

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.¹ In Florida, a person's criminal record includes minor brushes with the law, such as arrests by mistake and dismissed charges, and convictions alike.² 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.³

In Florida, there are currently 2 ways to have something removed from a criminal record: sealing or expungement of arrests.⁴ 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.⁵ Moreover, Florida scored last for its overall approach to restoring rights and opportunities after arrest or conviction.⁶

THE PROBLEMS

- **Criminal records represent lifelong sentences for returning citizens and their families.** Without sealing or expungement, criminal records are permanent.⁷ The many consequences of having a record, particularly if for a conviction, have been described as a form of “civil death.”⁸ 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.⁹ Nearly 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges check people's records.¹⁰ Beyond these institutional barriers, the “virtually unregulated” availability of records online and through background checks operates as a kind of “digital punishment.”¹¹ 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.¹²
- **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.¹³ Without mass incarceration and the collateral consequences associated with it, the nation's poverty rate would have dropped by over 20% between 1980 and 2004.¹⁴ 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.¹⁵ Meanwhile, just a year after having their records cleared, these individuals are 11% more likely to be employed and are earning 22% higher wages.¹⁶
- **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.¹⁷ 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.¹⁸ 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.¹⁹ Research has shown that people who have had their records cleared experience better employment outcomes and low recidivism rates, thus keeping communities safer.²⁰
- **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.²¹ 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.²² However, there are often exceptions to these terms of eligibility.²³ 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.²⁴

- **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.²⁵ Only 2 of these processes are automatic.²⁶ 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.²⁷ 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.²⁸ An analysis of these petition-based systems found that only 6.5% of eligible people ever obtain the relief they deserve.²⁹ More broadly, research has found that the "second-change 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.³⁰ The court process introduces costs from missing work, legal assistance, and court fees, making it nearly impossible for some to gain relief.³¹ 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-19.³² 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."³³

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.³⁴ 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.³⁵ Similarly, people who have been granted pardons or had their civil rights restored should have their records automatically expunged upon pardon or restoration.³⁶ Lastly, in many cases, Florida does not allow a person who has already had a record cleared to be eligible a second time.³⁷ 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.³⁸ 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.³⁹ Our economy will improve as more job-seekers become eligible to rejoin the workforce.⁴⁰ And if more people can achieve reentry, recidivism rates will be reduced, and the state will save money through reduced incarceration and supervision.⁴¹
- **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.⁴² 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."⁴³ Meanwhile, the criminal legal system will remain burdened with the costs of clearing records one by one.⁴⁴ These challenges can be solved through expanding Florida's use of automatic record-clearing.⁴⁵ In particular, all non-conviction records except for pending matters should be automatically expunged.⁴⁶ 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.⁴⁷ 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.⁴⁸
- **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.⁴⁹

ABOUT THE 2021 POLICY PLATFORM

The Florida Rights Restoration Coalition (FRRRC) policy platform for 2021 is informed by conversations, meetings, and surveys with thousands of returning citizens from all backgrounds and political persuasions throughout the state of Florida. The collective values and priorities in this platform are a blueprint for the policies that FRRRC and Florida's community of returning citizens will work to enact in the weeks and months ahead.

FRRRC is a grassroots, membership organization run by returning citizens (formerly convicted persons) who are dedicated to ending the disenfranchisement and discrimination against people with convictions and creating a more comprehensive and humane reentry system that will enhance successful reentry, reduce recidivism, and increase public safety.

Footnotes

¹ In addition, a nationally representative study found that nearly 1 in 3 Americans are arrested by age 23. See Erica Goode, "Many in U.S. Are Arrested by Age 23, Study Finds," *New York Times*, December 19, 2011, <https://www.nytimes.com/2011/12/19/us/nearly-a-third-of-americans-are-arrested-by-23-study-says.html>; Rebecca Vallas and Sharon Dietrich, "One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records," Center for American Progress, December 2014, https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf?_ga=2.259203465.280734389.1599572833-1605675688.1599572833; Rebecca Vallas et al., "Removing Barriers to Opportunity for Parents With Criminal Records and Their Children: A Two-Generation Approach," Center for American Progress, December 10, 2015, <https://www.americanprogress.org/issues/poverty/reports/2015/12/10/126902/removing-barriers-to-opportunity-for-parents-with-criminal-records-and-their-children/>.

² In Florida, "a criminal history record is created when a person is arrested and fingerprinted, and includes the disposition of any charges stemming from that arrest, whether it is an adjudication of guilt or the withholding of adjudication, acquittal, or dismissal of charges before trial, or other disposition." See "Frequently Asked Questions," Florida Department of Law Enforcement (FDLE), accessed September 8, 2020, <https://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions>. More broadly, "criminal history record" means any nonjudicial record maintained by a criminal justice agency containing criminal history information, which represents information collected by criminal justice agencies on persons including identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. See Florida Statutes § 943.045 (2020), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0943/Sections/0943.045.html.

³ Under Florida law, adult criminal history records remain public (indefinitely) unless sealed or expunged. See FDLE, "Frequently Asked Questions." While data on the total number of Floridians with non-cleared criminal history records are not available, there are several millions of people with these records. As just one example, in 2016, there were an estimated 1.5 million people who had felony conviction records (and who were disenfranchised for those records). See Christopher Uggen, Ryan Larson, and Sarah Shannon, "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016," The Sentencing Project, October 6, 2016, <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>.

⁴ Sealing of a criminal history record means the record remains available to certain criminal justice entities and officials with legal access, such as judges, but otherwise the record is confidential and secure. Expungement (also called expunction) means that the criminal history record is physically destroyed by any criminal justice entities who have it except for the FDLE, which may only access it for specific purposes. See Florida Statutes § 943.045 (2020); Florida Statutes § 943.053 (2020), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0943/Sections/0943.053.html.

⁵ Margaret Love and David Schlussel, "The Many Roads to Reintegration: A 50-State Report on Laws Restoring Rights and Opportunities After Arrest or Conviction," Collateral Consequences Resource Center, September 2020, <https://ccresourcecenter.org/wp-content/uploads/2020/09/The-Many-Roads-to-Reintegration.pdf>

⁶ Ibid.

⁷ See note 3.

⁸ Gabriel Jackson Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction," *University of Pennsylvania Law Review* 160 (2012): 1789–1833, <https://ssrn.com/abstract=2072736>.

⁹ "All Pennsylvanians Will Benefit from a Clean Slate Policy for Minor Criminal Records," Center for American Progress, last modified June 5, 2017, https://cdn.americanprogress.org/content/uploads/2015/06/05131750/1CleanSlate_PA.pdf?_ga=2.87106971.280734389.1599572833-1605675688.1599572833; "Communications Toolkit," Clean Slate Initiative, accessed September 8, 2020, <https://cleanslateinitiative.org/toolkit/>; "Vision for Justice: 2020 and Beyond," Civil Rights Corps and the Leadership Conference on Civil and Human Rights, September 2019, <https://cdn.buttercms.com/izbyXXTHSe2MuP8ZpSOE>, accessed from "Resources," Civil Rights Corps, <https://www.civilrightscorps.org/resources>.

¹⁰ Of the nearly 90% of employers who use criminal background checks, 86% check at least some candidates and 69% check all candidates. See Center for American Progress, "All Pennsylvania"; "Background Checking—The Use of Criminal Background Checks in Hiring Decisions," Society for Human Resource Management (SHRM), July 2012, <http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

¹¹ Love and Schlusell, "The Many Roads to Reintegration."

¹² Clean Slate Initiative, "Communications Toolkit: Talking Points."

¹³ For example, people who have been incarcerated are nearly 10 times more likely than the general public to experience homelessness. See Lucius Couloute, "Nowhere to Go: Homelessness among formerly incarcerated people," Prison Policy Initiative, August 2018, <https://www.prisonpolicy.org/reports/housing.html>. For information on unemployment among people with criminal records, see FRRC's [resources on implementing second-chance hiring practices](#).

¹⁴ Robert H. DeFina and Lance Hannon, "The Impact of Mass Incarceration on Poverty," *Crime and Delinquency* 59, no.4 (June 2013): 562–86, <https://doi.org/10.1177/0011128708328864>.

¹⁵ Cherrie Bucknor and Alan Barber, "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," Center for Economic Policy and Research, June 2016, <http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>.

¹⁶ Sonja Starr and J.J. Prescott, "Michigan Set-Asides Found to Increase Wages and Reduce Recidivism," *Federal Sentencing Reporter* 30, no. 4-5 (April/June 2018): 361–62, <https://doi.org/10.1525/fsr.2018.30.4-5.361>.

¹⁷ Center for American Progress, "All Pennsylvanians."

¹⁸ For example, after 3.57 years, it is estimated that Floridians who have been convicted of a drug offense are no more likely than the general population to commit a new offense. For those who were arrested for but not convicted of a drug offense, they become no more likely to commit a new offense after 2.43 years. See Alfred Blumstein and Kiminori Nakamura, "Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences," National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, October 2012, <https://www.ncjrs.gov/pdffiles1/nij/grants/240100.pdf>.

¹⁹ Clean Slate Initiative, "Communications Toolkit: Talking Points."

²⁰ Love and Schlusell, "The Many Roads to Reintegration."

²¹ "Seal and Expunge Process," FDLE, accessed September 9, 2020, <https://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home>.

²² Florida Statutes § 943.0581 (2020), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0943/Sections/0943.0581.html; Florida Statutes § 943.0578 (2020), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0943/Sections/0943.0578.html.

²³ As just one example, if a person who has been a victim of human trafficking is arrested for an offense that they committed in association with being a victim of the trafficking scheme, they are not eligible for expungement of that arrest record if they have previously been convicted of certain crimes. See Florida Statutes § 943.0583 (2020), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0943/Sections/0943.0583.html; Florida Statutes § 775.084 (2020),

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.084.html.

²⁴ Currently, neither a full pardon nor any other type of executive clemency will automatically expunge or facilitate the expungement of a criminal history record. See the question on civil rights restoration in FDLE, “Frequently Asked Questions.”

²⁵ FDLE, “Seal and Expunge Process.”

²⁶ These comprise automatic juvenile expungement and automatic sealing. See *Ibid.*

²⁷ As just one example, while many people with juvenile records are eligible for automatic expungement of those records, people with certain sexual offenses are not. Determining which offenses are disqualifying requires looking at 3 layers of Florida Statutes: §§ 943.0515, 943.0435, and the offenses referenced in § 943.0435(1)(h)1.d. that are outlined in still other statutes, such as specific parts of § 800.04. In addition, some of the referenced statutes make certain exceptions or specifications; for example, the offenses outlined in § 800.04(4)(a)2. only apply to § 943.0435(1)(h)1.d. in some cases. See Florida Statute § 943.0515 (2020),

http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=943.0515&URL=0900-0999/0943/Sections/0943.0515.html; Florida Statute 943.0435 (2020), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=943.0515&URL=0900-0999/0943/Sections/0943.0435.html.

²⁸ These 4 comprise human trafficking victim expungement, lawful self-defense expungement, court-ordered expungement, and court-ordered sealing. All of these processes except for human trafficking victim expungement also require that the person seeking relief apply for and obtain a certificate of eligibility from the FDLE. According to the FDLE itself, processing these petitions to seal or expunge criminal history records consumes considerable department resources. At the end of 2018, FDLE had approximately 8,300 pending applications for certificates of eligibility. And that year, the average turnaround time for processing a certificate of eligibility application was 144 business days. See Florida House of Representatives, Appropriations Committee, *House of Representatives Staff Analysis*, HB 7125, 2019, <https://www.flsenate.gov/Session/Bill/2019/7125/Analyses/h7125a.APC.PDF>. See FDLE, “Seal and Expunge Process” and the Florida statutes referenced therein for more information on the application processes for each of these types of relief.

²⁹ Clean Slate Initiative, “Communications Toolkit”; J.J. Prescott and Sonja B. Starr, “Expungement of Criminal Convictions: An Empirical Study” *Harvard Law Review* 133, no. 8 (June 2020): 2460–555, <http://dx.doi.org/10.2139/ssrn.3353620>.

³⁰ Love and Schluskel, “The Many Roads to Reintegration.”

³¹ Clean Slate Initiative, “Communications Toolkit.” Petitioning a court is even more burdensome and costly without a lawyer. See *Ibid.* Meanwhile, the FDLE charges a non-refundable \$75 fee to process applications for lawful self-defense expungement, early juvenile expungement, and court-ordered sealing and expungement. This fee may be waived by the Executive Director of the FDLE if the person seeking relief submits a written request and the director determines that the waiver is “in the best interests of criminal justice.” See the corresponding webpages, sections of the Florida Statutes, and rules of the Administrative Code for these respective types of relief, accessible from FDLE, “Seal and Expunge Process.”

³² These steps can also carry fees, including fees charged to obtain criminal records and run fingerprint checks. See Love and Schluskel, “The Many Roads to Reintegration.”

³³ *Ibid.*; Clean Slate Initiative, “Communications Toolkit.”

³⁴ Clean Slate Initiative, “Communications Toolkit.”

³⁵ This reform should apply both to adults who have been adjudicated guilty and juveniles who have been adjudicated delinquent. Florida is one of only 8 states in which record relief is not reliably or generally available to people with convictions. Meanwhile, 35 states now have laws that allow both misdemeanor and felony conviction records to be eligible for relief. See Love and Schluskel, “The Many Roads to Reintegration.”

³⁶ According to the Collateral Consequences Resource Center, pardoning is “an integral part of the justice system” in 18 states. In over half of those states, pardon leads to expungement. Sealing or expunging the record of a pardoned conviction is also allowed in an additional 9 states. In Florida, this reform can be accomplished through clemency reform. See *Ibid.*

³⁷ For example, if a person has their record cleared through juvenile diversion program expungement, they are eligible to petition for human trafficking victim expungement, court-order expungement, court-ordered sealing;

however, they are not eligible to receive other relief such as lawful self-defense expungement. See Florida Statutes § 943.0582,

http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=943.0582&URL=0900-0999/0943/Sections/0943.0582.html. In addition, with limited exceptions, a person may not receive court-ordered sealing or court-ordered expungement if they have already received one of these two types of relief. See the question on how many dates of arrest a person can have sealed or expunged in FDLE, “Frequently Asked Questions.”

³⁸ While some states exclude individuals who have previously gained relief or require that all record-clearing take place at once, these additional requirements limit the accessibility and the effectiveness of laws aimed at relief. See *Ibid.*

³⁹ Clean Slate Initiative, “Communications Toolkit: Frequently Asked Questions”; Center for American Progress, “All Pennsylvanians.”

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² People with records currently have to wait months or even several years, whether due to lengthy approval processes or mandatory waiting periods, before their record can be cleared. For example, in terms of mandatory waiting periods, Floridians seeking court-ordered expungement of a record must have previously obtained a court-ordered sealing of that record for a minimum of 10 years, in addition to remaining crime-free and other requirements. See Florida Statutes § 943.0585,

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0943/Sections/0943.0585.html. As noted by the Collateral Consequences Resource Center, such lengthy waiting periods seem “at odds with stated legislative goals of reducing recidivism.” By the time people with records have reached the 10-year threshold without committing a crime, they “would appear to be in little jeopardy of subsequent conviction” and may have little incentive to pursue the application process by that point, particularly if they would have to visit law enforcement agencies and appear in court in the area where they were charged and have since moved. See Love and Schlusell, “The Many Roads to Reintegration.”

⁴³ *Ibid.*

⁴⁴ Clean Slate Initiative, “Communications Toolkit”; Center for American Progress, “All Pennsylvanians.”

⁴⁵ *Ibid.*; “Release: Removing Barriers to Economic Opportunity for Americans with Criminal Records Is Focus of New Multistate Initiative by CAP, NELP, and CLS,” Center for American Progress, National Employment Law Project, and Community Legal Services, September 12, 2017,

<https://www.americanprogress.org/press/release/2017/09/12/437592/release-removing-barriers-economic-opportunity-americans-criminal-records-focus-new-multistate-initiative-cap-nelp-clsl/>.

⁴⁶ This reform should include records with no final disposition. See Love and Schlusell, “The Many Roads to Reintegration”; “Model Law on Non-Conviction Records,” Collateral Consequences Resource Center, 2019, <https://ccresourcecenter.org/model-law-on-non-conviction-records/>.

⁴⁷ These waiting periods are based on evidence of “redemption times” from Florida, meaning the period of time after which an individual with a record is no more likely than the general population to commit a new offense. Using Florida data, researchers determined that among people with convictions, the redemption times were 3.57 years for people originally convicted of drug offenses, 3.76 years for people convicted of property offenses, and 6.99 years for people convicted of violent offenses. See Blumstein and Nakamura, “Extension of Current Estimates of Redemption Times.”

⁴⁸ The automatic sealing of records “would obviate the need for individuals to apply for relief and thereby avoid the many access barriers that currently depress grant rates and produce the “second chance gap”.” See Clean Slate Initiative, “Communications Toolkit”; Love and Schlusell, “The Many Roads to Reintegration.”

⁴⁹ Love and Schlusell, “The Many Roads to Reintegration.” Florida does not consider ability to pay when imposing legal financial obligations. Unsurprisingly, research suggests that many Floridians are unable to pay the fines and fees associated with their conviction. See Rebekah Diller, “The Hidden Costs of Florida’s Criminal Justice Fees,” Brennan Center for Justice, 2010, <https://www.brennancenter.org/sites/default/files/legacy/justice/FloridaF&F.pdf>; *Jones v. DeSantis*, D.C. Docket Nos. 4:19-cv-00300-RH-MJF and 4:19-cv-00304-RH-MAF, at *99 (USCA 2020), <https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf>.