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Closing The Uptake Gap: Why Missouri Should Pass The Clean Slate Bill

Chloë Driscoll

In 2021, less than one percent of the over 500,000 Missourians eligible for record expungement had their records expunged.¹ It would take over a thousand years to clear the backlog of eligible expungements using the current expungement system.² This “uptake gap” occurs consistently in expungement systems like Missouri’s, wherein individuals must petition a court for record expungement.³ But Missouri House Bill 352, the “Clean Slate” bill, would create an automatic record-clearing process for eligible individuals, eliminating several barriers Missourians face on the path to expungement.⁴ The Clean Slate bill is a crucial step toward closing the uptake gap, and would create an expungement process that boosts restoration of rights over unearned lifelong punishment.

Individuals generally may be eligible for expungement if they were never charged with a crime, the charged crime no longer exists (or has become less serious), or they completed their sentence or parole.⁵ Yet, if these individuals do not achieve expungement, they continue to be held back by the stigma of having a criminal record. According to one study, over 45,000 statutes and regulations involving housing, employment, childcare, secondary education, finances, and more “impose disqualifications or

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¹ *The Missouri Second Chance Expungement Gap*, PAPER PRISONS, <https://paperprisons.org/states/MO.html> (last accessed Mar. 28, 2023).

² *Id.*

³ *Id.*; See also J.J. Prescott & Sonja Starr, *The Power of a Clean Slate*, CATO INST. (2020), <https://www.cato.org/regulation/summer-2020/power-clean-slate>.

⁴ *Missouri’s “Clean Slate” Bill would make “Expungement” automatic*, KTTN NEWS (Mar. 23, 2023), <https://www.kttm.com/missouris-clean-slate-bill-would-make-expungement-automatic/>; H.B. 352, 102nd Gen. Assemb., 1st Reg. Sess. (Mo. 2023).

⁵ See *Expungement Gap*, *supra* note 1.

disadvantages on people with a conviction.”⁶ Approximately nine in ten employers, three in five universities, and four in five landlords screen for criminal records.⁷ Notably, these disadvantages impact people who have never even been convicted of a crime – merely having an arrest record negatively impacts employment prospects more than other stigmas.⁸

So why don’t eligible individuals pursue expungement more often? Besides the current expungement process being expensive and complicated,⁹ many eligible individuals simply do not know they are eligible in the first place.¹⁰

The Clean Slate Bill would significantly close the uptake gap by addressing these barriers. Under the current system, individuals must file a petition, serve all necessary parties (generally anyone involved in the applicable record), and attend a hearing at which evidence and testimony may be presented.¹¹ Not including legal fees, this costs \$250 unless a judge chooses to waive the fee for an indigent client.¹² The Missouri Public Defender does not handle expungements, so indigent petitioners must try to pay potentially thousands of dollars for a private attorney or seek out a more affordable expungement clinic.¹³ Missouri has different kinds of expungement, each with its own form, instructions, and exceptions that

⁶ See Kenny Lo, *Expunging and Sealing Criminal Records*, CTR. FOR AMERICAN PROGRESS (April 25, 2020), <https://www.americanprogress.org/article/expunging-clearing-criminal-records/>.

⁷ *Id.*

⁸ *Id.*

⁹ See Rebecca Beitsch, *Here’s why many Americans don’t clear their criminal records*, PBS (June 8, 2016), <https://www.pbs.org/newshour/nation/heres-why-many-americans-dont-clear-their-criminal-records>.

¹⁰ *Id.*

¹¹ See *Missouri expungement law: What does it mean to seal a record, and how do you do it?*, MO. BAR (Apr. 6, 2021), <https://www.pbs.org/newshour/nation/heres-why-many-americans-dont-clear-their-criminal-records>.

¹² *Id.*

¹³ See *Expungement of Criminal Records*, MO. STATE PUB. DEF., <https://publicdefender.mo.gov/expungement-of-criminal-records/> (last accessed Mar. 28, 2023).

may be difficult for the average person to navigate.¹⁴ Expungement law is also rapidly evolving.¹⁵ Missouri significantly expanded the applicable list of offenses in 2019, so an offense that may have been ineligible five years ago could be eligible now.¹⁶ Currently, approximately 1,900 offenses are eligible for expungement or sealing.¹⁷ Sorting through Missouri's current petition-based process requires time and expense many cannot afford to sacrifice, especially with the knowledge that the effort could all be for naught should the petition be denied.

The Clean Slate system would automate the process by compiling records into one database accessible by courts, wherein those eligible for expungement would have their records expunged without having to petition.¹⁸ The new system would follow twenty states that have already enacted at least one form of automatic record-clearing,¹⁹ many under the advisement of the Clean Slate Initiative and the Collateral Consequences Resource Center (CCRC).²⁰ For its Restoration of Rights Project, the CCRC creates annual reports assessing the success of each state at restoring individuals' rights and opportunities after arrest or conviction and ranking

¹⁴ See *Expungement Forms*, MO. CT.'s, <https://www.courts.mo.gov/page.jsp?id=191585> (last accessed Mar. 28, 2023).

¹⁵ See *Missouri expungement law*, *supra* note 11.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ H.B. 352, 102nd Gen. Assemb., 1st Reg. Sess. (Mo. 2023).

¹⁹ *Id.*; See also *Automatic Clearing of Records*, NCSL (July 19, 2021), <https://www.ncsl.org/civil-and-criminal-justice/automatic-clearing-of-records#:~:text=Michigan%2C%20New%20Jersey%2C%20Pennsylvania%2C,includin%20general%20eligibility%20requirements%20and> (four of these states have enacted Clean Slate laws).

²⁰ *What Is The Clean Slate Initiative?*, CLEAN SLATE INITIATIVE, <https://www.cleanslateinitiative.org/about> (last accessed Mar. 28, 2023); Restoration of Rights Project, *Missouri Restoration of Rights & Record Relief*, COLLATERAL CONSEQUENCES RES. CTR. (Jan. 4, 2023), <https://ccresourcecenter.org/state-restoration-profiles/missouri-restoration-of-rights-pardon-expungement-sealing/>.

the states accordingly.²¹ In 2022, Missouri ranked at twenty-five, rising five places since 2021 by improving record relief laws and the clemency process.²² CCRC suggested Missouri could continue to improve by “broadening eligibility and simplifying procedures for record clearing” and by “making expungement of nonconvictions [sic] automatic.”²³

A 2020 Cato study of expungement echoed this sentiment.²⁴ The study analyzed criminal and employment records of Michigan individuals who had received an expungement, and concluded that petition-based expungement policies result in very low uptake rates for which the “only option that would be a true solution...is automating expungement”.²⁵

Additionally, the Cato study showed many views held by opponents to the Clean Slate Bill are unfounded.²⁶ Some believe that employers²⁷ and landlords should be able to access full criminal records for safety purposes.²⁸ Many also fear that expungement increases the likelihood of committing future crimes.²⁹

Research indicates the opposite – people who receive expungements have very low rates of recidivism.³⁰ In the Cato study, five years after expungement, ninety-nine percent were not convicted of any felony, ninety-nine and a half percent were not convicted of any violent crime, and ninety-six percent were not convicted of any crime at all.³¹ Overall, the

²¹ Restoration of Rights Project, *Missouri Restoration of Rights & Record Relief*, COLLATERAL CONSEQUENCES RES. CTR. (Jan. 4, 2023), <https://ccresourcecenter.org/state-restoration-profiles/missouri-restoration-of-rights-pardon-expungement-sealing/>.

²² *Id.*

²³ *Id.*

²⁴ See J.J. Prescott & Sonja Starr, *The Power of a Clean Slate*, CATO INST. (2020), <https://www.cato.org/regulation/summer-2020/power-clean-slate>.

²⁵ *Id.*

²⁶ See *id.*

²⁷ See *id.*; See also “Clean Slate” Bill, *supra* note 4.

²⁸ See Prescott, *supra* note 25.

²⁹ See *id.*

³⁰ *Id.*

³¹ *Id.*

individuals studied were less likely to commit crimes than the general population.³²

Safety concerns are also unwarranted because violent crimes are generally excluded from expungement.³³ The Clean Slate bill automates expungement for those *already* eligible, it does not expand the current criteria which already address public safety concerns by imposing a myriad of limits on eligibility and disclosure.³⁴ For example, there are already circumstances in which individuals with expungements are required to inform an employer of their criminal history, namely for any profession that would require a state-issued practicing license.³⁵ Additionally, an individual can expunge no more than five misdemeanor offenses and no more than three felonies.³⁶ If for whatever reason an expungement is deemed by a court to be erroneous, the conviction will be reinstated.³⁷

After the recent legalization of recreational marijuana, Missouri experimented with automatic expungement for certain marijuana-related offenses.³⁸ Critics expressed that the implementation was too expensive and burdensome for courts, and the passage of the Clean Slate bill would no doubt elicit similar critiques.³⁹ Indeed, to create and implement a new system undoubtedly requires money, time, and extra work from courts – but these are short-term pains for long-term gains.

³² See *id.*

³³ See *Expungement Forms*, *supra* note 14.

³⁴ See “Clean Slate” Bill, *supra* note 4.

³⁵ *Id.*

³⁶ See *id.*

³⁷ See “Clean Slate” Bill, *supra* note 4.

³⁸ See Rebecca Rivas, *Experts worry expungements under Missouri marijuana could be procedural ‘nightmare’*, MO. INDEP. (Dec. 7, 2022), <https://missouriindependent.com/2022/12/07/experts-worry-expungements-under-missouri-marijuana-law-could-be-procedural-nightmare/#:~:text=The%20courts%20will%20locate%20their,8%2C%202023>.

³⁹ See *id.*

In the long run, the burden on courts will be lessened because the record-keeping system will be more efficient and there will be significantly less expungement matters before the court. Streamlining the process will also make it much easier to implement any future changes to expungement law. Sydney Ragsdale, an attorney for the University of Missouri-Kansas City Expungement Clinic, has spoken about how records eligible for expungement can be arduous to locate in smaller counties with less robust record-keeping systems.⁴⁰ Ragsdale recalled a client with a thirty-year-old marijuana charge that could not be expunged until she tracked down an archived newspaper article about the charge, because the original court record was lost.⁴¹ Having all future offense records eligible for expungement in one accessible database will eliminate these frustrating setbacks.

Making expungement easier will also contribute to the local economy.⁴² Keeping people with criminal records from “second chance” employment results in an estimated \$78 to \$87 billion loss of gross domestic product annually.⁴³ Studies also indicate that the projected wage increases for individuals after expungement could lead to roughly two and a half billion dollars in additional economic activity for Missouri.⁴⁴

The current Missouri expungement system is not designed well enough to effectively restore the rights of those eligible for expungement. Passing the Clean Slate bill and implementing an automated expungement system would be an invaluable investment in the future of Missouri, and would shift expungement law in a more rehabilitative, restorative direction.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *See* Lo, *supra* note 6.

⁴³ *See id.*

⁴⁴ *See Expungement Gap, supra* note 1.

