Prepared Testimony of J.J. Prescott & Sonja Starr
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S.B. 1019

Introduction

We are Sonja Starr, the Julius Kreeger Professor of Law and Criminology at the University of Chicago Law School, and J.J. Prescott, the Henry King Ransom Professor of Law and the Co-Director of the Empirical Legal Studies Center and Program in Law and Economics at the University of Michigan Law School. Much of our research examines the workings of the criminal justice system, and we often use empirical tools to better understand how laws operate and their consequences. Our recent work has focused on reentry-related policies.

We recently completed a major study of criminal record expungement in Michigan, published in the *Harvard Law Review* in 2020.[1] Later that year, after our study had concluded and its results had been published and had had time to percolate among policymakers and advocates, the Michigan State Legislature passed its version of Clean Slate legislation, improving the expungement process in the state for clearing criminal records.[2] In this written testimony, we hope to briefly summarize what we found in our research and explain why those findings provide strong support for S.B. 1019, otherwise known as the Clean Slate bill.

Research Method

To conduct our study, we worked closely with the state police and various state agencies under a data security agreement. We were able to obtain full criminal histories as well as state wage and employment data for everyone who received a criminal record expungement in Michigan through the year 2014, as well as a large comparison group of people who were legally eligible for expungement but did not receive one. This enabled us to conduct the first comprehensive statewide study in the United States of the effectiveness of a policy of sealing criminal records.

Discussion

The good news from our research is that people who receive expungements have great outcomes. In our study, they had incredibly low subsequent crime rates, and they saw big increases in wages and employment rates. The bad news is that only a very small group of people actually received expungements under the pre-Clean Slate scheme. Before the adoption of Clean Slate legislation in Michigan, among those who were legally eligible for expungement, only 6.5% applied for and received one within five years of becoming legally eligible. It's worth adding that the eligibility requirements were so stringent that the great majority of people with records didn't even qualify in the first place—so we're talking about a small fraction of a small fraction.

We believe that Clean Slate reform is good news for people with records and their families. At the same time, Clean Slate policies do not threaten public safety and, if anything, probably improve it. First, crime and public safety: Usually when people object to Clean Slate legislation, crime and recidivism are what they raise concerns about. The idea is that to protect ourselves from future crime committed by people with records, the public needs access to those records—that we

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[1] J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 Harv. L. R. 2460 (2020).
[2] 2020 PA 193.

shouldn't allow potentially dangerous people to conceal their criminal pasts. We understand where this concern is coming from. Obviously public safety is an incredibly important policy priority. However, both our specific research findings on the aftermath of expungements, and the much broader body of research on the causes of crime and patterns of repeat offending, strongly indicate that crime concerns do *not* provide a good reason to oppose Clean Slate. In fact, there's good reason to believe that the Connecticut public will be *safer* if we pass Clean Slate legislation.

Turning to our study's findings, we looked at the full criminal records of everyone who'd ever gotten an expungement in Michigan, tens of thousands of people, and looked at whether they were subsequently rearrested or reconvicted. Overwhelmingly, the answer is no. **Within five years of getting an expungement, only 7% had been rearrested for anything, and only 4% had been reconvicted of any crime—and among those who were rearrested or reconvicted, the vast majority were just for misdemeanors, including driving misdemeanors.**

If we focus on the types of crimes that people are really worried about when they raise public safety objections, the numbers are tiny. Only 1% of expungement recipients were convicted of any felony within the next five years and only 0.6% were convicted of any violent crime, whether a misdemeanor or a felony. Put another way, these data suggest that **about 99% of those who receive expungements will NOT be convicted of a subsequent felony or violent crime, over a five year period**.

The crime numbers remained extremely low no matter what subset of the sample we looked at. People who had a felony expungement, people who had a violent crime expungement, people who got their expungement right after they satisfied the five-year waiting period, people who got their expungement much later—all of these groups had very low recidivism rates.

Someone might respond: these numbers may be low, but they still aren't zero, which is true. But if you followed *any* group of tens of thousands of people for five years, you wouldn't get zero arrests or zero convictions. Every population has some rate of crime. As it turns out, the crime rates we observe among expungement recipients are actually substantially *lower than the average* for the general population, by which we mean all adults. That's despite the fact that expungement recipients tend to have lower incomes than the average person and are more likely to be male— factors that are statistically associated with higher crime rates in general.

So why are the numbers so low? There are two basic ways to explain it: expungements could be *helping* to reduce crime rates, perhaps by giving people access to jobs, or this group of people could just be at very low risk of crime to begin with. Our data didn't allow us to disentangle these two explanations, and it's very plausible that *both* of them are right. To further inform this discussion, we can look to the broader body of criminological research on factors predicting criminal recidivism.

That research tells us, first of all, that those who will obtain Clean Slate relief are probably very low risk to begin with—even the people with felony or violent-crime records. That's mainly because we know they've all satisfied the waiting period—they have several clean years since their last conviction. There are a number of studies of what criminologists call "desistance" from crime—the process by which people age out of or otherwise give up criminal

offending. Those studies tell us that after a few clean years, it's pretty safe to assume that a person is done committing crimes—i.e., they won't come back into the criminal justice system if they haven't done so already. In general, the high-risk period for criminal recidivism after conviction or release is right away—the risk drops a lot just in the first year or two. There are varied estimates of exactly how much time it takes for a past conviction to lose *all* value as a predictor of future crime, compared to the general population average. But in all the studies, five years is at least enough for it to lose *almost* all of its predictive value. After seven years or twelve years, reconviction and rearrest rates are always very low.

Another possibility is that receiving the expungement lowered this group's crime rate even further. That theory is also supported by criminological research on the causes and predictors of crime and criminal recidivism. A large range of studies suggests that access to employment and stable housing are significant factors that help people to avoid committing more crimes. **So if having a criminal record expungement helps people to obtain jobs and rent apartments, that's good news for public safety and crime control.**

Importantly, there's *no* research supporting the opposite theory—the idea that having one's criminal record be accessible to the public helps to protect the public from crime. There's just no good reason to think that would be true. Indeed, knowing about an individual's criminal record might help one particular employer avoid hiring that individual, or one particular landlord avoid renting to them. But that individual is still going to exist, they're still going to be out there in society, and it's not like *everyone* they interact with every day is going to know about their record and somehow be on guard against them. Whatever crime risk they pose doesn't disappear because they were denied a job or a home—in fact, their risk of committing new crimes probably goes up. One employer or landlord *might* arguably be better off, but the public at large is worse off, because all in all, the unemployed or homeless or housing-unstable person poses a greater crime risk. When we think about public safety, we need to be thinking about the shared interests of the public at large, not just the narrow interests of whomever wants to run a background search on some individual.

That brings us to our next major point: the connection between Clean Slate and jobs. As background, **there's lots of research out there that shows that criminal records are a major barrier to job access**. For example, in an earlier study, one of us (Sonja Starr) worked with an economist (Amanda Agan) to fill out thousands of fictitious online job applications and randomize whether the applicants had a criminal conviction on their records. The applicants were otherwise identical, and the criminal convictions were pretty minor. Applicants without records got 61% more callbacks from employers.

Even though nobody really doubts that criminal records make it harder to get a job, some people are skeptical that Clean Slate can reverse this effect. They say: in the age of the Internet, the genie can't be put back into the bottle. Employers will Google news stories or find some other way to get the information. Of course, that is probably going to be true in some cases. But the study that we conducted in Michigan offers good news. **Even if the effectiveness of expungement might not be perfect, getting one still makes a huge difference to an individual's job prospects.** This should not be surprising, because most crimes are routine, common, and actually don't generate headlines. Moreover, most employers don't actually rely on Google for criminal

record information—they do background checks. Clean Slate takes the expunged conviction out of the background check databases, and this makes a big difference.

Our study compared Michigan expungement recipients to themselves, before and after their expungement. We used regression methods to control for their prior employment patterns, and then estimated how much the expungement changed the employment trajectory that they had been on beforehand. We also controlled for broader patterns in the Michigan economy, to make sure that events like the Great Recession didn't distort our analyses.

The great news is that expungement recipients in our study saw large improvements in their employment situations—on average, about a 23% increase in wages within the first year after the expungement, with wages stabilizing after that. This was almost entirely driven by unemployed people finding work and by people who were at the fringes of employment, for example working a few hours a week, finding more stable and better-paying jobs.

A 23% increase in a year is huge. State governments often invest lots of money in programs to help unemployed people, and particularly people with records, get jobs—things like job training. It's almost unheard of for those kinds of programs to have an effect anywhere close to 23%. Unlike all those programs, Clean Slate is automated, and thus costs the state extremely little after a modest initial downpayment. **Clean Slate is a great investment that we can expect to pay off for Connecticut financially, because getting people jobs gets them off of public benefits and into the tax base, not to mention probably making them less likely to commit costly crimes that may also require costly future incarceration.**

Unfortunately, without automation, only about 2,500 people a year got their criminal convictions expunged each year in Michigan, and that was just a small drop in the bucket compared to the number of new criminal convictions each year. Before Michigan adopted Clean Slate legislation, the number of people grappling with the burden of a criminal conviction was constantly growing. This is the current situation in Connecticut today without automated expungement. In Michigan, the problem we saw was that most qualified expungement candidates never applied to receive the benefits of an expungement. One important question to understand is: Why don't people apply for expungement, given how much the expungement can help?

Our data couldn't directly answer that "why" question, so we interviewed several Michigan expungement experts, including lawyers who work with people with records. There was a clear consensus among them as to what the problems were in Michigan, and these are likely to be the same problems faced by many people with convictions who are currently pardon-eligible in Connecticut. **These barriers to records clearing included poor knowledge and understanding of the law, the requirement of showing up to court to obtain records or attend a hearing, receiving a background check, and paying a fee. These requirements can be extremely difficult for people with financial constraints, or who do not have much time to take off from work or childcare.**

Beyond these concrete factors, expungement often is an extremely stressful process. **For many people with records, their experience with the criminal legal system was the worst experience of their lives. They may still be ashamed of their records and of their own criminal**

conduct. Now it's five years later, maybe ten years later, and they haven't reoffended—they have moved past that dark chapter in their lives. So, the idea of going back to court, going to the police to get fingerprinted, seeing the prosecutor again and the judge that sentenced them and maybe the crime victim—that makes jumping through all those administrative hoops and paying those fees seem even more daunting.

Fortunately, there's a solution, and S.B. 1019 will go a long way toward achieving it. Automation is the simplest, best solution to the problems of expungement access that we identified. Pennsylvania, which nearly unanimously passed an automated expungement bill in 2018, is already well along the way of clearing the large backlog of records that need to be retroactively cleared. Other states are headed this way as well, including Utah, California, and New Jersey. By all reports, the shift has been simple, effective, and inexpensive. It saves money for the state and makes the benefits of Clean Slate available to all those who qualify. This is a win-win.

Conclusion

In passing Clean Slate legislation through S.B. 1019, Connecticut will become one of the leading states in the national movement to give people with records a second chance. We urge the legislature and Governor Lamont to make this vision a reality.