# Understanding the Intent and Impact of State-Initiated Record Clearing Policies

Beth Hustedt, JD, MA[*], Kristin Bechtel, PhD[**], Pamela K. Lattimore, PhD[***]

ABSTRACT

*Laws that authorize the sealing or expungement of criminal records have received attention from advocacy organizations and state legislatures that are seeking to reduce the consequences of convictions and other interactions with the legal system. These consequences include barriers to a wide variety of areas such as employment, housing, and public assistance, inhibiting individuals' ability to pursue a productive life.*

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[*] Beth Hustedt, JD, MA is a Justice Researcher in the Center for Criminal Legal System Research at RTI International. She provides training and technical assistance (TTA) to state and local governments pursuing criminal legal system reforms. She also conducts program and outcome evaluations related to pretrial processes, indigent defense models, and restorative justice practices. Prior to joining RTI in 2015, she served as a deputy legislative counsel to a state legislature.

[**] Kristin Bechtel, PhD is a Principal Scientist for RTI's Center for Criminal Legal System Research. She has conducted multiple program and outcome evaluations spanning from pretrial through reintegration; and served as the principal investigator for policy evaluations, meta-analyses, and cost studies. She has also served as the project director overseeing the implementation and evaluation of policies adopted as part of state-led initiatives on juvenile justice and adult criminal legal system reforms.

[***] Pamela K. Lattimore, PhD, is a Principal Scientist Emeritus for RTI's Justice Program Area. She has evaluated criminal justice interventions, investigated the causes and correlates of criminal behavior, and developed approaches to improve criminal justice operations for more than 35 years. She is currently the principal investigator for research studying community supervision policy and impacts, probation reform, prisoner reentry, and criminal record expungement. She is a Fellow of the Academy of Experimental Criminology, and a recipient of the American Corrections Association Peter P. Lejins Researcher Award, the American Society of Criminology's Division on Corrections and Sentencing Distinguished Scholar Award, and the Academy of Experimental Criminology Joan McCord Award.

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*Although most states offer petition-based opportunities to seal or expunge certain records, these remedies are typically burdensome and often costly to individuals.*[1] *As a result, recent efforts have turned to legislation that places the burden for sealing or expungement on the state through so-called automatic sealing or expungement. The goal of these legislative efforts is to provide record-clearing relief to more individuals, but the implementation of these laws has been stymied by eligibility criteria that impede the efficient identification and subsequent sealing or expungement of eligible records. Herein, we identify key components of recently enacted state-initiated sealing and expungement laws, illustrate some of the barriers to implementation, and recommend actions to advance the effective drafting and implementation of such legislation.*

[1] "Petition-based expungement" or "petition-based sealing" refers to a state expungement or sealing policy that requires an individual to file a petition with the state for the sealing or expungement of a criminal record. *See* J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2483 (2020) (describing the lengthy expungement process in Michigan).

## INTRODUCTION

In 2018, approximately 77 million people or about one in three adults in the United States had a criminal record.[2] Currently there are more than 42,000 state and federal restrictions or disqualifications—known as collateral consequences—that can apply to an individual who has a conviction on their criminal record.[3] These consequences include barriers to employment such that the unemployment rate for formerly incarcerated individuals is nearly five times the national unemployment rate.[4] Other collateral consequences of conviction include barriers to housing,[5] social services,[6] voting and other forms of civic engagement,[7] and professional licensure,[8] prompting one scholar to refer to the circumstances surrounding possession of a conviction as a "new civil death."[9] Furthermore, even individuals with only non-convictions on their record can face negative employment impacts.[10] Collateral consequences are likely to disproportionately affect Black Americans, particularly Black men, as they are stopped and arrested more frequently, charged with more serious crimes, and sentenced more harshly than their White counterparts.[11] For

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[2] CHIDI UMEZ & REBECCA PIRIUS, NAT'L CONF. OF STATE LEGISLATURES, BARRIERS TO WORK: IMPROVING EMPLOYMENT IN LICENSED OCCUPATIONS FOR INDIVIDUALS WITH CRIMINAL RECORDS (2018), https://documents.ncsl.org/wwwncsl/Criminal-Justice/Barriers-to-Work-People-with-Criminal-Records.pdf [https://perma.cc/V3KP-8Y2E].

[3] *Collateral Consequences Inventory*, NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, https://niccc.nationalreentryresourcecenter.org/consequences [https://perma.cc/VWL2-9FYW] (as of Feb. 11, 2025, a search of federal convictions and convictions from all 50 states yields 42,756 consequences across 38,865 entries); *see also* BECKI R. GOGGINS & DENNIS A. DEBACCO, SEARCH, THE NAT'L CONSORTIUM FOR JUST. INFO. & STATISTICS, DOCUMENT NO. 255651, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2018 2, 19 (2020), https://www.ojp.gov/pdffiles1/bjs/grants/255651.pdf [https://perma.cc/H57C-29Q3].

[4] Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among the Formerly Incarcerated*, PRISON POL'Y INITIATIVE (July 2018), https://www.prisonpolicy.org/reports/outofwork.html [https://perma.cc/795E-LGP7].

[5] Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 UNIV. PA. L. REV. 1789, 1812–13 (2012).

[6] *Id.* at 1809–10, 1809 n.109, 1810 n.119.

[7] *Id.* at 1810.

[8] *Id.* at 1800 n.57, 1810 & n.117.

[9] *Id.* at 1790.

[10] *See* Shawn Bushway et al., *Barred from Employment: More than Half of Unemployed Men in Their 30s Had a Criminal History of Arrest*, SCI. ADVANCES, 18 February 2022, at 1, 7, https://www.science.org/doi/epdf/10.1126/sciadv.abj6992 [https://perma.cc/X59R-BX7K].

[11] ELIZABETH HINTON ET AL., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM 7–9 (2018), https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf [https://perma.cc/T5WN-TVTV].

these reasons, introducing or revising sealing and expungement laws[12] has become a priority in many states.

While there is considerable research on the impacts of criminal records on individuals' lives,[13] limited research (in terms of both quantity and methodological rigor) exists on how the sealing or expungement of records impacts individuals. However, one qualitative study found that individuals reported both practical benefits from successful sealing or expungement (such as reduced barriers to employment) and psychological benefits (such as facilitation of the "affirmation of a new identity").[14] Another study found that a record-clearing intervention provided by a Clean Slate Clinic improved employment outcomes for people with criminal records.[15] More specifically, four cohorts of clinic participants (a total of 235 individuals) were observed over twelve years;[16] researchers found that participants experienced a significant increase in average employment rates and average real earnings after the record-clearing intervention.[17] These findings suggest that record clearing may have an important role in improving access to employment and increasing earnings, but the generalizability of both studies is limited because of the studies' small sample sizes.

A large-scale study of Michigan's expungement law and its effects, published in 2020, sought to provide more broadly applicable findings.[18] At the time, Michigan had only petition-based expungement.[19] This petition-based expungement applied to a variety of convictions including both misdemeanors and felonies, involved a five-year waiting period which began either at the date of sentencing or the date of release from incarceration, and had fairly simple eligibility requirements (including, most notably, that any reconviction in the five-year waiting period would render a person ineligible for record expungement).[20] The researchers acquired criminal records from a Michigan state agency for all individuals who had successfully

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[12] While states define these terms differently, generally "sealing" refers to hiding a record from public view (unless disclosure is required by federal law) while "expungement" refers to permanently erasing a record.

[13] *See* INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT (Marc Mauer & Meda Chesney Lind eds., 2002).

[14] Ericka Adams et al., *Erasing the Mark of a Criminal Past: Ex-Offenders' Expectations and Experiences with Record Clearance*, 19 PUNISHMENT & SOC'Y 23, 23, 34, 38, 40, 42–44, 46 (2017).

[15] Jeffrey Selbin et al., *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. CRIM. L. & CRIMINOLOGY 1, 46, 48–51 (2018).

[16] *Id.* at 40–41, 47.

[17] *Id.* at 51.

[18] Prescott, *supra* note 1, at 2461–67.

[19] *Id.* at 2483.

[20] *Id.* at 2466, 2482.

petitioned for expungement as of March 2014 (nearly 30,000 cases); researchers also obtained the criminal records of individuals with non-expunged convictions for purposes of comparison.[21] The researchers found that employment outcomes (both wage and employment trajectories) generally improved for those who were granted expungements.[22] For example, in the year directly after expungement was granted, individuals' wages increased more than 22% on average.[23] The research also suggested that recidivism rates were very low among individuals granted an expungement.[24]

Limitations to the Michigan study included that out-of-state earnings were not accounted for in the analysis, nor were earnings that were not reported on state or federal tax records.[25] Other limitations with the earnings data (not expressly noted by the authors but identified in our review) included that the study relied on quarterly Unemployment Insurance Agency wage data to determine employment status and wage rates, but these data do not account for individuals who are self-employed or for those who are not working but are receiving Social Security or disability benefits, among other individuals. Furthermore, there were missing data that prompted the authors to calculate expungement eligibility dates based on conviction dates imputed from other data points in the criminal records;[26] the authors also did not have records for and were unable to restore records for about 9% of the group that did not receive expungements.[27] Because of these missing data challenges, the primary recidivism measure was examined only for expungement recipients, which limited findings to this self-selecting group.[28]

## I. CURRENT STUDY AND METHODS

Our study identified all current state-initiated sealing and expungement laws[29] and analyzed each state law by identifying (1) included categories of interactions with the legal system (arrests, non-convictions, and/or convictions); (2) included offenses; (3) eligibility requirements; (4) waiting periods; and (5) other procedural

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[21] *Id.* at 2465, 2480, 2483–84.

[22] *Id.* at 2461, 2523.

[23] *Id.* at 2461, 2528.

[24] *Id.* at 2461, 2511–15.

[25] *Id.* at 2484.

[26] *Id.* at 2485, 2485 n.133.

[27] *Id.* at 2485, 2485 n.131.

[28] *Id.* at 2485.

[29] In this paper, we refer to these laws (and their respective sealing or expungement processes) as "state-initiated" and not "automatic" because, although some parts of these processes are automatic, action on the part of the state (such as data collection and review) is required for their implementation.

elements. Our search included a thorough scan of LexisNexis for new and pending legislation and a review of the compilations and inventories listed on the Collateral Consequences Resource Center's site.[30] As part of our investigation into expungement reform, we interviewed state legislators and policy advocates to identify the challenges they encountered while working to enact legislation as well as to discuss any ongoing challenges with implementation.[31] Finally, we attempted to identify the agencies and data systems required to implement each state-initiated law.[32]

## II. THE MOVE AWAY FROM PETITION-BASED POLICIES

The Michigan study revealed that very few people took advantage of the state's petition-based expungement policy: the researchers estimated that only 6.5% of eligible people with conviction records had been granted an expungement within five years of becoming eligible.[33] Similarly, in Missouri, less than 1% of the more than 500,000 people eligible for petition-based expungement had had their records expunged as of 2021.[34] Nationally, an estimated twenty to thirty million Americans likely eligible for criminal record clearance have not received this remedy.[35] This discrepancy highlights what Colleen Chien has called the "second chance gap," i.e., the difference between eligibility for relief and the receipt of it.[36] Research points to a variety of reasons for this gap, including lack of awareness about the policies, administrative and cost-related burdens, and state limitations or qualifications that have not been met, such as satisfying restitution, or paying required court fines and

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[30] *Complilations & Inventories*, COLLATERAL CONSEQUENCES RES. CTR., https://ccresourcecenter.org/compilations-inventories-of-collateral-consequences/ [https://perma.cc/5RXX-8P86].

[31] Unless otherwise noted, interviewees were promised anonymity in exchange for their statements. Citations to interviews are therefore minimal to protect identities from disclosure.

[32] We were aided in this work by a System for the Electronic Analysis and Retrieval of Criminal Histories (SEARCH) Group report that outlines the administrative challenges states have experienced in attempting to implement state-initiated expungement policies. DAVID J. ROBERTS ET AL., SEARCH GRP., INC., TECHNICAL AND OPERATIONAL CHALLENGES OF IMPLEMENTING CLEAN SLATE (2023), https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_ResearchFindings.pdf [https://perma.cc/H2TZ-BE6Y].

[33] Prescott, *supra* note 18, at 2461, 2466, 2489, 2492.

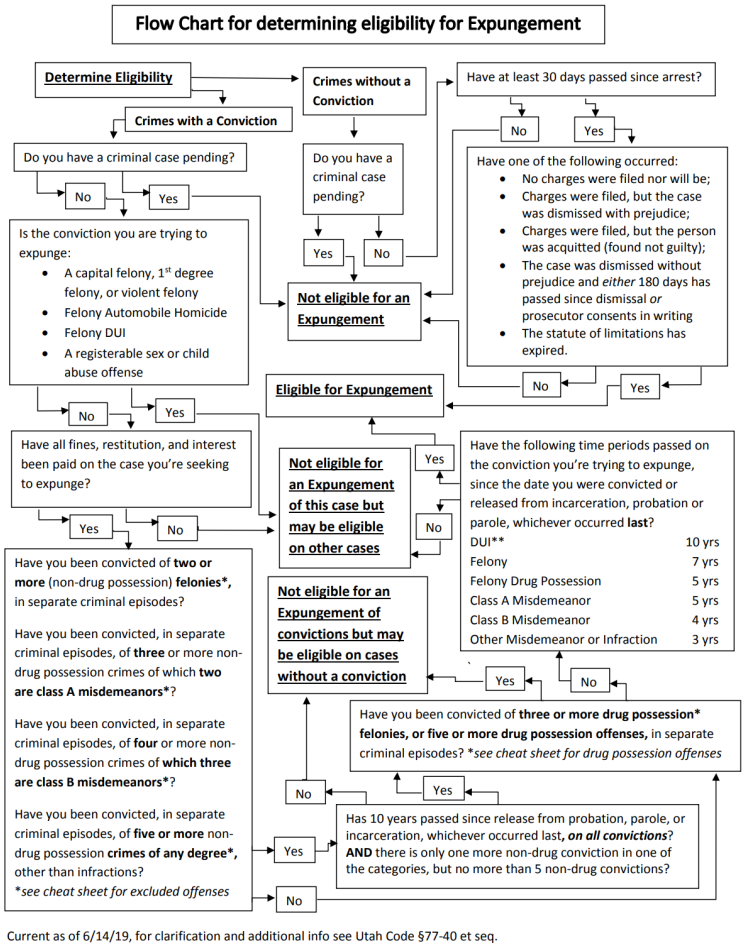
[34] COLLEEN CHIEN ET AL., PAPER PRISONS INITIATIVE, THE MO. SECOND CHANCE EXPUNGEMENT GAP 1, 3–4, 8 (2023). https://paperprisons.org/states/pdfs/reports/The%20Missouri%20Second%20Chance%20Expungement%20Gap.pdf [https://perma.cc/MMS4-GT3J].

[35] Colleen Chien, *America's Paper Prisons: The Second Chance Gap*, 119 MICH. L. REV. 519, 519–20, 524, 528–29, 563 tbl.4-3 (2020).

[36] *Id.* at 519, 531.

fees.[37] A flowchart (Figure 1) from the Utah State Courts website (created in 2019 when Utah had only a petition-based process in place) was meant to assist citizens in determining whether they were eligible for petition-based expungement relief. It serves as an example of the complicated structure surrounding eligibility that can be difficult to navigate.[38]

**Figure 1: Utah Petition-Based Expungement Eligibility Flowchart (2019)**[39]

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[37] *Id.* at 510, 540, 577–78.

[38] UTAH LEGAL SERVS., FLOW CHART FOR DETERMINING ELIGIBILITY FOR EXPUNGEMENT (2019), https://www.utcourts.gov/content/dam/howto/expunge/docs/Expungement_Eligibility_Flowchart.pdf [https://perma.cc/D7BC-YBDF].

[39] *Id.* at 1.

As we learned in our interviews, even when potential recipients of relief in Utah identified their eligibility in 2019 by reviewing the above chart or consulting with a lawyer, the costs of the petition-based process could be prohibitive—even if considering only petition-related court filing fees and not including the cost of hiring a lawyer to guide them through the process if needed. One successful Utah petitioner who went through the process in 2019 explained:

> The question was, "Can I afford to expunge?" I was eligible, but what mattered was, how much money could I come up with? My government fees were over $3,600. Most people in recovery or rebuilding their life from a criminal history don't make that. Do I skip paying my rent for the month to pay for my expungement costs? I was in a unique position where there was a fundraiser for me to pay for the government fees. That is the only reason I am record-free today.[40]

Thus, as a result of complicated eligibility requirements, the financial cost of petition-based sealing or expungement, and other factors that impede access to available relief, calls for states to move away from petition-based processes and to implement state-initiated policies have grown louder since the Michigan study was published in 2020. As we learned through our examination of state laws, and as of this writing, twenty-five states have some version of a state-initiated policy in place for certain offenses (including both Michigan and Utah). However, as we learned in interviews, implementation of these policies has rarely been immediate, and in many states, there have been significant delays.[41]

## III. ELIGIBILITY CRITERIA FOR STATE-INITIATED POLICIES

Interview findings revealed that some states are moving from petition-based processes to state-initiated processes but are not expanding eligibility for sealing or expungement, which results in conversations that are process focused.[42] Ohio policymakers are currently considering such legislation and, as a policy advocate in the state explained, the legislative goal is "to take existing eligibility policy and streamline the process by requiring the state to be the one initiating the record sealing process."[43] By contrast, in states where sealing and expungement policies are being crafted for the first time, such as in Virginia, the conversations become intertwined:

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[40] Zoom interview with policy advocate (June 11, 2024).

[41] Zoom interview with attorney/policy advocate (June 3, 2024); Zoom interview with attorney/policy advocate (July 18, 2024).

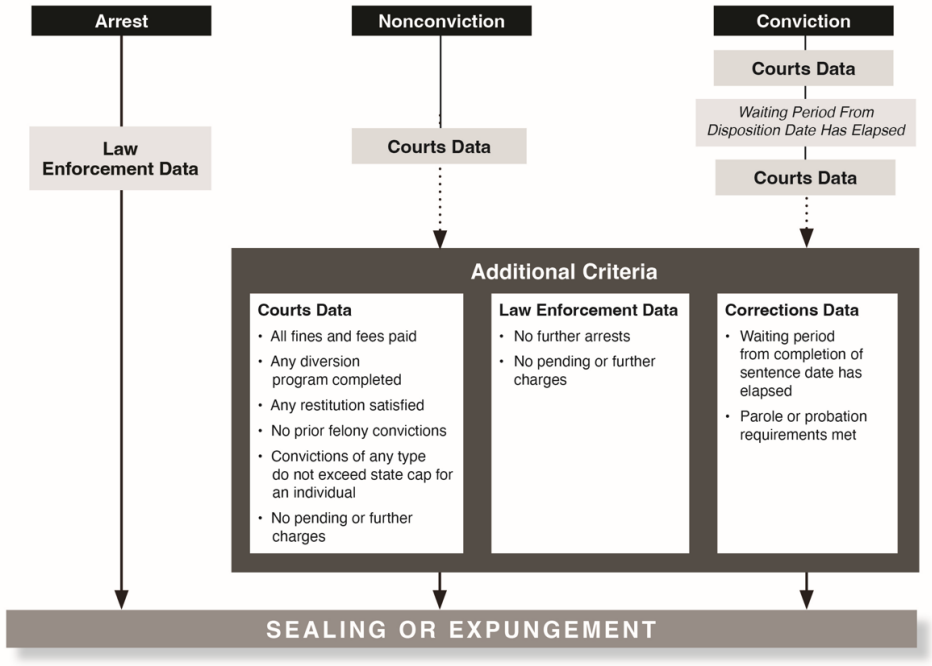
[42] Zoom interview with state lawmaker (April 7, 2023); Zoom interview with attorney/policy advocate (June 3, 2024).

[43] Zoom interview with policy advocate (May 30, 2024).

Who should be eligible for relief? What systems and processes should be put in place as a means to that relief?[44]

Our research revealed that many states reserve state-initiated processes for arrests, non-convictions, and certain misdemeanors (e.g., Oklahoma, Utah), whereas other states have sought to include low-level felonies in these processes (e.g., California, Pennsylvania). Common eligibility requirements include that restitution has been satisfied, that court fees and fines have been paid, that the individual has not had other legal system contact in a specified period of time, and that a state cap on the number and types of records that can be sealed or expunged has not been exceeded. State laws almost always include conditions that not only limit the remedy but also generate considerable demand on agencies and their data systems to confirm eligibility. Figure 2 (created by the authors for this article) illustrates how additional eligibility criteria states choose to add to their policies add layers of complexity and require communication and data exchange among agencies to successfully seal or expunge an eligible record.

**Figure 2. Examples of Additional State-Initiated Sealing and Expungement Eligibility Criteria and Data Sources Needed for Implementation**




Interview participants identified certain qualifications included in state policies that are arguably not necessary to ensure public safety. For example, many found the requirement that all court fines and fees be satisfied to be unduly restrictive, as

[44] Zoom interview with state lawmaker (April 7, 2023).

it serves to limit access to a remedy that was designed, at least in part, to mitigate the costs associated with petition-based expungement.[45] One policy advocate explained, "We shouldn't be blocking people from expungement and an employability credential—so they could pay the very fines they owe—because they have the fines. It's a foolish barrier to have."[46] Another policy advocate echoed this sentiment: "You can leave fines and fees to state debt collection to sort out. But let's get people record-free." Notably, after becoming the first state to enact a state-initiated sealing policy in 2018,[47] in 2020 Pennsylvania revised the law to remove the requirement that people pay all court fines and fees to be eligible for record sealing.[48]

Interview participants also stressed the importance of reducing imposed waiting periods to a minimum in order to make people eligible for sealing or expungement as soon as possible.[49] Pennsylvania policymakers recently took this advice as well, reducing the waiting periods contained in the state-initiated policy to seven years for misdemeanors and five years for summary offenses.[50] Pennsylvania also expanded eligibility to a broader range of offenses, adding low-level felonies to the sealing-eligible list with a waiting period of ten years.[51]

## IV. THE IMPORTANCE OF AUTOMATION

A consistent theme in interviews was that the outdated data systems on which many states rely are not currently equipped to support implementation of state-initiated policies. For states without a unified court system, like Ohio, there is currently no centralized database from which to pull state-level court data. A policy advocate in the state noted, "We need to bring our court records into the twenty-first century and we recognize that it is a financial burden, but there will be a net savings after the upfront investment."[52]

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[45] Zoom interview with policy advocate (June 3, 2024); Zoom interview with policy advocate (June 11, 2024); Zoom interview with attorney/policy advocate (July 18, 2024).

[46] Zoom interview with attorney/policy advocate (July 18, 2024).

[47] Act of June 28, 2018, sec. 2, §§ 9122.2–9122.3, 2018 Pa. Laws 402 (codified as amended at 18 PA. CONS. STAT. §§ 9122.2–9122.3).

[48] Act of Oct. 29, 2020, sec. 2, § 9122.2(a)(1), (a)(3), (b)(2)(i), 2020 Pa. Laws 718 (codified as amended at 18 PA. CONS. STAT. § 9122.2).

[49] Zoom interview with attorney/policy advocate (June 3, 2024) and Zoom interview with policy advocate (June 11, 2024).

[50] Act of Dec. 14, 2023, sec. 4, § 9122.2(a)(1), (a)(3), 2023 Pa. Laws 334 (codified at 18 PA. CONS. STAT. § 9122.2).

[51] *Id.* at sec. 1, § 9102, sec. 4, § 9122.2(a)(1.1), sec. 5, § 9122.3(a)(2)(i).

[52] Zoom interview with policy advocate (May 30, 2024).

Even in states with a unified court system and an existing centralized database for court data, states are often not prepared to support *fully automated* state-initiated processes that require transferring data from one agency to another. For example, under Connecticut's current policy, convictions for nonviolent misdemeanors and certain nonviolent felonies are eligible for state-initiated erasure but conditions apply that require data to be shared across agencies.[53] Ultimately, though Connecticut's Clean Slate law was scheduled to be implemented on January 1, 2023, implementation was delayed until late 2023 because of the need for "significant information technology upgrades" (now completed, at the cost of eight million dollars) to enable agencies to effectively share the necessary data and implement the policy.[54] In Missouri, implementation of the state-initiated expungement policy involves a non-automated process that requires a manual review of records which has created a significant burden on the court system.[55]

One notable exception was the approach taken in Pennsylvania, where early advocates from Community Legal Services of Philadelphia (CLS) met consistently with policymakers and agreed that the development of Clean Slate policies must align with the data currently available from the Administrative Office of the Pennsylvania Courts (AOPC) database. This approach ensured that state-initiated policies could be fully automated. As a senior attorney at CLS explained:

> You could have your eligibility criteria based on something that's not in the AOPC database and say, "You need to connect your database to this probation database and get this new field of data and align your data with this other data, and have your systems talk to their systems for the first time." That would cost millions of dollars, and it would cause all sorts of implementation issues. So, we have been very focused on asking the question, "How can we do this with the data that's already in the AOPC database?" And we accept it as it is. Sometimes it doesn't work perfectly, but we are going to deal with the data we have.[56]

Similarly, in Utah, which also has a unified court system, early advocates worked to design the policies in coordination with the courts and with an eye toward

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[53] Zoom interview with attorney/policy advocate (June 3, 2024).

[54] Jaden Edison, *CT's 'Clean Slate' Law Faces Delay, and Supporters Yearn for Answers*, CT MIRROR (Dec. 7, 2022, 4:57 PM), https://ctmirror.org/2022/12/07/ct-clean-slate-law-criminal-convictions-erased-delay/ [https://perma.cc/937F-YV9G]; Jaden Edison & Mark Pazniokas, *CT's 'Clean Slate' Law to Take Full Effect After Delay*, CT MIRROR (Dec. 18, 2023, 4:46 PM), https://ctmirror.org/2023/12/18/ct-clean-slate-law/ [https://perma.cc/H8JF-T6AY].

[55] *See* Rebecca Rivas, *Missouri Courts Request $3.7 Million to Continue Arduous Marijuana Expungement Process*, MO. INDEP. (Jan. 17, 2024, 8:00 AM), https://missouriindependent.com/2024/01/17/missouri-courts-request-3-7-million-to-continue-arduous-marijuana-expungement-process/ [https://perma.cc/RQ82-WWRN].

[56] Zoom interview with attorney/policy advocate (June 3, 2024).

ensuring successful implementation. One policy advocate and legal services provider in Utah emphasized that the legislative goal should not be "to start with a petition-based process and just make it automatic" but rather to carefully consider how to best design a state-initiated process that can be fully automated using the data and technologies that already exist in the state.[57] This advocate explained that crafting policies with automation in mind "is tedious, weeds work" but noted that, ultimately, successful implementation hinges "entirely on the technology." They added, "You can't implement a policy decision if there isn't a data field to query for it."[58]

Sometimes this approach has required policy compromise. In Pennsylvania, all drug convictions fall under the same statutory charge. By itself, the charge does not indicate what type or quantity of drugs was involved. When policymakers wanted to make only certain types of drug-related convictions eligible for state-initiated, fully-automated sealing (and wanted to exclude a certain drug family from this structure), they learned that these data were not contained in the existing database. To solve this problem, the state policymakers chose to rely on the severity of the sentence (which is a data point in the AOPC database) as a proxy for the seriousness of the drug charge. In Utah, some policymakers wanted to include only marijuana-related convictions in their state-initiated, fully-automated expungement policy; however, the centralized database did not specify whether the controlled substance at issue was marijuana or another substance. Accordingly, the state chose to exclude all misdemeanor drug possession convictions from the policy, regardless of substance type. While imperfect, these policy considerations and resulting compromises have allowed Pennsylvania and Utah to effectively implement state-initiated, fully-automated sealing and expungement policies because the policies were mindfully crafted to align with the data that are available in their respective centralized databases.

Even still, there have been challenges with implementation in both states. These challenges have most often been due to missing data in older records, which has caused backlogs, some manual review of records and has required ongoing reexamination of the data fields on which the automation relies. In Utah, while the state has successfully sealed more than 400,000 records so far through their automated process, only about a quarter of the sealed records have been fully expunged from individuals' Utah criminal histories. This leaves about 300,000 records yet to be expunged under the policy. This gap between sealing and expungement numbers is largely due to the absence of specific identifying information in older records, such as an offense tracking number or a state identification number, which prevents the automated system from successfully matching records to verify eligibility. While this issue of data missingness does not apply to more current, digitized records, the inability to match a person's identifier

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[57] Zoom interview with attorney/policy advocate (July 2, 2024).

[58] Zoom interview with attorney/policy advocate (July 2, 2024).

(such as their state identification number) with older records that do not contain this identifier has sparked renewed conversations around whether other identifying information can serve as reasonable proxies in these situations. For example, perhaps two other pieces of personally identifying information could be used instead of a state identification number to successfully match current records with what is available on older records. Thus, compromises and ongoing policy changes are required to ensure a state's law provides relief to those it is designed to serve.

Additionally, interview participants stressed the importance of initiating waiting periods from the disposition date rather than from a sentence completion date whenever possible. As the end date of a waiting period often triggers the automated process to begin, it is helpful to have this date in the same centralized database that will confirm eligibility. Since disposition dates are contained in centralized court databases, this policy decision avoids the need for communication with another agency to successfully automate a state-initiated law.[59]

## V. ELIGIBILITY SCREENING AND OTHER NOTIFICATION PROCESSES

While states have worked to enact state-initiated sealing and expungement policies that do not require navigating the petition-based process, the often-confusing eligibility requirements leave many people understandably uncertain of their eligibility for state-initiated laws. One policy advocate explained,

> That's why people meet with us, because they don't know. They have no idea if they're eligible or not. It would be great to see all the states have some type of platform that would give the public the power to understand if they're eligible and then get past their criminal records. If there was a court website where people could go to check their eligibility—or even if it was hosted somewhere other than the courts, like a nonprofit, or in workforce development offices, or perhaps offices where people go to get services or Medicaid, for example—that could just verify someone's identity and tell them if they're eligible or not, that would be a huge step forward. People shouldn't have to go hire an attorney to find out if they're eligible and will benefit from the automatic policy.[60]

Notably, one advocate and attorney in Utah decided to fill this information gap by creating an eligibility screening tool for the state. The tool launched in late 2022[61]

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[59] Zoom interview with attorney/policy advocate (June 3, 2024); Zoom interview with attorney/policy advocate (July 2, 2024).

[60] Zoom interview with policy advocate (June 11, 2024).

[61] Rasa Legal, *About*, RASA (2024), https://www.rasa-legal.com/about/ [https://perma.cc/822H-WDSU].

and is available on the Rasa Legal website.[62] For a fee of $15, the tool provides people with information about what is on their Utah criminal record and determines whether they are eligible for state-initiated or petition-based expungement and whether they might be eligible for either type of relief in the future.[63] The Rasa Legal tool can also be used to identify records from and eligibility for expungement or sealing in the state of Arizona.[64] Since its launch, the tool has been utilized by more than 15,000 people seeking to know if their records would be eligible for sealing or expungement under Utah or Arizona's record clearance laws.[65]

Separately, it remains unclear if any state will formalize a notification process to inform people when their records have been sealed or expunged as a result of state-initiated policies. However, given the confusion around eligibility requirements, it seems likely that people may not know their records have been cleared as a result of state-initiated sealing or expungement laws without some form of notification.

## VI. LESSONS LEARNED AND RECOMMENDATIONS

Refinements made to policies serve as good examples of lessons learned. As discussed above, since being the first state to enact a state-initiated sealing policy in 2018,[66] Pennsylvania has amended their sealing law to (1) expand the list of offenses that are sealing-eligible;[67] (2) eliminate fees and fines as a barrier to eligibility;[68] and (3) reduce waiting periods.[69] Furthermore, while implementation hurdles have been considerable, the attempts to create state-initiated policies to provide relief to the many Americans awaiting these reforms hold promise, particularly when states are willing to both simplify and fully automate state-initiated policies. As Chien explains, states should "develop workable standards that can be applied and

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[62] Rasa Legal, RASA (2024), https://www.rasa-legal.com/ [https://perma.cc/GW5D-DMBU].

[63] *Id.*; Rasa Legal, *Eligibility Tool*, RASA (2024), https://www.rasa-legal.com/eligibility-tool/ [https://perma.cc/KPZ8-QLVX]; Zoom Interview with Noella Sudbury, Founder and CEO, Rasa Legal (July 2, 2024).

[64] Rasa Legal, *Arizona*, RASA (2024), https://www.rasa-legal.com/about/ [https://perma.cc/822H-WDSU].

[65] Zoom Interview with Noella Sudbury, Founder and CEO, Rasa Legal (July 2, 2024).

[66] Act of June 28, 2018, sec. 2, § 9122.2, 2018 Pa. Laws 402 (codified as amended at 18 PA. CONS. STAT. § 9122.2).

[67] Act of Dec. 14, 2023, sec. 1, § 9102, sec. 4, § 9122.2, sec. 5, § 9122.3, 2023 Pa. Laws 334 (codified at 18 PA. CONS. STAT. § 9122.2).

[68] Act of Oct. 29, 2020, sec. 2, § 9122.2, 2020 Pa. Laws 718 (codified as amended at 18 Pa. Cons. Stat. § 9122.2).

[69] Act of Dec. 14, 2023, sec. 4, § 9122.2, 2023 Pa. Laws 334 (codified at 18 PA. CONS. STAT. § 9122.2).

administered in imperfect data environments."[70] Policies with fewer limitations and requirements—and that are responsive to the need to limit the data used to those that can be pulled from one centralized source—can go a long way to mitigate barriers to successful implementation and ensure that full automation of state-initiated policies is possible. Policymakers, then, should use empirical evidence to guide the development of sealing and expungement policies in their states and consider whether current data systems can accommodate the required components of any given law. With the information presented here in mind, and based on the current research available, we make the following recommendations to states as they move away from petition-based sealing or expungement policies to increasingly rely on state-initiated policies.

***Eligibility Criteria***

- Review eligibility criteria on an ongoing basis to determine if barriers to sealing or expungement relief can be removed.
- Remove the eligibility requirement that all court fees and fines be paid (if included).
- Expand state-initiated sealing or expungement policies to include a broader category of offenses, including low-level felony offenses (if not included).

***Data Systems and Automation***

- Create a fully automated process for sealing or expunging eligible records by limiting the data points needed to confirm eligibility to the data fields available in a centralized court data system.
- Invest in a centralized court data system if one is not currently available.

***Waiting Periods***

- Begin the clock for waiting periods at the disposition date rather than at a sentence completion date or at the end of a probation or parole period.
- Reduce the time period people must wait to be eligible for sealing or expungement policies to a minimum.

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[70] Chien, *supra* note 35, at 529.