová on record clearance of misdemeanor marijuana possession convictions, which also emphasizes the racial disparities among the people who have such records (15% of Black men in Columbus, Ohio, as compared to 3% of white men).[72] Another study by Hrdinová explores how legislatively broadening eligibility for record sealing influences the number of people applying for and receiving record sealing.[73] Sarah Lageson and Robert Stewart unearth significant discrepancies between official state reports of criminal records and two sources of private sector background checks, and, through interviews with the subjects, demonstrate the impact that these discrepancies have on their subjects' lives.[74] Jessica Steinberg and Eleanor Wade survey thirty-two state laws and procedures for expunging felony convictions, identifying informational, procedural, and financial barriers to expungement uptake.[75]

Some of the existing research concentrates on evaluating the effects of expungement or expungement laws by using outcomes captured by administrative, usually government data. This approach has some advantages. The outcomes are objectively measured and typically easy to understand and interpret, and large sample sizes allow for the study of more moving parts and the detection of smaller effects.[76] The results are also more generalizable.[77] At the same time, administrative

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[71] *See, e.g.*, Colleen Chien*, America's Paper Prisons: The Second Chance Gap*, 119 MICH. L. REV. 519, 519–20 (2020); COLLEEN CHIEN ET AL., THE MINNESOTA SECOND CHANCE EXPUNGEMENT GAP, https://paperprisons.org/states/MN.html [https://perma.cc/ UQ3S-K7KD] (last visited Aug. 20, 2024); COLLEEN CHIEN ET AL., THE MISSOURI SECOND CHANCE EXPUNGEMENT GAP 30, https://paperprisons.org/states/MN.html [https://perma.cc/C7EX-92FS] (last visited Aug. 20, 2024); COLLEEN CHIEN ET AL., THE CONNECTICUT SECOND CHANCE PARDON GAP 5, https://paperprisons.org/states/CT.html [https://perma.cc/7H24-DUQ4] (last visited Aug. 20, 2024).

[72] ALEX FRAGA & JANA HRDINOVÁ, THE OH. STATE UNIV. MORITZ COLL. OF L. DRUG ENF'T & POL'Y CTR., *The Prevalence of Misdemeanor Marijuana Possession Records in Columbus, Ohio* 2 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4193167 [https://.perma.cc/H3BB-PHBZ].

[73] JANA HRDINOVÁ, THE OH. STATE UNIV. MORITZ COLL. OF L. DRUG ENF'T & POL'Y CTR., *Is Expanding Eligibility Enough? Improving Record Sealing Access and Transparency in Ohio Courts* 17 (2023).

[74] Sarah Lageson & Robert Stewart, *The Problem with Criminal Records: Discrepancies Between State Reports and Private Sector Background Checks*, 62 CRIMINOLOGY 5, 5 (2024).

[75] Jessica K. Steinberg & Elenore Wade, *State Legislatures and the Uptake Puzzle in Expungement of Criminal Records*, 100 INDIANA L. J. (forthcoming 2025) (manuscript at 53), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4844076 [https://perma.cc/T8YA-MHFG].

[76] Andrew M. Penner & Kenneth A. Dodge, *Using Administrative Data for Social Science and Policy*, 5 RUSSELL SAGE FOUND. J. SOC. SCI. 1, 5 (2019).

[77] *Id.* at 7.

data collected for non-research purposes have considerable drawbacks. In particular, limitations in terms of the detail and richness of the available data considerably narrow the scope of plausible questions researchers can explore.[78] For this reason, existing research relying on semi-structured interviews, sometimes combined with record review, adds crucial nuance to our understandings of the effects of criminal records and the benefits that expungement can provide.[79] Studies limited to several dozen interviews, however, are unlikely to produce generalizable findings standing alone. In this important sense, our work in this Article complements the existing literature by offering larger-scale survey evidence of the subjective experiences of both expungement recipients and individuals who have commenced the petition process of pursuing an expungement but, for whatever reason, have failed to obtain relief.

II. OUR STUDY SETTING AND DESIGN

Our findings derive from, to our knowledge, the first survey-based study of criminal record expungement applicants, both eligible and ineligible, as well as expungement recipients. We were able to field our survey through a collaborative partnership with the City of Detroit's Project Clean Slate (PCS). We describe PCS and the population it serves in Section A. In Section B, we outline our study design and detail our survey instrument. We also introduce our study population and describe our analysis sample. In Section C, we sketch our approach to collecting useful contextual information through interviews with PCS staff and other relevant experts on expungement in Michigan. With this groundwork in place, we turn to presenting our findings and discussing their interpretation in Part III.

A. *Detroit and Project Clean Slate*

In 2016, the City of Detroit established PCS to assist Detroiters with applying for and obtaining expungements, in light of the estimated 215,000 people with criminal records in the city, approximately 168,000 of whom are eligible for expungement under current law.[80] Since its founding, PCS has helped more than 12,000 people obtain record expungement via Michigan's petition-based expungement process.[81] Indeed, with a staff of fifteen, PCS is able to provide relatively comprehensive representation to eligible Detroiters from the very

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[78] *See* Katie Harron et al., *Challenges in Administrative Data Linkage for Research*, 4 BIG DATA & SOC'Y 1, 2 (2017).

[79] Penner & Dodge, *supra* note 76, at 8.

[80] *Project Clean Slate*, *supra* note 35.

[81] Ingrid Kelley, *More than 12,000 Have Had Their Records Expunged as Part of Project Clean Slate*, FOX 2 DETROIT (Oct. 9, 2024, 8:33 PM), https://www.fox2detroit.com/video/1529582 [https://perma.cc/VAF9-PW6E].

beginning of the process through to a court's final determination on an expungement application and beyond, including follow-up inquiries to confirm government compliance. PCS's services are available only to Detroit residents, and the majority of convictions of its clients occur in courts in the Detroit Tri-County Area.[82] Partly for this reason, the organization has been able to establish relationships with local courts, prosecutors' offices, and law enforcement agencies that have allowed streamlining of some of the more onerous aspects of the process—in particular, obtaining certified records of conviction, cleaning up incomplete and inaccurate state criminal histories (as recorded by the official Internet Criminal History Access Tool (ICHAT)), and securing the judge's signature on the expungement order, sometimes by stipulation without a hearing.[83]

While the state of Michigan by and large reflects national demographics and socioeconomic conditions, the population of Detroit differs from the state population along a number of important dimensions. Detroit's poverty rate is nearly triple the national rate at 31.5%,[84] its median income is roughly half the national median at $37,761,[85] and employment rates and educational attainment are also below state and national averages.[86] Detroit is 77.8% African American and 10.1% white.[87] Its

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[82] Zoom Interview with Detroit Project Clean Slate Dir. Stephani LaBelle, Lead Att'y Christina Guirguis, and Head Legal Assistant Kara Judd (July 11, 2024) [hereinafter *Interview with PCS Staff*].

[83] *Id.*

[84] *QuickFacts: Detroit city, Michigan*, U.S. CENSUS BUREAU. https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,MI/PST045222 [https://perma.cc/RDP8-6CW7] (last visited Aug. 18, 2024) [hereinafter *Detroit QuickFacts*]; Emily A. Shrider & John Creamer, *Poverty in the United States: 2022*, U.S. CENSUS BUREAU (Sept. 12, 2023), https://www.census.gov/library/publications/2023/demo/p60-280.html [https://perma.cc/ H33E-KUPU].

[85] Gloria Guzman & Melissa Kollar, *Income in the United States: 2022*, U.S. CENSUS BUREAU (Sept. 12, 2023), https://www.census.gov/library/publications/2023/demo/p60-279.html [https://perma.cc/MX4J-KJQB]; *Michigan Poverty & Well-Being Map: Metro Detroit Metro Region*, University of Michigan Poverty Solutions, https://poverty.umich.edu/research-funding-opportunities/data-tools/michigan-poverty-well-being-map/ [https://perma.cc/U4FK-E2N9] (last visited Aug. 18, 2024); *Detroit QuickFacts*, *supra* note 84.

[86] For example, only 16.9% of the Detroit population has a bachelor's degree or higher as compared to 31.1% of the Michigan population, and in Detroit, only 54.7% of the population older than 16 is in the civilian labor force, as compared to 61.4% across Michigan. *Detroit QuickFacts*, *supra* note 84.

[87] *Detroit QuickFacts*, *supra* note 84. In 2020, for the first time, the U.S. Census collected information on MENA (Middle Eastern North African) identification and found that in Wayne County, where Detroit and Dearborn are located, 7.8% of residents identify as MENA in whole or in part, more than in any other U.S. county. Rachel Marks et al., *3.5 Million Reported Middle Eastern and North African Descent in 2020*, U.S. CENSUS BUREAU (Sept. 21, 2023), https://www.census.gov/library/stories/2023/09/2020-census-dhc-a-mena-population.html [https://perma.cc/53CT-6M7X].

crime rate is notably higher than state and national averages,[88] and the city's population is also disproportionately represented in jail and prison admissions,[89] and in overall convictions,[90] in the state.

One question in studying the expungement process (and legal assistance generally) in a particular and perhaps atypical city setting, therefore, is whether any lessons that emerge will be relevant to states contemplating statutory reform and localities brainstorming models of service delivery. While socioeconomic differences mean that Detroit cannot be said to be representative of the nation, its residents still represent a very useful population to study in this context, because along each demographic dimension, Detroit's population aligns with other populations that are disproportionately likely to have criminal records and thus to be potential beneficiaries of expungement. For example, nationwide, 27% of white adults and 46% of Black adults are estimated to have a criminal record (including non-conviction records).[91] People with criminal records are also more likely than the general population to be living in poverty, to be unemployed, to have lower educational attainment, and to have low wages.[92]

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[88] FED. BUREAU OF INVESTIGATION, *Michigan: Offenses Known to Law Enforcement by City* (2019), https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-8/table-8-state-cuts/michigan.xls [https://perma.cc/2XA8-EXXL].

[89] *Compare* Christian Henrichson et al., *Incarceration Trends in Michigan*, VERA INST. OF JUST. 3 (Dec. 2019), https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-michigan.pdf [https://perma.cc/5Z6T-SG4R] (jail and prison admission rates by Michigan county) *and* Sabiha Zainulbhai, *Neighborhoods and Re-Entry in Detroit: Mapping Prison Data*, DATA DRIVEN DETROIT 2–6 (2015) https://skilledwork.org/wp-content/uploads/2017/08/Data-Driven-Detroit_Mapping-Prison-Data.pdf [https://perma.cc/2C6R-K67L] (showing higher prison and jail admission rates among Detroiters).

[90] Approximately two to three million Michigan residents have criminal records. SAFE & JUST MICHIGAN, *Public Criminal Records and Michigan's New "Clean Slate" Law* 3, https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Keeping-Michigan-Healthy/HIVSTI/Training-and-Events/Clean-Slate-Presentation---Safe-and-Just-Michigan.pdf [https://perma.cc/2XY8-AMEM] (last visited Apr. 7, 2025). Of these residents with records, roughly 10% or 215,000 are from Detroit, even though the city accounts for only 6% of the state population. *Detroit QuickFacts, supra* note 84.

[91] *The Clean Slate Initiative's Data Dashboard*, *supra* note 1. The Clean Slate Initiative estimates that the percentage of Michigan residents with a record is somewhat lower than the national average at 18% of the total state population, with 27% of Black adults and 15% of white adults estimated to have records. *Id*.

[92] HALF IN TEN, *Americans with Criminal Records*, THE SENT'G PROJECT, at 1–2, https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf [https://perma.cc/S2PT-H5BE] (last visited Aug. 18, 2024) (discussing the effects of a criminal record on poverty status, employment, and wages); MARSHA WEISSMAN ET AL., THE USE OF CRIMINAL HISTORY RECORDS IN COLLEGE ADMISSIONS RECONSIDERED, CTR. FOR CMTY. ALT. 17 (2010) https://www.prisonpolicy.org/scans/communityalternatives/ reconsidered_criminal_ hist_recs_in_college_admissions.pdf [https://perma.cc/YG8C-J7Q3] (discussing collateral consequences on educational attainment).

B. *Our Survey Design and Population*

We worked through PCS to send survey requests and links to 14,022 individuals that PCS's staff had assisted in some capacity in the past. Each of these individuals had contacted PCS staff between March 2019 and February 2024 to receive assistance with at least one expungement petition (in other words, these individuals "opened" a case with PCS), and each had at least one of those petition assistance cases "closed" by PCS by the time we collected and prepared the data.[93] This population includes people who abandoned the process at some point as well as people who successfully received expungements for one or more convictions. PCS also provided us with the background information that its staff had recorded on each individual, much of it collected via an intake questionnaire and subsequent communications. The survey request informed all potential respondents that the survey was optional and sought informed consent. The invitation offered a ten-dollar gift card to the first 1,000 respondents and a one-in-four chance to receive a ten-dollar gift card thereafter; unsurprisingly, the rate of responses slowed dramatically with the reduction in the incentive. Our survey software estimated that the survey would take respondents about ten to twenty minutes to complete, and on average, respondents completed the survey in about nine minutes.

Our survey instrument comprises sixty-seven questions, some of which we only put to some respondents depending on their answers to prior questions.[94] The survey, as administered, contains no mandatory questions. We designed the questions to cover a range of topics relating to the expungement process and respondents' motivations, experiences, and outcomes. In particular, the survey asks people why they sought expungement when they did, how they learned about the process, what kinds of barriers they encountered, and, when applicable, what caused them to give up on the process. The instrument also includes questions designed to measure the impact of the experience on respondents' perceptions of the fairness and legitimacy of the legal system, to assess the consequences of receiving an expungement along a variety of dimensions (e.g., employment, housing, family relationships), to gauge post-expungement recidivism, and to explore whether expunged convictions continue to surface in background checks. In this Article, we focus on questions

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[93] An expungement petition assistance case at PCS is considered "closed" when it is not possible for PCS staff to take any further action to move a petition forward. This could happen for a variety of reasons, from the client failing to respond to PCS staff at any point in the process, to the client being found ineligible for criminal record expungement (or becoming ineligible mid-application due to a new arrest), to the best-case scenario—PCS confirming that the client's record has been verifiably expunged. We did not send the survey to the roughly 5,800 people in PCS's client base whose only cases were still pending at the time of our data collection, because these individuals likely lacked sufficient information to answer many of the questions.

[94] Survey questions and other survey documents are available from the authors upon request.

related to the expungement process; we leave for future analysis questions regarding the *impact* of receiving an expungement on people's lives.[95]

Our survey sample includes respondents who completed and submitted at least one expungement petition to state officials and respondents who did not succeed in submitting a petition. Would-be expungement applicants must first demonstrate Detroit residency, the only requirement to receive PCS assistance. If a potential applicant is unable to show Detroit residency, they make it no further in the process, and thus they appear neither in PCS's records nor in our survey, since PCS does not conduct intake on them. Once individuals make it past the residency screening, PCS runs a criminal background check (or ICHAT) to assess eligibility for expungement based on the number, type, and timeframe of their convictions. PCS screens out a significant number of individuals as ineligible at that point: because they have too many convictions or convictions in ineligible offense categories; because the waiting period has not yet expired for their convictions; or because they have no convictions—often the result of prior expungements through the automated process. The experiences of these individuals, along with those who are eligible but who stop working with PCS staff and never file expungement petitions, are important and worthy of careful study. In particular, understanding what causes eligible individuals to forgo the expungement process and live with a criminal record is critical to designing more effective petition-based systems and assessing expungement's benefits.[96]

Out of 1,483 responses received, we include 1,439 in our analysis and exclude 44 because they failed quality control checks.[97] Our response rate is in the expected range: 13% started the survey, with an 80% survey completion rate among those who began answering questions. In any survey, the sample selection introduced by the voluntary decision to respond to a survey invitation is a potential source of bias in the results. In Table 1, we show characteristics of the survey sample. For some characteristics, we are able to compare the survey sample to all PCS clients who received a survey invitation, based on the intake data on each client that PCS shared with us. This comparison shows that our survey sample is quite similar in many observable respects to the overall pool of PCS clients from which it was drawn, but

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[95] *See* Edmonds, Prescott & Starr, *supra* note 7.

[96] While the rate at which eligible individuals fail to seek expungement is a known area of concern and study, the rate at which *ineligible* individuals *seek* expungement is also of interest, as their efforts demonstrate that the demand for cleaning up criminal records exceeds what is possible even under the greatly expanded eligibility parameters of expungement laws in Michigan and other jurisdictions. This demand implies that would-be applicants believe they would benefit from expungement.

[97] We removed thirty-one individuals who failed to correctly respond to a mid-survey attention question and a further thirteen individuals who did not respond to another key question in the survey (whether they had submitted an expungement petition). Because the skip logic of our survey depended on their answer to this question, those who failed to answer it did not produce data that we could analyze.

it tilts toward people who actually file for and receive expungements and away from those who discover they are ineligible during the process or otherwise drop or stall out of the process.

Panel A of Table 1 focuses on demographics. Both groups are overwhelmingly Black (92% for respondents, 95% for the larger group).[98] The survey sample leans slightly less male (57%, compared to 65% in the PCS pool).[99] The age structure of the survey sample is roughly similar to the PCS pool's age structure, although adults under 35 are somewhat underrepresented (23%, versus 33% in the PCS pool). Panel B shows that individuals in the survey sample and the underlying PCS pool have very similar criminal histories on average. In both samples, about three-quarters have a felony conviction, and the average number of convictions (around three), felonies (around 1.5), and years since the last conviction at the time of intake (around 13.5) are approximately the same. More detailed analysis of the distributions of felony and misdemeanor convictions between these two groups likewise shows a reasonably high degree of similarity.[100]

Notably, the average time elapsed since a respondent's last conviction is much longer than the legal waiting periods for petition-based expungements (the longest of which is seven years, when a person with multiple felony convictions becomes eligible). Prescott and Starr find that under an earlier legal regime, the average time elapsed was 9.6 years,[101] and in the same study, only about 6.5% of all individuals eligible for petition-based expungements receive relief within the first five years of legal eligibility.[102] Many respondents, for whatever reason, apply at times other than when their eligibility ripens. In our pool, the elapsed time is likely longer because the 2020 amendments to the expungement law made a very large number of Michigan residents newly eligible for expungement, including some with quite old convictions. This figure is likely to shrink as time passes following the implementation of Michigan's expanded law, as the oldest eligible convictions are steadily expunged either through the petition-based or automated processes.

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[98] The balance of each is composed of several other racial groups as well as those who do not identify their race, with no other group exceeding 5% of either sample.

[99] Women are a minority of the population with records, *Clean Slate Initiative Data Dashboard*, *supra* note 1 (presenting figures that show that 28% of people in Michigan with records are women), although among those who are eligible, women are also more likely to receive expungement, Prescott & Starr, *supra* note 8, at 2500. Thus, our data imply that more women avail themselves of PCS's services than men. This is consistent with other literature suggesting women are more likely to take advantages of government programs. *See* Mark Schlesinger & Caroline Heldman, *Gender Gap or Gender Gaps? New Perspectives on Support for Government Action and Policies*, 63 J. OF POL. 59, 79 (2001).

[100] Results available from the authors upon request.

[101] Prescott & Starr, *supra* note 8, at 2496.

[102] *Id.* at 2466.

Finally, Panel C of Table 1 highlights the sharpest differences between the survey sample and the underlying pool: those who responded to the survey are much more likely to have been eligible for expungement for at least one conviction (per PCS's determination) and to have actually filed an application for expungement. As we show below, those who file an application almost always receive expungement, meaning that our sample tilts toward people with favorable process outcomes. (Applicants benefit from PCS's assistance and guidance in making their application choices.) This is not surprising: individuals deemed ineligible by PCS may have been frustrated by the process (and thus perhaps they are less likely to respond to a PCS-related survey), and those who are eligible but did not follow through with filing may be less engaged with this issue or less communicative with the agency generally. It is, however, a factor to keep in mind when interpreting our results below.[103]

Socioeconomic background characteristics, shown in Table 2, are available only for our survey respondents because we obtained them via the survey. Unsurprisingly (given Detroit's socioeconomic picture and that of people with records generally), the respondent population skews generally toward lower incomes; over half make less than $30,000 a year. However, a range of income categories, living situations, and educational levels appear in the sample. Most of the respondents work for a living, and others are students, retirees, or out of the workforce due to disability. In general, these distributions of socioeconomic characteristics are roughly similar to those of the Detroit population.[104] Note that these survey questions reflect the respondent's situation at the time of the survey, which could differ from their circumstances both when they made contact with PCS and when they applied for or received their expungement.

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[103] Selection bias like this is typical in survey research. *See* Gary Cuddeback et al., *Detecting and Statistically Correcting Sample Selection Bias*, 30 J. SOC. SERV. RES. 19, 20 (2004) ("[S]elected individuals can, and frequently do, refuse to participate. This is problematic if collectively the individuals who do not participate are systematically different from those who do, and consequently the final sample may be biased."). This is especially true in studies of individuals who are at particularly high risk of non-participation. *See, e.g.*, *id.* at 21. Statistical inferences drawn from these data must account for this selection bias using sample selection models. *Id.* at 22.

[104] For comparison points, see *Detroit QuickFacts*, *supra* note 84.

Table 1. Descriptive Statistics

	Detroit PCS Population	Survey Sample
A. Demographics	*N = 14,022*	*N = 1,439*
Percent male	64.7	57.2
Percent Black (including multiracial)	95.0	91.8
Percent Nonwhite	97.0	95.0
Average age (at intake)	41.0	44.0
Percent under age 35 (at intake)	32.8	23.4
Percent ages 35–55 (at intake)	55.2	62.7
Percent over age 55 (at intake)	11.9	13.8
B. Criminal history	*N = 7,017*	*N = 1,065*
Percent with at least one felony	75.7	75.8
Percent with multiple convictions	71.9	72.1
Average number of convictions	3.1	3.1
Average number of felonies	1.6	1.5
Average years since last conviction (at intake)	13.3	13.7
Average years since last felony conviction (at intake)	17.1	17.8
C. Expungement petition statistics	*N = 14,022*	*N = 1,439*
Percent intake before eligibility expansion	23.0	26.1
Average years since last conviction	14.0	13.2
Percent intake after eligibility expansion	77.0	73.9
Average years since last conviction	13.0	13.9
Average years since intake (as of March 2024)	1.9	2.1
Percent eligible for at least one expungement	55.8	66.6
Percent who filed at least one expungement petition	29.3	53.1

Note. Panels A and C summarize demographic and expungement petition statistics of the entire PCS population and the survey sample, respectively. Panel B summarizes criminal history statistics for the subset of the PCS population and the survey sample for which we have criminal history data. Intake refers to the date of a respondent's first interaction with PCS.

We designed our survey instrument to pose some questions only to individuals who answer "yes" to one of two prior questions: whether they received an automated expungement and whether they received a petition-based expungement. This group includes 47% of our sample; an additional 38% answer "I don't know" to one or both questions. PCS's administrative data show that 36% of the latter group in fact received expungements; we cannot tell whether these individuals answer "I don't know" because they were uncertain as to whether their expungement was automated

or petition-based or because they were not sure whether they had received an expungement at all. We did not anticipate this ambiguity when we designed the survey's skip logic, which unfortunately likely led to a somewhat smaller sample size than was necessary for certain questions. For each survey question we analyze, we report the effective sample size in the results we present.

Table 2. Socioeconomic Characteristics

	Survey Sample *N = 1,439*
Annual Income	
$29,999 or less	56.1
$30,000–$69,999	32.9
$70,000 or greater	7.6
Employment Situation	
Working full-time	55.9
Working part-time	12.2
In school	10.3
Unemployed, not in school	11.7
Not in workforce (retired or disabled)	19.6
Education (highest level attained)	
Less than high school diploma/GED	11.0
High school diploma/GED	37.1
Some college	32.6
Higher-education degree	19.0
Living Situation	
With spouse or significant other	34.7
With children/grandchildren	41.3
With others	13.9
Alone	29.1

Note. This table reports percentages of the survey sample. The survey permitted multiple responses for employment and living-situation categories. Higher-education degrees include associate's, bachelor's, and graduate degrees.

C. *Interviews*

We complement our survey data with qualitative information from nine interviews with experts on the expungement process in Michigan. Interviewees include three representatives of PCS (Executive Director Stephani LaBelle, Lead

Attorney Christina Guirguis, and Head Legal Assistant Kara Judd),[105] who provide an important perspective that supplements the survey data that we collected from their clients. In addition, because PCS provides services that other Michigan municipalities do not and because PCS benefits from strong relationships with local courts, prosecutors, and police, interviews with experts outside of Detroit can be useful in assessing ways in which the experience of expungement applicants in the rest of the state might differ from that of Detroiters. In the Discussion, we refer to these interviews as appropriate to contextualize our survey results.

These interviewees include:

- Kamau Sandiford, the Clean Slate Program Manager of Safe & Just Michigan (SJM).[106] SJM is a leading advocacy organization for people with records, and it has close ties to other entities interested in expungement throughout the state. Sandiford's role includes organizing expungement fairs, webinars, and other events to promote expungement awareness and access.
- Sarah Munro, the Pro Bono Manager for Michigan Advocacy Program (MAP),[107] a statewide legal-services advocacy group that includes a legal services division covering South Central Michigan. Munro's responsibilities include overseeing MAP's work on expungement cases.
- Stephen Rideout, the Clean Slate staff attorney for Oakland County,[108] a large county close to Detroit (with twice the city's population). Like PCS, this county office assists residents with expungement, but it is a smaller operation with just one attorney.
- Nora Ryan, the Director of Michigan Legal Help (MLH).[109] MLH offers digital resources to allow citizens throughout the state to learn about expungement and fill out and print the forms they need; it does not provide legal representation but instead offers support for legal self-help. It also refers individuals to in-person self-help centers near them.

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[105] *Interview with PCS Staff*, *supra* note 82.

[106] Zoom Interview with Kamau Sandiford, Clean Slate Program Manager, Safe & Just Mich. (Jul. 19, 2024).

[107] Zoom Interview with Sarah Munro, Pro Bono Manager, Mich. Advoc. Program (Jul. 10, 2024).

[108] Zoom Interview with Stephen Rideout, Staff Att'y, Oakland Cnty. Clean Slate Program (Jul. 31, 2024).

[109] Email from Nora Ryan, Dir., Michigan Legal Help, to Mira Edmonds, Clinical Assistant Professor of L., Univ. of Michigan L. Sch. (Jul. 26, 2024, 10:10 EDT) (on file with authors).

- Robyn Pierce, a librarian with the Jackson District Library system (JDL).[110] JDL operates the Legal Self-Help Center Network of Jackson County, through which library staff provide support to help individuals determine their expungement eligibility and learn how to navigate the process.
- Katrina Garrett, the Manager of the Expungement Unit at the Michigan State Police (MSP).[111] (Garrett has since become MSP's Criminal History Manager.) MSP carries out background checks, maintains the state's official criminal records database, and implements expungement, including running the automated-expungement algorithm.

III. ANALYSIS AND RESULTS

Our analysis concentrates on respondents' experiences with the petition-based expungement process, and we structure this Part sequentially, beginning with what draws potential applicants to apply for expungements. We are particularly interested in learning about applicants' underlying reasons for wanting and seeking out an expungement, why potential applicants decide to pursue an expungement when they do and not at some other time, and how potential applicants learn about expungement relief generally and about their eligibility in particular. We then turn to how people experience the application process, including their evaluation of PCS's services, their assessment of their interactions with other actors involved in the process, and the hurdles they report encountering (such as an inaccurate criminal history). Finally, we turn to one problem that emerges for some successful applicants *after* they receive their expungement: the continued appearance of expunged convictions on background checks.

A. *Expungement Uptake: Why, When, and How*

The survey asks respondents about the reasons they applied for expungement (allowing the selection of multiple responses), and we report their responses in Table 3, Panel A. Most respondents report multiple motivations, so percentages sum to more than 100%. Consistent with the literature suggesting that the most significant burden of a criminal record is in the employment sphere, fully 69% of our sample report being motivated to seek an expungement by a desire to find a job or pursue a

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[110] Email from Robyn Pierce, Adult Servs. Libr., Jackson Dist. Libr., to Mira Edmonds, Clinical Assistant Professor of L., Univ. of Mich. L. Sch. (Aug. 2, 2024, 12:53 EDT) (on file with authors).

[111] Zoom Interview with Katrina Garrett, Manager, Expungement Unit, Michigan State Police (Jul. 31, 2024).

promotion.[112] Nearly the same number (67%) report that they want to wipe clean "the stain on [their] reputation." The reputational harms of criminal records are generally less quantifiable and thus have been less of a focus of empirical research, but they are a frequent refrain in the qualitative literature on the challenges facing those with records.[113] Previous studies discuss the negative effect of criminal records on subjects' self-conception and reputation, and this research documents the positive impact of expungements in this regard. But we are unaware of previous survey research that demonstrates the centrality of this concern among expungement-seekers.[114] In addition, licensing-related concerns motivate—at least in part—nearly half of the sample to seek an expungement. (Licensing-related concerns might include, for example, the desire to obtain a concealed pistol license, an occupational license in a restricted profession, or a commercial driver's license, although we did not ask respondents to identify the specific license behind their demonstrated interest in expungement.) A third of the sample report the pursuit of (better) housing as a motivation, which is also unsurprising based on research describing criminal records as a significant barrier to safe and stable housing.[115] Fifteen percent of the sample mention the desire to participate more fully in the lives of their children. Access to federal financial aid motivates another 10% of the sample.[116]

The survey also inquires why respondents chose to pursue expungement "at the time that [they] did." The "why now" question is related to the "why" question but distinct in its implications. There are many compelling reasons an individual might choose to pursue expungement, and yet, as we note above, many applicants do not petition for expungement as soon as they become eligible, or even really close, given the waiting-period threshold. Understanding the reasons for the timing of expungement petitions helps to inform the interpretation of studies of expungement

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[112] *See, e.g.*, LOVE ET AL., *supra* note 64, at 3–4; Solomon, *supra* note 64, at 48; DECKER ET AL., *supra* note 64, at 3.

[113] *See, e.g.*, Michael Cerda-Jara et al., *Criminal Record Stigma in the Labor Market for College Graduates: A Mixed Methods Study*, 11 SOCIO. SCI. 42, 42, 59 (2024) (analyzing interviews about labor market stigma); Andreas Schneider et al., *Stigmatization Among Probationers*, 38 J. OFFENDER REHAB. 19, 24–26 (2003) (qualitatively studying emotional and cognitive effects of probation status).

[114] *See, e.g.*, McWilliams & Hunter, *supra* note 64, at 99; Smith et al., *supra* note 64, at 1855.

[115] *See*, *e.g.*, LOVE ET AL., *supra* note 64, at 11; McWilliams & Hunter, *supra* note 64, at 89.

[116] Prior research points to the barriers to accessing education posed by criminal records; however, these have been alleviated somewhat recently due to changes in federal financial-aid policy. *See* FEDERAL STUDENT AID, FAFSA SIMPLIFICATION ACT CHANGES FOR IMPLEMENTATION IN 2024–25 (2023), https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-08-04/fafsa-simplification-act-changes-implementation-2024-25 [https://perma.cc/3Q5A-RKZ8] (last visited Aug. 18, 2024) (giving an overview of the phase-in timeline). Nevertheless, it is possible that some respondents may not be aware of these policy changes and may still perceive their records as posing barriers to federal financial aid. To the extent that individuals refrain from pursuing educational opportunities based on this understanding, their perception that expunging their convictions will clear the path to federal financial aid is important.

outcomes. For example, if petitions are largely filed when people have just lost jobs, we need to be aware that evidence of improved employment outcomes in the wake of expungement might simply reflect job-search effort or regression to the mean and have no causal connection to expungement itself.[117] In addition, evidence on the timing question can inform policies aimed at improving uptake by better identifying the factors that encourage or enable those who already have a reason to pursue expungement to follow through with the process.[118]

Table 3. Motivations for Seeking Expungement

	Survey Sample *N = 1,439*
A. Why did you decide to seek expungement?	
Ability to get hired or promoted	68.8
Ability to get housing	32.5
Participation in the lives of children	14.5
State licenses	45.0
Federal financial aid	10.2
Record felt like a stain on reputation	67.2
B. Why did you decide to seek expungement at the time that you did?	
Waiting period recently passed	15.5
Recently learned about expungement	60.4
Got help from Detroit PCS	53.3
Got other help I didn't have before	10.1
Recently lost job	6.5
Searching for new job	20.2
Seeking promotion at work	6.9
Looking for housing	13.9
Wanted state license	26.3
Wanted to apply for federal financial aid	6.4

Note. This table reports percentages of the survey sample. The survey permitted multiple responses. "Other" category is omitted.

Panel B of Table 3 shows the reasons respondents report for the timing of their expungement petition. In this sample, only 7% report having recently suffered a job loss; 31% in total report at least one kind of job-related motivation for their petition

[117] Prescott & Starr, *supra* note 8, at 2534–35.

[118] Lack of information about expungement options appears to be an important driver of the uptake gap. *See id.* at 2502; Ganick, *supra* note 16, at 15.

timing.[119] Respondents also identify housing searches (14%) and pursuit of licenses (26%) as accounting for their decision to file when they did. However, by far the most common reasons for "why now" are that applicants *learn* about the expungement process or about their possible eligibility (60%) and that they *receive some initial help* with the expungement process—most often from PCS (53%), but also, in some cases, from someone else (10%). These results, although they cannot support causal inferences about any particular intervention, suggest that outreach, education, and legal assistance programs (like PCS's services) have the potential to improve expungement uptake.[120] In the end, many people who have good reasons to want expungements actually pursue them only when they receive key information or assistance they feel they need.

How, then, did PCS's clients come to learn about expungement, and how did they learn that *they* might be eligible for it? Our survey asks both questions, and we present the results in Panels A and B of Table 4, respectively. The data do not suggest one dominant source of information; the most common sources include traditional and social media, word of mouth, a state-funded job training program called Detroit at Work, other state and city resources and websites (including PCS itself), and expungement fairs, which are events at which individuals receive assistance with the first few steps toward preparing an expungement application.[121] Our data do not provide causal evidence regarding the effectiveness of any particular outreach effort, but it is perhaps suggestive that different members of the community learn about expungement and their potential eligibility through different channels, indicating that a multipronged outreach approach may be effective in reaching different groups.

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[119] In our sample, 448 of 1439 select either "recently lost job," "searching for new job," or "seeking promotion at work" (or some combination of the three).

[120] *See* Prescott & Starr, *supra* note 8, at 2534–35; Ganick, *supra* note 16, at 15. This inference also aligns with access-to-justice research outside of the expungement context. *See, e.g.*, J.J. Prescott, *Assessing Access-to-Justice Outreach Strategies*, 174 J. INSTITUTIONAL & THEORETICAL ECON. 34, 37 (2018) (finding that outreach interventions increase uptake of online courts).

[121] Expungement fairs sometimes serve as intake points, with the sponsoring organization taking on most eligible attendees for full representation. Other times, fairs work to educate individuals and get them started with referrals to legal services providers or pro bono attorneys who may be able to assist them with the rest of the petition process. Interview with Kamau Sandiford, *supra* note 106; Interview with Stephen Rideout, *supra* note 108; Interview with Sarah Munro, *supra* note 107.

Table 4. How Respondents Learn about Expungement and Expungement Eligibility

	Survey Sample *N = 1,439*
A. How did you learn that Michigan has a criminal record expungement process?	
Traditional media	24.1
Social media	19.0
Word of mouth	24.7
Expungement fair	16.2
State websites (AG, Legal Services)	3.7
My lawyer	1.7
Detroit at Work	21.4
City of Detroit	32.6
B. How did you learn that you might be eligible for an expungement?	
Traditional media	18.1
Social media	11.6
Word of mouth	23.2
Expungement fair	19.0
State websites (AG, Legal Services)	6.6
My lawyer	4.1
Detroit at Work	20.4
City of Detroit	29.5

Note. This table reports percentages of the survey sample. The survey permitted multiple responses. "Other" category is omitted.

B. *Process Outcomes and Applicant Experiences*

Applicant outcomes and their experiences with the expungement process are critical measures of the accessibility and success of Michigan's expungement regime. In Table 5, we report on expungement eligibility, the filing of petitions, and petition success.[122] As Table 5 shows, only 59% of our survey respondents were legally eligible to expunge all of their convictions, while 7% were eligible to expunge some but not all, and the remaining one-third were ineligible. In addition, even among those whom PCS deems eligible for relief, about 21% never file

[122] Although this table focuses on the survey sample (elaborating further on the information conveyed in Table 1, which compares this sample to the underlying PCS pool), our data source here is PCS's administrative data, which contain more granular detail on petitions and eligibility than our survey data.

petitions (we return to the reasons for this below). However, among those who *do* pursue petition-based expungements, PCS applicants are overwhelmingly successful in attaining relief.[123] Indeed, 98% of these applicants receive one or more expungements. Among petition filers, just over 65% secure expungements for all the convictions on their record. About 87% of those who petition specifically receive petition-based expungements, with the rest of the respondents who receive relief obtaining only automated expungements (i.e., some of the 87% receive both kinds of expungements for different convictions).[124]

Overall, this rate of success is very high and suggests that, at least for PCS's clients, it is quite rare for eligible applicants to be denied an expungement by courts exercising their discretionary authority—although individuals with multiple convictions may find greater success before some courts than others.[125] This finding has implications for the interpretation of other studies of successful expungement recipients, including Prescott and Starr's study in Michigan: although successful recipients are a selected group, the sources of that selection appear to be eligibility requirements and individual perseverance, rather than judges using their discretion to deny some applications. These results also speak favorably to PCS's efforts to screen cases carefully before filing petitions and to deliver robust advocacy in the cases it pursues.[126] Although being screened out early may be a disappointing outcome for would-be filers, it at least spares them the added frustration of going through an unsuccessful petition process, while also keeping futile cases out of the courts.[127] It further allows PCS to allocate its limited resources efficiently and

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[123] Conversely, almost no applicants deemed ineligible by PCS filed petitions, unsurprisingly, as PCS screens them in advance of filing.

[124] Although we focus on the petition-based process here because PCS primarily assists clients with that process, Michigan's adoption of the automated process did affect PCS's clients. In some cases, automated expungement mooted pending petitions entirely because the convictions in question were cleared automatically, and in other cases, the automated process cleared only parts of the client's record, leaving the remaining convictions to be addressed by the petition-based process. In total, PCS's records show that, among survey respondents, one-third of those who filed petitions and 10% of those who did not file petitions received automated expungement.

[125] In their study, Prescott and Starr report (citing figures from the Michigan State Police) somewhat more modest results, with only three-quarters of applicants statewide receiving expungements. Prescott & Starr, *supra* note 8, at 2483. But the remaining quarter likely includes not only individuals who are denied expungements by judges, but also those who are ineligible or who abandon the process. Prescott and Starr also analyze a period before Michigan's most recent reforms, when eligibility was more restricted and automated expungement had not yet been introduced. For all these reasons, the figures are hard to compare directly.

[126] Interview with Stephani LaBelle, Dir., Detroit Project Clean Slate (Nov. 5, 2024).

[127] In addition, under Michigan's statute, when a court denies a person a petition-based expungement, the law may bar the person from refiling for three years. MICH. COMP. LAWS § 780.621d(5) (2024). Therefore, if the reason for ineligibility is a waiting period, unpaid restitution, or other issues that can be resolved, PCS protects would-be filers from the 3-year bar by declining to file until eligibility is established.

effectively, including preparing clients for hearings and submitting supplemental information to courts when necessary to improve an applicant's chances for success.[128]

Table 5. Eligibility and Outcomes

	Survey Sample
A. All survey respondents	*N = 1,439*
Eligible for all convictions	59.3
Eligible for some but not all convictions	7.4
Filed at least one petition	53.1
Any expungement received	56.9
All convictions expunged	36.7
B. Survey respondents who are eligible	*N = 959*
Filed at least one petition	78.5
C. Survey respondents who filed at least once	*N = 764*
Filed more than one petition	55.0
Any expungement received	98.4
Any petition-based expungement granted	86.8
All convictions expunged	65.1

Note. Panel A reports percentages of the total survey sample. Panel B reports a percentage of the subsample of survey respondents who are eligible for at least one expungement. Panel C reports percentages of the subsample of survey respondents who filed at least one expungement petition with state authorities.

Perhaps unsurprisingly, given their positive outcomes, our respondents report general satisfaction with the expungement process. Table 6 shows respondents' subjective perceptions of various aspects of the experience. Here, we rely on our survey evidence for the outcome variables, although we continue to use PCS's data on eligibility and filing status to define the subsamples for which we report these outcomes. Panel A of Table 6 presents respondents' general reactions to the expungement process. Eighty-eight percent of the full sample report that they would recommend pursuing expungement to "someone else in a similar situation." This is true for 97% of those who actually received expungements and—perhaps more surprisingly—also true for 77% of those whom PCS deems ineligible and 74% of those who are eligible yet did not receive expungements (the large majority of whom

[128] Interview with Stephani LaBelle, *supra* note 126.

did not complete the filing process).[129] Thus, while success is clearly a strong driver of satisfaction, even most individuals who do not successfully complete the process are generally positive about it.

Table 6. Respondents' Assessment of the Expungement Process

	Full Survey Sample *N = 1,439*	Expunged *N = 819*	Ineligible *N = 472*	Eligible but Not Expunged *N = 140*	Dis-satisfied with PCS *N = 195*
A. General reactions to process					
Recommends expungement	88.0	96.8	76.7	74.3	52.8
Satisfied with PCS	66.0	88.8	36.9	31.4	0.0
Dissatisfied with PCS	13.6	2.1	26.9	35.0	100.0
B. Specific complaints about PCS					
Did not know who to contact	23.8	11.1	38.3	49.3	81.0
Did not keep informed of case	10.4	1.8	17.6	35.7	55.9
Did not answer questions	9.9	2.4	17.6	27.9	55.9
Felt disrespected	4.0	0.5	7.6	12.9	25.1
C. Other complaints about process					
Felt disrespected by judge	9.6	2.4	18.9	20.7	43.6
Felt disrespected by court staff	7.9	1.7	15.5	19.3	37.9
Felt disrespected by prosecutor	9.7	2.6	18.4	22.1	43.6
Did not feel heard	11.4	2.9	22.2	25.0	54.4
Errors in criminal history	11.5	13.3	8.5	12.1	9.7

Note. This table reports percentages of respective survey subsamples.

The next several lines of Panel A of Table 6 speak to respondents' assessment of PCS specifically. On the overall satisfaction question, two-thirds of respondents say they are satisfied with PCS,[130] while 14% report that they are dissatisfied (with

[129] A small fraction of individuals in our survey sample had one or more open cases—in addition to at least one closed case—at the time of the survey, including 4.3% among those who are eligible but who did not receive an expungement. This latter group, therefore, consists almost entirely of individuals who abandoned their cases, and very few, if any, individuals with active cases who may have eventually received an expungement. We include individuals with open cases in our analysis because excluding them results in only slight, non-substantive differences in our findings regarding eligible individuals who nevertheless abandon the expungement process and because it is unclear whether these residual open cases are truly active in any event.

[130] The PCS satisfaction rate compares favorably to that of federal government services on average (59%) and state government services in Michigan on average (55%). *These State Governments Offer the Best Customer Service*, QUALTRICS (May 23, 2024), https://www.qualtrics.com/news/these-state-governments-offer-the-best-customer-service/ [https://perma.cc/A2JL-C5V9].

the remainder giving a neutral answer).[131] As the third line of Table 6 shows, those who report being dissatisfied with PCS are overwhelmingly those who were informed by PCS that they were ineligible (27% dissatisfied) or who were eligible but did not complete the process of filing a petition (35% dissatisfied). Of those who file petitions (and receive expungements, as essentially all filers do), only 2% are likely to report being dissatisfied with PCS; conversely, only 9% of those who report being dissatisfied with PCS actually file and receive expungements. For these reasons, an important caveat to the overall positive picture painted by our survey results is that, as we discuss above, those who chose not to respond to our survey are more likely to be ineligible according to PCS and/or more likely to have failed to complete the process. Accordingly, people with more negative experiences seem likely to be underrepresented in the survey sample.

Our survey instrument asks additional questions to tease out more detail on individuals' perceptions of PCS as well as other aspects of the expungement petition process. Although it bears emphasis that most respondents give favorable responses to these questions as well (and large numbers give neutral answers), we focus in Panel B of Table 6 on the *unfavorable* responses—that is, on which specific complaints about PCS (and others, in Panel C) seem to characterize the views of the minority of clients who wind up dissatisfied. This inquiry, we think, helps inform why some clients abandon the process despite being eligible—about 10% of our survey sample, but roughly a quarter of the overall PCS population with at least one closed case.[132] Below, we also offer direct survey evidence on why a nontrivial fraction of PCS clients do not file petitions.[133]

The most common specific complaint about PCS is simply that it was unclear how to contact an attorney or other PCS staff members to inquire about one's case: 81% of dissatisfied respondents, and 24% of all respondents, report this source of dissatisfaction. Several other complaints (e.g., feeling that they had been disrespected by PCS, feeling that they were not kept fully informed about case progress, and feeling that they were not receiving consistent answers to questions) are much less prevalent overall in the sample, although when they do occur they are also very strong predictors of dissatisfaction.[134] Only 4% of the full sample reports

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[131] We framed all of these questions as positive statements with a Likert-type set of answer choices, so those we label "dissatisfied" are those who state that they "disagree" with the statement that they are satisfied, for example.

[132] *See infra*, Table 7.

[133] *See infra*, Table 8.

[134] In analysis we do not report in this Article, we regress overall dissatisfaction on "disagree" answers to each of the other questions about PCS as well as whether the individual self-reports receiving an expungement. Each one of these "disagree" answers strongly predicts overall dissatisfaction ($p < 0.001$ with clustered standard errors, point estimates ranging from 18 to 27 percentage points) even when we hold the answers to other questions constant. That is, even though each of these "disagree" answers is correlated with the others and with non-receipt of expungement,

disagreement with the statement that PCS treated them with respect, while approximately 10% of the overall sample disagrees with statements about being kept informed and having questions answered by PCS. Every complaint about PCS was far more common among those who did not receive expungements, including among those PCS deems ineligible.

Of course, the survey data reflect only individuals' subjective perceptions; we do not directly observe anything PCS did or did not do in providing legal services and support. Some individuals may, for example, develop frustrations that are not PCS's fault but nevertheless blame PCS for them. In interviews with PCS, we learned that the agency uses a streamlined model in which different staff members are responsible for different stages of the application process. PCS has found that this model enables it to assist the greatest number of people effectively with the resources available, but it also means that clients are not assigned to a particular attorney until their expungement hearing is scheduled.[135] In addition, due to staffing limitations, at the time we conducted the survey, a person did not answer PCS's central phone line, though clients could leave voicemails. (Beginning in August 2024, and as of this writing, a receptionist now answers the phone line during business hours.) Instead, PCS conveys information about each client's case primarily through weekly emails with case updates generated through the Smartsheet case management system.[136] PCS Executive Director Stephani LaBelle describes this method of client contact as the most efficient way for the agency to convey important information to clients while leaving staff with the bandwidth to manage its heavy caseload.[137] Nonetheless, each of these factors may lead some individuals to feel that they do not have "their attorney" whom they can contact with questions.[138]

Although limited resources force PCS to opt for this sort of team approach, the self-reported confusion of some clients does suggest that PCS may be able to improve clients' experiences by making sure clients know whom to contact.[139] At the same time, clients successfully send hundreds of emails to PCS on a daily basis, hinting that respondents who register concerns about communication may be outliers

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they all have independent predictive power. Edmonds, Prescott, and Starr further investigate procedural perceptions and their connection to overall perceptions of justice-system fairness. *See* Edmonds, Prescott & Starr, *supra* note 7.

[135] *Interview with PCS Staff*, *supra* note 82.

[136] *About Smartsheet*, SMARTSHEET, https://www.smartsheet.com/about [https://perma.cc/6U5Z-GRX5] (last visited Aug. 26, 2024).

[137] Interview with Stephani LaBelle, *supra* note 126.

[138] *See* Spencer Rand, *Hearing Stories Already Told: Successfully Incorporating Third Party Professionals into the Attorney-Client Relationship*, 80 TENN. L. REV. 1, 6 (2012).

[139] Other research finds a connection between better communication and improved perceptions of the associated government agency. *See* Alfred Tat-Kei Ho & Wonhyuk Cho, *Government Communication Effectiveness and Satisfaction with Police Performance: A Large-Scale Survey Study*, 77 PUB. ADMIN. REV. 228, 231–36 (2016).

who find communicating with PCS difficult for a range of reasons that may be beyond PCS's control.[140] More generally, perceived accessibility and clear information about how to get in touch seem to be important drivers of subjective satisfaction with legal services, along with proactively keeping clients up to date, answering their questions, and treating them with respect.[141] It is possible that better communication will keep some clients engaged in the expungement process who would otherwise abandon it. On the other hand, to the extent that receiving unwelcome news that one is ineligible for expungement drives client dissatisfaction regardless of how PCS delivers the news, it is difficult to see how PCS can avoid all bad feelings.

The first four lines of Panel C of Table 6 report our analysis of responses to questions about whether other actors in the process (judges, court staff, and prosecutors) treat respondents with respect and whether respondents "feel heard" during the process.[142] Again, negative responses (labeled here as "felt disrespected" and "did not feel heard") appear to be very rare among those who file for and receive expungements (2–3% of all respondents in that category report a negative response), but they are much more common among those whom PCS deems ineligible or who do not file for other reasons (16–22% and 19–25% of all respondents in these categories, respectively), ranging from 8% to 11% in the survey sample overall (substantially higher than the rate of feeling disrespected by PCS). The "felt disrespected" responses in particular are somewhat surprising. Those who do not file petitions presumably would have had less interaction with judges, court staff, and prosecutors than those who do file petitions, or none at all, which one might expect to lead to a neutral answer to this question. It is possible that respondents' negative feelings toward these actors do not really stem from the expungement process but are instead carryovers from other interactions, for example, in the course of their underlying criminal cases.[143]

The last line of Table 6 points to a specific concern that surfaces even for a substantial number of respondents who are ultimately successful in achieving expungement: 13% of this group, and 12% of the full survey sample, encounter

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[140] Interview with Stephani LaBelle, *supra* note 126.

[141] *See* Clark D. Cunningham, *What Do Clients Want From Their Lawyers?*, 2013 J. DISP. RESOL. 143, 147 (2013).

[142] The procedural justice literature inspires these questions. *See e.g.*, Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 PSYCHOL., PUB. POL'Y & LAW 78, 82 (2014); Avital Mentovich, J.J. Prescott & Orna Rabinovich-Einy, *Legitimacy and Online Proceedings: Procedural Justice, Access to Justice, and the Role of Income*, 57 LAW & SOC'Y REV. 189, 191 (2023).

[143] *See, e.g.*, James D. Livingston et al., *What Influences Perceptions of Procedural Justice Among People with Mental Illness Regarding their Interactions with the Police?*, 50 CMTY. MENTAL HEALTH J. 281, 285 (2014). Alternatively, maybe the sheer absence of the justice system from the process, that the courts did not become proactively involved, is enough to generate these negative emotions.

slowdowns due to errors in their official state criminal histories (known, again, as ICHATs in Michigan), which prevent these individuals from being deemed eligible for expungement unless and until the issue is resolved. Meanwhile, only a third definitively report no issues with their ICHATs, while another 11% of respondents indicate that they do not know, and half do not respond to this question.[144] PCS is typically able to resolve these disqualifying discrepancies and confirm expungement eligibility.[145] Still, this is a serious concern because there is no reason to believe that ICHAT errors are confined to the PCS population, which is fortunate to benefit from the organization's assistance and expertise in resolving record inaccuracies. It is highly likely that this issue affects expungement petitioners throughout Michigan.[146] This pattern may likewise serve as a cautionary tale for other states about the importance of precision and reliability in criminal history records.[147] In the Discussion, we briefly examine sources and solutions to this problem, drawing on our interviews.

Finally, we report some additional results that we do not show in the table. Among those who self-report receiving an expungement, 10% report that later, after their record should have been cleared, the expunged conviction appeared in at least one background check.[148] Importantly, only 43% respond "no" when asked whether their expunged conviction has resurfaced in this way, with almost half of those answering the question—47%—reporting that they do not know either way.[149] This

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[144] PCS's data tracking practices have changed over time as research becomes a more prominent interest; earlier entries in PCS's administrative dataset are less specific about clients' ICHAT issues, so our insight is somewhat limited for respondents who do not reply to this question.

[145] *Interview with PCS Staff*, *supra* note 82.

[146] It is also likely to matter to potential candidates for automated expungement because the algorithm turns on the ICHAT—and if the automated expungement process denies an expungement because of such an error, the individual might never learn of it.

[147] Already, we see evidence of incomplete criminal history records affecting automated expungement implementation in California. *See* Alyssa C. Mooney, Alissa Skog & Amy E. Lerman, *Racial Equity in Eligibility for a Clean Slate Under Automatic Criminal Record Relief Laws*, 56 LAW & SOC'Y REV. 398, 413 (2020) ("Our analyses revealed that 35% of cases had no disposition, and 75% of people had at least one such case on their record. Missing data may severely limit the potential benefits of automatic relief legislation and leave a persistent 'second chance gap'" (quoting Chien, *supra* note 71)). The problem of incomplete and inaccurate criminal history records is national in scale. *See* David McElhattan, *Punitive Ambiguity: State-Level Criminal Record Data Quality in the Era of Widespread Background Screening*, 24 PUNISHMENT & SOC'Y 367, 368 (2021); Lageson & Stewart, *supra* note 74. Similarly, it is important that reforms are robust to the particular types of inaccuracy that may be substantively relevant to record clearing.

[148] We do not present this result in Table 6 because the sample differs from the rest of the table; we only posed this specific question to those who self-identified as having received an expungement.

[149] In addition, some of the "no" answers presumably come from individuals who simply have not applied for anything that required a background check since receiving an expungement. That is, even fewer than 43% may have affirmative evidence that the state successfully cleared their records from public databases.

is a significant concern for the efficacy of expungement, and we return to it below as well.

Another concern our data underscore is respondents' uncertainty about their expungement status—especially with respect to automated expungement. Although PCS focuses on petition-based expungements, some clients who begin the process with PCS staff learn that at least some convictions have already been automatically expunged, and others may receive automated expungements after they commence the petition process, because of the change in the law or because they reach the end of the waiting period. In our sample, 19% report receiving at least one automated expungement. However, 31% answer "I don't know" to this question. We cannot discern from our survey whether selecting "I don't know" reflects not knowing whether they received an expungement at all (as opposed to not knowing whether it happened automatically), but this seems plausible for some individuals in the sample, because (as in many other states) there is no statewide process for notification of automated expungement in Michigan. We discuss policy implications and possible notification strategies in Part IV.

Tables 7 and 8 shed further light on the uptake gap by addressing the reasons some individuals who ultimately do *not* file expungement petitions give for that choice, despite having been sufficiently motivated to approach PCS for help in the first place. As we note above, this outcome is more common among individuals who do not respond to our survey.[150] Accordingly, Table 7 begins by reporting the reasons we can draw from PCS's data, comparing survey respondents to the broader PCS pool. We study only the set of people who appear to have withdrawn voluntarily, i.e., they withdrew despite PCS having determined that they were legally eligible for expungement.

In the full PCS pool, the overwhelmingly dominant reason for closing files of eligible individuals who have not received an expungement is that the client simply stops responding (this occurred in 91% of such cases); PCS cannot, obviously, tell us the reason for that outcome in any particular case. Failure to respond to PCS communications as an explanation for why PCS did not file a petition, despite eligibility, is unsurprisingly less common among the subset of eligible non-petitioners who *do* respond to our survey (those who fell out of touch with PCS can be expected to be less likely to respond to us), although it is still true of 70% of them. The other listed reasons for not moving forward are that the conviction in question has been automatically expunged, mooting the need for the petition (10% of all file closings, but almost one-third of the subset who participate in our survey), and that another conviction is ineligible for expungement (11% of all file closings and 22% of those who respond to the survey), suggesting that some PCS clients may value a clean slate much more than a partially cleared record.

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[150] *See supra* text accompanying note 103.

Table 7. Why Eligible Respondents Do Not File: PCS Reported Data

	PCS Population, Eligible but Did Not File *N = 3,788*	Survey Sample, Eligible but Did Not File *N = 206*
Respondents who were eligible but did not file		
Conviction was eventually automatically expunged	9.9	32.5
No client response	91.2	69.9
A separate conviction was ineligible	10.5	21.8
No client response & separate conviction ineligible	7.7	12.1

Note. This table reports percentages of respective population and survey subsamples.

Table 8. Self-Reported Reasons for Abandoning the Expungement Process

	Survey Sample, Abandoned Petition *N = 150*
If you did not complete the expungement process for any of your convictions, why did you not?	
Ineligibility (actual or perceived)	51.3
Was confused about the process	35.3
Was concerned it would take too long	8.7
Was concerned it would cost too much	16.0
Do not know what happened to my application	20.7
Believed convictions would be automatically expunged	8.0
Problems with criminal history record	18.0
Other things were more important	4.0

Note. This table reports percentages of the subsample of survey respondents who abandoned their expungement petition.

Table 8 presents what survey respondents themselves say about why they did not move forward with an expungement petition.[151] Unlike Table 7, this table details survey results for those who were ineligible at the time or believed themselves to be (51% of non-filing respondents give some variant on this reason, including being informed by PCS of their ineligibility or having experienced another arrest or

[151] Note that the questions underlying this table were only asked to 150 respondents, those who specifically stated, in response to a prior question, that they had chosen not to move forward on "any" of their petitions, which is only a subset of those who (per PCS's data) did not file.

conviction). Other common reasons center on lack of knowledge (e.g., confusion about the process or not knowing what happened to their application), which support the suggestion above that communication improvements—where feasible—might increase expungement petition filing rates. Smaller but still substantial percentages report being worried about the time and expense of the process (9% and 16%, respectively) or, more positively, report that the conviction has been or is expected to be automatically expunged (8%). Finally, 18% report that difficulty resolving problems with their official criminal history (ICHATs) contributed to their decision to abandon filing—amplifying the policy concerns about the serious costs of inaccurate records.

IV. DISCUSSION

In this Part, we contextualize our survey results with the qualitative information from our interviews to better understand the implications of our findings. We also discuss a few policy implications of our analysis, and we describe the limitations of our findings. Section A considers petition-based expungement challenges facing everyone in Michigan—that is, beyond the client base of PCS—and reviews alternative expungement support models operating in the state. Section B addresses the policy implications of our study for both automated expungement and petition-based expungement, which we hope may assist other jurisdictions as they consider how to deploy either approach, or some combination of the two, to craft accessible and effective record-relief opportunities. In Section C, we describe limitations of this study as well as possible directions for future research.

A. *The Expungement Process Beyond Detroit: Insights from Interviews*

Detroit Project Clean Slate is a well-resourced, well-staffed, and well-connected city agency that is able to deliver comprehensive representation to any Detroit resident eligible for expungement, primarily but not exclusively in courts in the Detroit Tri-County Area.[152] Other jurisdictions in Michigan—like, we assume, most jurisdictions throughout the country—do not provide similar levels of assistance with the state's petition-based expungement process. So, extrapolating our results beyond Detroit risks painting a far too rosy picture of record relief in Michigan and beyond. First, drawing some reasonable inferences, we extrapolate a bit from Detroit, but we primarily use data from our interviews with advocates to identify challenges that Detroit and the rest of Michigan share. Second, we contextualize our PCS survey results by describing alternative petitioner support models in Michigan that operate with fewer resources than PCS and provide different forms of piecemeal assistance.[153]

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[152] *Project Clean Slate*, *supra* note 35.

[153] For a full list of our interview subjects, see *supra* Section II.C.

To begin, the *problems* our survey respondents report encountering are likely to be more prevalent and burdensome in jurisdictions other than Detroit, and even harder to navigate without assistance. Indeed, addressing errors in criminal history records and correcting a deficient or defective expungement may be impossible for many people without the help of a lawyer. Lack of information and confusion about the expungement process are likely to be more widespread in areas without a dedicated local agency to assist and support residents with convictions eligible for expungement, to develop collaborative, time- and cost-saving solutions with courts and other stakeholders, and to provide information about expungement opportunities to community members. In our view, the scope and magnitude of each hurdle to record relief that we identify in Detroit (e.g., ICHAT issues or uncertainty about the process) and its respective impact (e.g., on satisfaction with the process or on success in obtaining relief) serve as conservative estimates of the challenges facing Michigan as a whole.

Importantly, certain themes that emerge repeatedly in our interviews both reinforce the survey's findings concerning Detroit and highlight additional procedural hurdles in the city, across Michigan, and beyond. Interview subjects consistently describe an excessively complex process, including some seemingly unnecessary steps—such as obtaining a certified record of conviction from the court of conviction, which the applicant must then turn around and file with the expungement application in the same court.[154] The varying procedures and requirements that each court establishes for obtaining certified records of conviction, filing the expungement application, and scheduling a hearing are significant sources of frustration and difficulty for experienced advocates—but they are even more frustrating and difficult for pro se individuals.[155] People without representation are often confused by the requirement that the application packet be served separately on the Michigan State Police, the Attorney General's office, and the local prosecutor's office.[156] Delays in the time it takes MSP to remove convictions from the ICHAT after expungement have also been confusing and costly to successful applicants, although overall delays in the process have decreased over time.[157]

The application requirement that an individual seeking expungement must submit ink fingerprints to MSP seems unnecessarily onerous, inefficient, and outdated in an era when LiveScan digital fingerprinting is more widespread and

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[154] Interview with Sarah Munro, *supra* note 107; Interview with Stephen Rideout, *supra* note 108.

[155] Interview with Sarah Munro, *supra* note 107; Interview with Stephen Rideout, *supra* note 108; *Interview with PCS Staff*, *supra* note 82.

[156] Interview with Sarah Munro, *supra* note 107; Interview with Kamau Sandiford, *supra* note 106.

[157] Interview with Sarah Munro, *supra* note 107; *Interview with PCS Staff*, *supra* note 82.

reliable.[158] PCS and other advocates have responded creatively to minimize this burden on clients by, for example, creating multiple ink fingerprint cards at the outset in anticipation that successive applications might be necessary.[159] In another Michigan jurisdiction, advocates collaborate with law enforcement to capture fingerprints via LiveScan technology and print them onto paper cards (using printers purchased by the advocates).[160]

The too-common scenario in which individuals must file successive petitions to address multiple eligible convictions arises due to a quirk in the statute's articulation of the waiting periods before an individual becomes eligible to file an expungement petition for a particular conviction.[161] As we describe above, the statute is written such that if there is an "intervening" conviction between an earlier conviction and the end of the statutory waiting period, the earlier conviction becomes ineligible for expungement in the eyes of some courts.[162] These courts require that the intervening conviction be expunged before an individual can file a petition to expunge the earlier conviction.[163] This interpretation leads to significant duplication of labor and cost and prolongs the processing periods so that it takes much longer for all eligible convictions to be expunged.[164]

Another universally cited challenge in the Michigan process is the existence of incomplete or inaccurate state criminal history records, which are onerous and time-consuming to clear up.[165] We discuss this issue above with respect to our survey results, but the interviews provide additional insight into the nature of the problem. In a nutshell, when attempting to calculate the relevant waiting period, determining when a case concludes can be challenging. If a court sentences a person to prison or probation, for instance, that person's ICHAT does not contain sufficient information years later for someone to calculate the waiting period for that conviction.[166] Instead, it is necessary for an applicant to obtain court records and/or Michigan Department

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[158] Interview with Sarah Munro, *supra* note 107; Interview with Stephen Rideout, *supra* note 108.

[159] Interview with Sarah Munro, *supra* note 107.

[160] Interview with Stephen Rideout, *supra* note 108.

[161] MICH. COMP. LAWS § 780.621d(7)(c) (2024) (requiring that the application include "a statement that the applicant has not been convicted of an offense during the applicable time period"); MICH. COMP. LAWS §§ 780.621d(4)(c), 780.621g(6)(c) (2024). *See supra* text accompanying note 51.

[162] *Id.*

[163] Interview with Sarah Munro, *supra* note 107; *Interview with PCS Staff*, *supra* note 82.

[164] *Id.*

[165] Interview with Sarah Munro, *supra* note 107; Interview with Stephen Rideout, *supra* note 108; Interview with Kamau Sandiford, *supra* note 106; *Interview with PCS Staff*, *supra* note 82.

[166] *Id.*

of Corrections records to establish clearly when the waiting period began to run.[167] MSP is well aware of this particular ICHAT problem, and it has been working with local courts for years on another ICHAT challenge—clearing the backlog of erroneous ICHAT entries.[168] MSP has made real progress in some counties, but the backlog remains significant because the courts and MSP can only rectify these errors piecemeal and manually.[169] MSP has staff dedicated exclusively to this task, as does PCS and the Detroit Police Department due to the fact that Wayne County currently has the highest rate of incomplete or inaccurate ICHATs.[170]

Not surprisingly, the cost of filing the petition for an individual is a burden in and of itself, with ten- to fifteen-dollar fees for fingerprinting, a range of fees that courts charge to generate certified records of conviction, and a fifty-dollar fee required by MSP for each application.[171] In some counties, advocates have been able to cover certain of these costs, sometimes with the assistance of prosecutors, law enforcement agencies, or nonprofit organizations—for example, the Detroit Police Department provides fingerprinting services for PCS clients at no charge, and PCS covers the fifty-dollar MSP fee for its clients—but this workaround is by no means universal.[172] Furthermore, costs can pose a hurdle in a more insidious way. Advocates across the state report that many courts refuse to schedule hearings and deny expungement petitions if the applicant owes any fines, fees, or restitution on the underlying case.[173] Although the statute provides that courts may reinstate

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[167] Interview with Sarah Munro, *supra* note 107; Interview with Stephen Rideout, *supra* note 108; Interview with Kamau Sandiford, *supra* note 106. In 2024, the Michigan legislature also considered legislation to amend the law so that a conviction during the waiting period would not disqualify the person from expunging otherwise eligible earlier convictions. *See Legislative Analysis: Allow Expungement of Conviction Despite Another Conviction During Waiting Period*, HOUSE FISCAL AGENCY, 1, 1 (Nov. 11, 2024), https://legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-5957-85AA4EF5.pdf [https://perma.cc/GW58-94KE]. This legislation had not passed as of the end of the 2024 legislative session. *See* H.B. 5957, 102nd Leg., Reg. Sess. (Mich. 2023), https://fastdemocracy.com/bill-search/mi/2023-2024/bills/MIB00025343/ [https://perma.cc/2PCT-83Q7] (last visited Feb. 4, 2025).

[168] Interview with Katrina Garrett, *supra* note 111.

[169] *Id*.

[170] Interview with Katrina Garrett, *supra* note 111; *Interview with PCS Staff*, *supra* note 82.

[171] Interview with Sarah Munro, *supra* note 107; Interview with Kamau Sandiford, *supra* note 106; Email from Robyn Pierce, *supra* note 110; *Instructions for Filing and Serving an Application to Set Aside Conviction(s) (Form MC 227)*, MICH. STATE COURT ADMIN. OFFICE, https://www.courts.michigan.gov/4a20e1/siteassets/forms/scao-approved/mc227.pdf [https://perma.cc/HPV5-RRG3] (last visited Aug. 27, 2024).

[172] Interview with Sarah Munro, *supra* note 107; *Interview with PCS Staff*, *supra* note 82; Interview with Kamau Sandiford, *supra* note 106; Interview with Stephen Rideout, *supra* note 108.

[173] Interview with Sarah Munro, *supra* note 107; *Interview with PCS Staff*, *supra* note 82. According to PCS's administrative data, 3% of the PCS population and roughly 4% of our survey sample did not proceed with an expungement petition due to outstanding court costs and fees.

automatically expunged convictions upon a finding that there has not been a "good-faith effort to pay the ordered restitution,"[174] accounts indicate that courts are improperly denying petition-based expungements when there is unpaid restitution.[175] No statutory support exists for denying an expungement on the basis of unpaid court fines or fees either, and yet this also appears to be happening.[176]

In the absence of resources like those PCS has to offer, are there other models that advocates and local governments can adopt to help citizens obtain record relief? Yes, but resource constraints do limit the effectiveness of these models, especially their ability to meet high levels of demand. With the dramatic increase in eligibility for expungement due to Michigan's recent reforms and the rise in public awareness of expungement as a valuable opportunity, the public's appetite for legal assistance has grown exponentially in recent years.[177] Because the petition-based process is so burdensome for individuals and because the demand for services far outstrips their availability, some advocates and service providers are economizing in creative ways that provide a useful contrast to PCS's model.

Led by Pro Bono Director Sarah Munro, the Michigan Advocacy Program/Legal Services of South Central Michigan ("MAP/LSSCM") employs various triaging tactics to stretch its limited resources to help as many expungement-seeking clients as possible across the many different courts throughout the organization's thirteen-county service area.[178] For instance, because each court has different procedures for obtaining certified records of conviction, the organization asks clients in most counties to obtain these records themselves, which lowers its costs—fortunately without any significant drop-off in follow-through by clients.[179]

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[174] MICH. COMP. LAWS § 780.621h(3) (2024) ("Upon a motion by a person owed restitution, or on its own motion, the court shall reinstate a conviction that was set aside under section 1g for which the individual whose conviction was set aside was ordered to pay restitution if the court determines that the individual has not made a good-faith effort to pay the ordered restitution.").

[175] Interview with Sarah Munro, *supra* note 107; *Interview with PCS Staff*, *supra* note 82.

[176] Interview with Sarah Munro, *supra* note 107; *Interview with PCS Staff*, *supra* note 82; Interview with Stephen Rideout, *supra* note 108.

[177] *See* Sandiford & Cooper, *supra* note 11, at 11 ("Even with the implementation of the automated expungement process, we have not seen a noticeable decrease in the demand for legal services at many of our expungement fairs."). PCS's case volume also illustrates this exponential growth in the demand for expungement assistance. The program recorded its 10,000th expungement in May 2024, eight years after its inception, with 5,300 of those expungements completed within the preceding year. Bre'Anna Tinsley, *Detroit's Project Clean Slate Celebrates 10,000 Expungements for Residents*, WDET (May 7, 2024), https://wdet.org/2024/05/07/detroits-project-clean-slate-celebrates-10000-expungements-for-residents/ [https://perma.cc/VFC3-ZNXR]. In November 2024, the program hit 12,000 expungements. Interview with Stephani LaBelle, *supra* note 126.

[178] Interview with Sarah Munro, *supra* note 107.

[179] *Id*. MAP/LSSCM also asks clients in most counties to obtain their own fingerprinting. This choice leaves important logistical and financial obstacles in place that could potentially derail clients, although the organization is able to assist with costs in some circumstances. *Id.*

Not surprisingly, the organization lacks sufficient staff to fully represent every eligible applicant, so it relies on pro bono attorneys to appear at hearings with clients, or if the case seems to be a relatively straightforward one, it sometimes prepares clients to represent themselves at hearings.[180] Thus far, MAP/LSSCM faces a scheduled expungement hearing in every case, with no option for expungement by stipulation, as PCS has been able to negotiate in certain Wayne County courts.[181] However, MAP/LSSCM does collaborate with the Washtenaw County Sheriff's Office and Washtenaw County Prosecutor's Office to secure certified court records and provide fingerprinting services for county residents free of charge.[182]

According to Kamau Sandiford, the Clean Slate Program Manager at Safe & Just Michigan ("SJM"), SJM faces similar challenges and tries to use its resources to increase awareness and empower people with opportunity at the earlier stages of the petition process.[183] SJM is primarily an advocacy organization—rather than a direct services provider—so in addition to working on policy matters and training, its work in the expungement realm involves hosting or coordinating expungement fairs. These fairs seek to jumpstart the expungement process for attendees, but SJM does not have the resources to see the process through to the end for people.[184] Employees and volunteers at fairs screen attendees for eligibility, assist them with filling out their paperwork, help them with fingerprinting, arrange a notary for their application, and provide them with envelopes to serve necessary parties.[185] The steps remaining for most individuals are effecting service, obtaining certified records of conviction from the court, and attending the hearing.[186] Whenever possible, SJM tries to provide direct referrals to legal services providers at the fair, though the providers do not always have capacity to represent attendees.[187] SJM also relies heavily on pro bono attorneys and law students to staff expungement fairs.

Like Detroit, nearby Oakland County has a governmental Clean Slate Program, but it only has one attorney, Stephen Rideout. Rideout's challenges mirror the challenges of MAP/LSSCM, SJM, and PCS.[188] To address them, instead of outsourcing steps of the process, which he sees as threatening the likelihood of completion, or focusing on getting people over the first few thresholds, Rideout

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[180] *Id*.

[181] *Id*.

[182] Interview with Sarah Munro, *supra* note 107.

[183] Interview with Kamau Sandiford, *supra* note 106.

[184] *Id*.

[185] *Id.*; Sandiford & Cooper, *supra* note 11, at 7.

[186] Interview with Kamau Sandiford, *supra* note 106.

[187] *Id*.

[188] Interview with Stephen Rideout, *supra* note 108.

triages by prioritizing delivering full representation for clients with felonies that are actively impeding job or housing prospects.[189] He assists individuals with misdemeanors or traffic cases whenever possible, but he places them lower on his priority list.

The Michigan Legal Help (MLH) model—which supports self-help centers by providing online tools for applicants—guides and sustains the program at the Jackson District Library system (JDL). In Jackson, librarian Robyn Pierce and two colleagues assist library patrons with preparing expungement applications through the JDL Self-Help Center.[190] The library staff determines eligibility, assists with completing applications, and mails application packets.[191] Applicants are responsible for requesting certified records of conviction from courts, obtaining fingerprints, and arranging court hearing dates.[192] The library provides individuals with a hearing script from MLH, but applicants must represent themselves at their hearings.[193] Pierce reports that patrons are sometimes confused about the details of the process and the limitations of the law—most notably that there are eligibility requirements that not all individuals with records meet.[194] There is also occasional role confusion, with applicants believing the library is granting the expungement, or that the library navigators will go to court with them.[195] Cost and transportation are significant challenges for expungement seekers, though Pierce notes that remote video court hearings help alleviate these issues.[196]

B. *Policy Implications of the Study*

Although our research focuses primarily on petition-based expungement, our findings carry implications for automated expungement as well. For example, we present evidence that people are not applying until years after they become eligible for record relief,[197] and we document significant attrition among those who start the petition process even in a jurisdiction that provides substantial assistance to applicants.[198] Both of these results support the case for developing and implementing

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[189] *Id*.

[190] Email from Robyn Pierce, *supra* note 110.

[191] *Id*.

[192] *Id*.

[193] *Id*.

[194] *Id*.

[195] *Id*.

[196] *Id*.

[197] *See supra* Section II.B.

[198] *Id*.

some form of automated expungement system, even in those jurisdictions that already offer relatively generous petition-based record relief opportunities. Of course, the burdens of the petition-based process—including the tremendous amount of time, money, and effort that applicants and their supporters expend on putting together, filing, and advocating for petitions, not to mention the resources of courts and agencies—are also arguments for an automated process for appropriate cases.[199]

At the same time, our research also shows that many people who benefit from automated expungement do not know they have a clean record, underscoring the importance of effective notification procedures for automated expungement recipients.[200] Furthermore, although incomplete or inaccurate criminal history records become conspicuous problems in states using petition-based approaches, these problems are just as significant—but mostly invisible—when states implement an automated process.[201] Interview subjects describe the role of advocates in notifying MSP about convictions that should have been automatically expunged but have not been due to ICHAT inaccuracies—in some cases, even obtaining the court records necessary to make the corrections.[202] Similarly, our research confirms that at least for some portion of expungement recipients, expunged convictions continue to show up in commercial background-check databases, a depressing practical reality.[203] Both of these issues are likely to be even more significant problems for the expected beneficiaries of automated expungement because those affected may never learn that their convictions should have been automatically expunged but have not been due to discrepancies in criminal history records or that their automatically expunged convictions are erroneously showing up in commercial background-check databases.

Our research has more to say about petition-based expungement, particularly when a legal assistance organization exists to complement the formal legal right to petition for record relief. The Detroit PCS model is one to emulate for many reasons. Most significantly, as a city agency, it is well-funded by the city and makes its

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[199] Of course, automated expungement is not fully automated, although it does involve an algorithmic component. Rather, it involves significant labor and cost on the part of the state agency tasked with undertaking expungement without petition. *See Technical and Operational Challenges of Implementing Clean Slate: Research Findings & Technical Appendix – Profiles of 11 Study States*, SEARCH GROUP, INC. (Apr. 6, 2023), https://www.search.org/search-report-examines-technical-operational-challenges-to-state-implementation-of-clean-slate/ [https://perma.cc/FY96-5H5M]. We do not here attempt to calculate the cost savings of shifting even more cases from petition-based to automated expungement, but it is almost certain that any shift would save significant resources in the long run.

[200] Sandiford & Cooper, *supra* note 11, at 8.

[201] *Id*. *See also* SEARCH GROUP, INC., *supra* note 199.

[202] Interview with Sarah Munro, *supra* note 107; *Interview with PCS Staff*, *supra* note 82; Interview with Stephen Rideout, *supra* note 108; Interview with Katrina Garrett, *supra* note 111.

[203] *See supra* text accompanying notes 148, 149.

services broadly available to Detroit residents regardless of income or the court where the convictions originate.[204] This all-comers approach lowers the barriers to entry and provides a much-needed and valuable service.[205] With relatively generous funding, it is able to serve many more clients than more cash-strapped organizations (some of which face Legal Services Corporation funding restrictions that limit representation for non-U.S. citizens).[206] PCS also has the distinct advantage of being an expungement-only shop. Specialization allows it to develop expertise, networks, and streamlined processes to serve a large population effectively and efficiently.[207]

Naturally PCS also faces resource limitations and is forced to make certain choices. Research like ours can help evaluate the consequences—the costs and benefits—of those decisions. For instance, in order to serve more individuals, PCS does not assign an attorney to clients until the hearing stage. Up until then, multiple people, including attorneys, are involved in processing a case to screen for eligibility, fix any ICHAT issues, pull court records, compile and serve packets, request hearing dates, and arrange for stipulations with the prosecutor's office. Our findings reveal one downside of this money-saving approach. Although most respondents indicate they are satisfied with PCS, among the minority who report dissatisfaction, the most common complaint is uncertainty and confusion about how to contact their lawyer and/or how to learn about the status of their case. Twenty-four percent of the survey sample, and 81% of those who indicate being dissatisfied with PCS, express this concern.[208] Notably, all clients with open cases receive weekly case-status emails from PCS, and the PCS website also includes a form that clients can submit to seek additional case updates, raising the possibility that clients who respond negatively to this question in our data might include individuals whose cases were closed due to ineligibility or who have not provided PCS with updated contact information.[209]

More generally, every service provider must make hard decisions about how best to deploy their limited resources, whether in terms of the number of clients who can receive assistance, how far in the process clients can receive support, whether clients must undertake certain steps themselves, or how available advocates will be

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[204] *Interview with PCS Staff*, *supra* note 82.

[205] The gap between those who qualify for legal services assistance and those who can actually afford to hire an attorney is significant, so the fact that PCS is able to help Detroit residents regardless of income is worth emphasizing.

[206] Interview with Sarah Munro, *supra* note 107; *LSC Restrictions and Other Funding Sources*, LEGAL SERVS. CORP., https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/lsc-restrictions-and-other-funding-sources [https://perma.cc/9E5C-4JBL] (last visited Aug. 27, 2024).

[207] *Interview with PCS Staff*, *supra* note 82; Interview with Sarah Munro, *supra* note 107; Interview with Stephen Rideout, *supra* note 108.

[208] *See supra* Table 6.

[209] Interview with Stephani LaBelle, *supra* note 126.

to answer client questions on an ongoing basis. Although we cannot in this Article provide empirical support for the relative value or cost of these different triaging approaches, we can remind advocates in other jurisdictions contemplating best practices that demand for assistance always outstrips supply (as in every other area of the civil legal system) and highlight the variety of choices they must make to bridge that gap.

Our findings, like plenty of other research, emphasize the importance of high-quality state data and record-keeping practices.[210] Many people in Michigan who are, under the law, eligible for expungement are trapped by their record as a result of poor record-keeping. Rampant inaccuracy and incompleteness of criminal history records is a long-standing issue that has gained new visibility in the age of expungement. All jurisdictions that wish to support broader record relief would be wise to address as soon as possible the state of their criminal history records. Jurisdictions should combine improved record-keeping with robust petition-based expungement legislation that will not allow record relief to fail when nonmaterial information is missing, inconsistent, or ambiguous.

Finally, the discretion at the core of any petition-based system presents important risks and deserves careful attention. One concern is a scenario in which a minority of judges who do not believe in record relief have the power to legislate from the bench by denying expungement applications across the board.[211] Equally troubling is the possibility of judges and court administrators using the expungement process to collect unpaid court fines and fees.[212] Particularly in light of the disparate impact of imposing court fines and fees on different groups, the potential for the misuse of discretion over expungement petitions threatens to exacerbate existing inequalities.[213] One lesson is that legislatures ought to clearly articulate the scope of judicial discretion to deny an expungement.[214] If statutory reform proves ineffective, and the education of judges and court administrators does not move the needle, moving more fully toward an automated expungement approach to record relief

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[210] *See* Lageson & Stewart, *supra* note 74.

[211] Interview with Stephen Rideout, *supra* note 108; *Interview with PCS Staff*, *supra* note 82.

[212] Interview with Sarah Munro, *supra* note 107; *Interview with PCS Staff*, *supra* note 82; Interview with Stephen Rideout, *supra* note 108.

[213] Kristen Clarke, Amy L. Solomon & Rachel Rossi, "Dear Colleague" Letter, U.S. DEP'T OF JUST. (Apr. 20, 2023), https://www.justice.gov/opa/press-release/file/1580546/dl [https://perma.cc/XMP8-M8RB] (last visited Aug. 24, 2024) (urging state and local courts and agencies to "ensure that their assessment of fines and fees is constitutional and nondiscriminatory" in light of evidence that "[t]he detrimental effects of unjust fines and fees fall disproportionately on low-income communities and people of color, who are overrepresented in the criminal justice system and already may face economic obstacles arising from discrimination, bias, or systemic inequities").

[214] The Michigan Supreme Court recently issued a decision articulating the discretionary standard in Michigan's statute, particularly with regard to the definition of "public welfare." *See* People v. Butka, No. 164598, 2024 WL 3503572, at *1 (Mich. July 22, 2024).

might be the best solution of all, albeit one that itself requires careful consideration of effective implementation strategies.

C. *Limitations of the Study and Directions for Future Research*

While our survey sample is remarkably representative of the PCS client population as a whole in demographic terms, there remain certain, perhaps inevitable, limitations to the data we were able to collect and analyze. Most significantly, it is very likely that those who drop out of the process are different from the respondents on average. Individuals who are eligible for expungement and its myriad benefits, and are receiving full representation from PCS, but who nonetheless fail to follow through with the process, are also not likely to spend much time completing a survey about their experiences with that process. While Table 8 reflects what we are able to learn from those who do not complete the process but happen to respond to the survey, it is difficult to claim that these data are representative. So, while survey responses and stakeholder interviews make clear the many problems with incomplete records and how confusion about the process, delay, expense, and procedural complexities provide partial explanations for why eligible individuals may not succeed in filing their petition, a more robust understanding of the uptake problem and potential solutions remain an area for future research.

Likewise, individuals who report being pleased with the process or its outcomes may be overrepresented among survey respondents. We received many emails from people who were invited to take our survey in which they expressed feeling adrift, uninformed, and unsure about where they were in the process or how they ought to proceed. While these experiences may be outliers, as they are inconsistent with the general tenor of survey responses, they also suggest that the most disgruntled among the population may have chosen not to complete the survey. For this reason, we must acknowledge that there may be greater dissatisfaction with the expungement process and PCS than our survey results indicate. Outliers or not, these emails suggest that personal communication with applicants may be important to prioritize, as it affects people's experiences of the process and legal system.

Our survey approach relies on respondents' assessments and memories of their expungement process, and there are good reasons to believe that respondents rarely learn or remember all or even most of the details of what happens in their cases.[215] We sought to mitigate the distorting effects of humans' flawed memories and other cognitive biases by referencing case data from PCS, but invariably some distortions remain.[216] In particular, we find it surprising that many survey respondents seem uncertain whether the expungements they receive came about through the petition-

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[215] *See* Myrick, *supra* note 12.

[216] *See* Penner & Dodge, *supra* note 76; Harron et al., *supra* note 78.

based process (involving a hearing) or the automated process.[217] This unexpected uncertainty matters to our survey results somewhat because of the display logic we employ in the survey, but it also reveals the frequency with which expungement applicants may be confused about the details of the process itself.

Conducting a large-scale survey enables us to collect meaningful quantitative data, but without follow-up interviews with survey respondents, we admit we are left to explain some of the patterns in the data with mere conjecture. Thus, we make no causal claims in this Article about the reasons why survey respondents report the experiences and attitudes that they do. Future research might include the distribution of a similar survey to the same population in several years to assess any changes in participation and responses, as well as interviews with a subset of respondents to test our hypotheses about the reasons for certain survey results. Ultimately, research of this nature is best considered alongside quantitative research using administrative data and qualitative interview responses, which together can paint a more complete picture of how expungement works in practice.[218]

PCS is unusual in that it provides comprehensive assistance to all eligible Detroiters who seek their assistance. Thus, survey respondents are not only unrepresentative of those eligible for expungement because they are motivated enough to seek assistance when many do not (and to answer survey questions about their experiences when many do not), but they are also unrepresentative because they *receive* comprehensive assistance when most do not. We are not here comparing the PCS sample to a control group without this kind of assistance, so we note the difference without making any definitive claims as to what any difference might imply. Future research may address a broader selection of people seeking expungement, including those who receive significantly less robust assistance with the application process. Because laws allowing record relief vary significantly from state to state, comparative work that focuses on the relative costs and benefits of different organizational structures and procedures could also prove illuminating. Finally, although we do not address the effects of receiving an expungement on PCS clients in this Article, our future work will enrich this research by using these same data to document applicants' subjective views of how record relief has affected their lives.[219]

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[217] *See supra* Section III.B.

[218] *See* Penner & Dodge, *supra* note 76; Harron et al., *supra* note 78

[219] Edmonds, Prescott & Starr, *supra* note 7.