

## SENATOR FOR A DAY MOCK LEGISLATION

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Senate Bill 6 – Clean Slate

### **The problem with ‘Clean Slate’ policies: Could broader sealing of criminal records hurt more people than it helps?**

<https://www.niskanencenter.org/the-problem-with-clean-slate-policies-could-broader-sealing-of-criminal-records-hurt-more-people-than-it-helps/>

By: Jennifer Doleac and Sarah Lageson August 31, 2020

Recent conversations about racial bias in policing have highlighted our criminal justice system’s heavy-handedness, particularly in low-income communities and communities of color. An arrest or conviction reduces the likelihood of finding a job or housing for many years to come, contributing to cycles of poverty. In this way, our criminal justice system casts a long shadow over the lives of those it touches. As we decriminalize low-level offenses (like minor drug possession) and recognize that police, judges, and prosecutors treat white and black civilians differently, many have wondered if people with past convictions should have the opportunity to wipe their slate clean and start over without the stigma of a criminal record.

There is plenty of evidence that employers discriminate against people with criminal records, either because they’re worried about legal liability or the job applicant’s reliability and productivity. While discrimination may be rational for an individual employer, it is quite destructive for society as a whole, given the importance of employment to reducing recidivism. It is also perverse and unfair to tell formerly incarcerated people that we expect them to go on the straight and narrow, only to repeatedly slam the doors of honest work in their faces.

With this in mind, a growing chorus has called for broader **sealing** (also called “expungement”) of criminal records. Sealing an official criminal record hides it from view by employers, landlords, and others doing formal background checks. However, relatively few criminal records are currently eligible for sealing (typically minor offenses committed a long time ago), and the process to have a record sealed is complicated and costly. Advocates are pushing to expand the set of records eligible for sealing—and to leverage technology to make sealing automatic. These are often referred to as ‘Clean Slate’ policies.

Advocates hope that these policies will make it easier for people who have paid their dues to find jobs and build rewarding lives without their criminal records haunting them at every turn. This is a laudable goal, and just last year, **at least 31 states** implemented record sealing policies.

Unfortunately, the evidence we have suggests these policies will not work. In fact, record-sealing could increase discrimination based on race when criminal records are not visible. Even without these unintended consequences, so long as employers want information on criminal records, sealing official records is unlikely to truly hide the evidence of someone’s criminal justice involvement.

### **The case of Ban the Box: Hiding information about criminal records did more harm than good**

This is not the first time that advocates have tried to reduce discrimination against people with criminal records by hiding those records. So-called “Ban the Box” policies prevent employers from asking about

applicants' criminal records until late in the hiring process. But because they don't directly address employers' concerns about safety and fit for the job, not being able to ask about criminal records upfront simply leaves employers to guess. In the United States, young men of color are more likely to have recent criminal convictions. Because of this, Ban the Box [incentivizes employers to discriminate](#) against applicants from this group.

Research on this policy's effects shows that employment for young men of color with limited education [actually decreased](#) in areas that passed Ban the Box. While it is possible that the policy helped some people with records get a job, the [best evidence](#) suggests that any beneficial effects were small. This is likely because employers could still check applicants' criminal records at the end of the hiring process. If they didn't want to hire people with records, they could turn those applicants away at that point. It appears that most did.

The motivation behind Clean Slate is similar. Once criminal records are sealed, advocates hope that employers who do not want to hire people with records will simply not discriminate. But as the case of Ban the Box shows, this policy might broaden discrimination rather than reduce it.

The effects of Clean Slate will hinge largely on why employers discriminate against people with records in the first place. Clean Slate could reduce legal liability concerns for the subset of applicants whose records are sealed, since an employee's sealed record cannot be held against an employer in court. However, if employers are worried about something else—such as reliability or productivity—we probably will not see such benefits. Because Clean Slate targets minor and older offenses, it could simply have no effect at all. [Research shows](#) that these types of records already result in less discrimination than more serious and recent offenses do.

To the extent that Clean Slate seals records that employers care about, it could leave them guessing, just as Ban the Box did. Employers who want to avoid hiring people with a criminal past may then discriminate against applicants from groups where criminal records are more common. Once again, this would most likely harm young men of color who never had a criminal record.

### **Clean Slate will not hide or correct criminal record information**

Clean Slate could lead to broader, race-based discrimination if record-sealing effectively hides criminal records that employers want to see. But record sealing also has the opposite problem: it might actually do too little. This means that even if our concerns about racial discrimination are overblown, this legislation might not be effective at hiding evidence of criminal justice involvement or correcting the inaccurate information circulating on the internet.

Information on arrests and convictions is typically a matter of public record, which means anyone can access it. There is a good reason for this: locking someone up is an infringement on their liberty, and we should know how often our government is doing this and to whom. However, once criminal record data is made public, it is unregulated. Because criminal record information is so decentralized in the United States, there is big money to be made from collecting and aggregating this information across agencies and places, and selling it online.

Even official criminal record data is [notoriously incomplete](#). An incorrect court docket or [missing case disposition](#) could undermine the automated systems proposed by Clean Slate advocates. But the unofficial criminal records available online are even less reliable, and there's no way to correct this

information. Record sealing policies do not address this problem, which may pose a greater hurdle than official background checks ever did.

There is a risk that Clean Slate could actually incentivize employers to rely more on the private market for criminal records, if they view the official record as hiding relevant information. Mugshots and other information about arrests and convictions are readily available from private vendors. Advocates promise job applicants that criminal records are sealed, but interested parties could easily find a sealed record through a simple web search.

### **Let the research guide policy**

But this is all just speculation. Perhaps we're too pessimistic! What effect does record sealing have in practice?

We don't know yet, because there is no research evidence on the effects of broadening access to record-sealing. The [research](#) that advocates typically point to suffers from a major shortcoming: It simply compares outcomes for the few people who successfully navigated the existing maze of sealing requirements to outcomes for those who did not. These studies find that those who have their records sealed are better off—but this could be due to differences in motivation or resources that enabled them to have their records sealed in the first place. It is not yet clear if record-sealing itself has any benefits, or if those benefits outweigh any unintended costs.

In our view, the rush to broaden record sealing is premature. Many places have already implemented Clean Slate policies, giving researchers [an opportunity](#) to study the effects of such changes. We should wait and see whether they find net benefits, costs, or no effect at all, before scaling these policies further.

### **More promising alternatives exist**

We see at least three other policies that are likely to be more effective at helping people with criminal records.

***Centralize criminal record data and improve accuracy:*** Record sealing policy emphasizes sealing a single version of a record. It could be far more helpful if states centralized and restructured their criminal record data practices to ensure that available records are complete and accurate. We should increase the use of [state record repositories](#) to manage a single version of a person's criminal record, integrating data between police, courts, and corrections. States could then provide qualified employers and public access to a single, high-quality source; this would limit demand for private vendors' inaccurate and incomplete data, making it less lucrative for such vendors to exist in the first place. People should also have free and direct access to their own criminal records so that they can check for and correct inaccuracies. In other words, we should treat criminal records the way we now treat credit reports and medical records. These are administrative records that affect people's lives; they deserve privacy and integrity.

***Broaden the use of deferred adjudications for non-violent, first-time felony offenses:*** Helping people avoid a record in the first place is likely to be the best way to help them move forward. Some states allow "deferred adjudications" for certain charges, usually non-violent offenses. Defendants who receive such deferrals are essentially placed on probation, and if they complete those requirements, the original charges are dismissed. [Research from Texas](#) provides compelling evidence that these policies have

considerable benefits when applied to non-violent, first-time felony defendants: they dramatically reduce the likelihood of future convictions, and increase employment. In other words, giving people a real second chance before putting a (first) felony conviction on their record is an effective way to ensure that one bad decision doesn't derail their lives.

***Invest in rehabilitation and training:*** For most people coming out of jail and prison, the criminal record itself may not be the primary barrier to employment. We currently do little to give individuals the skills and support they need to compete in the labor market. Investing in education, job training, cognitive behavioral therapy, and health care for those with recent convictions [could all go a long way](#) toward helping people reintegrate into society – and address employers' concerns in the process. Policymakers should also experiment with designing systems to *increase* the information available to employers about individuals' rehabilitation and job-readiness (for instance, court-issued [rehabilitation certificates](#)).

None of these alternatives provide the magic wand that advocates seek. But they might actually work.

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## **Governor Shapiro Hosts Legislative Leaders and Reform Advocates for Ceremonial Bill Signing of Clean Slate Legislation, Giving More Pennsylvanians a Second Chance at Success**

*The Shapiro-Davis Administration has been working to give Pennsylvanians the second chances they deserve – signing comprehensive probation reform legislation into law, securing historic funding for indigent defense, and more.*

*The Governor and Lieutenant Governor joined legislative leaders and reform advocates today for a ceremonial signing of Clean Slate legislation on the day this updated law takes effect to help ensure Pennsylvanians who receive a pardon will get their criminal records expunged automatically.*

<https://www.pa.gov/en/governor/newsroom/2024-press-releases/governor-shapiro-hosts-legislative-leaders-and-reform-advocates-0.html>

June 11, 2024

**Harrisburg, PA** – Today, **Governor Josh Shapiro** hosted a ceremonial bill signing with **Lieutenant Governor Austin Davis**, **Majority Appropriations Chairman Jordan Harris**, members of the General Assembly, and criminal justice reform advocates to celebrate the Clean Slate legislation that passed with bipartisan support and was signed by the Governor to make our Commonwealth more fair for all Pennsylvanians.

Last year, Governor Shapiro [signed](#) overdue criminal justice reform legislation into law as Act 36 of 2023. This legislation expands Pennsylvania’s landmark Clean Slate initiative and establishes a process for the automatic expungement of criminal records for Pennsylvanians who receive an unconditional pardon. Today, this updated law takes effect, ensuring more people can begin to get the second chances they deserve.

“A minor conviction from years ago shouldn't prevent someone from getting a job or renting an apartment – especially if that person has received a pardon. And when someone gets a second chance, that should be a real opportunity to start over and succeed,” said **Governor Josh Shapiro**. “I believe Pennsylvania is a place for second chances — and my Administration has invested in and advanced real criminal justice system reform. This is a cause that resonates beyond party lines, and that’s why this Clean Slate legislation was cosponsored by both Democrats and Republicans. This life changing bill includes a commonsense set of steps to remove unnecessary barriers for Pennsylvanians who want to rebuild their lives and meaningfully contribute to our communities — and I’m proud to be here with the lawmakers who worked together in a bipartisan manner to get this to my desk.”

Governor Shapiro believes people who have paid their debt to society and are working to put their lives back together deserve to have a real path to opportunity and success – and his

Administration has taken commonsense steps to remove unnecessary barriers for Pennsylvanians who want to rebuild their lives and meaningfully contribute to our communities.

During his first year in office, Governor Shapiro also [signed historic probation reform into law](#), making sure Pennsylvanians who receive a pardon will have their records cleared automatically and ensuring minor technical violations don't land someone on probation back in jail.

As a state representative, Lieutenant Governor Austin Davis sponsored a bill to provide automatic expungement for pardoned individuals, and he helped get this vital Clean Slate legislation over the finish line as Lieutenant Governor. The historic Clean Slate law was originally signed into law in 2018 by Governor Tom Wolf, leading the nation by making Pennsylvania the first state to seal criminal records through automation.

This is the third expansion of the law, which now allows those convicted of certain non-violent drug felonies to have their records sealed automatically after ten years without another conviction and reduces the waiting period for summary convictions from ten to five years. Act 36 also changes Pennsylvania's Clean Slate program by expanding the list of criminal offenses that are afforded limited access and reduces the amount of time an individual must stay conviction-free before a record of a misdemeanor or summary offense becomes eligible for clean slate.

"The Governor and I believe Pennsylvania should be a place where people have second chances. Over the past year and a half, we have heard from many Pennsylvanians who have worked hard to turn their lives around and make amends," said Lieutenant Governor Austin Davis. "As a state representative, I introduced legislation to address the injustices in our pardon process, and as Lieutenant Governor, I was proud to continue to champion this cause, working with Chairman Harris and Senator Lisa Baker to incorporate automatic expungement language into the final version of this bill. This is a big win not just for the folks who earn a pardon, but also for their families and our communities – and it's also a bipartisan win."

The Pennsylvania State Police (PSP) have been working to implement Clean Slate reform since the bill was signed in December. To ensure the process runs smoothly and effectively, PSP is working diligently to build out the process for expunging these records and is also preparing necessary changes to the Computerized Criminal History database.

PSP is prepared to begin processing summary convictions – minor offenses including things like disorderly conduct, loitering, and low-level criminal mischief – this week while working toward full implementation in the coming months. This legislation impacts 6 million criminal records involving summary convictions. PSP plans to test the system in the fall and roll out the program by next year.

[Act 36](#) of 2023 was formerly [House Bill 689](#) sponsored by Chairman Harris, which received bipartisan support in the General Assembly.

"Pennsylvania's Clean Slate law, hailed as 'model legislation,' unlocks housing, financial, and employment opportunities through automated record-sealing, with 12 states following suit, and I am proud to have been on this journey for over five years," said **Majority Appropriations Chairman Jordan A. Harris**. "Today, HB 689 expands eligibility, allowing those with non-violent drug felonies a second chance after ten years, recognizing it as common sense for reformed individuals. This proactive approach not only removes barriers to employment but also strengthens the economy and communities, aligning with the urgent need to bridge the job-employment gap and reduce recidivism rates."

"We're here today to talk about an issue that really helps people in Pennsylvania. We have our Governor and our Lieutenant Governor – they're here to represent Pennsylvanians, and they're here to support this legislation because this helps Pennsylvanians. We are all here for that," said **Representative Sheryl Delozier**. "This is an issue that is supported by Republicans and Democrats – this is not a political issue, it's a people issue. Pennsylvania got it right. Pennsylvania moved this legislation forward and Pennsylvania recognized how important it is that we work together."

"Politics is about doing the people's business, so your job is to get something done for the people," said **Senator Tony Williams**. "Millions of Pennsylvania – rural and suburban, white and Black, Latino and Asian – suffer from this circumstance. I'm proud to be standing here today with a Commonwealth of representation from what Pennsylvania really looks like – and no matter what people tell you, we're here to get stuff done and we're prepared to get stuff done."

"This is Clean Slate 3.0 – and I expect this momentum that's been created by this legislation to be the fuse and the fuel for so many other pieces of criminal justice reform legislation that has to be done," said **Senator Camera Bartolotta**. "We have to show people if you make a mistake, and you do everything right, and you pay your debt to society – you have a path forward. You don't have to pay for that for the rest of your life. This is a way to at least open the door to success. You don't have to pay for a mistake for the rest of your life. And there's so many other pieces of legislation that this team and the others in this room have been working so hard on and I want to see us run with all of it."

"When the Justice Action Network was founded, some of our very first meetings were with these leaders in this room, and we instantly knew that something special was happening here in Harrisburg," said **Jenna Bottler, President & Executive Director of the Justice Action Network**. "No matter the debate and discord and other issues – these leaders were always willing to put aside their differences and work together on evidence-based, data driven criminal justice policy. Policy that is proven to make the citizens of this Commonwealth safer every single day, policies that are proven to restore families and communities and individuals and hope in this state, policies that are proven to empower individuals reach new heights of economic prosperity and give employers access to a robust workforce right here in Pennsylvania. Clean Slate is going to jumpstart those goals of safety and hope and prosperity."

“Pennsylvania currently has 74 available skilled workers for every 100 available jobs. We have a gap in Pennsylvania – we have to look for every person who's willing to contribute, who wants to be part of our workforce, and we have to work with them to get the skills and the education necessary so they can fulfill their lives and their dreams right here in the Commonwealth,” said **Luke Bernstein, President and CEO of the Pennsylvania Chamber of Business and Industry**. “Employers across our state and business community more broadly care about removing barriers to employment, not putting more barriers up. This law, since its inception, has helped more than 1.2 million Pennsylvanians, encouraging them to reenter the workforce. Expanding record clearance encourages more formerly incarcerated individuals to apply for and accept jobs and offers a largely untapped pool of skilled workers for Pennsylvania employers. This is not only good economically – this is good for our communities.”

The Governor believes people who have paid their debt to society and are working to put their lives back together deserve a real path to opportunity and success – and his 2024-25 budget proposal provides care and opportunity to those in the justice system to make our legal system more fair and pave the way for more Pennsylvanians to get the second chances they deserve. His proposed investments include:

- **\$5 million** to ensure those facing eviction have access to legal counsel.
- **\$5 million** for the Department of Corrections (DOC) to hire additional staff for to reduce the use of Extended Restrictive Housing in correctional facilities.
- A **\$4 million** increase through the Pennsylvania Commission on Crime & Delinquency (PCCD) to implement the changes made through recent probation reform and to provide additional resources to counties for adult probation services that reduce recidivism, increase the use of evidence-based practices, reduce caseload sizes, and improve the quality of services.
- A **\$2.5 million** increase for indigent defense to be funded through PCCD and the Criminal Justice Advisory Committee. Previously, Pennsylvania was one of only two states in the country that did not allocate state funding for indigent defense – but the 2023-24 budget funded statewide indigent defense for the [first time in Pennsylvania history](#).
- An additional **\$239,000** to support staff well-being at DOC. Well-supported and resilient corrections staff are better equipped to handle the stressors of the job, which directly impact the safety and security of correctional facilities.

For more information on how the Shapiro Administration is working to ensure the justice system works for all Pennsylvanians, click [here](#).



