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The Case for Expunging Criminal Records

A new study shows the benefits of giving people a clean slate.

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The consequences of a run-in with the law can persist for decades after the formal sentence has been served. People with records face major barriers to employment, housing and education, effectively condemning them to second-class citizenship.

In recent years, criminal justice reform efforts have increasingly focused on finding policy tools that can lower these barriers. The most powerful potential lever is the expungement of criminal convictions, which seals them from public view, removes them from databases, and neutralizes most of their legal effects.

At least 36 states have laws allowing expungement, but they tend to be narrow in scope. Whether it's allowed typically depends on the number of convictions and the type of crime; people usually have to wait years after completing their sentences and go through an elaborate process to have their records cleared.

In the past year there's been an explosion of activity on this front, however. In late February, an especially ambitious bill was introduced in the California Legislature, allowing automatic expungement of misdemeanors and minor felonies after completion of a sentence. In Utah, an automatic expungement bill is awaiting the governor's signature. These developments follow on the heels of the first major automatic expungement law, which passed in Pennsylvania last summer.

Reflecting the changing politics surrounding criminal justice, the movement for these reforms has attracted a bipartisan coalition, creating a real possibility that more states around the country could pass similar laws. Still, such efforts must overcome the primary objection of critics: that employers, landlords and others have a public safety interest in knowing the criminal records of those they interact with.

For many years, debates about expungement laws have been missing something critical: hard data about their effects. But this week, we released the results of the first major empirical study of expungement laws. Michigan, where our data came from, has an expungement law that exemplifies the traditional nonautomatic approach.

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Our analysis produced some good news and some bad news — but all of the findings strongly support efforts to expand the availability of expungement.

The good news is that people who get expungements tend to do very well. We found that within a year, on average, their wages go up by more than 20 percent, after controlling for their employment history and changes in the Michigan economy. This gain is mostly driven by unemployed people finding work and minimally employed people finding steadier positions.

This finding is especially encouraging because some skeptics have argued that expungement can't work in the age of Google — that the criminal-record genie can't be put back in the bottle. We have no doubt that this is sometimes true: People with expunged records may sometimes be haunted by online mug shots, for instance. Even so, many others do benefit.

In addition, contrary to the fears of critics, people with expunged records break the law again at very low rates. Indeed, we found that their crime rates are considerably lower than those of Michigan's general adult population. That may be in part because expungement reduces recidivism.

But another likely reason is that expungement recipients aren't high risk to begin with. Like most states, Michigan requires a waiting period before expungement (five years after a person's last interaction with law enforcement). Research in criminology indicates that people with records who go several years without another conviction are unlikely to offend again.

To be sure, if expanded laws cut down waiting periods or otherwise loosened eligibility requirements, the broader pools of recipients might have a higher baseline crime risk. But even then, there's simply no reason to believe that expungement would *increase* those baseline crime risks. Again, if anything, access to jobs, housing and other benefits should reduce overall levels of crime.

So here's the bad news: Hardly anyone gets expungements. According to information Michigan State Police provided to us, Michigan grants about 2,500 a year — but that's a drop in the bucket compared to the number of criminal convictions there each year. Precise numbers are hard to come by, but we estimate that there are hundreds of thousands annually.

Relatively few people with records meet the legal requirements — but that’s not the only problem. Even among those who do qualify, we found that only 6.5 percent received expungements within five years of becoming eligible. Michigan judges have discretion to reject applications, but that’s not the big reason for this low rate. Rather, over 90 percent of those eligible don’t even apply.

Given the large potential benefits of expungement, why *wouldn’t* someone apply? We interviewed expungement lawyers and advocates for people with records, whose insights pointed to a clear set of explanations. Most people don’t know they can get an expungement, or don’t know how to do it, and don’t have lawyers to advise them. The process is long and complicated, requiring visits to police stations and courthouses. The fees and costs (which in Michigan usually total close to \$100, not including transportation and time away from work) are a barrier for people in poverty. And people with records have often had painful experiences with the criminal justice system, making the prospect of returning to it for any reason daunting.

The low rate of applications for expungement is consistent with broader findings about the difficulties that poor and middle-class Americans face in dealing with the legal system. When the state makes it too hard or costly for citizens to exercise a right or opportunity, it’s not that different from denying that right or opportunity. Most people won’t be able to jump through all those hoops.

The policy upshot of our research is clear: Obtaining an expungement should be made as simple as possible. Ideally, states should follow the approach of Pennsylvania and the new California and Utah bills, and make expungement automatic once the legal requirements are met.

Our results suggest that expungement is a powerful tool for improving outcomes for people with records, without risk (and possibly with benefits) to public safety. But lawmakers need to make it much easier for people to actually use that tool and get a fresh start to life.

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