

CLEAR PAST CRIMINAL RECORDS

Roughly 1 in 3 Americans has some type of criminal record, and nearly half of all children in America have at least 1 parent with a past record. In Florida, a person's criminal record includes minor brushes with the law, such as arrests by mistake and dismissed charges, and convictions alike. Without expanded and streamlined opportunities to have their slates cleaned, millions of Floridians have a mark on their records that can follow them for the rest of their lives, well after they've finished their sentences.

In Florida, there are currently 2 ways to have something removed from a criminal record: sealing or expungement of arrests. Floridians qualify to have their records cleared only in certain circumstances, according to several rules set out in the Florida Statutes. These rules show the complex, exclusive nature of clearing records in our state today. In fact, in a recent national comparison of state laws, Florida scored an F for its laws on sealing conviction records and a D for its laws on clearing non-convictions. Moreover, Florida scored last for its overall approach to restoring rights and opportunities after arrest or conviction.

THE PROBLEMS

- **Criminal records represent lifelong sentences for returning citizens and their families.** Without sealing or expungement, criminal records are permanent. The many consequences of having a record, particularly if for a conviction, have been described as a form of "civil death." Individuals "who have redeemed themselves are trapped by lifetime barriers" to employment, driver's and occupational licenses, housing, education, public benefits, credit, and other pathways to opportunity. Nearly 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges check people's records. Beyond these institutional barriers, the "virtually unregulated" availability of records online and through background checks operates as a kind of "digital punishment." And these obstacles have intergenerational effects, affecting which neighborhoods children grow up in, the schools they attend, and the opportunities afforded to them. Children of people with criminal records face worse outcomes in their own lives, such as in educational performance and attainment in addition to employment and income in adulthood.
- **The barriers created by criminal records hurt our economy.** The challenges that people with records are far more likely to face, from homelessness to unemployment, cost our local economy and tax base. Without mass incarceration and the collateral consequences associated with it, the nation's poverty rate would have dropped by over 20% between 1980 and 2004. Still today, the U.S. economy loses up to \$87 billion in GDP every year because people with records are locked out of the job market. Meanwhile, just a year after having their records cleared, these individuals are 11% more likely to be employed and are earning 22% higher wages.
- **Inaction on criminal records weakens public safety.** Clearing past records does not threaten public safety, and indeed benefits it, for 2 reasons. First, the risk of reoffending among returning citizens drops sharply over time. Using data from Florida and other states, studies have found that people with records who remain crime-free for roughly 3 or more years (depending on the offense) are not any more likely than the general population to commit a new offense. Therefore, clearing people's records from the past does not hurt public safety. Second, the many benefits to clearing a person's record for their economic security actually reduces the likelihood of them reoffending. Research has shown that people who have had their records cleared experience better employment outcomes and low recidivism rates, thus keeping communities safer.
- **Despite the societal consequences of criminal records, many Floridians with records are ineligible for record-clearing.** Florida currently provides 9 different ways for a person's record to be sealed or expunged. Despite this multitude of processes, only people who meet specific criteria may have their records cleared. For example, people who were arrested contrary to the law and people whose charges were dismissed due to lawful self-defense are eligible for expungement. However, there are often exceptions to these terms of eligibility. Moreover, there are large categories of records that are not eligible for clearing under any circumstances. Most importantly, Florida currently limits relief to only non-conviction records. As a result, any

adult who has been found guilty and any young person found delinquent can never have that mark on their record removed, even if they are pardoned or have their civil rights restored.

- **Even when Floridians are eligible for relief, the state's processes are overly burdensome.** In Florida's current system, the 9 different pathways to record-clearing carry with them different eligibility criteria, application procedures, and fees. Only 2 of these processes are automatic. As a result, for the many people with records who aren't eligible for automatic record-clearing, determining what relief is available and the requirements presents a barrier in and of itself. Even once a person has determined a pathway to pursue, there are numerous steps that require time and resources. For example, 4 of the 7 non-automatic pathways to record-clearing require the person to petition a court. An analysis of these petition-based systems found that only 6.5% of eligible people ever obtain the relief they deserve. More broadly, research has found that the "second-chance gap" between the people eligible for relief and those who actually gain it is due to many factors, including lack of information and counsel, the cost and complexity of procedures, and distrust of the legal system. The court process introduces costs from missing work, legal assistance, and court fees, making it nearly impossible for some to gain relief. Even the pathways to record-clearing that do not involve court petition often require collecting various criminal records and coordinating with law-enforcement agencies, tasks made more difficult amid COVID-19. Importantly, "the end result of all these barriers is not only exclusion but also deterrence": even among Floridians eligible for relief, the vast majority keep their records rather than try to work through this series of "costly, intimidating, and time-intensive procedural tasks."

THE SOLUTIONS

- **Expand eligibility to include more people with records.** As one of the most powerful tools for removing barriers to employment, housing, and more, record-clearing is both "life-changing" for returning citizens and a contributor to economic strength and public safety for communities. Therefore, the state should reform the rules on record-clearing that stand in the way of relief for many Floridians. For instance, people who have been found guilty or delinquent, whether for a prior offense or one that the person seeks to have cleared, should be eligible for record-clearing. Similarly, people who have been granted pardons or had their civil rights restored should have their records automatically expunged upon pardon or restoration. Lastly, in many cases, Florida does not allow a person who has already had a record cleared to be eligible a second time. That should change. Floridians should be allowed to have more than 1 record cleared in a lifetime, and not be required to have those records cleared at the same time. These reforms will allow more people with records to earn a living, secure stable housing, and access the resources they need to provide for their families. Our economy will improve as more job-seekers become eligible to rejoin the workforce. And if more people can achieve reentry, recidivism rates will be reduced, and the state will save money through reduced incarceration and supervision.
- **Streamline the record-clearing process.** Without changes to record-clearing procedures, people eligible for record-clearing in Florida will still face a long, uphill battle to gaining relief, discouraging many from trying at all. For example, people with non-convictions will still have to petition a court, "an approach increasingly seen as inappropriate and unnecessary for this category of records." Meanwhile, the criminal legal system will remain burdened with the costs of clearing records one by one. These challenges can be solved through expanding Florida's use of automatic record-clearing. In particular, all non-conviction records except for pending matters should be automatically expunged. In addition, records should be automatically sealed upon 4 to 7 years depending on the offense, once the person has demonstrated their rehabilitation by remaining crime-free for that period. This automation ensures that everyone who is eligible for record-clearing—not just those who have the time and resources to go through the current complex processes—gets the second chance they've earned.
- **Reform fines and fees in record-clearing.** While streamlining the record-clearing process will reduce the resources required of people with records in seeking relief, inequitable and burdensome costs still remain. Any fees that people with records are required to pay for record-clearing should take into account their ability to pay. In addition, these individuals should be eligible for record-clearing even if they have outstanding court debts, in order to avoid restricting relief to only those who have the means to pay their debt.

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