

TIMELY RECORD CLEARING RELIEF: AN ESSENTIAL ANTI-POVERTY AND RACIAL EQUITY STRATEGY



United Way
of Greater Philadelphia
and Southern New Jersey



Report prepared on behalf of
United Way's Knowledge Center

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FORWARD

The Promise's Record Clearing and Employment Access initiative was launched in May 2022, and continues to make progress toward assisting eligible Philadelphians clear criminal records that prevent them from securing stable employment. The initiative has created the opportunity for over 1,000 people to meet with an attorney to review their cases, at no cost to them.

Throughout the process we have been drawing upon lessons to inform ongoing clinic implementation and our ability to deepen our impact. We learned that in many cases, the individuals our partners engaged with were unaware that record clearing was an option for them, and the simple act of beginning the process was empowering. We also were made aware of the long-time horizon of record clearing, which in some cases can be up to five-years due to procedural and administrative practices. Once this issue was brought to light we began to wonder, "What can be done to remove barriers to a speedy resolution of record clearing cases?" This question, among others, led The Promise to commission this policy brief.

The Record Clearing and Employment Access Initiative partners include 18 community-based organizations as hosts for events that offer the opportunity to meet with lawyers from one of three local agencies: The Defender Association of Philadelphia, Philadelphia Lawyers for Social Equity (PLSE), and Community Legal Services (CLS).

We engaged CLS to prepare this brief because they have taken on many new clients because of this initiative and have seen first-hand the impact of the increased backlog within the courts that our concerted efforts are unfortunately helping to create. Beyond being one of our valued legal partners, they engage in an enhanced level of advocacy around both criminal and civil matters in the region. They not only are experts in record clearing, they also focus on a number of other issues, including but not limited to: public benefits, employment, housing, debt and consumer rights, utilities, DHS cases, domestic violence, elder abuse, Medicaid, and more. They know the local and state court systems inside and out, so we knew CLS would be the best partner to help get answers and assist us in advocating for better, more just policies.

We are grateful for their partnership, and pleased to share a set of practical policy solutions we hope will shed light on the variety of opportunities that exist to shorten the path toward record clearing for thousands of eligible Philadelphians.

Andrea Anderson, PhD
Chief Knowledge Officer
United Way of Greater Philadelphia and Southern New Jersey

EXECUTIVE SUMMARY

One in three Americans – approximately 500,000 Philadelphians – has a criminal record,¹ often for minor, old convictions and/or arrests that did not lead to conviction. Nationally, those with a history of criminal conviction face more than 40,000 collateral consequences—including barriers to employment, housing, education, public assistance, voting, and other key aspects of daily living.² **Due to racial bias at every level of the criminal legal system, Black people are more likely to be charged and convicted of more serious offenses, even for the same conduct,³ and are also more likely to face employment barriers due to their records.⁴**

When people clear their records, their **earnings increase by up to 22%** and they are very unlikely to be re-arrested; however, **just 6.5% of eligible individuals successfully navigate the process for having their records sealed.**⁵ A desire to address this gap has spurred the implementation of automated record clearing like Pennsylvania’s Clean Slate law. Community-based clinics have also expanded access to record clearing. As a result of local efforts, **more than 300 petitions for record relief are filed in Philadelphia each week.**

Expanding access to record clearing is critically important; however, increased demand on existing systems requires additional resources and streamlined processes to ensure eligible people receive timely relief. **The process to get a record expunged or sealed by petition in Philadelphia takes up to 18 months; the process to get a conviction pardoned by the Governor takes up to four years.** Speeding up these timelines is essential to ensuring Philadelphians with records can access living wage employment and economic stability.

The most essential action to speed up these timelines is for the First Judicial District to allocate additional judicial resources to reviewing and signing agreed-to expungement and sealing petitions. In addition, we recommend the following actions on the local and state levels.

Local Actions: City Officials

The City of Philadelphia must strategically invest funds in key areas including:

- Allocating additional civil/employment-specific funding to the Court so that it can increase available judicial resources for processing petitions.
- Providing the Philadelphia District Attorney’s Office (DAO) with funding explicitly tied to increased staffing to assist in responding to record clearing petitions.

¹ See Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 2020 (U.S. Department of Justice, 2022), available at <https://www.ojp.gov/pdffiles1/bjs/grants/305602.pdf> (approximately 114,376,500 people have criminal records nationally, which is approximately one in three Americans).

² *Collateral Consequences Inventory*, NAT’L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, <https://niccc.nationalreentryresourcecenter.org/consequences> (last visited Feb. 24, 2023).

³ Alana Rosenberg et al., *Comparing Black and White Drug Offenders: Implications for Racial Disparities in Criminal Justice and Reentry Policy and Programming*, 47 JOURNAL OF DRUG ISSUES 132 (2016); German Lopez, *Black and white Americans use drugs at similar rates. One group is punished more for it.* VOX, Oct. 1, 2015, <https://www.vox.com/2015/3/17/8227569/war-on-drugs-racism>.

⁴ DEVAH PAGER & BRUCE WESTERN, INVESTIGATING PRISONER REENTRY: THE IMPACT OF CONVICTION STATUS ON THE EMPLOYMENT PROSPECTS OF YOUNG MEN (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/228584.pdf>.

⁵ J.J. Prescott, J. & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460 (2020).

- Creating a city fund to pay court debts that cannot otherwise be waived and stand in the way of expungement or sealing.

Local Actions: Philadelphia Courts

With increased funds, the First Judicial District (FJD) can speed up their processes by:

- Increasing the maximum number of scheduled petitions per day from 60 to 100.
- Automating more steps of the court’s sealing and expungement processes (e.g., electronic transmission and signature of orders).
- Streamlining expungement processes when individuals successfully complete diversion programming.
- Creating recommended timelines for processing petitions to encourage stakeholders to complete necessary tasks within a specific timeframe.

The FJD can also increase access to record clearing for people who owe court debt by:

- Amending court rules to allow individuals to pay off all restitution debt *first*, ahead of other court fees and fines, as restitution is the only form of court debt that prevents record sealing.
- Promoting access to court waivers of debt for individuals who cannot afford to pay their outstanding court fees and fines.

Local Actions: Philadelphia District Attorney’s Office

With increased funds, the Philadelphia DAO can speed up and improve their processes by:

- Consenting to petitions more quickly, and keeping up with a higher volume of petitions filed if the court expands the number that can be filed each day.
- Dedicating specific trained staff to the task of reviewing and agreeing to petitions consistent with DAO policy and applicable law; refining DAO policy where necessary to ensure consistent and timely access to record clearing.

State-Level Actions

The Pennsylvania legislature and the Shapiro administration must act to:

1. Pass and sign legislation to expand Pennsylvania’s Clean Slate law to include automated sealing of felony drug convictions, petition-based sealing of felony theft convictions, and reduce the period of time before misdemeanor convictions become eligible for sealing. The State Police and FBI must also continue to work together to ensure sealed cases are also sealed on FBI background checks.
2. Increase funding for the Board of Pardons to allow for adequate staffing and faster processing of pardon applications.
3. Enact legislation requiring “ability to pay” determinations *before* people are assessed unaffordable court fines and costs that they have no means to pay.

Concerted action at the local and state level with the investment of all relevant stakeholders is necessary to realize the full potential of our record clearing laws to transform the lives of Philadelphians and ensure meaningful access to opportunity for all.

INTRODUCTION

In Summer 2022, Chantel Jones attended a community-based record clearing clinic—funded by The Promise as part of its Jobs and Opportunities Challenge—looking for relief from a misdemeanor conviction record that was more than a decade old. At the time, she was completing her nursing degree and soon planned to apply for a license to practice, but was concerned that her old conviction record would prevent her application’s approval. At the clinic, advocates from Community Legal Services (CLS) immediately initiated the record sealing petition process on Chantel’s behalf. However, CLS advocates also had to inform Chantel that it could be more than a year before her record was fully sealed—past the time she hoped to apply for her nursing license. Ms. Jones expressed frustration about the lengthy process, as she clearly needed relief on a much faster timeline. She is not alone.

Many individuals who contact CLS have an urgent need to clear their records so that they can access employment and career pathways. Further, criminal records can pose barriers to stable housing, child custody, education access, and important components of daily life and well-being.⁶ As the City of Philadelphia continues to contend with high poverty rates, a gun violence epidemic, racial inequity, and its staggering history of mass incarceration, ensuring Philadelphians can access timely record relief must be a central focus of the City’s anti-poverty and racial equity agenda.

Unfortunately, the current wait times to have a criminal record sealed, expunged, or pardoned are too long. Although Pennsylvania’s Clean Slate law provides automated sealing of non-conviction records shortly after charges are dropped and timely sealing of summary and some misdemeanor convictions after ten years, **many people with records still need to seek relief through the petition-based expungement and sealing processes, which currently take between 12 and 18 months, or through the even lengthier pardon process, which can take 4 to 5 years to complete.**

This report will examine the various barriers and challenges to timely record clearing relief and propose potential solutions. The recommendations in this report are a product of CLS’s decades of experience with record clearing processes, as well as a series of stakeholder meetings conducted over a period of several months, including with First Judicial District administrative staff, the Philadelphia District Attorney’s Office (DAO), and other providers of legal services to people with records in Philadelphia.

Our highest priority recommendation is for the City to invest in more judicial resources to process expungement and sealing petitions that receive no objection from the DAO. Doing so would allow more petitions to be filed each day, allow for faster consents from the DAO, and increase the speed with which so many Philadelphians would receive record relief.

CLS values the partnership of our stakeholders, as well as the support of The Promise and Philadelphia City Council. CLS hopes to work with all parties involved to explore implementation of the recommendations identified in this report and any other potential solutions that may arise.

⁶ A detailed review of the collateral consequences associated with a criminal record is beyond the scope of this brief; however, such information has been summarized in AMANDA NEMOYER ET AL., SYNTHESIS OF THE RESEARCH: UNDERSTANDING THE SIGNIFICANCE OF CRIMINAL RECORD CLEARING AS A POVERTY REDUCTION STRATEGY (2023).

CURRENT PROCESS

Sealing

In Pennsylvania, record sealing, or “limited access,” removes information from public view. Sealed records are *not* fully destroyed and can be maintained and utilized in a limited number of contexts. Specifically, sealed records should be removed from: 1) the public facing statewide database of criminal records operated the Administrative Office of Pennsylvania Courts (AOPC), 2) the public facing background check system operated by the Pennsylvania State Police—which serves as a central repository for criminal record information in Pennsylvania and is a frequent source of employment background checks, and 3) all commercial background check company databases.

Currently, the Federal Bureau of Investigation (FBI) reports sealed records on its background checks.⁷ As a result, sealed records will still appear on reports to a limited number of industries permitted access to FBI background checks (e.g., education, childcare, banking); however, in most situations sealed records should not be used against applicants during the hiring process. Sealed records can also be retained and utilized by law enforcement, the District Attorney’s Office, and the courts.

Given the more limited nature of record sealing as a remedy, it has broader eligibility and application.

Currently, through Clean Slate, **all cases that did not result in a conviction are automatically sealed** within a month or two of charges being dropped, and all convictions for summary offenses and some misdemeanor offenses are automatically sealed after 10 years have passed without another misdemeanor or felony conviction.⁸ Some additional misdemeanor convictions—including first degree misdemeanors and second-degree simple assault convictions—are not automatically sealed, but can be sealed through a petition process after 10 years have passed without another misdemeanor or felony conviction.⁹

Expungement

Pennsylvania law contains a true expungement remedy, whereby expunged information is fully destroyed and can no longer be accessed or used by any person or agency. However, **because expungement involves the full destruction of records, this remedy has limited eligibility criteria.** Specifically, expungement is available for: charges that did not result in a conviction; completion of certain diversion programs; summary convictions after five years have passed with no additional arrests; any convictions that have been pardoned by the Governor; and convictions for individuals who are 70 years or older and have been arrest-free for at least ten years.

⁷ CLS has been advocating for change to the way the FBI reports sealed cases and, currently, the Pennsylvania State Police and FBI are actively working on potential reforms.

⁸ Summary offenses are the most minor category of criminal offense in Pennsylvania and include offenses such as disorderly conduct, loitering, trespass, underage drinking, and retail theft for less than \$150. Penalties for a summary offense typically consist of a fine. Misdemeanor offenses are often considered more serious than summary offenses and can result in up to 5 years of incarceration, but less serious than felony offenses. In addition to potentially lengthy prison sentences, felony convictions can also lead to extralegal restrictions (e.g., related to government benefits, obtaining college financial aid).

⁹ A proposal currently before the Pennsylvania legislature seeks to expand Clean Slate’s automated sealing to include felony drug convictions and expand petition-based sealing eligibility to include some felony convictions.

The process for expunging or sealing a record by petition is essentially the same:

- First, the individual files a petition with the local court where the case was heard (here, the Philadelphia Court System, known as the “First Judicial District” or FJD).
- Next, the Philadelphia District Attorney’s Office (DAO) reviews the petition and either agrees or objects to the requested form of relief (i.e., sealing or expungement)
 - If the DAO objects to the petition, the case will be heard at a hearing before a Judge.
 - If the DAO agrees to the petition, then a Judge can review and sign it without the need for a hearing. Importantly, at this time, **the Philadelphia DAO consents to sealing and expungement petitions approximately 95% of the time.**
- After a Judge signs sealing or expungement order, it then has to be implemented.
 - In response to a sealing order, the FJD removes public access to the specific records in the Administrative Office of Pennsylvania Courts (AOPC) statewide database and in the court’s files.
 - Expunged records are destroyed at the courthouse and completely deleted from the AOPC statewide database.
 - The court will then send the orders to the local police department and the Pennsylvania State Police who remove public access to sealed records and destroy expunged records.
 - For expungement orders, the Pennsylvania State Police will notify the FBI after erasing the expunged records, and the FBI is instructed to remove expunged cases from their database as well.
- Finally, on a monthly basis, the AOPC contacts commercial background companies and instructs them to remove sealed and expunged cases from their databases and cease reporting the associated information on background checks.

Only once all these steps are complete can an individual be sure that their record has been sealed or expunged and will not appear on employment or other background checks.

Currently, the petition-based process for sealing or expungement takes approximately 12 to 18 months from the time of initial filing to the time of confirmation from the Pennsylvania State Police.

Pardon

Unlike expungement and sealing, the pardon process largely happens at the state level and therefore the City of Philadelphia may have limited ability to address the extensive wait times involved. However, unless and until Clean Slate is expanded to include felony convictions, the pardon process remains the only mechanism for clearing felony convictions and, therefore, merits inclusion in this discussion.

The Pennsylvania Constitution grants the Board of Pardons the authority to recommend that the Governor pardon certain criminal convictions. A pardon, or clemency, is considered full legal forgiveness for the

offense—the individual who is pardoned is “as innocent as if he had never committed the offense.”¹⁰ A pardon fully restores an individual’s rights and makes the conviction record eligible for expungement.

Despite many recent positive reforms in Pennsylvania, including a shortened pardon application form and the removal of associated filing fees, the pardon process remains lengthy and complex to navigate. For instance, the pardon application requires information about an individual’s conviction(s) and includes an optional personal statement and supplementary materials such as letters of recommendation. Individuals must also procure multiple documents from the court files in their cases, which can be a challenging and slow process. Once their application is complete and mailed to the Pardon Board in Harrisburg, individuals then wait up to 18 months for the application to be “filed,” at which time the substantive review process can begin.

Application review may include an interview with a parole officer and someone from the local District Attorney’s Office. The Board of Pardons then votes on whether to extend a hearing to an applicant; after such a hearing, the Board holds a public vote on the application. With the support of at least three out of five Board members, applications move forward to the Governor’s office for review. There is no required timeline, meaning it can take anywhere from several months to more than a year for the Governor to approve and sign a pardon. Once it is signed, an individual then needs to start the expungement process, adding an additional 12 to 18 months to the process. **If successful, the pardon process can take up to 4-5 years before the conviction record is ultimately removed from an individual’s record.** Individuals who are denied must wait a full year before they can begin the process to apply for a pardon all over again.

BARRIERS TO TIMELY RELIEF

Petition-Based Expungement & Sealing Process Delays

As described above, the expungement and sealing processes are fairly complex and involve multiple processes and actors. Each stage of the process is associated with potential delays.

At the first step of the process, when a sealing or expungement petition is filed, the court sets a prospective hearing date. Before the rise in petition-based filings, it was common to get a hearing date scheduled within 30 days of the filing date. Now, hearing dates are set for six to nine months after filing, creating a substantial delay. Although the Philadelphia District Attorney’s Office will consent, or agree, to the vast majority of filed petitions (and therefore no hearing will ultimately occur), the DAO does not enter those consents with the court until several weeks before the hearing date. Further, their consents are often not immediately processed by the court—sometimes that processing occurs *several months* after the original hearing date.

These front-end delays arise in large part because of a court-created limitation that sets 60 as the maximum number of petitions that can be scheduled for any given court date.¹¹ Given the large number of people seeking petition-based record relief and the various resources invested into increasing access to record clearing around the city, more than 60 record relief petitions are typically filed each day. Further, because many individuals need to file multiple petitions to clear up their records, far fewer than 60 people can have hearings scheduled on any given date. As a result, the scheduling of cases continues to be pushed further and further

¹⁰ Commonwealth of Pennsylvania v. Sutley, 378 A.2d 780 (Pa. 1977).

¹¹ The 60 petitions per day rule was set based on court and DAO resource constraints at the time the rule was set. Both court administrative staff and DAO staff agree that they could now process more petitions per day, but because of the backlog for judicial review and signature that already exists, raising the limit would not solve the problem without additional judicial resources.

out, contributing to ongoing delays.¹²

Limited judicial resources dedicated to reviewing and signing record relief orders serves as another major contributing factor to front-end process delays. Currently, a single judge in motions court reviews and signs orders—even those agreed to by the DAO—and they must complete this task in addition to hearing a full case list each day. With approximately 300 filings processed each week, this task requires a substantial amount of work to complete. Therefore, **the limits on judicial resources for reviewing and signing orders further contributes to the delays in petition processing faster** and prevents the court from being able to increase the number of filings allowed each day.

After the orders are signed, the court then sends them—on paper via physical mail—to the Pennsylvania State Police, who review and process the paperwork and implement the orders—a process that can take several months. Once the sealing or expungement process is complete, the individual or attorney who filed the petition will receive confirmation, again, on paper via physical mail.

When the DAO objects to a filed petition for sealing or expungement, a hearing must take place. Generally, individuals are expected to attend their court hearings. However, work schedules, a lack of child care, and/or difficulties with transportation can present challenges to attending court hearings. Court hearings may also be delayed, as requests for continuances from the DAO are common. If after a hearing the order is ultimately granted, the same back-end process described above would occur.

Delays in Expungement Following Diversion

Philadelphia has a strong slate of diversion programs that offer alternatives to incarceration, or even formal conviction. Some, but not all, diversion programs promise expungement to individuals who successfully complete them and, even among those programs, not all of the promised expungements occur automatically. In such cases, individuals must navigate the petition-based expungement process and its accompanying delays.

Pardon Process Delays

As described above, the pardon process is lengthy and can be delayed at many points. At the local level, there can be delays in access to required court documents, as the court limits the number of record requests that organizations can make at one time. As a result, record procurement can take several months for individuals represented by organizations like CLS. Given the concerted effort to increase access to the pardon process for Philadelphians, it is also essential to speed up access to these necessary court records.

At the state level, long wait times for the initial internal filing of applications stem from ongoing staffing shortages at the Board of Pardons. Additionally, although some recent innovations (e.g., conducting hearings virtually) have increased the number of applicants who can be listed for each hearing, these hearings are still held fairly infrequently. Finally, a lack of specific timeline for the Governor's office to review and approve Board-recommended pardon requests can also cause substantial delays in the final stages of the pardon process. Of course, even after receiving a pardon, individuals must complete the expungement process—and experience the concomitant delays—detailed above.

¹² In 2022, Philadelphia record clearing clinics sponsored by The Promise connected more than 600 people seeking sealing and/or expungement with legal representation to pursue these forms of relief. Additional and ongoing efforts to increase access to record relief opportunities will likely continue to increase the volume of petitions filed in Philadelphia, potentially also increasing hearing scheduling delays as a result of the court's 60-per-day hearing limit.

Fines and Costs

Individuals with conviction records or who have been entered into diversionary programs often owe court debt in some combination of court costs, fines, and/or restitution which can cause barriers to record clearing. Restitution is particularly problematic as it can prevent record sealing, even when an individual is otherwise eligible. Importantly, no options for waiving restitution currently exist and, therefore, individuals must pay any restitution owed, which can include prohibitively high amounts, thereby posing a potentially permanent barrier to sealing.¹³

Over time, the state Board of Pardons has changed its policy regarding payment of court debt as a prerequisite to obtaining a pardon, but generally the Board will not recommend someone for a pardon if they owe any court debt.

Fortunately, judges may waive court costs and fines at their discretion; however, the process to do so requires an individual petition, adding yet another component to the expungement or pardon processes. Although payment plans are available, for individuals with low income or those who can only afford small monthly payments, it could take decades to pay off existing court debts to then be eligible for seeking record clearing relief.

SOLUTIONS

Local Solutions: City Officials

1. Provide funding for the FJD and DAO to implement local process improvements.

We recognize that greater efficiency from improving administrative processes can only go so far. The human element involved in making decisions about and processing petitions for sealing and expungement cannot be fully eliminated (except in a completely automated process like Clean Slate). Therefore, to ensure that an increased volume of petitions does not contribute to a larger backlog, both the FJD and DAO require adequate staffing.

Through its Jobs and Opportunities Challenge, The Promise is providing increased resources to legal services agencies and community groups to increase access to record clearing opportunities. This effort has and will continue to result in an increased number of sealing and expungement petitions filed. To ensure the DAO and FJD can process this larger number of petitions in a timely manner, additional resources must be directed to these agencies as well.

Specifically, in addition to funding the criminal courts and the DAO for their criminal case operations, **the City must also direct additional civil funding earmarked explicitly for increased staffing** for employees who can assist in the process of agreeing to and approving a higher volume of petitions at a faster rate. The FJD and the DAO should not be asked to increase staffing with funds currently issued for other important criminal justice purposes.

¹³ For example current CLS client S.B. owes \$3,973.53 in restitution on a misdemeanor case for which she was offered entrance into the ARD diversion program. S.B. is a mother of two children whose only income is TANF cash assistance. Even on a payment plan of \$25 per month, it would take S.B. over 13 years to be able to pay back this restitution, complete the ARD program, and be able to get it expunged.

Securing additional judicial resources to process agreed-upon sealing and expungement petitions is the highest priority recommendation for reducing wait times and increasing capacity for petition filings. The courts could use additional funding to allow multiple judges—as opposed to the single judge currently assigned—to complete the largely administrative process of reviewing and signing record clearing petitions to which the DAO has already agreed. Alternatively, the courts may use additional funding to leverage other judicial resources, including possibly incorporating retired judges into the team of court personnel completing this work.

At the DAO, additional resources explicitly designated for sealing and expungement work could allow for staff dedicated to this issue who are fully trained on the relevant laws and DAO policies to ensure speedy and consistent responses to individual petitions.

2. Create a city fund to pay court debts that stand in the way of expungement or sealing.

Despite recent legislative changes that eliminated outstanding fines and fees as a barrier to record sealing and that authorized waiver of court debt for individuals who are unable to pay, there are still several situations in which cases cannot be cleared because of debts owed. For example:

- Restitution owed prevents the sealing of otherwise eligible misdemeanor convictions. Additionally, if Clean Slate is expanded to include certain felony convictions, restitution owed will prevent sealing in those cases as well.
- Individuals often cannot successfully complete diversion programs without paying all court debt; if the programs are not completed, they cannot be expunged.

A city fund to pay debts owed in these cases would make record clearing possible for individuals with limited or no income, who otherwise would be unable to pursue record relief. Such a fund might be administered by a non-profit organization in a manner similar to the operation of the Philadelphia Bail Fund.

Local Solutions: Philadelphia Courts (FJD)

1. Expedite the Philadelphia court process for sealing and expunging cases.

Other than some recent changes (e.g., electronic filing of petitions and DA's Office consents), the Philadelphia courts have used largely the same systems for processing sealing and expungement petitions for many years. Although the courts have been constrained from expanding existing systems based on available financial and staffing resources, they have also been open to discussing potential ways to improve processing. After exploring a variety of potential solutions, we believe the following recommendations will have the largest impact on improving the speed with which sealing and expungement processing occurs.

- **Create more “slots” for petitions to be scheduled per court day.** The current limit of 60 petitions scheduled per court date is a primary driver of front-end delays, especially given that just a small fraction of these petitions will actually need to be heard at a hearing. The upper limit of petitions allowed to be scheduled each day should be significantly increased to 100 petitions per day. The additional recommendations we provide below, paired with additional financial resources, should further optimize system efficiencies and help to address the increased volume of scheduled petition hearings.

- **Automate more steps of the court’s sealing and expungement processes.** One of the largest backlogs in the current petition processing system is the need for a judge to review and physically sign a large quantity of orders each week, in addition to other judicial work. To address this bottleneck, the court should consider whether electronic transmission of filings to a judge and electronic signature of orders would be permissible and feasible. Cutting down on the time required for this largely administrative function (as the DAO has already agreed to these petitions) should speed up the existing process and would allow for other changes that could further optimize operations.
 - **Create recommended timelines for processing petitions.** Historically, processing backlogs have developed at various points in the petition-based system. Establishing an expected length of time for each step in the process might help all stakeholders (e.g., DAO, judges, and administrative staff) make concerted efforts to remain on schedule and identify problems as they develop.¹⁴
- 2. Change the order in which the system distributes court debt payments to allow individuals to pay restitution first.**

Until 2020, *any form* of outstanding court debt (i.e., court fees, fines, or restitution) would prevent otherwise eligible misdemeanor convictions from being sealed in Pennsylvania, frustrating many individuals unable to pay imposed fines and fees and undermining the goal and impact of the automatic sealing associated with Clean Slate. In recognition of this problem, the Pennsylvania General Assembly passed Act 83 of 2020,¹⁵ removing the requirement for individuals to pay off their court fees and fines before becoming eligible for record sealing. However, Act 83 did *not* remove the requirement for individuals to pay all restitution before becoming eligible for record sealing.

Importantly, under the Philadelphia courts’ current payment distribution rules, individuals cannot pay off their restitution debt ahead of other court fees and fines. Rather, payments are generally allocated across all the legal financial obligations owed. Thus, individuals must still pay 100% of their legal financial obligations for the case to be sealed. Occasionally, a person may petition the court for an order that allows the restitution debt to be paid first; however, pursuing that avenue will also consume more time and resources.¹⁶

Pennsylvania law, however, allows a county court to set its own rules regarding payment distribution.¹⁷ Therefore, **the Philadelphia courts should amend its rules to apply payments to restitution debt first, before collecting payments for additional court costs and fines.** This change would not only prevent the need for additional petitions and hearings regarding individual distribution changes, but would also likely increase the number of cases that could be automatically sealed by Clean Slate, reducing the need for petition-based sealing.

¹⁴ A similar approach has demonstrated effectiveness at the federal level—specifically, a system flags all motions that have not been resolved after a certain period of time to encourage targeted efforts to resolve those petitions in a timely manner.

¹⁵ Act 83 of Oct. 29, 2020, Pub. L. No. 718-83 Cl. 18

¹⁶ A current CLS client currently faces this exact challenge, as he owes just \$20.00 in restitution but \$509.44 in other fines and fees. Without a specific court order allowing him to pay the \$20.00 in restitution first, he will have to pay the entire \$529.44 before his case will be eligible for sealing. If this case were sealed, his record would be completely cleared.

¹⁷ 42 Pa.C.S. § 9728(g.1).

3. Mitigate fines and costs to allow expungement.

Although no longer a barrier to record sealing, outstanding court fines and costs can still prevent otherwise eligible individuals from pursuing expungement for certain cases, including summary convictions. Importantly, many Philadelphians carry summary convictions on their records despite never appearing in court. Specifically, law enforcement typically issue citations in response to alleged summary violations and other minor infractions (e.g., traffic violations). The Court tries people who do not appear in court *in absentia* (i.e., without their presence).¹⁸ Such trials virtually always lead to a conviction for the summary offense. Thousands of such guilty verdicts are rendered annually, resulting in the assessment of many hundreds of dollars of fines and costs. Ironically, the debts produced in these cases often equal or exceed those assessed in felony and misdemeanor convictions.

Fortunately, a new state law, Act 163 of 2022,¹⁹ authorizes courts to waive court fines and costs, including in the case of summary convictions, once individuals are in default on court debt because they cannot afford to pay. **The City of Philadelphia should ensure that residents are aware of this positive change in the law and can access court waivers of their debts.** The Philadelphia courts should ensure that they have the capacity to handle an increased volume of waiver motions and that they implement a simple process for individuals to access debt waivers, even without the assistance of an attorney. **For example, creating a simple court debt waiver form motion that can be used by *pro se* individuals seeking to waive their debts** would be very helpful.

4. Streamline expungement process when individuals successfully complete diversion programming.

As noted above, many of the diversion programs that steer individuals away from further legal system involvement in the city promise that participants will have their cases expunged after they successfully complete the programming. However, these programs appear to follow different processes and timetables. Additionally, even when expungement occurs “automatically,” it can still require input from a variety of stakeholders—including the DAO and the probation department—before it can be implemented. Creating consistent and standardized expungement processes across available diversionary programs—as well as identifying achievable goals for the length of time each step will take—would likely increase the speed with which individuals have their records cleared after completing diversion.

Local Solutions: Philadelphia District Attorney’s Office

1. Expedite and refine the DAO approach to sealing and expungement.

- **Consent to petitions more quickly.** When the DAO consents, or agrees, to a sealing or expungement petition, a hearing is no longer required (only a judge’s final review and signature), thereby conserving judicial and court resources. However, the DAO does not file their response to a petition until its scheduled hearing date approaches—which can be months after the petition was initially filed. Faster filing of the DAO response to a petition would likely quicken the pace by which agreed-upon petitions are sent to a judge for final review and approval. Conversations with stakeholders from the DAO indicate that the DAO has the capacity to file earlier consents to petitions, but have not been able to do so given the current constraints on judicial resources for reviewing and signing consented-to petitions.

¹⁸ This procedure is dictated by Philadelphia Municipal Court Rule 1002, 234 Pa. Code § 1002.

¹⁹ Act of Nov. 3, 2022, Pub. L. No. 2175-163 Cl. 42

- **Refine and recommit to DAO policy regarding objection to petitions.** The DAO has a robust written policy describing the limited circumstances in which its attorneys should object to sealing and expungement petitions; however, personnel do not always adhere to those prescribed standards (e.g., unnecessarily objecting to petitions). **The DAO can save time and resources by ensuring that its staff are well trained on and adherent to their existing objection policies, as well as the relevant statutes and laws governing eligibility for sealing and expungement.**

State Solutions

1. **Pass Legislation to Expand Clean Slate.** In 2022, a bipartisan group of Pennsylvania House legislators introduced House Bill 1826, which would expand the list of offenses eligible for sealing to include felony convictions and reduce the waiting period for sealing misdemeanor convictions. Specifically, if passed, the bill would provide for automated sealing of most drug felony convictions after 10 years; permit petition-based sealing for property felony convictions, such as theft, after 10 years; and reduce the waiting period for sealing of misdemeanor convictions from 10 years to 7 years.

Supporters of this bill include the PA Chamber of Business and Industry, the Pennsylvania District Attorneys Association, the Pennsylvania Coalition Against Domestic Violence, the Drug and Alcohol Service Providers Organization of Pennsylvania, the Pennsylvania Workforce Development Association, and the Pennsylvania division of Americans for Prosperity. The City of Philadelphia is also on record as supporting the bill. CLS and the Justice Action Network are the lead advocates for the bill, which will be re-introduced in the 2023 legislative session.

In addition to expanding Clean Slate, the Shapiro administration must commit to continue to facilitate work between the State Police and the FBI to ensure that the FBI is able to seal records on FBI background checks.

2. **Advocate for increased staffing at the Board of Pardons to allow for faster processing of pardon applications.** In the past decade, the Board of Pardons has streamlined its application and administrative processes, greatly reducing the burden to applicants. However, now the Board requires increased funding and staffing to speed up their internal processes. Further, the Board should commit to holding more public hearings, and the Governor should commit to reviewing and signing pardons in a timely manner.
3. **Advocate for a state law requiring “ability to pay” determinations before imposing court fines, costs, and restitution.** Although recent changes to state law now make clear that judges can waive court fines and costs once indigent individuals have defaulted on their debts, additional reforms that require judges to consider an individual’s ability to pay court debt at the time of sentencing would reduce the need for indigent individuals and courts to expend additional resources waiving these debts on the back end. Moreover, requiring consideration of financials means when imposing restitution would help ensure that restitution is actually paid and doesn’t just serve as an overwhelming lifetime barrier to record clearing.

CONCLUSION

The City of Philadelphia should be commended for its leadership and commitment to creating opportunities and removing barriers for people with criminal records. The focus brought to this issue by The Promise in neighborhoods across Philadelphia is essential to the City's anti-poverty and racial equity initiatives. However, **without dedicated civil resources for the Philadelphia courts and the District Attorney's Office, backlogs and delays in the record clearing process will continue to thwart the vision of these initiatives.** With resources already stretched thin by these agencies to carry out other components of the criminal system's operation, **additional resources for record clearing must be explicitly earmarked as separate civil sources of funding aimed at alleviating barriers to employment and economic security caused by criminal records.**

Specifically, stakeholders have highlighted the essential need for additional judicial resources to increase the number of petitions that can be filed each day and increase the speed by which agreed-upon petitions for relief can be signed and ordered.

CLS hopes to continue working with all stakeholders involved in the record clearing process to speed up timelines for sealing, expungement, and pardon relief so that **more eligible Philadelphians can more quickly receive the life-changing relief provided by record clearing.**

Contact:

Sharon Dietrich, Litigation Director, Community Legal Services: sdietrich@clsphila.org

Jamie Gullen, Managing Attorney, Community Legal Services: jgullen@clsphila.org

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