

Begin forwarded message:

From: Joshua Gaines <[REDACTED]>
Date: January 19, 2022 at 1:46:37 PM EST
To: David D'Amora <[REDACTED]g>
Subject: RE: Couple questions for you after the summit

Wow... they applied some real creative thinking to these questions! Short answers below, but I'll follow up with more details. What's your timeline to get back to them?

1. Do we have information on how often sealed records are kept from law enforcement being able to access or that law enforcement is required to get a warrant?
 - a. Not on hand, but this is something I can dig up without too much trouble. It may take some time, though.
2. Are there any studies that indicate police involved shootings go up when they don't have access to past criminal behavior (old behavior — more than 7 years ago).
 - a. Not that I'm aware of. (I've never heard the issue raised.)
3. In stats that have sealed or expunged records, are there ever exceptions that allow the banking industry to check and see if the person has a record of identity theft or embezzlement, or states that disallow those convictions for sealing or expungement?
 - a. Not generally. Expunged/sealed records all almost always unavailable to anyone outside the justice system. There are some outliers like Louisiana, though, that allow for certain licensing boards and public employers to see expunged records. I'm not aware of any state that grants *private* industries (including banking, etc.) special access to expunged/sealed records, though. As to whether there are states where ID theft/embezzlement are ineligible: I'm sure there are some, but I'm not sure that it's clear that those offenses are ineligible b/c of their ties to the banking industry or just b/c they happen to fall within broader categories of ineligible offenses (e.g., they happen to be class A misdemeanors and only Class B and lower misdoses can be expunged). I'm not aware of those offenses being specifically and exclusively singled out anywhere.
4. Prosecutors and Judges are arguing the workload to seal things will be tremendous. What have other states done to deal with this issue?
 - a. The good/bad news is that uptake rates for petition-based sealing/expungement are *incredibly* low across the country. Only a small fraction of the people who are eligible ever apply. Having said that, I'm not aware of any particularly innovative things states have done to make the process more efficient/less costly within a purely discretionary petition-based model. That's one of the reason automated expungement has caught on recently (it's now been enacted in PA, UT, CA, MI, DE, and NJ and there are bills in lots of other states). There are middle grounds between automated expungement and pure discretionary petition-based expungement too, though: For example, some states create presumptions in favor of expungement after a certain number of years, placing the burden on prosecutors to rebut in appropriate cases. If they don't, the only issue is whether the person meets objective eligibility criteria, which the court can find on its own and rubber stamp the order.