

# CONNECTICUT CLEAN SLATE LEGISLATIVE PROPOSAL

## LEGISLATIVE PURPOSE

- To provide a self-enforcing mechanism for mitigating the long-term consequences of a criminal record, including in the housing context<sup>1</sup>
- To support reentry without creating additional procedural hurdles for those who have served their time

## KEY FEATURES

- Automatic record sealing for *all misdemeanors and some felonies* after a set period of time
- Records only accessible to law enforcement agencies, NOT landlords, employers, etc
- Exists alongside current pardon system (which will still require an application)

## POLICY CONSIDERATIONS

Questions	Proposals
How long should the lookback period be?	7 years from the date of conviction <sup>2</sup>
What happens when someone reoffends?	Lookback period clock restarts
What felonies are covered?	Felonies in which the offense has no relationship to the qualities of being a good tenant <sup>3</sup>
Are there any protections for landlords?	Landlords will be immune from tort liability <sup>4</sup>

## CONCERNS

- Makes pardon process redundant in some cases
- Requires significant technological infrastructure so that records are continuously and automatically sealed

## EVIDENCE FROM OTHER JURISDICTIONS

City/State	Law/Policy
PA	<p>Clean Slate Law (enacted 2018)<sup>5</sup></p> <ul style="list-style-type: none"> <li>▪ Record sealing automatic 10 years after conviction</li> <li>▪ Individuals eligible for automatic sealing include those with: <ul style="list-style-type: none"> <li>▪ a conviction for a misdemeanor of the second or third degree;</li> <li>▪ a conviction for a misdemeanor punishable by imprisonment of no more than two years where the person has no conviction within the past ten years for any offense punishable by imprisonment of one or more years and if completion of each court-ordered financial obligation of the sentence has occurred</li> </ul> </li> <li>• In cases that do not qualify for automatic sealing, individuals may be eligible to petition the trial court for the same benefit</li> <li>• Employers are immune from tort liability for criminal acts by employees who had their records sealed under the law<sup>6</sup></li> </ul>

1. For general background on Clean Slate initiatives, see <https://cleanslatecampaign.org/>.
2. The most recent research demonstrates that the likelihood of an individual with a criminal record reoffending diminishes over time, and the rate at which it diminishes is related to the age of the individual at the time of the initial offense. According to Alfred Blumstein and Kiminori Nakamura, those “arrested when they were 18 years old had the same arrest rate 7.7 years later as a same-aged individual in the general population. In contrast, those whose first arrest occurred at age 16 [had the same arrest rate as] a same-aged individual in the general population 8.5 years later, and individuals who were first arrested at age 20 [had the same arrest rate as a same-aged individual in the general population] 4.4 years after their first arrest.” Alfred Blumstein and Kiminori Nakamura, *‘Redemption’ in an Era of Widespread Criminal Background Checks*, 263 National Institute of Justice Journal 10, 12-13 (2009).
3. As guidance for which felonies to exclude from consideration, see the Housing Authority of New Haven’s lookback period chart (Appendix A) for assessing applicants with criminal records. The chart was generated by the Housing Authority in cooperation with the New Haven Legal Assistance’s Reentry Clinic. Certain felonies – including those in which the underlying crime provides little evidence of the applicant’s qualification as a tenant – are not considered.
4. Connecticut statutes and caselaw are ambiguous on the nature of landlord liability for the criminal conduct of a tenant. This feature will ensure that landlords are not liable for any dangerous conduct of tenants related solely to their sealed criminal records. Importantly, this does not effect a landlord’s standard obligation to maintain a safe environment and take action against problematic tenants.
5. 2017 PA H.B. 1419
6. It is notable that Pennsylvania’s law only includes tort immunity for employers, not landlords. We propose including tort immunity for landlords and are open to considering whether such liability should extend to employers.

# “BAN THE BOX”: HOUSING LEGISLATIVE PROPOSAL

## LEGISLATIVE PURPOSE

- To provide individualized review for housing applicants with criminal records
- To incorporate a model from the employment context into the housing context

## KEY FEATURES

- Landlords may ONLY consider crimes that have been committed within the last 7 years,<sup>1</sup> and ONLY after a conditional offer of housing has been made
- The conditional offer may be rescinded due to a criminal record ONLY after an individualized assessment has been conducted and reasons have been offered
- The individualized assessment must provide the applicant an opportunity to be heard either in person or in writing

## POLICY CONSIDERATIONS

Questions	Proposals
What criteria should landlords use in the individualized assessment	<ul style="list-style-type: none"><li>• Nature of the offense</li><li>• Age of applicant at time of offense</li><li>• Relationship between offense and qualification for being a good tenant</li><li>• Mitigating circumstances (evidence of rehabilitation)</li></ul>
How can applicants challenge a wrongful denial?	Private enforcement through CHRO
Are there any protections for landlords?	Landlords will be immune from tort liability <sup>2</sup>

## CONCERNS

- Shifts assessment burden to landlords
- May require aggressive private enforcement/punishment to deter landlords from making wrongful denials

## EVIDENCE FROM OTHER JURISDICTIONS

City/State	Law/Policy
Seattle	<ul style="list-style-type: none"> <li>• Passed a law that prevents landlords from screening applicants based on criminal convictions; arrests that didn't lead to a conviction; records that have been expunged, vacated, or sealed; and juvenile records.<sup>3</sup></li> <li>• In May 2018, a group of landlords filed a challenge to the ordinance in King County Superior Court, asserting that it violates their First Amendment and due process rights.<sup>4</sup></li> </ul>
Wash. DC	<ul style="list-style-type: none"> <li>• Passed a law in 2016 that "regulates landlords' use of criminal background checks in screening applicants by limiting the lookback period to 7 years."</li> <li>• "The law imposes several new requirements for rental housing providers including: provision of written notice of rent eligibility criteria to applicants; and not making an inquiry or asking any questions related to an applicant's criminal background or arrest history at any time prior to making a conditional offer of housing to the applicant."</li> <li>• "A housing provider may only withdraw a conditional offer based on the listed criminal convictions or pending criminal accusations, if it is reasonable to withdraw the offer. When deciding whether or not the withdrawal is reasonable, the housing provider must use the following factors in making the decision:               <ul style="list-style-type: none"> <li>• the nature of the offense and its severity</li> <li>• how old the applicant was when the applicant committed the offense</li> <li>• how long it has been since the offense was committed</li> <li>• information provided by the applicant (or on their behalf) regarding their good conduct and rehabilitation since the offense occurred</li> <li>• if the offense reoccurred, how safe the provider's other tenants or property would be whether or not the offense occurred on property rented by the applicant"<sup>5</sup></li> </ul> </li> </ul>

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3. Seattle Ord. 125393
4. *Yim et al v. City of Seattle* (W.D. Wash 2018)
5. "Criminal Background Screenings and Housing" (Sep 25, 2017)  
[https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/FCRSAHousing\\_GENERALPreview\\_092517.pdf](https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/FCRSAHousing_GENERALPreview_092517.pdf)