

Released But Still Restricted: Reentry and the Implications of a Criminal Record

Terrance M. Hinton*

INTRODUCTION

As a scholar-practitioner in the prison reentry field, I have assisted thousands of justice-impacted individuals. The American criminal justice system was established to make our communities safer and to hold individuals accountable for violations of the law. Once an individual is punished, whether through probation, fines, community sanctions, jail, or prison, the criminal justice system says that they have paid their debt to society.¹ However, in working closely with those who have left prison, I have witnessed a much different picture. Citizens with a criminal background are essentially stamped with a scarlet letter and continue to be punished by a series of lifetime collateral consequences that can include barriers to employment and housing.² Record relief mechanisms that set aside convictions for individuals who have paid their debt to society can open doors and increase access to these resources.³ While there is plenty of research that points to the benefits of record relief, the public often hears more about individuals with criminal histories who reoffend than about individuals who benefit from expungement or record sealing and move on to become productive members in society.

In Part I of this essay, I will tell the story of one particular individual named Terry Green,⁴ who, despite his upbringing and a felony conviction that included a

* Terrance Hinton, Ph.D., serves as a lecturer within the Department of Sociology at The Ohio State University and as a faculty member in the College of Safety and Emergency Services at Columbia Southern University. A smaller version of this paper was presented at the 2024 Ohio State University Moritz College of Law symposium titled “Relief in the Making: The Policy, Implementation, and Impact of Rights Restoration Laws” at The Drug Enforcement and Policy Center. The presentation entitled “*Free But Not Free: Addressing the Collateral Consequences of a Criminal Background*,” provides the foundation for this paper while the main ideas presented during the conference are expanded upon here.

¹ Hakim Nathaniel Crampton, *Paying a Debt to Society: Expunging Criminal Records as a Pathway to Increased Employment*, 701 ANNALS AM. ACAD. POL. & SOC. SCI., 206, 206 (2022).

² JUST. CTR., THE COUNCIL OF STATE GOV'TS, REMOVING STRUCTURAL BARRIERS TO EMPLOYMENT: A PLAYBOOK FOR EVERY STATE 1 (2021), <https://csgjusticecenter.org/publications/removing-structural-barriers/national-playbook/> [<https://perma.cc/6N2W-UVP2>].

³ MARGARET COLGATE LOVE, COLLATERAL CONSEQUENCES RES. CTR., THE MANY ROADS FROM REENTRY TO REINTEGRATION 48–49, 49 n.99, 97 (2022), https://ccresourcecenter.org/wp-content/uploads/2022/08/MRFRTR_8.24.22.pdf [<https://perma.cc/PEB8-UEB3>].

⁴ Terry Green has given me permission to share his story. He presented at the 2024 Ohio State University Moritz College of Law Drug Enforcement and Policy Center’s symposium entitled “Relief

four-year prison sentence, has moved forward with his life and is making an impact in his community since his record was expunged. In Part II, I will discuss the challenges of having a criminal record in-depth and the impact of having a record on finding employment, accessing housing, and pursuing an education. This will include a review of the relationship between having a criminal record, expungement, and the impact this has not only on justice-impacted individuals but also on our communities and economy. In Part III, I examine some of the key variables that were instrumental in assisting Terry in overcoming obstacles to his expungement, which could provide a roadmap for others who are seeking a similar outcome. In Part IV, I examine policy implications and discuss what strategies other states are utilizing to streamline the expungement and record-sealing process, while also offering additional solutions and recommendations that could further enhance the expungement and record sealing process.

I. TERRY'S STORY

Today, Terry Green is a successful entrepreneur, the founder and executive director of a community nonprofit organization called *Think Make Live Youth* that provides developmental leadership, court diversion, career readiness, life skills, social justice, and community engagement programming for youth and young adults between the ages of thirteen and twenty-four.⁵ Terry is also a social justice consultant, which provides him the opportunity to travel the world and consult with agencies on youth leadership, innovative civic engagement, and economic development strategies. Due to his impact on the Central Ohio community, Terry has received several community service awards including the Next Up Columbus Award.⁶ However, this is not how Terry's story began.

Growing up in Toledo, Ohio, Terry was initially raised by a single mother after his father left the family when Terry was young. After Terry and his mother moved to Columbus, Ohio, his mother began battling with addiction and therefore was in and out of Terry's life. As a result, Terry and his sister were raised by their grandmother into their teenage years. At the age of fifteen, with no parents in the picture, Terry eventually dropped out of high school, became homeless, and began selling drugs to make ends meet. On his sixteenth birthday he saw his mother go to prison as a result of drugs, and at the age of twenty he lost his best friend to gun violence. In between those years, Terry also spent time in and out of juvenile

in the Making: The Policy, Implementation, and Impact of Rights Restoration Laws". He presented as part of Panel 1: *Theories and Deep Thoughts about Collateral Consequences and Record Relief in Criminal Justice System*.

⁵ THINK MAKE LIVE YOUTH, <https://tmlyouth.org/> [<https://perma.cc/9JEX-PB8W>]. Think Make Live Youth has two different programs that serve youth between the ages of thirteen and twenty-four.

⁶ Sarah Shumick, *Next Up Columbus 2020: Terry Green*, CITY PULSE COLUMBUS (Aug. 31, 2020), <https://citypulsecolumbus.com/next-up-columbus-2020-terry-green/> [<https://perma.cc/H5JC-2YGR>].

facilities for selling drugs. As an adult, a SWAT raid on a drug house led to an indictment on drug charges and Terry was convicted of drug possession and drug trafficking. He was sentenced to serve four and a half years in prison at Southeastern Correctional in Lancaster, Ohio. These early events in Terry's life are critical for understanding how many individuals ultimately end up in the criminal justice system.⁷

As a former workforce development program manager, I have assisted thousands of justice-impacted individuals as they reentered society following time spent in prison.⁸ In getting to know each of my clients, assisting in their reentry planning and establishing connections with other community resources were vital in addressing their individual needs.⁹ Upon establishing rapport with my client, one of the first activities I would do was have them create their timeline. To create their timeline, clients would recall anywhere between five and ten significant events in their lives that they felt had been the most significant and impactful to them. In reviewing the timelines of clients I worked with, I found that it was not uncommon for many of them to have experienced adverse childhood experiences (ACEs), such as child abandonment, having an addicted or incarcerated family member, death of a family member or friend, sexual assault, and many more traumatic experiences.¹⁰

Empirical research from the Kaiser Permanente and Centers for Disease Control and Prevention Adverse Childhood Experiences Study demonstrates a strong correlation between ACEs and various adverse outcomes in adulthood. These outcomes include physical and mental health disorders, aggressive behavior, and other negative effects.¹¹ This is not to say that individuals who have documented adverse childhood experiences are guaranteed to exhibit these types of behaviors. What it does suggest is that childhood adversity is associated with adult criminality and that to decrease criminal recidivism treatment interventions must focus on the effects of early life experiences.¹² Terry was no exception to this. With no education,

⁷ Zoom Interview with Terry Green, Founder & Exec. Director, *Think Make Live Youth* (Dec. 14, 2023).

⁸ I served in multiple roles at Alvis, Incorporated as a workforce development coordinator and reentry program manager for the H.I.R.E and E.D.G.E. workforce development programs. I served in these roles from April 2018 to February 2021. Information on the workforce development program at Alvis, Incorporated may be found on the Alvis website. *Workforce Development*, ALVIS, <https://alvis180.org/services/workforce-development/> [<https://perma.cc/FW2U-G2KX>].

⁹ See NAT'L MENTAL HEALTH & SUBSTANCE USE POL'Y LAB'Y, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMINISTRATION, BEST PRACTICES FOR SUCCESSFUL REENTRY FROM CRIMINAL JUSTICE SETTINGS FOR PEOPLE LIVING WITH MENTAL HEALTH CONDITIONS AND/OR SUBSTANCE USE DISORDERS 1-2 (2023), <https://store.samhsa.gov/sites/default/files/pep23-06-06-001.pdf> [<https://perma.cc/W9NG-JD55>].

¹⁰ Gloria Huei-Jong Graf et al., *Adverse Childhood Experiences and Justice System Contact: A Systematic Review*, PEDIATRICS, art. e2020021030, Jan. 2021, at 1, 4, <https://doi.org/10.1542/peds.2020-021030> [<https://perma.cc/9FAL-QPZH>].

¹¹ James A. Reavis et al., *Adverse Childhood Experiences and Adult Criminality: How Long Must We Live Before We Possess Our Own Lives?*, PERMANENTE J., 2013 Spring, at 44-47.

¹² *Id.* at 44.

housing, or family support, he began selling drugs, which ultimately landed him in prison on a four-year sentence for drug possession and drug trafficking charges.

In prison, incarcerated individuals are labeled as offenders or perpetrators of crime, while those who have been released from prison are stigmatized as ex-offenders, convicts, or felons. However, many of these individuals were victims of crime before committing crimes, which is often overlooked as these types of experiences can set forth a lifetime trajectory of being in and out of the criminal justice system.¹³ For violent crimes such as homicide, it is not uncommon to find that victims have also committed previous offenses.¹⁴ In Chattanooga, nearly half of all shooting victims in 2015 had criminal histories with a violent crime or gun charge.¹⁵ One study found that violent offending increases the risk for victimization by 68% in neighborhoods when neighborhood street culture is at an average level.¹⁶ The same study found that victims of violence are 55% more likely than non-victims to commit a violent crime,¹⁷ further highlighting the common phrase that “hurt people hurt people.”

While incarcerated, Terry took advantage of every program that was offered within the prison, which included working for the Ohio Penal Industries (OPI),¹⁸ taking a class within the Ohio Prison Education Exchange Project¹⁹ offered by The Ohio State University, and obtaining his GED.²⁰ Within OPI, each Correctional Institution has different shops equipped to produce several products and services, such as Construction Services & Asbestos Abatement, Dental Lab Services, Heavy Duty Vehicle Modification, and more.²¹ Due to his participation in and completion

¹³ See, e.g., Brenna Boppre & Emily Salisbury, *The Women's Risk Needs Assessment: Putting Gender at the Forefront of Actuarial Risk Assessment*, PENAL REFORM INT'L (Apr. 12, 2016), <https://www.penalreform.org/blog/womens-risk-needs-assessment-putting-gender-forefront-actuarial/> [<https://perma.cc/87ZA-V4CZ>]; Utah Criminal Justice Center, *Women's Risk Needs Assessment Research (WRNA)*, UNIV. OF UTAH COLL. OF SOC. WORK, <https://socialwork.utah.edu/research/ucjc/wrna/index.php> [<https://perma.cc/JUZ8-8NQR>].

¹⁴ MARVIN E. WOLFGANG, PATTERNS IN CRIMINAL HOMICIDE 175 (1958).

¹⁵ Shelly Bradbury, *Gang Violence: The Few Who Shoot*, CHATTANOOGA TIMES FREE PRESS (May 29, 2016), <https://projects.timesfreepress.com/2016/05/shots-fired/#work> [<https://perma.cc/MHK4-S22W>].

¹⁶ Mark T. Berg et al., *The Victim-Offender Overlap in Context: Examining the Role of Neighborhood Street Culture*, 50 CRIMINOLOGY 359, 376 (2012).

¹⁷ *Id.* at 378.

¹⁸ *Who We Are*, OHIO DEPT. OF REHAB. & CORR.: OHIO PENAL INDUS., <https://opi.ohio.gov/know-the-program/overview> [<https://perma.cc/P3Z2-68RH>] (“The OPI program seeks to reduce recidivism by enabling incarcerated adults to acquire real life skills and experience that makes them better prepared to maintain employment after they are released. Each Correctional Institution has different shops equipped to produce several products and services.”).

¹⁹ *Our Project*, OHIO PRISON EDUC. EXCH. PROJECT, <https://opeep.osu.edu/our-project> [<https://perma.cc/J2Y3-N2MT>] (“The Ohio Prison Education Exchange Project (OPEEP) works to increase access to quality higher education for incarcerated and justice-involved individuals.”).

²⁰ Interview with Terry Green, *supra* note 7.

²¹ *Who We Are*, *supra* note 18.

of so many programs, Terry was released under the status of transitional control as part of the Transitional Control (TC) Program.²² Eligible individuals identified by the Ohio Parole Board may join the TC program during the final 180 days of their incarceration and, upon completion of the program, participants are typically transferred to a halfway house where they serve the remainder of their sentence in a community-based setting.²³

After completion of his prison sentence in 2013, Terry realized the need to assist young people who had been raised in circumstances similar to his own. Having lived through such a challenging childhood and dealt with the consequences of engaging in criminal activities, he understood the importance of mentorship and early intervention by providing kids who had lived through similar experiences with alternatives to crime. This realization led him to the creation of his nonprofit organization *Think Make Live Youth* in December of 2017.²⁴ With his new nonprofit, Terry became very proactive in getting involved with community activities aimed at addressing youth violence and reentry initiatives. From the beginning, much of his community work involved serving on several reentry organizations and committees. As a result, he was able to connect with other individuals who worked in various aspects of the criminal justice system and began connecting with administrators, lawyers, professors, and other leaders within the criminal justice and non-profit sectors.

Although Terry was beginning to make an impact in the Columbus community through *Think Make Live Youth*, the label of having a felony record still posed significant obstacles for him. More than 40,000 statutes and regulations imposing collateral consequences exist across the United States for justice-impacted individuals.²⁵ These collateral consequences include obstacles to employment, housing, college admission, professional licenses, government benefits, voting rights, and more.²⁶ Having worked in the reentry space with thousands of people who have criminal records, I know firsthand that previously incarcerated individuals

²² *Transitional Control*, OHIO DEPT. OF REHAB. & CORR., <https://drc.ohio.gov/systems-and-services/1-parole/transitional-control> [<https://perma.cc/Q7MS-HQAP>] (“Transitional Control (TC) is a program designed to facilitate an incarcerated individual’s transition back into the community from prison. It benefits the individual and the community by providing the opportunity for a more successful transition from prison while residing in a monitored environment.”).

²³ *Id.*

²⁴ *About TML Youth*, THINK MAKE LIVE YOUTH, <https://tmlyouth.org/about-tml-youth/> [<https://perma.cc/F7XM-9WJ6>] (“Think Make Live started off as a twenty-minute PowerPoint presented by Terry Green for a senior humanities class at The Ohio State University” and in 2017 was “registered as an Ohio nonprofit to provide innovative programs and events to support ... youth 14–21 years old.”).

²⁵ Alexander L. Burton et al., *Beyond the External Criminal Record: Public Support for Expungement*, 20 CRIMINOLOGY & PUB. POL’Y 123, 125 (2021).

²⁶ Andrea Miller et al., *Collateral Consequences of Criminal Records*, NAT’L CTR. FOR STATE CTS., CT. STAT. PROJECT (Nov. 12, 2021), https://www.courtstatistics.org/_data/assets/pdf_file/0031/70888/Collateral-Consequence-Caseload-Highlight-3.pdf [<https://perma.cc/XQ5V-E3XS>].

face barriers to employment, housing, education, and other important resources, barriers which would prevent my clients from making any significant progress in reintegrating back into society.

For Terry, these barriers were similar, but, through his work serving on community boards and reentry coalitions, he eventually became connected with an attorney from the Legal Aid Society of Columbus who recommended that he look into getting his record expunged.²⁷

Terry was unfamiliar with the process, but he was able to learn from the attorney that he was eligible for record expungement.²⁸ In the state of Ohio, record sealing removes one's criminal record from public view so that it no longer appears on most official background checks.²⁹ Record expungement goes a step further and results in the criminal record being completely removed for most circumstances.³⁰ For Terry, having his record expunged presented the chance to open up numerous opportunities, especially given the nature of his work as an entrepreneur and leader of a nonprofit organization.

To start the process, Terry was connected to a paralegal who became an advocate for him in getting started with record expungement. Letters of support for Terry came from various professionals within the criminal justice system. The Ohio Justice and Policy Center eventually became involved with the process, and from there Terry was able to get previous fines and court costs waived through the court.³¹ After several months, Terry was notified that his record had been officially expunged.³² Since that time, additional avenues of opportunity have opened for Terry. He no longer has to report that he has a felony on his record when applying for employment and can now access loans for housing and travel throughout the U.S. The effects of Terry's expungement, however, go beyond individual barriers. He is

²⁷ *Who We Are*, THE LEGAL AID SOCIETY OF COLUMBUS, <https://www.columbuslegalaid.org/who-we-are> [<https://perma.cc/8PB9-FXSE>] (“The Legal Aid Society of Columbus (LASC) is a non-profit, 501(c)(3) organization created by the Columbus Bar Association in 1953” that “provides legal assistance for people who cannot afford an attorney through representation and easy-to-understand information about [their] legal rights. This includes information about how to get into court, what to do when in court or what to do when dealing with government agencies.”).

²⁸ Interview with Terry Green, *supra* note 7.

²⁹ *Ohio Rights Restoration Mechanisms*, THE OHIO STATE UNIV. MORITZ COLL. OF LAW DRUG ENF'T & POL'Y CTR. (October 2023), https://moritzlaw.osu.edu/sites/default/files/2023-10/Ohio%20Rights%20Restoration%20Laws%20Handout_Oct2023.pdf [<https://perma.cc/Q433-X529>].

³⁰ *Id.*

³¹ *Our Work*, OHIO JUST. & POL'Y CTR., <https://ohiojpc.org/our-work/> [<https://perma.cc/Z6NW-SUT5>] (“The Ohio Justice and Policy Center provides free legal assistance to people looking to overcome barriers created by a criminal record and to people who are incarcerated and face denials of basic human rights.”).

³² Krista Frost, *Record Expunged for Columbus Community Activist After Work with Youth*, 10WBNS (July 29, 2020, 7:05 PM EDT), <https://www.10tv.com/article/news/local/record-expunged-for-columbus-community-activist/530-e180f00f-8dfb-4327-b695-bfe362005fef> [<https://perma.cc/FL7U-EX64>].

now able to volunteer to go into youth prison facilities to assist young people who come from backgrounds similar to his, which he does regularly. Early intervention is essential for young people involved in the juvenile justice system. Statistics show that once youth enter the system, they are more likely to cycle in and out of the criminal justice system throughout adulthood.³³ However, alternative-to-incarceration models, such as credible messenger mentoring programs, have shown effectiveness in communities nationwide. Family-focused therapy models like Multisystemic Therapy (MST), Functional Family Therapy (FFT), and Restorative Justice interventions also demonstrate compelling evidence of success for youth accused of serious offenses.³⁴ Terry, having lived through those experiences, understood the importance of not only mentoring young people in the community but also those who were incarcerated.

In 2012, a diversion program called Unleashing Potential was started by a Franklin County Municipal Judge. The Unleashing Potential program aims to assist eighteen- to twenty-five-year-old defendants who have a previous criminal history in restarting their lives.³⁵ Terry's organization *Think Make Live Youth* was asked to partner with the Franklin County Municipal Court and the Unleashing Potential program for additional support services. As part of the program, *Think Make Live Youth* case managers collaborate with each program participant to create a personalized twelve-month wellness plan. This plan includes objectives such as securing employment, obtaining stable housing, and addressing mental and behavioral health needs. The Unleashing Potential program also supports participants by helping them earn a diploma or GED, access public benefits they qualify for, and receive additional assistance tailored to their individual needs. Upon completion of the program, the court will seal the charges against the participant, reduce the charges against them, and/or dismiss the participant's case.³⁶ While still in the infancy stages, so far five men have been able to have their records cleared due to their completion in the program, with more to come in the future who will also get this opportunity.³⁷ In the four years since his expungement, Terry's work has come full circle and continues to do so to this day.

³³ Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, THE SENT'G PROJECT 12 (Mar. 1, 2023), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf> [<https://perma.cc/ZW6A-BM3H>].

³⁴ Richard Mendel, *Effective Alternatives to Youth Incarceration*, THE SENT'G PROJECT 12 (June 28, 2023), <https://www.sentencingproject.org/app/uploads/2023/06/Effective-Alternatives-to-Youth-Incarceration.pdf> [<https://perma.cc/FUY4-F4E7>].

³⁵ Kathy Lynn Gray, *Unleashing Potential: Judge Jessica D'Varga Aims to Break the Cycle of Crime in Columbus*, COLUMBUS MONTHLY (Feb. 14, 2022, 11:30 AM ET), <https://www.columbusmonthly.com/story/lifestyle/around-town/2022/02/14/unleashing-potential-franklin-county-judge-jessica-dvarga-break-cycle-of-crime-columbus/> 6782338001 [<https://perma.cc/M6PV-A7K9>].

³⁶ *Id.*

³⁷ Interview with Terry Green, *supra* note 7.

While Terry's story is one of inspiration, it is important not to overlook the fact that there were many obstacles in his expungement process. For every individual like Terry who is successful in having his record expunged, countless others never get the opportunity to do so even though they are eligible. There are many reasons for this, but barriers such as fines or fees can undermine these efforts and ultimately continue a cycle of poverty and hardships or result in recidivism, particularly among marginalized groups.³⁸ In the next section, I will discuss how these obstacles not only impact individuals seeking expungement but also our communities.

II. CRIMINAL RECORDS AND EXPUNGEMENT

At any given point in time, around two million people are incarcerated in prisons across America.³⁹ Taking into account that an additional forty-five million individuals have at least one past misdemeanor conviction, the total number of Americans with a criminal record, arrest record, criminal charges, or conviction is seventy-seven million, or roughly one in every three adults.⁴⁰ When someone is convicted of a crime, their punishment varies based on the severity of the charges. Punishment may include incarceration, placement in a halfway house, community supervision, fines, or other sanctions. In theory, after an individual completes the terms of their sentence, they are said to have paid their debt to society and are free to resume their life as lived before contact with the criminal justice system. In practice, however, the reality is an entirely different story. The mark of having a criminal record lasts long after one's sentence is completed and can pose significant barriers to housing, education, employment, healthcare, and other public benefits.⁴¹ These items are foundational for stability and the inability to obtain them can force individuals and their families back into poverty or to return to a life of crime.⁴² "Collateral consequences" are not only hard on individuals and their families, but also negatively impact our communities, economy, and public safety efforts.⁴³ Next, I will examine the areas of employment, housing, and education and how record sealing and expungement can be critical components for justice-impacted individuals seeking relief.

³⁸ Gus Tupper et al., *Fines and Fees Are a Barrier to Criminal Record-Clearing*, CAP: CTR. FOR AM. PROGRESS (Nov. 30, 2021), <https://www.americanprogress.org/article/fines-and-fees-are-a-barrier-to-criminal-record-clearing> [<https://perma.cc/43DA-M3L>].

³⁹ Crampton, *supra* note 1, at 206.

⁴⁰ *Criminal Records and Reentry Toolkit*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/civil-and-criminal-justice/criminal-records-and-reentry-toolkit> [<https://perma.cc/3ASX-A3P3>].

⁴¹ Rebecca Vallas et al., *A Criminal Record Shouldn't Be a Life Sentence to Poverty*, CTR. FOR AM. PROGRESS (May 28, 2021), <https://www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2> [<https://perma.cc/6KAS-UFXA>].

⁴² *Id.*

⁴³ *Id.*

A. Impact on Employment

It is no secret that a criminal conviction brings sanctions and disqualifications that can form barriers for individuals long after they have served their time. One of the main areas this can be seen in is employment. Having a felony, misdemeanor, or even an arrest on your record can carry a stigma that makes potential employers less likely to give you a callback interview.⁴⁴ Even when employers who identify themselves as “second chance employers”⁴⁵ communicate that they are willing to hire individuals with a criminal record, statistically they are less likely to do so.⁴⁶

A phenomenological study of in-depth interviews with employers in the Baltimore Metropolitan area examined factors influencing their decisions to hire individuals with a criminal record. Researchers found that lack of trust, the lack of work readiness skills among those recently released from incarceration, employers’ past interactions with individuals with a criminal record, and media reporting all impacted these hiring decisions.⁴⁷ The study also found that employers understood that individuals with a previous criminal history needed the opportunity to work, but that the risk of customer perception or dissatisfaction impacting their bottom line was also a concern.⁴⁸

Legal liability can also be a major concern for employers. Employers risk liability when they knowingly hire individuals with armed robbery charges, particularly for roles involving access to merchandise or supplies. Such negligent hiring practices can lead to significant legal and financial consequences.⁴⁹ Other situations, such as where individuals have been convicted of financial crimes, would raise major red flags for employers, especially for employment positions that require access to financial information or customer service positions that require access to a cash register. While the Ohio Certificate of Qualification for Employment was created to provide immunity to employers for negligent hiring claims, employers are still at times hesitant to open these opportunities to justice-impacted individuals.⁵⁰

⁴⁴ Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOCIO. 937, 942, 955 (2003).

⁴⁵ Second chance employers are employers who hire people with criminal records. See Emily Heaslip, *What to Know About Second Chance Hiring and Why It Could Help Solve Your Labor Problems*, U.S. CHAMBER OF COM. (Sept. 20, 2021), <https://www.uschamber.com/co/run/human-resources/second-chance-hiring> [<https://perma.cc/A7FB-QZHX>].

⁴⁶ Devah Pager & Lincoln Quillian, *Walking the Talk? What Employers Say Versus What They Do*, 70 AM. SOCIO. REV. 355, 373–74 (2005).

⁴⁷ Oluwasegun Obatusin & Debbie Ritter-Williams, *A Phenomenological Study of Employer Perspectives on Hiring Ex-Offenders*, COG. SOC. SCIS., art. 1571730, 2019, at 1, 5–8, <https://doi.org/10.1080/23311886.2019.1571730> [<https://perma.cc/2S29-8SK2>].

⁴⁸ *Id.* at 6.

⁴⁹ Bryan L. Sykes et al., *Barred: Labor Market Dynamics and Human Capital Development Among People on Probation and Parole*, 701 ANNALS AM. ACAD. POL. & SOC. SCI. 28, 31 (2022).

⁵⁰ *Certificate of Qualification for Employment*, OHIO DEP’T REHAB. & CORR., <https://drc.ohio.gov/systems-and-services/2-reentry-services/certificate-of-qualification-for-employment-cqe/certificate-of-qualification-for-employment-cqe> [<https://perma.cc/2PNN-T6ZK>].

Public safety is also a concern employers must take into consideration. For example, depending on the nature and circumstances of the offense, individuals convicted of a sex offense involving child pornography may be prohibited from possessing a computer at work.⁵¹ Additionally, they may also be barred from employment at locations within a specified distance of schools or daycares, regardless of their qualifications or skill level.⁵² On the other hand, there are other situations regarding concerns about a potential applicant's criminal record that could be examined more closely. For example, obtaining a commercial driver's license (CDL) is a popular profession for those who have a previous criminal history and can be lucrative for those willing to be on the road and travel long distances.

While managing a workforce development program, I worked with two individuals who wanted their CDLs. "Ted"⁵³ had served seven years for drug trafficking and expressed a strong interest in driving 18-wheelers. Due to the nature of his trafficking charge and the job duties associated with transporting freight across the country, hiring Ted would pose a significant risk to any employer. It therefore became clear why this situation would not work for Ted or the employer. Another client of mine, who I will call "James,"⁵⁴ served a twenty-seven-year sentence for murder as a juvenile at the age of seventeen. He was eventually bonded over into adult prison at the age of eighteen where he remained incarcerated for the next twenty-six years. While incarcerated, James took advantage of every available program, including college business classes and a CDL simulation course.⁵⁵ Following his release from prison, James began working a steady job in the construction industry for several years. When he enrolled in the adult workforce development program I was managing, he had just gotten married and had started a family. In my initial meeting with James, he communicated to me that it was his dream to obtain his CDL and eventually own his own trucking business. While he had steady work in the construction industry, the wages were not enough to support his growing family which would soon include a third child. James eventually achieved success, but the process was long and challenging. Both the workforce center provider and potential employers hesitated to hire him due to his criminal background. Their reluctance was understandable, as hiring someone with a violent crime on their record requires careful consideration. Employers must exercise due

⁵¹ *Are Sex Offenders Allowed to Use Cell Phones & Computers?*, STECHSCHULTE NELL (Jan. 11, 2023), <https://www.tpatrialattorneys.com/sex-offenders-computers-cell-phones/> [https://perma.cc/EJ3W-RCBT].

⁵² OHIO REV. CODE ANN. § 2950.034(A) (West 2023).

⁵³ I am using a pseudonym to protect Ted's identity. He was a former client in my workforce development program and has given me permission to share his story.

⁵⁴ I am using a pseudonym to protect James's identity. He was a former client in my workforce development program and has given me permission to share his story.

⁵⁵ Business classes were as a part of Franklin University's and Ashland University's Prison Education Programs. These classes are part of the individual prison transcripts through the Ohio Department of Rehabilitation and Correction and cannot be provided to protect the confidentiality of the individual.

diligence to mitigate potential liability risks, particularly in cases like James's. In Ohio, the nature of James's charge permanently disqualifies him from eligibility for expungement or record sealing.⁵⁶

That said, James's charge was over thirty years ago and he has been living in the community, working a steady job, and avoiding run-ins with the law since his release. In this situation, is it fair for this information to be public after such a lengthy period? More specifically, did his previous crime present a risk for a job that centered on his capability to drive an 18-wheeler? The ability of a record to be expunged or sealed must factor in all these details, as not everyone can and should be eligible for this type of relief. However, there are many situations similar to James's where individuals with previous violent charges have proven that they should be eligible for relief. Nonetheless, state law often denies relief.⁵⁷

For several years, I taught a job readiness class where I helped formerly incarcerated individuals with workforce development, helping them create resumes, write cover letters, and prepare for job interviews. I frequently guided clients on how to address the felonies on their records. Job applications often asked applicants to check a box if they had ever been convicted of a felony or misdemeanor. In the fine print below, job applications mentioned that disclosing a conviction was not an automatic disqualifier for employment and that employers would consider the circumstances surrounding the crime.⁵⁸ In reality, however, the simple checking of "yes" on the felony question often led hiring managers to move on with other candidates.

Since then, "ban the box" legislation has become more common.⁵⁹ These laws, designed to delay an employer's inquiry into an applicant's criminal history until later in the hiring process, aim to give applicants a fairer chance by allowing employers to assess their qualifications first. Although ban the box laws have become more widespread, their actual impact remains debated. The assumption that employers will be more likely to hire those with a criminal background if forced to evaluate their qualifications before discovering their criminal record has been given mixed results.⁶⁰ In my program, I frequently saw clients get hired and begin working only to be terminated weeks later after their background checks revealed their criminal histories. Such experiences are particularly harmful to individuals already

⁵⁶ OHIO CRIM. SENT'G COMM'N, ADULT RIGHTS RESTORATION & RECORD SEALING 1 (2023), <https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/judPractitioner/adultRightsRestoration.pdf> [<https://perma.cc/45PD-8U5B>], citing OHIO REV. CODE ANN. § 2953.32 (West 2023).

⁵⁷ *Id.*

⁵⁸ *Arrest and Conviction Records: Resources for Job Seekers, Workers and Employers*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/arrestandconviction> [<https://perma.cc/7TB5-2GQ8>].

⁵⁹ *Ban the Box*, NAT'L CONF. OF STATE LEGISLATURES (June 29, 2021), <https://www.ncsl.org/civil-and-criminal-justice/ban-the-box> [<https://perma.cc/S927-XMCJ>].

⁶⁰ Dallan F. Flake, *Do Ban-the-Box Laws Really Work?*, 104 IOWA L. REV. 1079, 1079-80 (2019).

facing significant barriers to employment, often shattering their confidence in seeking future opportunities. Being hired, starting work, and then losing the job due to a background check is far more demoralizing than simply not receiving an interview or callback. Moreover, even for those fortunate enough to retain employment, the low wages typically earned by individuals with criminal records often fall short of providing financial stability.⁶¹

1. Wages Gained and Lost Due to Record Clearing

The ability to obtain a record sealing or expungement comes with financial implications that can either propel individuals to higher-paying jobs or keep them in a perpetual cycle of poverty. In a study of several hundred participants who entered programs for legal record clearing remedies, researchers analyzed the impact of the intervention on employment outcomes. These participants received legal assistance from the East Bay Community Law Center's Clean Slate Clinic in Alameda County (Oakland), California. Researchers found evidence that a record clearing intervention increased participants' employment rates and wages in the years after the intervention from roughly 75% to 80%–85%.⁶² In the first year of the intervention, they found that average real earnings increased slightly, but then increased rapidly from \$4,000 below baseline to nearly \$2,000 above baseline, which resulted in an overall increase of \$6,000 (equal to almost one-third of the total average earnings).⁶³ While there is no guarantee that a record sealing will result in this magnitude of a financial benefit, this example further highlights the impact that a record sealing could have on individuals seeking employment opportunities with better wages.

2. Earnings Lost

On the other side, the presence of a criminal record can significantly impact career earnings. Researchers estimate that individuals with misdemeanor convictions lose \$5,100 annually, while those with felony convictions face an average annual loss of \$6,400.⁶⁴ Even though many states offer expungement or other mechanisms of record relief, one of the major challenges is the time gaps between eligibility and actual delivery of relief. For example, in Ohio, it can

⁶¹ Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, BRENNAN CTR. FOR JUST. (Sept. 15, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal> [https://perma.cc/A8H3-M32A].

⁶² Jeffrey Selbin et al., *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. CRIM. L. & CRIMINOLOGY 1, 7–8 (2018).

⁶³ *Id.* at 8.

⁶⁴ Colleen Chien et al., *Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver's License*, 64 ARIZ. L. REV. 675, 675 (2022).

generally take six months to seal minor misdemeanors and up to one year for misdemeanors.⁶⁵ Fourth- and fifth-degree felonies may be sealed after one year and third-degree felonies after three years. However, applicants must wait an additional 10 years to expunge any felony case. Anyone who already had their record sealed can apply for expungement, but even then some felony records cannot be expunged until the 10-year mark passes.⁶⁶ In addition, to be eligible an applicant cannot have any open or pending criminal cases, including warrants and open traffic violations, and cannot be on probation or community control. All fines and restitution need to be paid and the waiting period must end.⁶⁷

In states like Michigan, the waiting period for expungement varies depending on the type of crime and the number of convictions.⁶⁸ In Texas, individuals with criminal convictions may have their records sealed, but only after a waiting period that can take years.⁶⁹ Other challenges such as outstanding court fines, filing fees, legal hurdles, and an unfamiliarity with the overall process can prevent individuals from applying in the first place. In fact, in Texas, where individuals with criminal convictions may seal their records after a waiting period, researchers found that almost 95% of people eligible for relief have not accessed it.⁷⁰ This can lead to thousands of eligible people falling into the “second chance sealing gap,” which is defined as the difference between eligibility and delivery of a person’s second chance.⁷¹ Long-term implications could include never obtaining the necessary record sealing that could open new doors for employment opportunities with higher wages. This ultimately can translate into billions in lost annual earnings and tax revenue, which impacts all communities.⁷²

⁶⁵ Laura A. Bischoff, *New Ohio Law Makes Hiding Criminal Records Easier, Quicker, Cheaper*, COLUMBUS DISPATCH (May 21, 2023), <https://www.dispatch.com/story/news/state/2023/05/21/ohios-new-law-makes-it-easier-to-seal-expunge-old-criminal-records/70180578007/> [https://perma.cc/7H7Y-3PEP].

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2482–83 (2020).

⁶⁹ Brett Pritchard, *When a Criminal Record Is Sealed in Texas*, LAW OFFICE OF BRETT H. PRITCHARD (Apr. 4, 2023), <https://www.brettpritchardlaw.com/blog/2023/april/when-a-criminal-record-is-sealed-in-texas> [https://perma.cc/947R-AHYX].

⁷⁰ Colleen Chien et al., *The Texas Second Chance Non-Disclosure/Sealing Gap*, SANTA CLARA L. DIGIT. COMMONS (Apr. 10, 2023), https://digitalcommons.law.scu.edu/context/facpubs/article/2009/viewcontent/The_Texas_Second_Chance_Non_Disclosure_Sealing_Gap_Report_2023_.pdf [https://perma.cc/BEF9-5H7F].

⁷¹ *Id.*

⁷² CHERRIE BUCKNOR & ALAN BARBER, CTR. FOR ECON. & POL’Y RSCH., *THE PRICE WE PAY: ECONOMIC COSTS OF BARRIERS TO EMPLOYMENT FOR FORMER PRISONERS AND PEOPLE CONVICTED OF FELONIES* 1–2 (2016), <https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5> [https://perma.cc/U4FA-MXXF].

3. Economic Impact & Recidivism

Employment-related collateral consequences can be necessary in certain occupations. For example, individuals convicted of identity or credit card theft may be restricted from jobs involving access to personal or private information. However, in some states, there are other times when having a felony conviction can result in an automatic disqualification regardless of the circumstances such as for individuals who have violent offenses.⁷³ Studies frequently point to the fact that disqualifying people with a criminal record costs the U.S. economy upwards of \$80 billion in annual gross domestic product, but the same challenges remain for justice-impacted individuals year after year.⁷⁴ Failure to obtain employment with higher earning wages can become discouraging for many individuals with criminal backgrounds and could even influence them to resort back to criminal activities.⁷⁵

Researchers studying 2,050 formerly incarcerated individuals in Ohio found notable patterns. They discovered that as subjects experienced declining stability, their risk of recidivism increased alongside a reduction in formal labor market engagement.⁷⁶ This further illustrates the fact that exclusion from the formal labor market over time can heighten recidivism risk among the formerly incarcerated. Taken together, one could argue that eligibility for record sealing and expungement should be expanded to include a case-by-case examination. This approach would improve employment prospects for individuals who have demonstrated readiness for better opportunities but are hindered by their criminal record.

For example, in the situation involving my former client, James, a closer look at his record would have revealed that his case, while violent, took place thirty years ago as a juvenile. Previous literature in recent years has linked childhood trauma and brain development in adolescence and its potential effects on decision-making, delinquent behavior, and involvement in the juvenile justice system.⁷⁷ After serving a twenty-six-year sentence, James has had no further run-ins with the law since his release. Now a fifty-two-year-old father of three, his risk of reoffending is significantly reduced and this fact should be considered by employers when

⁷³ 50-State Comparison: Limits on Use of Criminal Record in Employment, Licensing & Housing, RESTORATION OF RTS. PROJECT, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-comparison-of-criminal-records-in-licensing-and-employment> [https://perma.cc/9UDM-RFUE].

⁷⁴ Bucknor, *supra* note 72, at 1; Michael Hopkins, *Chapter 789: Banning the Box: The Solution to High Ex-Offender Unemployment?*, 49 U. PAC. L. REV. 513, 522 (2018).

⁷⁵ Terrance Hinton, *Citizen Perceptions of Institutional Disparities and the Re-Integration of Nonviolent Drug Related Offenders* 1, 191 (Mar. 16, 2018) (Ph.D. dissertation, Walden University) (ProQuest).

⁷⁶ Simon Kolbeck, *Is Reduced Contact with the Formal Labor Market Over Time Associated with Heightened Recidivism Risk?*, 61 J. OFFENDER REHAB. 337, 347–48 (2022).

⁷⁷ Ashley Williams, *Early Childhood Trauma Impact on Adolescent Brain Development, Decision Making Abilities, and Delinquent Behaviors: Policy Implications for Juveniles Tried in Adult Court Systems*, 71 JUV. & FAM. CT. J. 5, 5–6, 9 (2020).

evaluating risk. Failing to do so keeps individuals with similar background circumstances shut out of the labor market, which comes at a substantial cost to our communities and economy.⁷⁸ In looking at why some individuals recidivate, it is important to note that a lack of employment is not always the sole reason; instead, a combination of other forces such as housing, substance abuse, or mental health challenges can collectively contribute to this outcome.⁷⁹

4. Incentives to Hire People with Criminal Backgrounds

Obtaining record relief offers many benefits for individuals seeking employment. However, many do not qualify due to varying state laws that prohibit relief based on the offense.⁸⁰ There are, however, several benefits available to incentivize employers to hire individuals with a criminal record. The Federal Bonding Program essentially provides insurance at no cost to any employer who hires a prospective applicant who has a felony on their record. This program was formulated by the federal government to alleviate the fears of employers who were reluctant to hire clients for fear of theft or damage. Bonds are issued from the federal government in \$5,000 increments up to a maximum of \$25,000. Employers must reapply for the bond every six months.⁸¹

The Work Opportunity Tax Credit (WOTC) is a federal income tax credit that provides incentives to private businesses to hire targeted groups of job seekers with significant barriers to employment, including individuals with a criminal record.⁸² Under the WOTC program, an employer that hires someone with a felony on their record may claim a tax credit equal to 25% of the eligible new hire's first-year wages if the individual works at least 120 hours, up to the maximum amount of \$1,500.⁷⁷ If the individual works at least 400 hours, the employer may claim a tax credit equal to 40% of the employee's first year's wages, up to the maximum amount of \$2,400.⁸³ The employee must have been convicted of a felony and have a hiring date that is less than one year from the last date of conviction or release from prison to be eligible. To claim the tax credit, employers must fill out the federal tax credit

⁷⁸ Bucknor, *supra* note 72, at 13–14.

⁷⁹ LaToshia Butler & Ebonyque Taylor, *A Second Chance: The Impact of Unsuccessful Reentry and the Need for Reintegration Resources in Communities*, CMTY. POLICING DISPATCH (Apr. 2022), https://cops.usdoj.gov/html/dispatch/04-2022/reintegration_resources.html [<https://perma.cc/FA9B-7Q4A>].

⁸⁰ *50-State Comparison: Limits on Use of Criminal Record in Employment, Licensing & Housing*, *supra* note 73.

⁸¹ Roberta “Toni” Meyers Douglas, *Federal Bonding Program*, LEGAL ACTION CTR., <https://www.lac.org/resource/federal-bonding-program> [<https://perma.cc/6TNV-FLUU>].

⁸² Heidi Hillyer, *Reducing the Rate of Prison Recidivism in Florida by Providing State Corporate Income Tax Credits to Businesses as an Incentive for Employment of Ex-Felons*, 21 BARRY L. REV. 105, 113–14 (2016); *Work Opportunity Tax Credit*, U.S. DEP’T OF LAB. EMP. & TRAINING ADMIN., <https://www.dol.gov/agencies/eta/wotc> [<https://perma.cc/R9NV-ZJJD>].

⁸³ Hillyer, *supra* note 82, at 113.

paperwork and submit it to the Internal Revenue Service within twenty-eight days of the eligible employee's official start date.⁸⁴ In Ohio, the Department of Job and Family Services (ODJFS) supervises the federal Work Opportunity Tax Credit (WOTC) and the Federal Bonding Program. Since October 2023, ODJFS has certified more than 23,000 WOTC applications, which has resulted in thousands of Ohio employers having received more than \$109 million in tax credits.⁸⁵

The Workforce Innovation and Opportunity Act, more commonly known as WIOA, was signed into law in 2014 and is another avenue for providing employment, education, training, and support services to justice-impacted individuals.⁸⁶ To be eligible for funding, adults must be at least eighteen years old, eligible to work in the United States, and, if applicable, registered for selective service. This includes young adults aged fourteen to twenty-four who are: homeless, need a high school diploma, are justice-impacted, are low income, or qualify as a foster child.⁸⁷ This benefit was utilized by my client James, whom I referred to Ohio Means Jobs which then assisted him in applying for WIOA funding to obtain a CDL for \$6,000.⁸⁸ This allowed James to go through trucking school and ultimately led to his employment as a truck driver once he obtained his CDL.

Another credit that is available in the State of Ohio is the Certificate of Qualification for Employment (CQE).⁸⁹ The CQE, established in 2012 through Senate Bill 337, allows individuals with prior felony or misdemeanor convictions to apply to the court for relief. This process lifts collateral sanctions that prevent them from being considered for employment or licensing in specific fields in the state of Ohio.⁹⁰ Data from the ODRC Annual reports on CQE approvals from 2020–2022 show that a total of 1,891 CQE petitions were approved.⁹¹

⁸⁴ *Id.* at 114.

⁸⁵ *Employers Can Receive Tax Credits for Hiring Individuals Facing Barriers to Employment*, OHIO DEPT. OF JOB & FAM. SERVS., <https://dam.assets.ohio.gov/image/upload/jfs.ohio.gov/RELEASES/WOTCNewsRelease2024.pdf> [<https://perma.cc/B8ZM-A2BG>].

⁸⁶ *Workforce Innovation and Opportunity Act*, U.S. DEP'T OF LAB. EMP. & TRAINING ADMIN., <https://www.dol.gov/agencies/eta/wioa> [<https://perma.cc/TNY5-S4F5>].

⁸⁷ Ohio Department of Job and Family Services. <https://jfs.ohio.gov/job-services-and-unemployment/job-services/job-programs-and-services/workforce-innovation-and-opportunity-act/overview>

⁸⁸ *What Does It Cost to Get a CDL in 2023?*, PRIDE TRANSPORT (Dec. 30, 2021), <https://www.pridetransport.com/news-and-events/cdl-cost-2022#:~:text=On%20average%20it'll%20cost,info%20about%20CDL%20testing%20HERE> [<https://perma.cc/756Y-DQJM>].

⁸⁹ <https://drc.ohio.gov/systems-and-services/2-reentry-services/certificate-of-qualification-for-employment-cqe/certificate-of-qualification-for-employment-cqe>

⁹⁰ OHIO REV. CODE ANN. § 2953.25 (West 2023).

⁹¹ *Ohio Certificate of Qualification for Employment (CQE) Annual Report 2020*, OHIO DEP'T OF REHAB. & CORR., https://drc.ohio.gov/wps/wcm/connect/gov/8fd1aee4-9716-478f-bd80-2ce99b288561/2020+CQE+Annual+Report.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0J000QO9DDDDM3000-8fd1aee4-9716-478f-bd80-2ce99b288561-oecsw-l#:~:text=The%202020%

The decision to issue a CQE in Ohio is determined by the Court of Common Pleas in the county where the petitioner currently resides.⁹² Applicants must also complete a fifteen-page petition that includes prior convictions, prior employment, rehabilitation rationale, and professional and personal references. This information is then reviewed by staff at the Ohio Department of Rehabilitation and Correction and at the Court of Common Pleas, with input from prosecutors and multiple judges.⁹³ To apply for a CQE, individuals can file a petition one year after release from incarceration and all periods of supervision. If the individual was not incarcerated, the petition can be filed six months after the final release from all court-imposed sanctions. If the individual was incarcerated but sentenced to community control, the petition can be filed one year after the final release from all sanctions.⁹⁴

In limited circumstances, a person can apply for a CQE before the waiting period ends. For example, an individual may be able to apply “early” if they meet one of the following conditions: they were released after earning a ninety-day-credit or a 10% reduction in their prison term by participating in programs in prison; they received a Certificate of Achievement and Employability; they were released from a local jail (not prison) and got a recommendation from the sheriff; they were not incarcerated and did not receive community control as a sentence; or they received early termination of community control and paid all fines and restitution.⁹⁵

Although each of the above options presented can provide additional relief for individuals with a criminal record, there are also many hurdles such as cost and time in the application process. Individuals leaving prison often need employment and housing immediately.⁹⁶ The time one is required to wait once released to become eligible, coupled with having to navigate the process of applying, can make the

20CQE%20Report,be%20extracted%20from%20DRC%20record [https://perma.cc/YE92-TJVG]; *Ohio Certificate of Qualification for Employment (CQE) Annual Report 2021*, OHIO DEP’T OF REHAB. & CORR., [https://drc.ohio.gov/wps/wcm/connect/gov/70157d0b-7343-4b85-a49e-0c565e6c1844-oegbu8x](https://drc.ohio.gov/wps/wcm/connect/gov/70157d0b-7343-4b85-a49e-0c565e6c1844/2021+CQE+Annual+Report.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGK0N0JO00QO9DDDDM3000-70157d0b-7343-4b85-a49e-0c565e6c1844-oegbu8x) [https://perma.cc/6EPD-2P83]; *Ohio Certificate of Qualification for Employment (CQE) Annual Report 2022*, OHIO DEP’T OF REHAB. & CORR., https://drc.ohio.gov/wps/wcm/connect/gov/484b6a9e-692d-4f18-823a-739946732188/CQE+-+2022+CQE+Annual+Report.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_K9I401S01H7F40QBNJU3SO1F56-484b6a9e-692d-4f18-823a-739946732188-oyrbfy2 [https://perma.cc/92SZ-MPK6].

⁹² *Certificate of Qualification for Employment*, *supra* note 50.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ OHIO JUST. & POL’Y CTR., THE OHIO JUSTICE & POLICY CENTER’S CQE WORKBOOK 1, 3 (2019), <https://ohiojpc.org/wp-content/uploads/2020/11/CQE-Workbook-May-2020.pdf> [https://perma.cc/36YZ-9G9T].

⁹⁶ Joey Hayashi & Thomas Coyne, *Breaking Down Barriers: Lessons from Housing and Justice System Collaborations*, JUST. CTR., THE COUNCIL OF STATE GOV’TS (Mar. 27, 2023), <https://csjusticecenter.org/2023/03/27/breaking-down-barriers-lessons-from-housing-and-justice-system-collaborations/> [https://perma.cc/7DAD-ULFW].

process extremely challenging. The time gap between application and receiving record relief can exacerbate reentry challenges. These challenges may include slipping back into poverty, supplementing low wages with criminal activities, or becoming further immersed in the underground economy.⁹⁷ Indeed, recent research finds that more than one-quarter of U.S. adults engage in some form of informal work, with more than one in nine adults having two or more informal work arrangements.⁹⁸ This study provides one example of individuals engaging in informal work. However, options such as obtaining a CQE, utilizing the Work Opportunity Tax Credit, the Federal Bonding Program, and, if eligible, record-clearing interventions can significantly improve employment outcomes for individuals with criminal records.

5. Recommendations for Employment as it Pertains to Expungement

Research clearly shows that a prior criminal conviction creates social, political, and economic barriers for justice-involved individuals. This results in annual costs to the economy in the billions of dollars in gross domestic product and increases the likelihood of recidivism.⁹⁹ As previously discussed, several strategies and tax incentives have been implemented to reduce barriers for individuals with a criminal record. These initiatives can help open additional employment opportunities for both employers and applicants.

Despite these relief mechanisms, laws across the U.S. impose indefinite collateral consequences that continue to exclude millions of individuals from opportunities. At the same time, the process for those eligible for record sealing or expungement remains extremely difficult to navigate.¹⁰⁰ Policymakers, practitioners, and administrators in the criminal justice field should take the time to listen to the experiences of those who have been impacted by the criminal justice system regarding their challenges in finding suitable employment. Taking steps to address these issues would help policymakers and stakeholders across the criminal justice system better understand the complexities and systemic barriers of collateral consequences. This understanding would enable more informed decisions that enhance public safety while supporting the successful reintegration of justice-impacted individuals into the community.

The message should not end there; rather, it should catalyze change. This change could involve passing legislation that limits mandatory and indefinite

⁹⁷ Eric Martin & Marie Garcia, *Reentry Research at NIJ: Providing Robust Evidence for High-Stakes Decision-Making*, 284 NAT'L INST. JUST. J. 1, 2 (2022).

⁹⁸ Sykes, *supra* note 49, at 33–34.

⁹⁹ Bucknor, *supra* note 72, at 14; Christy A. Visher et al., *Ex-Offender Employment Programs and Recidivism*, 1 J. OF EXPERIMENTAL CRIMINOLOGY 295, 298 (2005).

¹⁰⁰ U.S. COMM'N ON CIV. RTS., COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES 143 (2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf> [<https://perma.cc/ZM44-K3KQ>].

collateral consequences, thus promoting fair, consistent, and transparent application of discretionary consequences. Other strategies could include the expansion of eligibility guidelines for record sealing or expungement relief and rendering criminal records less searchable.¹⁰¹ Justice-impacted citizens should be given every opportunity to pursue employment with middle-class wages and any additional assistance they need to reintegrate back into the community. Doing so makes us stronger as an economy, better as a community, and safer as a nation.

B. *Impact on Housing*

Each year, thousands of people return home after a period of incarceration. Depending on the individual, this process can involve a number of challenges that include reconnecting with family, finding employment, and obtaining housing. Housing is a foundational part of reentry and a key factor in reducing recidivism.¹⁰² Existing literature has documented that many people leaving prison face challenges finding suitable housing with a criminal conviction.¹⁰³ There are housing options available for returning residents, but they are often limited. For example, halfway houses or group homes have limited capacity and time restrictions for returning residents, and, even then, some individuals may not qualify for this option. Often, laws and policies both on the community corrections side and public housing side are the main culprits, including the fact that, in some states, individuals on parole or probation are barred from living with a resident who also has a felony conviction.¹⁰⁴

The challenges with housing for individuals with criminal backgrounds span decades, beginning with the War on Drugs Era in the 1980s,¹⁰⁵ through the 1990s highlighted by the Violent Crime Control and Law Enforcement Act,¹⁰⁶ and into the 2000s. During these periods, legislatures increased collateral sanctions that included restrictions on eligibility for public benefits such as public housing, welfare, and

¹⁰¹ JUST. CTR., THE COUNCIL OF STATE GOV'TS, *supra* note 2, at 8–9.

¹⁰² See CATERINA GOVIS ROMAN & JEREMY TRAVIS, THE URB. INST., TAKING STOCK: HOUSING, HOMELESSNESS, AND PRISONER REENTRY 1, 5 (2004), <https://www.urban.org/sites/default/files/publication/58121/411096-Taking-Stock.PDF> [<https://perma.cc/42XB-J4XR>]; Teresa Gowan, *The Nexus: Homelessness and Incarceration in Two American Cities*, 3 ETHNOGRAPHY 500, 501 (2002).

¹⁰³ Danya E. Keene et al., *Navigating Limited and Uncertain Access to Subsidized Housing After Prison*, 28 HOUS. POL'Y DEBATE 199, 199 (2017).

¹⁰⁴ Leah Wang, *Guilty by Association: When Parole and Probation Rules Disrupt Support Systems*, PRISON POL'Y INITIATIVE (Nov. 8, 2023), https://www.prisonpolicy.org/blog/2023/11/08/association_restrictions/ [<https://perma.cc/NQ8S-QQ4Z>].

¹⁰⁵ History.com Editors, *War on Drugs*, HISTORY.COM (Dec. 17, 2019), <https://www.history.com/topics/crime/the-war-on-drugs> [<https://perma.cc/3PMT-T7KB>].

¹⁰⁶ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, § 31903(D)(v)(II), 108 Stat. 1796, 1893 (1994).

other government resources.¹⁰⁷ Families that receive a federal housing program subsidy face strict guidelines against having individuals with felony convictions in their household, particularly those with a drug history.¹⁰⁸ Policymakers aimed to penalize or strip families of these benefits when they violate program rules. This presents challenges in maintaining relationships and the family structure, as research indicates the importance of family support in reducing recidivism.¹⁰⁹

Justice-impacted citizens who do apply for housing often times face long waitlists and rejection, which can lead to housing inaccessibility and an increase in their risk of recidivism.¹¹⁰ In many areas, landlords in the private market can legally conduct criminal background screenings and reject anyone with a criminal record.¹¹¹ Housing providers have a legitimate interest in selecting tenants who will pay their rent and otherwise comply with the lawful requirements of their lease. However, in some cases, tenant-screening practices may unfairly exclude people from housing opportunities in discriminatory ways.¹¹² In many situations, justice-impacted citizens as a result find themselves homeless, which in turn can also increase their likelihood of recidivism.¹¹³

The impact of race when obtaining housing is an additional factor affecting those with a criminal record. In a qualitative study that utilized sketch maps and individual interviews involving formerly incarcerated people related to reentry housing in Chicago, Illinois, researchers highlighted the perspectives of individuals affected by punitive housing policies. In the interviews with participants, researchers found that the mark of a criminal record was often associated with other factors such as discrimination based on race and credit histories.¹¹⁴

¹⁰⁷ Alessandro Corda, *Collateral Consequences and Criminal Justice Reform: Successes and Challenges*, 52 CRIME & JUST. 447, 448, 454 (2023).

¹⁰⁸ Selena Muñoz-Jones & Emily Widra, *How Your Local Public Housing Authority Can Reduce Barriers for People with Criminal Records*, PRISON POL'Y INITIATIVE (Feb. 15, 2023), <https://www.prisonpolicy.org/blog/2023/02/15/publichousing/> [https://perma.cc/V4WY-WYYA].

¹⁰⁹ Thomas J. Mowen et al., *Family Matters: Moving Beyond "If" Family Support Matters to "Why" Family Support Matters During Reentry from Prison*, 56 J. RSCH. CRIME DELINQ. 483, 483 (2019).

¹¹⁰ Leah Jacobs, & Aaron Gottlieb, *THE EFFECT OF HOUSING CIRCUMSTANCES ON RECIDIVISM: Evidence From a Sample of People on Probation in San Francisco*. *Criminal justice and behavior*, 47(9), 1097–1115. <https://doi.org/10.1177/0093854820942285> (2020)

¹¹¹ *Id.* at 591.

¹¹² U.S. DEP'T OF HOUS. & URB. DEV., OFF. OF FAIR HOUS. & EQUAL OPPORTUNITY, GUIDANCE ON APPLICATION OF THE FAIR HOUSING ACT TO THE SCREENING OF APPLICANTS FOR RENTAL HOUSING 1 (2024), https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf [https://perma.cc/TH4Y-MPK2].

¹¹³ Leah A. Jacobs & Aaron Gottlieb, *The Effect of Housing Circumstance of Recidivism: Evidence from a Sample of People on Probation in San Francisco*, 47 CRIM. JUST. & BEHAV. 1097, 1097 (2020).

¹¹⁴ Hamlin, *supra* note 110, at 595.

Incarceration disproportionately impacts minorities in the United States.¹¹⁵ When combined with discriminatory acts based on race and credit histories, this perpetuates an endless cycle of housing discrimination that can compound residential segregation based on race and class in the United States.¹¹⁶

1. The Difference of Expungement/Record Sealing in Housing

Record sealing allows courts to restrict access to a criminal record, removing it from public view and official background checks. In contrast, expungement completely removes a record in most cases, as though it never existed.¹¹⁷ For those with a criminal record, expungement is more desirable because it prohibits inquiry in most circumstances and allows a person with an expunged record to legally say that the record does not exist.¹¹⁸ For example, if Terry is asked on a job application whether he has ever had a felony conviction, he could legally say that he does not given that those proceedings were expunged. However, if his record had been sealed, he would still have to disclose this information if asked. This difference is also critical when it comes to housing because tenants who can seal their eviction records are still required to reveal that record when filling out housing applications, which oftentimes will disqualify them.¹¹⁹ For some individuals, this can be confusing and frustrating, especially given the barriers, time constraints, and financial commitment that are involved in obtaining any kind of record relief. Therefore, individuals who are eligible or have received record sealing or expungement must understand these small nuances and their impact.

2. Recommendations for Housing as it Pertains to Expungement

In the past several years, reentry scholars, advocates, and legislators have proposed several strategies to address the barriers associated with obtaining housing. To address this in the State of Ohio, House Bill (HB) 50, legislation aimed at

¹¹⁵ NAZGOL GHANDNOOSH, THE SENT'G PROJECT, ONE IN FIVE: ENDING RACIAL INEQUITY IN INCARCERATION 3 (2023), <https://www.sentencingproject.org/app/uploads/2024/02/One-in-Five-Ending-Racial-Inequity-in-Incarceration.pdf> [<https://perma.cc/AGK7-ZD9C>].

¹¹⁶ Rashawn Ray et al., *Homeownership, Racial Segregation, and Policy Solutions to Racial Wealth Equity*, THE BROOKINGS INST. (Sept. 1, 2021), <https://www.brookings.edu/articles/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/> [<https://perma.cc/R3YP-7JYA>].

¹¹⁷ *Ohio Rights Restoration Mechanisms*, *supra* note 29.

¹¹⁸ Kristine Hamann et al., *The Evolving Landscape of Sealing and Expungement Statutes*, AM. BAR ASS'N (Jan. 22, 2024), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2024/winter/evolving-landscape-sealing-expungement-statutes/ [<https://perma.cc/BD8T-CZFY>].

¹¹⁹ James J. Scherer, *Changing the Rule That Changes Nothing: Protecting Evicted Tenants by Amending Cleveland Housing Court Rule 6.13*, 69 CLEV. ST. L. REV. 719, 723, 727 (2021).

establishing a Certificate of Qualification for Housing (CQH) for returning citizens, was signed into law by Governor Mike DeWine in the summer of 2024.¹²⁰

For years, some proponents have called for a national overhaul of housing policy, including limits on landlords' access to prospective tenants' eviction records. They have also advocated for expungement laws that permanently erase eviction records from the public court system, allowing prospective renters to answer "no" when asked about prior evictions on rental applications.¹²¹

If clients are not eligible to receive a record seal or expungement, the U.S. Department of Housing and Urban Development's (HUD) recommendations on eviction records include delaying utilizing any criminal background information until later in the process after the landlord or housing provider has examined other qualifications such as income and rental history.¹²² Despite these suggestions from HUD, a criminal record remains a barrier for individuals seeking subsidized housing. In many cases, a record results in automatic disqualification, leading to eviction or rejection of prospective applicants, even if they have suitable employment and good credit. More recently, HUD has sought public comment and recommendations for improvement on published proposed regulations that would reduce barriers to HUD-assisted housing.¹²³ The proposed rules would amend the regulations for certain HUD Public and Indian Housing and Housing Programs. The proposed amendments would also revise existing regulations governing the admission of applicants with criminal records or involvement with the criminal justice system. They would also address the eviction of or termination of assistance for individuals based on illegal drug use, drug-related criminal activity, or other criminal behavior. The proposed revisions would also require public housing agencies (PHAs) and assisted housing owners to consider multiple sources of information before making any discretionary denial or termination decisions based

¹²⁰ *Governor DeWine Signs Bills Into Law*, GOVERNOR.OHIO.GOV (June 21, 2024), <https://governor.ohio.gov/media/news-and-media/governor-dewine-signs-bills-into-law-6-21> [<https://perma.cc/P64Q-6BVE>].

¹²¹ JABOA LAKE & LENI TUPPER, CTR. FOR AM. PROGRESS, EVICTION RECORD EXPUNGEMENT CAN REMOVE BARRIERS TO STABLE HOUSING 10 (2021), <https://www.americanprogress.org/wp-content/uploads/sites/2/2021/09/Eviction-Record-Expungement-Can-Remove-Barriers.pdf> [<https://perma.cc/NV4W-RZVP>]; Scherer, *supra* note 119, at 746; Sara Sternberg Greene, Barbara Kiviat and Hesu Yoon. *Getting to Home: Understanding the Collateral Consequences of Negative Records in the Rental Housing Market* (October 30, 2024). Duke Law School Public Law & Legal Theory Series No. 2024-66, Available at SSRN: <https://ssrn.com/abstract=5018188> or <http://dx.doi.org/10.2139/ssrn.5018188>

¹²² Demetria L. McCain, Principal Deputy Assistant Secretary for Fair Housing and Equal Opportunity. June (2022). <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>

¹²³ Reducing Barriers to HUD-Assisted Housing, 89 Fed. Reg. 25332 (proposed Apr. 10, 2024) (to be codified at 24 C.F.R. pts. 5, 245, 882, 960, 966, and 982), <https://www.govinfo.gov/content/pkg/FR-2024-04-10/pdf/2024-06218.pdf> [<https://perma.cc/7CMD-CBDP>].

on criminal activity. This would include, but not be limited to, the recency and relevance of prior criminal behavior in the community.¹²⁴ The proposed guidelines aim to reduce unnecessary exclusions from these programs. At the same time, they preserve the discretion of PHAs and assist housing owners in maintaining the health, safety, and peaceful enjoyment of residents, staff, and communities.¹²⁵ While policymakers and advocates have suggested several important interventions related to public housing, much remains to be done in this area as it is a critical component of post-incarceration stability. With such difficult challenges for individuals with a criminal record, further examination is needed on how record sealing and expungement can be a part of a larger discussion on housing reform.

C. Impact on Education

Pursuing a high school diploma or higher education degree is often one of the most effective ways to achieve economic mobility. With increased educational attainment, Americans have greater opportunities to support themselves and their families. This is especially true for those who have faced significant barriers to employment due to their previous interactions with the criminal justice system, as education has been shown to reduce recidivism by 48% while also increasing public safety.¹²⁶ Additional educational attainment can result in higher earnings. On average, individuals with an associate degree earn over \$15,000 more annually than those with a high school diploma, while those with a bachelor's degree earn nearly \$20,000 more annually than those with an associate degree. When you compound these earnings over time, individuals with bachelor's degrees earn about \$1,000,000 more than those with only a high school diploma.¹²⁷ While the financial implications of furthering one's education are clear, in the absence of a record sealing or expungement, justice-impacted individuals continue to face additional barriers to educational attainment.¹²⁸ The following section highlights some of the main challenges.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ U.S. DEP'T OF EDUC., OFF. OF CAREER, TECH., & ADULT EDUC., BEYOND THE BOX 2023, at 9 (2023), <https://lincs.ed.gov/sites/default/files/2023-04/beyond-the-box.pdf> [<https://perma.cc/YS4B-VB5Y>]. This report was first published in 2016 and again with an updated version in April 2023, making educators aware of what “formerly incarcerated students face both during the admissions process and while enrolled” in higher education. *Id.* at 2.

¹²⁷ ANTHONY P. CARNEVALE ET AL., GEO. U., CTR. ON EDUC. & THE WORKFORCE, THE COLLEGE PAYOFF: EDUCATION, OCCUPATIONS, LIFETIME EARNINGS 3–4 (2011), <https://cew.georgetown.edu/wp-content/uploads/collegepayoff-completed.pdf> [<https://perma.cc/GD5K-YJV5>].

¹²⁸ U.S. DEP'T OF EDUC., OFF. OF CAREER, TECH., & ADULT EDUC., *supra* note 126, at 8.

1. Applying to College with a Criminal Record

There are many options available today for furthering one's education, including traditional brick-and-mortar universities, community colleges, and online universities. Additionally, vocational-technical programs and trade schools offer alternative pathways for educational advancement. Completing a GED or high school equivalent is the most common program for incarcerated individuals to take advantage of. Only 9% of people in prison can successfully finish a postsecondary education while incarcerated, 2% complete an associate degree, and just 7% receive a certificate from a college or trade school.¹²⁹ With the Pell Grant reinstated within prisons within the past few years, future research could provide more data that will reflect these changes.

However, for those who have been released from prison, barriers remain when it comes to applying to school. These obstacles can range from college application checkboxes that require students to detail any criminal justice system involvement to delays in transferring diplomas, certifications, and transcripts from correctional institutions to educational systems.¹³⁰ Depending on the charge, such as sexual assault, both on-campus and off-campus housing can present challenges to maintaining campus safety. These challenges may arise from community corrections restrictions or liability concerns faced by the university. While this precaution makes sense in some circumstances, there has been insufficient evidence to support a link between students with criminal records and an increase in campus crime.¹³¹

For individuals with a criminal record, the university application process can be arduous. The Ban the Box initiative has made improvements in this area by removing any question about involvement with the criminal justice system, similar to what one may see on employment applications. However, nearly 72% of institutions still require applicants to disclose criminal history information, which can present significant barriers.¹³² Simply inquiring about criminal history can prohibit individuals from even applying to college in the first place.¹³³ The admission

¹²⁹ PATRICK OAKFORD ET AL., VERA INST. OF JUST., INVESTING IN FUTURES: ECONOMIC AND FISCAL BENEFITS OF POSTSECONDARY EDUCATION IN PRISON 11 (2019), <https://www.vera.org/downloads/publications/investing-in-futures.pdf> [<https://perma.cc/7Q3J-A5TL>]. Dustin Wallace, Naomi Eden, and Juan Flores. Benefits of Higher Education for Formerly Incarcerated People. Institute for Research and Labor and Employment. December (2020). <https://irle.berkeley.edu/publications/student-publication/benefits-of-higher-education-for-formerly-incarcerated-people/>

¹³⁰ U.S. DEP'T OF EDUC., OFF. OF CAREER, TECH., & ADULT EDUC., *supra* note 126, at 9.

¹³¹ *Id.* at 21.

¹³² KAREN BUSSEY ET AL., INST. FOR HIGHER EDUC. POL'Y, "THE MOST IMPORTANT DOOR THAT WILL EVER OPEN": REALIZING THE MISSION OF HIGHER EDUCATION THROUGH EQUITABLE ADMISSIONS POLICIES 57 (2021), https://live-ihcp-wp.pantheonsite.io/wp-content/uploads/2021/06/IHEP_JOYCE_full_rd3b-2.pdf [<https://perma.cc/SAF2-LJRA>].

¹³³ CTR. FOR CMTY. ALTERNATIVES, BOXED OUT: CRIMINAL HISTORY SCREENING AND COLLEGE APPLICATION ATTRITION iv, 28, 43 (2015), http://communityalternatives.org/pdf/publications/BoxedOut_FullReport.pdf [<https://perma.cc/ECB6-C5AW>].

applications that do inquire about criminal history will often reach out to applicants who disclose information about a previous charge and ask additional questions for more information. Some applicants have likened this process to an investigation, as the questions are often intrusive and require a thorough review of their background. Additionally, the process may involve obtaining statements from law enforcement and correctional officials, providing more letters of recommendation, and appearing before an admissions review committee.¹³⁴

When a college application does ask about an applicant's criminal history, including records that have been sealed or expunged, whether that history must be reported will depend on the specific application instructions and state laws. Some colleges do not require disclosure of sealed or expunged records, while other applications, such as law school applications, may explicitly ask for information about these types of records.¹³⁵ For instance, law school applications often require full disclosure of all criminal history, including sealed or expunged records, due to the rigorous character and fitness checks that will be conducted later when applying to the bar. The Ohio Bar considers an applicant's criminal history when determining whether the applicant possesses the requisite character and fitness to practice law. Others, such as the University of Akron School of Law's website, state the following:

You have a duty to be truthful and accurate as well as a duty to reveal all information even if you do not have complete documentation. You need to disclose details of the result of any criminal charges. Even if the charges were dismissed, adjudication was withheld, a conviction was reversed, a conviction was set aside, a conviction was vacated, a conviction was expunged, or the record sealed, you must provide disclosure.¹³⁶

The importance of having a record sealing or expungement in these types of situations cannot be overstated. Often, the criminal charges for these individuals may not even be relevant to campus safety concerns, but because they are public records they must be reported. Otherwise, individuals run the risk of being turned down by admissions for providing false information. Having to access and submit documents regarding one's previous criminal history is embarrassing and can bring shame to individuals who are trying to move forward with their lives. Upon leaving prison, individuals are often told to move forward with their lives, be productive citizens within their communities, and stay away from the criminal activities that got them

¹³⁴ *Id.* at 28.

¹³⁵ PETER LEASURE, THE OHIO STATE UNIV. MORITZ COLL. OF LAW DRUG ENF'T & POL'Y CTR., COMMENTARY ON THE DISCLOSURE OF SEALED OR EXPUNGED CRIMINAL HISTORY DURING CHARACTER AND FITNESS REVIEWS FOR THE PRACTICE OF LAW IN OHIO 1-2 (2023), https://moritzlaw.osu.edu/sites/default/files/2023-07/Disclosure%20of%20Sealed%20or%20Expunged%20Criminal%20History%20for%20Ohio%20Bar_formatted_FINAL.pdf [<https://perma.cc/QC9Z-S6AK>].

¹³⁶ *Id.* at 1.

incarcerated. Imagine an individual taking steps to move forward by furthering their education, only to discover that the college application requires them to disclose their past transgressions. These transgressions, now visible, are made known to strangers in the admissions department.

Similar to housing and employment applications, the admission of a felony often carries an automatic stigma in academia. This stigma can interact with societal and cultural barriers, such as the inherent biases held by admissions officers against applicants with a criminal history. Beyond the criminal charge, the university admissions department typically does not know the individual's upbringing or socioeconomic background. Furthermore, they often do not take the additional step of engaging with the applicant to understand their character, personality, or current skills.

With so many barriers to overcome in the admissions process, coupled with the stigma of having a criminal record, many individuals choose to not complete their application for fear that they would be denied admission regardless of their qualifications.¹³⁷ In a 2015 Center for Community Alternatives study, researchers found that two out of three State University of New York (SUNY) applicants who disclosed felony convictions ended up dropping out of the process and never submitting a complete application.¹³⁸ This phenomenon not only plays out within college admissions, but also in applying for housing, employment, and government assistance. While many individuals are still able to navigate these barriers and go on to obtain their degrees in higher education, there is still much to be done in this area. The impact of a record sealing or expungement for eligible individuals could not only mitigate many of the barriers mentioned above in the college admission process but could lead to more justice-impacted individuals pursuing their education.

2. The Problem with Obtaining an Education and Licensing Restrictions

For individuals who do get through the application process and enroll in college, there are additional hurdles to navigate. College advisors can be unfamiliar with working with students who come from different circumstances. Specifically, for those with a previous history of justice involvement, there is often a misunderstanding where college advisors assume that certain licensing restrictions will prevent them from pursuing certain careers such as nursing, manufacturing, or banking. While this is understandable, sometimes well-intentioned advisors may steer individuals with a criminal background away from entering those education programs and careers entirely. Conversely, advisors may also encourage individuals with criminal records to go into the wrong careers not understanding the restrictions and barriers that individuals may face due to their criminal background. It was not uncommon in my job readiness class to encounter these types of situations with

¹³⁷ CTR. FOR CMTY. ALTERNATIVES, *supra* note 133, at 43.

¹³⁸ *Id.* at v.

clients I was assisting who had a certification or degree in nursing only to be told that they would not be eligible to receive a license due to their previous drug charge.

The landscape of collateral consequences for conviction is constantly evolving as many states have implemented fair chance licensing legislation to reduce barriers for individuals with criminal records.¹³⁹ The National Inventory of Collateral Consequences of Conviction is a database that provides resources detailing restrictions and the latest reforms related to licensing, employment, and other benefits for individuals with criminal records. It also highlights the impact of these consequences and offers valuable information for those affected.¹⁴⁰ Other resources include the Council of State Governments' Justice Center, which has implemented the Fair Chance Licensing Project to track reforms across all 50 states.¹⁴¹ This resource can also be utilized by students and advisors to understand the specific restrictions and considerations at a state and conviction level so that they can make informed decisions about their education and career path.

3. Recommendations for Education as it Pertains to Expungement

As highlighted, there are several barriers for those with a criminal record who are trying to further their education. On a small scale, to overcome these barriers, institutions and organizations can make systematic changes in assisting those with a criminal record in applying for, enrolling in, and completing higher education. However, on a larger scale, a record sealing or expungement can eliminate a lot of work for the individual, advisor, and admissions department. While record sealing does not eliminate every hurdle, it can streamline the overall process. Therefore, institutions of higher learning need to understand the unique needs and context of every individual so that they can provide the best guidance.

For example, for those who are not eligible or are going through the process of record sealing, colleges could implement policy changes on specific convictions that require disclosure. An institution that does seek to inquire about an applicant's criminal history if applicable should identify which convictions they are interested in and for what reason. For example, careful consideration of or hesitancy about an applicant with a murder or rape charge makes sense, but a drug conviction may not necessarily warrant the same type of disclosure. Even in the case of a violent charge such as murder, the circumstances surrounding the offense must be carefully examined, including the amount of time that has passed since the charge. Often, individuals with such charges have served more than 20 years in prison, which presents a substantial gap since their last offense. This is similar to the regulations

¹³⁹ *How States Are Expanding Access to Work*, JUST. CTR., THE COUNCIL OF STATE GOV'TS (Nov. 10, 2021), <https://csgjusticecenter.org/projects/fair-chance-licensing/how-states-are-expanding-access-to-work/> [<https://perma.cc/KHT4-Y46V>].

¹⁴⁰ *See generally Welcome to the NICCC*, NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, <https://niccc.nationalreentryresourcecenter.org/> [<https://perma.cc/5NDM-NYTQ>].

¹⁴¹ *How States Are Expanding Access to Work*, *supra* note 139.

proposed by the U.S. Department of Housing and Urban Development (HUD) under the rule “Reducing Barriers to HUD-Assisted Housing.” HUD’s proposal suggests that individuals should not be automatically or categorically denied access to or terminated from HUD-assisted housing, including public housing, Housing Choice Vouchers, and HUD multifamily housing, solely due to a criminal record.¹⁴² Instead, HUD is proposing that PHAs and owners of HUD-assisted multifamily housing conduct individualized assessments when making admissions decisions. These assessments would consider only criminal records relevant to endangering the health and safety of staff and residents, while also giving full consideration to mitigating factors and circumstances.¹⁴³ This same alternative could exist for justice-involved citizens who are also incoming students.

For online institutions, the issue of a criminal record may not even be applicable unless the crime involves pornography, identity theft, or cyber or financial crimes. The bottom line is that the benefit of record sealing or expungement can eliminate several hurdles for individuals who are seeking to further their education as well as for the institutions they apply to. A failure to make record relief more accessible for individuals will continue to shut out thousands who are looking to further their education, advance their careers, and become productive members of society.

D. *Economic & Community Impact*

Mass incarceration represents a great cost not only to individuals captured in the web of the criminal justice system but also to communities. So far, we have examined the barriers that a criminal background brings in housing, education, and employment and how this impacts the individual. What is often forgotten is how this further impacts families and communities. What if there were no further progressions or mechanisms of accessibility to record relief or expungement?

Let’s take Terry’s situation as an example, but from the lens that he is either not eligible or cannot get his record expunged. We spend roughly \$80 billion per year in our corrections system, including an average of between \$30,000 and \$50,000 per incarcerated person.¹⁴⁴ Today in Ohio, it costs \$103.88 per day, or \$37,916 a year to incarcerate someone.¹⁴⁵ That means that to send Terry to prison for four and half years would cost taxpayers around \$170,000.¹⁴⁶ Upon release

¹⁴² Reducing Barriers to HUD-Assisted Housing, *supra* note 123.

¹⁴³ *Id.*

¹⁴⁴ U.S. DEP’T OF EDUC., OFF. OF CAREER, TECH., & ADULT EDUC., *supra* note 126, at 7–8.

¹⁴⁵ 2023 *Annual Report*, OHIO DEP’T OF REHAB. & CORR. 49 [https://drc.ohio.gov/wps/wcm/connect/gov/f7bc011b-1724-4acf-8675-4d41fb655093/Annual+Report+FY2023+ODRC+FINAL.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013HMOA06A2E161V2082-f7bc011b-1724-4acf-8675-4d41fb655093-oEzHQbQ \[https://perma.cc/A9LW-9CY9\].](https://drc.ohio.gov/wps/wcm/connect/gov/f7bc011b-1724-4acf-8675-4d41fb655093/Annual+Report+FY2023+ODRC+FINAL.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013HMOA06A2E161V2082-f7bc011b-1724-4acf-8675-4d41fb655093-oEzHQbQ [https://perma.cc/A9LW-9CY9].)

¹⁴⁶ *Id.* (based off the cost to incarcerate one person in Ohio at \$103.88 per day, or \$37,916 annually).

almost five years later, Terry could obtain employment, but, due to his inability to receive record relief, the background check could become a barrier to him getting a higher-paying job. This could lead to his housing situation becoming unstable, because landlords will automatically disqualify him because of his charge. If he tries applying to school, he will also face additional barriers during the application process. Although Terry's story did not go in this direction, this happens often to many others. Collectively, these barriers are frustrating and can send some spiraling back into poverty. Other options could include working under the table and receiving cash or, if eligible, receiving government assistance in the form of food stamps, health insurance, vouchers, etc. During poverty, survival becomes a reality and the option of resorting back to what one knows, i.e., criminal activities, whether that be selling drugs, theft, robbery, is not uncommon.¹⁴⁷

Data from the Ohio Department of Rehabilitation and Correction shows that nearly one in three Ohioans return to state prison within three years of release.¹⁴⁸ Therefore, if Terry is one of the individuals out of those three who reoffends and if he returns to prison on another charge for another three years, it will come at another \$114,000 cost to taxpayers.¹⁴⁹ This process for some becomes repetitive as the same barriers remain and the waiting periods for record sealing, expungement, and CQE start over.

The more than quarter-million-dollar price tag to taxpayers to incarcerate Terry for two different stints in prison does not even factor into account inflation and other indirect costs. For example, many of the clients I worked with have left behind a spouse or children due to incarceration. Taking away either parent, who in many cases was the breadwinner, can also send the family back into poverty. Left with few options, the family has to return to government assistance for food, housing, childcare, and healthcare, which is an additional cost to the taxpayers in all communities.¹⁵⁰ Therefore, when one person is incarcerated, taxpayers are not only footing the corrections bill but also the bill to support the family they leave behind.¹⁵¹

Children whose parents are involved in the criminal justice system may face psychological strain, school discipline, and economic hardship and may engage in

¹⁴⁷ Christopher F. Rufo, *Crimes of Survival*, CITY J. (Jan. 2, 2019), <https://www.city-journal.org/article/crimes-of-survival> [<https://perma.cc/22F3-2ZBK>].

¹⁴⁸ Laura A. Bischoff, *Nearly 1 in 3 Go Back to Ohio Prisons*, THE COLUMBUS DISPATCH (May 28, 2021 6:00 AM), <https://www.dispatch.com/story/news/2021/05/28/ohio-sees-steady-climb-prison-recidivism-rate/5143605001/> [<https://perma.cc/GXA2-G55U>].

¹⁴⁹ 2023 *Annual Report*, *supra* note 145; Bischoff, *supra* note 148 (based off the cost to incarcerate one person in Ohio at \$103.88 per day, or \$37,916 annually, in conjunction with the fact that nearly one in three Ohioans return to state prison within three years of release).

¹⁵⁰ SANETA DE VUONO-POWELL ET AL., ELLA BAKER CTR. FOR HUM. RTS., FORWARD TOGETHER, & RSCH. ACTION DESIGN, WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES 25 (2015), <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-FINAL.pdf> [<https://perma.cc/P7HS-2ZXA>].

¹⁵¹ *See id.*

antisocial behavior and criminal activity.¹⁵² It is difficult to predict how a child will respond to a parent's intermittent or continual incarceration, and research findings on these children's risk factors are mixed.¹⁵³

A study examining thirty-six justice-involved individuals and their families explored how financial health influences their ability to navigate the U.S. criminal justice system and reenter society. Researchers found that incarceration often forces families to make difficult decisions, such as prioritizing which bills to pay. In severe cases, financial disruptions led to outcomes such as the loss of a home or a child being placed in protective custody.¹⁵⁴

For every individual like Terry who overcomes the hurdles of obtaining an expungement, thousands never receive any kind of record relief. What if record sealing or expungement were more accessible? Would it not be a win for the individual, their families, and communities? What would the cost savings be for taxpayers if these mechanisms of relief were more accessible? In the next section, I will examine some of the obstacles Terry faced and three key variables that played a major role in his eventual expungement. Analyzing these factors is important not only in understanding how Terry was able to receive his expungement, but in providing a blueprint for others seeking a similar outcome.

III. DISCUSSION—KEY FACTORS IN OBTAINING RECORD RELIEF

State laws defining the requirements to qualify for expungement can vary widely depending on the seriousness of the offense, prior record, and how much time has passed since a sentence was completed.¹⁵⁵ Some states only allow expungements in cases that resulted in the dismissal of charges before the entry of a plea, such as through the successful completion of a deferred prosecution agreement. Depending on the expungement, sealing, and other record relief laws in each state, they may allow expungements after a conviction, but only for certain offenses categorized as minor infractions or misdemeanors.¹⁵⁶ Terry faced similar challenges, and while his case ultimately resulted in the expungement of his record, further analysis is necessary. Examining the key variables that influenced his expungement process could reveal factors that might have altered the outcome. In the previous sections, the discussion focused on the implications of having a criminal record and its impact

¹⁵² Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NAT'L INST. OF JUST. J., 05/2017, at 1, <https://www.ojp.gov/pdffiles1/nij/250349.pdf> [<https://perma.cc/2KDD-59G3>].

¹⁵³ *Id.*

¹⁵⁴ Elaine Golden & Tanya Ladha, *Impact of Incarceration on Families*, FIN. HEALTH NETWORK (Sep. 16, 2021), <https://finhealthnetwork.org/research/impact-of-incarceration-on-families/> [<https://perma.cc/5NKQ-TPB6>].

¹⁵⁵ Burton, *supra* note 25, at 8.

¹⁵⁶ *50-State Comparison: Expungement, Sealing & Other Record Relief*, RESTORATION OF RTS. PROJECT, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/> (Oct. 2021) [<https://perma.cc/XX6E-DSQS>].

on obtaining housing, employment, and furthering one's education. Highlighting the key factors that contributed to Terry's successful expungement could serve as a model for other states. Implementing similar changes may help streamline the process for individuals seeking to have their records sealed or expunged.

A. *Community Support*

Upon returning to the community after his incarceration, Terry attended reentry board and coalition meetings, which are free to the public and provide valuable resources for those impacted by the justice system. These meetings offered access to critical information and support. Such networking events play a crucial role in connecting justice-involved individuals with legal advocates, legislators, and stakeholders. They also serve as platforms for fostering meaningful discussion and collaboration. Terry attended a number of these events and eventually began to serve on the reentry board. In working with other reentry advocates, he eventually connected with an attorney from the Legal Aid Society of Columbus (LASC).¹⁵⁷ Prior to this connection, Terry was not aware that he would even qualify for record relief, but in establishing a relationship with the attorney, he learned that he indeed was eligible to have his record expunged.¹⁵⁸

Despite the significant benefits of a clean record, potential beneficiaries are often either unaware of the opportunity or find it too difficult or financially stressful to pursue to fruition.¹⁵⁹ Returning home from incarceration or receiving a felony conviction brings many challenges to individuals and their families, especially when it comes to housing and employment.¹⁶⁰ Therefore, as discussed in the previous section, with changes in financial stability come changes in what the main priorities will be, no matter the availability of information and how it is distributed. For example, I have worked with clients who decided to skip their court date to go to work because they needed the money and could not afford to take time off. Having to decide between keeping the lights on in the house or going down to a record sealing or expungement informational session becomes an easy decision for individuals who have families. A study on the benefits of expungement for individuals with criminal records found significant gaps in awareness among eligible

¹⁵⁷ *Who We Are*, *supra* note 27 (“The Legal Aid Society of Columbus (LASC) is a non-profit, 501(c)(3) organization created by the Columbus Bar Association in 1953” that “provides legal assistance for people who cannot afford an attorney through representation and easy-to-understand information about [their] legal rights. This includes information about how to get into court, what to do when in court or what to do when dealing with government agencies.”).

¹⁵⁸ Interview with Terry Green, *supra* note 7 (Terry credits Kathi Schear, who is a staff attorney at the Legal Aid Society of Columbus working on the domestic and reentry teams, for assisting him in beginning his expungement process).

¹⁵⁹ J.J. Prescott & Sonja B. Starr, *The Power of a Clean Slate*, *REGUL.*, Summer 2020, at 31.

¹⁶⁰ EBONY N. RUSS ET AL., *PRISON & JAIL REENTRY & HEALTH* 3 (2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210928.343531/full/health-affairs-brief-prison-community-reentry-russ.pdf> [<https://perma.cc/GZA5-WS69>].

individuals. Interviews with lawyers and advocates revealed that many individuals are unaware that the law permits record clearing or that they meet the eligibility criteria.¹⁶¹ To address these issues, other holistic changes that may require additional assistance for justice-impacted individuals in areas such as employment, housing, and transportation must factor into the equation.

After a follow-up meeting with the attorney, Terry was connected with a paralegal to start the process with LASC.¹⁶² LASC can provide free legal support to individuals who financially cannot afford the expungement process. However, the process with LASC is income-based. So, ironically, as Terry was improving his economic standing within the community, his improved finances simultaneously made him ineligible for LASC.¹⁶³ Justice-impacted individuals often face a “benefits cliff,” where increased economic mobility through higher employment earnings results in the loss of essential government benefits. This phenomenon can hinder their ability to achieve long-term economic stability.¹⁶⁴ This effect is even more profound for justice-impacted women, who are often the primary caregivers of their children and may rely on government benefits for support.¹⁶⁵ In Terry’s situation, due to his connections in the reentry field, he was able to receive further assistance from the Ohio Justice and Policy Center (OJPC).¹⁶⁶

In Ohio, one of the first steps a person must take in the expungement process is filing a petition, often in the same court in which the criminal prosecution took place.¹⁶⁷ The petition only addresses a single criminal case, so if a person wants to expunge records of multiple cases, they must file multiple petitions. The judge then reviews the petitioner’s file to determine whether they meet that jurisdiction’s requirements.¹⁶⁸ When filing a petition for expungement, prosecutors may object to the motion if they have concerns about the individual they originally charged. This occurred in Terry’s case: his initial petition faced opposition from the prosecutor.¹⁶⁹

¹⁶¹ Prescott & Starr, *supra* note 159, at 31.

¹⁶² *Who We Are*, *supra* note 27.

¹⁶³ Interview with Terry Green, *supra* note 7.

¹⁶⁴ Gabriella Chiarenza, *A Hand Up, Not a Handout, to Cross the Benefits Cliff*, FED COMMUNITIES (Dec. 2, 2022), <https://fedcommunities.org/stories/benefits-cliffs-hand-up-not-handout/> [<https://perma.cc/VVM2-WEC6>] (through applied research, public programs, outreach and technical assistance, Federal Reserve community development teams help promote economic growth and financial stability in low- and moderate-income communities across the country).

¹⁶⁵ HEATHER KOBALL ET AL., NAT’L CTR. FOR CHILD. IN POVERTY, ADDRESSING BENEFIT CLIFFS WITH THE FAMILY RESOURCE SIMULATOR 1 (2021), <https://www.nccp.org/wp-content/uploads/2021/05/Addressing-Benefit-Cliffs-with-the-Family-Resource-Simulator.pdf> [<https://perma.cc/8JXB-6TDQ>].

¹⁶⁶ Interview with Terry Green, *supra* note 7.

¹⁶⁷ *How to Expunge Your Record in Ohio*, LUFTMAN, HECK & ASSOCIATES LLP (Feb. 21, 2023), <https://www.columbuscriminalattorney.com/how-to-expunge-your-record-in-ohio/> [<https://perma.cc/L8FW-HCSX>].

¹⁶⁸ *Id.*

¹⁶⁹ Interview with Terry Green, *supra* note 7.

Once the prosecutor objected, the judge ruled in the prosecutor's favor without ever giving a reason to Terry as to why.¹⁷⁰

Studies highlight public support in favor of expungement, especially for individuals who have committed nonviolent crimes.¹⁷¹ Individuals who receive expungements have very low rates of recidivism. In a study of over 20,000 expungement recipients in the state of Michigan, researchers found that just 4% of all expungement recipients in Michigan are reconvicted within five years, and most reconvictions are for nonviolent misdemeanors.¹⁷² However, this does not ease the hurdles of expungement. In Terry's original petition, the judge ruled in favor of the prosecutor's objection even though neither the prosecutor nor the judge had considered other aspects of Terry's life. After his first denial, Terry began taking steps by obtaining letters of community support from different individuals he had formed relationships with from the Columbus community.¹⁷³ Terry appealed the court's decision and submitted his support letters. Once the prosecutor received the letters of support, he withdrew his objection, and a court date was then set for Terry's expungement hearing with the judge. With the pandemic in full swing during that time the actual hearing never took place, but on July 24th, 2020, Terry was notified by his attorney that his record had been expunged.¹⁷⁴

Several significant variables facilitated Terry's eventual expungement. Through his relationships within the community, Terry was able to connect with attorneys who understood the ins and outs of the expungement process and could be strong advocates in helping him navigate the barriers. Even with this support, the process was lengthy and there were plenty of obstacles along the way. And for every individual like Terry who receives his expungement, countless others are unaware they are eligible and have no one advocating for them. Therefore, support from family and community advocates can be instrumental in the process.

B. *Removal of Fines and Fees*

One in three people in the United States have a criminal record and can therefore be subject to more than 44,000 legal sanctions and collateral consequences that create barriers to housing, employment, education, and many other necessary resources.¹⁷⁵ We have already discussed how these collateral sanctions disproportionately affect people of color and other vulnerable groups, which further

¹⁷⁰ *Id.*

¹⁷¹ Brian M. Murray, *Insider Expungement*, 2023 UTAH L. REV. 337, 389 (2023).

¹⁷² Prescott & Starr, *supra* note 159, at 32.

¹⁷³ Mary Evans, *ReEntry Stories: Navigating the Expungement Process*, WYSO (Dec. 3, 2020), <https://www.wyso.org/news/2020-12-03/reentry-stories-navigating-the-expungement-process> [<https://perma.cc/YT4A-3PN9>].

¹⁷⁴ Interview with Terry Green

¹⁷⁵ Tupper, *supra* note 38.

perpetuates a generational cycle of poverty, inequality, and involvement with the criminal justice system.¹⁷⁶

Record relief is supposed to alleviate these issues. However, the irony is that one of the main obstacles on the pathway to record sealing is the fines and fees that are associated with it.

Financial obligations are non-existent while one is incarcerated, but upon release they come in many forms including child support, old fines, and ID reinstatement fees. This is not uncommon, as

fines and fees are a part of most court proceedings and criminal sanctions. That said, with many individuals unable to pay the fines and fees, the Justice Center estimates that the total amount of criminal justice debt exceeds \$25 billion.¹⁷⁷ Individuals who cannot pay their court fines or fees face an uphill battle to move forward, as they are often denied the opportunity to seal or expunge their records. Depending on the state and jurisdiction, the inability to pay can also result in additional probation, new charges, and an increase in fines. This becomes problematic, especially for those in poverty, as these barriers can ultimately continue a vicious cycle of poverty and hardships or result in recidivism.

Expungements and sealing almost always require an individual to file a petition, appear in court, and stay out of trouble for a period of time. This process can cost hundreds of dollars in administrative and legal fees, which deters eligible individuals from applying. One of the first major obstacles Terry faced in his quest to get his record expunged was outstanding court fines, some of which were almost ten years old. Terry was advised to file a motion and request a waiver of fines so that he could continue with the expungement process.¹⁷⁸ Following several trips to the courthouse, Terry was able to get all of his fees waived.¹⁷⁹ After the removal of his fines, Terry then hired an attorney from the Ohio Justice and Policy Center who represented him free of charge and was finally able to apply for expungement.¹⁸⁰

¹⁷⁶ Simone Ispa-Landa & Charles Loeffler, *Indefinite Punishment and the Criminal Record: Stigma Reports Among Expungement-Seekers in Illinois*, 54 CRIMINOLOGY 387, 392 (2016); Christopher Uggen et al., *'Less than Average Citizen': Stigma, Role Transition and the Civic Reintegration of Convicted Felons*, in AFTER CRIME & PUNISHMENT 258, 262 (Shadd Maruna & Russ Immarigeon eds., 2004).

¹⁷⁷ BRIANA HAMMONS, FINES & FEES JUSTICE CTR., TIP OF THE ICEBERG: HOW MUCH CRIMINAL JUSTICE DEBT DOES THE U.S. REALLY HAVE?, at 4 (2021), https://finesandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg_Criminal_Justice_Debt_BH1.pdf [<https://perma.cc/V3D3-3G5S>].

¹⁷⁸ Interview with Terry Green, *supra* note 7 (Terry specifically went to the courthouse and explained to the judge how he was involved with his organization *Think Make Live Youth*, his program, his life, his transformation and his community. He says this was key in the judge choosing to waive his fees).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*; See *About Us*, OHIO JUST. & POL'Y CTR., <https://ohiojpc.org/about-us/> [<https://perma.cc/J33A-8LNC>] (“[The Ohio Justice and Policy Center] is a 501(c)3 nonprofit law firm with offices in Cincinnati and Columbus, Ohio” that “offer[s] a spectrum of free legal services,

C. Perseverance

While many states now offer record sealing/expungement options, each of these processes operates differently and can take time. Much of this depends on several contextual factors that include the court process, the ability of the individual to pay the necessary fees, and the perseverance of the individual. Terry's expungement process took approximately nine months from start to finish. During this time, he also had to navigate other critical challenges, such as securing housing and employment.

Criminological research tells us that the riskiest time for recidivism is during the first few years after conviction or prison release. Two national recidivism studies conducted by the Bureau of Justice Statistics (BJS) examined outcomes for individuals released from prison. Within three years of release, nearly 70% were rearrested, approximately 47% were convicted of a new crime, and 25% returned to prison with a new conviction.¹⁸¹ This could be due to many factors such as the environment to which that individual returns, employment availability, housing stability, family pressure, and substance abuse/mental health factors. While every situation is different, it is not uncommon for people leaving prison to walk back into situations where demands from their families become more pronounced. Considering that the loved ones they left behind to raise kids had to manage and move on with their lives while they were incarcerated, the pressure to step back in and be the provider can be immediate and at times overwhelming.

In garnering letters of support for his expungement, Terry also had to continuously come to court and make phone calls, all while also having to work and find housing. For many individuals who have been previously incarcerated or have a history of justice involvement, this can be quite a challenge when you factor in transportation barriers, time off work, or childcare, if applicable. Facing what can be an uphill battle, to get through the length of an expungement process the individual must truly be committed to making it to the end and must be accountable for following through with the necessary steps.

IV. POLICY IMPLICATIONS

A. What Are States Doing?

In the past several years, states have broadened their expungement options. In Ohio, the 134th General Assembly passed Senate Bill 288, effective in April of

programs, and resources for people in all communities who lack essential support as they navigate the complexities of the criminal legal system.”).

¹⁸¹ NAT'L ACADEMIES OF SCIENCES, ENG'G, & MEDICINE, DECARCERATING CORRECTIONAL FACILITIES DURING COVID-19: ADVANCING HEALTH, EQUITY, AND SAFETY 130 (Emily A. Wang et al. eds., 2020).

2023, creating “a true ‘expungement’ for convictions, where the record is deleted, destroyed, and erased so that it is permanently irretrievable, except in very limited circumstances.”¹⁸² Several months later, the 135th General Assembly passed House Bill 33, which “created true expungement for a dismissed complaint, indictment, or information.”¹⁸³ In September 2024, the 135th General Assembly enacted House Bill 50, introducing the Certificate of Qualification for Housing. This legislation enables individuals facing housing-related collateral sanctions due to a conviction or guilty plea to petition the court for relief.¹⁸⁴

Other policy changes in Ohio include the Fresh Start Act enacted by House Bill 263, which changed state licensing authorities (Board of Pharmacy, Department of Commerce, and Medical Board) and their approach to punishment and rehabilitation.¹⁸⁵ Senate Bill 288, effective in 2023 under the 134th General Assembly, introduced reforms to licensing criteria. It established a list of specific criminal offenses that may disqualify an individual from obtaining a license and prohibited licensing authorities from denying licenses solely based on a criminal charge, conviction, or vague qualifications such as “lack of moral character.”¹⁸⁶ The bill also eliminates convictions for the use or possession of marijuana drug paraphernalia as disqualifying factors for certain types of service, employment, licensing, or certification.¹⁸⁷

Pennsylvania recently expanded its Clean Slate laws. House Bill 689, signed by Governor Josh Shapiro, reflects a commitment to criminal justice reform and an expansion of opportunities for Pennsylvania residents.¹⁸⁸ Several years ago, Pennsylvania became the first state in the nation to pass a Clean Slate bill, which automatically seals records of lower-level non-violent offenses.¹⁸⁹ Since that time, twelve other states have adopted Clean Slate laws, including Utah, New Jersey, and

¹⁸² *Expungement/Sealing of Records and Certificate of Qualification for Employment*, UNIV. OF AKRON SCH. OF L. LIBR., <https://libguides.uakron.edu/reentry> (Dec. 15, 2024, 10:56 AM) [<https://perma.cc/2HFA-VHTN>].

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Ohio House Bill 263, 133rd Gen. Assem., 2021.

¹⁸⁶ S.B. 288, 134th Gen. Assemb. (Ohio, 2023). <https://www.legislature.ohio.gov/download?key=19959>

¹⁸⁷ JEFFREY GOLON ET AL., OHIO LEGIS. SERV. COMM’N, FISCAL NOTE & LOCAL IMPACT STATEMENT: S.B. 288 134TH GENERAL ASSEMBLY, at 25 (2022), <https://www.legislature.ohio.gov/download?key=19959&format=pdf> [<https://perma.cc/NK7J-CXPN>].

¹⁸⁸ John Cole, *Shapiro Signs ‘Clean Slate 3.0’ into Law*, PA. CAPITAL-STAR (Dec. 14, 2023, 5:54 PM), <https://penncapital-star.com/criminal-justice/shapiro-signs-clean-slate-3-0-into-law/> [<https://perma.cc/ES5F-XRT3>].

¹⁸⁹ Elliot Hannon, *Pennsylvania’s Landmark Clean Slate Law Goes Into Effect, Sealing About 30 Million Criminal Records*, SLATE (June 28, 2019), <https://slate.com/news-and-politics/2019/06/pennsylvania-clean-slate-law-seals-30-million-nonviolent-misdemeanor-criminal-records.html> [<https://perma.cc/YN4Q-LTFC>].

Connecticut.¹⁹⁰ In the last three years, other states, including Oklahoma (2022), Colorado (2022), California (2022), Minnesota (2023), and New York (2023), have also passed laws that meet The Clean Slate Initiative's criteria for Clean Slate legislation.¹⁹¹

B. *Strategies*

Although Terry's story has a positive ending, it is marred by setbacks, frustrations, and delays. Even with states taking additional steps to pursue record relief, there are still barriers. The question that must be asked today is how these obstacles can be decreased. What about individuals who may never be eligible for record relief due to the nature of their charge?

One idea that has been discussed by scholars is the idea of the right to social expungement. This concept acknowledges the right of individuals who have been arrested or convicted of offenses that have been vacated, expunged, legalized, or decriminalized to have stories about their past interaction with the criminal legal system removed from media websites.¹⁹² The issue with this concept, however, is that courts cannot order websites to remove information for individuals who have had their records expunged. Therefore, it is still possible for these items to be found on the internet. Although marijuana is now legal in many states,¹⁹³ individuals' previous marijuana-related charges can still be found on the internet. Therefore, some of these charges may never be completely erased from the internet even if they have been expunged.

Other strategies include limiting mandatory and indefinite collateral consequences. Employment and housing restrictions based on criminal records can be imposed automatically or left to decision-makers' discretion. These restrictions often disregard the specifics of the offense, its relevance to the position or housing context, and evidence of the individual's rehabilitation.¹⁹⁴ Taking a second look at these items, reexamining the circumstances, and getting a feel of where that individual is today could open additional opportunities.

Expanding access to relief mechanisms such as expungement, record sealing, and certificates of relief can greatly reduce the collateral consequences related to employment, education, and housing. These measures either eliminate such consequences in suitable cases or transform mandatory restrictions into discretionary ones, fostering greater opportunities for affected individuals. More

¹⁹⁰ *Clean Slate in the States*, THE CLEAN SLATE INITIATIVE, <https://www.cleanslateinitiative.org/states#states> [https://perma.cc/3DQU-3LTB].

¹⁹¹ *Id.*

¹⁹² Itay Ravid, *The Right to Social Expungement*, 60 AM. CRIM. L.R. 347, 347 (2023).

¹⁹³ ANGELA DILLS ET AL., THE EFFECT OF STATE MARIJUANA LEGALIZATIONS: 2021 UPDATE, at 1 (2021), <https://www.cato.org/sites/cato.org/files/2021-01/PA908.pdf> [https://perma.cc/K3KD-JM6F].

¹⁹⁴ Reducing Barriers to HUD-Assisted Housing, *supra* note 123.

streamlining of the process and clarity on eligibility guidelines can eliminate lengthy waiting periods, costly court proceedings, and stringent eligibility requirements.

Employment, housing, and education-related collateral consequences are often justified as necessary to ensure public safety in some circumstances. However, many collateral consequences are automatically enacted by any felony charge. Implementing laws and policies that have a more linear connection between the duties and responsibilities of a particular job, housing proximity, educational aspirations, relative to the current public safety risk could also eliminate some of these barriers.

Further, closer attention should be paid to the individuals themselves. Just as there are different levels to criminal charges, there are also different levels to the current circumstances of each individual. Items such as documentation of pro-social activities since the last release (no crimes, consistent employment, obtaining a degree, community service) should warrant record relief and lead to fee waiver. In other words, individuals who have already established a consistent record of pro-social activities within the community should not have to go through the same lengthy steps as somebody who may not necessarily be in the same category.

C. Limitations—Is Terry the Exception?

While Terry's story has a positive ending, there are thousands of individuals who do not make it to the finish line due to several social, contextual, and economic factors. Following his release from incarceration, Terry pursued entrepreneurship early in his reentry journey, which minimized his need to navigate traditional employment applications. Unlike many justice-involved individuals, he did not face repeated job application rejections due to his criminal history. This distinction highlights how entrepreneurship can serve as an alternative pathway for overcoming employment barriers associated with prior convictions.

That said, Terry's situation is unique because he was able to take advantage of every opportunity that came his way and was dedicated to the process to the end. Countless others are either ineligible for record expungement, cannot afford it, or do not have the patience and persistence needed to go through all the hurdles discussed in this paper. Even with Terry's work in the community and professional connections, resiliency was required to reach the finish line because the path was not easy. Imagine what it is like for the thousands of other eligible individuals who do not have this kind of support. Terry's story is a great example of what is possible and of the impact record relief can bring.

D. Expungement and Legacy

Terry's expungement has allowed him to do things he could not previously do. For the first time, he has no restrictions on where he can live. He now can choose to live downtown or within any community he chooses. Although he is an entrepreneur, he can apply for jobs and does not have to discuss his previous record. This is critical

for justice-impacted individuals who are starting a business. I have worked with many former clients who needed income from a current job to assist in starting up a business. As with any business, getting started takes time and money. Thus, the expungement of Terry's record was critical for him being able to move forward as an entrepreneur. He also has no restrictions to traveling and as a result has been able to take trips across the United States for vacation.¹⁹⁵ He is able to attend different conferences as a featured guest speaker where he can connect with other organizations that work with young people in the reentry space. His expungement also allows him the opportunity to further pursue his education, seek better employment opportunities, have more access to social capital, and continue to live out his dream.

One result of Terry's expungement was his ability to pass a background check as a volunteer to be able to work with the youth in juvenile prisons. This is important because before his expungement Terry was not eligible to do this, even though his nonprofit is geared toward working with troubled youth who grew up in backgrounds like his. His expungement paved the way for him to give back and assist others:

Having an expungement opens up your horizons to where, when it comes to applying for a job or good housing, people can be able to see you, as, you know, a human being.

My message to others who are in the process of having a record expungement is to not give up on your dreams and that you can still accomplish your goals as long as you stick through the process.¹⁹⁶

As mentioned at the beginning of this article, a year after Terry received his expungement a judge from the Franklin County Municipal Court reached out to him regarding a program she was developing called *Unleashing Potential*.¹⁹⁷ The court diversion program was to help serve eighteen- to twenty-five-year-old defendants in restarting their lives without the weight of their previous criminal history. Defense attorneys and prosecutors identify potential participants, who must agree to the program's rules and sign on to an individual case plan developed after their needs are assessed. These needs include items such as getting a driver's license, volunteer work in the community, getting a job, finding stable housing, and taking parenting or professional development classes. Upon successful completion of the program,

¹⁹⁵ Interview with Terry Green, *supra* note 7.

¹⁹⁶ *Id.*

¹⁹⁷ Maria Durant, *New Franklin County Municipal Court Program Helping Young Adults Stay on the Right Path*, ABC6 (May 26, 2022, 6:21 PM), <https://abc6onyourside.com/news/local/new-franklin-county-ohio-municipal-court-program-unleashing-potentia-helping-young-adults-stay-on-the-right-path-judge-jessica-dvarga-think-make-live-youth> [<https://perma.cc/9S39-VBT5>].

the individual has a chance to have their record expunged.¹⁹⁸ As part of the program, the Franklin County Municipal Court collaborated with Terry's organization *Think Make Live Youth* to carry out these services. As of today, they have been able to graduate five people through the program and these five have been able to have their records expunged.¹⁹⁹ Although the program is still in its early stages, its significant and compounding impact demonstrates the transformative potential of expungement. Terry's decision to leverage this opportunity to support others with similar experiences exemplifies the broader societal benefits of such initiatives.

CONCLUSION

The American criminal justice system was established to make our communities safer and to hold individuals accountable for violations of the law. Once an individual is punished, whether that be through probation, fines, community sanctions, jail, or prison, the criminal justice system says that they have paid their debt to society. Working with thousands of current and formerly incarcerated individuals in the areas of workforce development, education, and reentry has given me a front seat to the "invisible punishment"²⁰⁰ that comes from legal restrictions and societal stigmas that continue to hold individuals with a criminal record back long after they have served their time. While they are free from the isolation of incarceration, they are in reality not free.

Although states have implemented laws aimed at reducing barriers for individuals with criminal records in employment, housing, voting, and other areas, the overall impact of these reforms remains uncertain. This uncertainty arises from various factors, including those previously discussed in the literature. Some states have made only modest reforms to their record relief laws, while other states have enacted ambitious automatic record relief systems. The practical impact of record relief reforms varies dramatically depending on not just the reach of the laws, but also the resources that are devoted to implementing these laws.

This paper explores not only collateral consequences and record relief but, more importantly, also explores the life-changing impact that expungement can have on one individual and how that impact has essentially resulted in a return on investment for both the individual and others within the Columbus community. Terry's story provides awareness of the barriers imposed by collateral consequences and the obstacles to record relief in the day-to-day practice of all actors in the criminal justice system. If record relief efforts seem too daunting, too out of reach, too expensive, or full of too many loopholes, then many will never seek out these mechanisms for relief. When addressing broader concerns of justice and fairness for

¹⁹⁸ *Id.*

¹⁹⁹ Interview with Terry Green, *supra* note 7. Since that time there have been additional participants. Further information can be found at <https://youtu.be/gutoO0xSRm4>.

²⁰⁰ INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 15 (Marc Mauer & Meda Chesney-Lind eds., 2002).

individuals and communities, policymakers and stakeholders in the criminal justice system must prioritize developing more accessible and effective strategies for record relief. This includes creating streamlined processes for granting expungement opportunities to eligible individuals.

Public safety is a community responsibility that involves providing everyone with a second opportunity to be successful after they have served their time. The ability to work, find stable housing, and further one's education is foundational to our society. With so many people in the U.S. who have either served time or have a previous criminal history, our laws and policies must provide them every opportunity to reintegrate successfully rather than return to a life of crime. This is the right thing to do, and it not only makes us stronger as an economy but also better as a community and safer as a nation.