KEY STUDIES AND DATA ABOUT HOW LEGAL AID REDUCES BARRIERS TO EMPLOYMENT

Approximately 75 million Americans, or about one-in-three adults, have a criminal record1 and almost half of U.S. children have one parent with a criminal record.2 Those with criminal records face significant barriers to employment, with an unemployment rate of approximately 27 percent.3 Having a criminal record reduces the likelihood of a callback for an interview by 50 percent for whites and 72 percent for African Americans (Summary 6). Some of these criminal records do not need to be following people the way that they are, based on the laws on the books. Legal aid can help those who are eligible for expungement and set-asides receive them and assist with transitions.

RESOURCES
- Each month, the FBI updates the number of individuals who have criminal records.4
- Clean Slate Clearinghouse has an interactive map, which provides an overview of adult criminal record clearance policies and state-specific court forms and resources.5
- The Restoration of Rights Project (RRP) has a table of judicial expungement, sealing, and set aside policies, linked here.6 The RRP includes state-by-state profiles analyzing the law and practice in each U.S. jurisdiction relating to restoration of rights and status, as well as 50-state comparison charts that make it possible to see national patterns in restoration laws and policies.
- The Collateral Consequences Resource Center (CCRC) released a report documenting the number of laws passed in 2018 to reduce barriers to successful reintegration for people with a criminal record.7 The CCRC also drafts annual reports on new legislative developments, participates in court cases challenging specific collateral consequences, and provides recommendations and research in connection with policy reform efforts.

RESEARCH HIGHLIGHTS ABOUT HOW LEGAL AID CAN REMOVE BARRIERS TO EMPLOYMENT
- Results of an empirical study by two University of Michigan law professors show that setting aside an individual’s record of conviction is associated with a significant “upward turn in the employment-rate trajectory” (p. 44) and wages. They also find “very low rates of recidivism, just 6% of all set-aside recipients are rearrested within five years of receiving their set-aside” (Summary 1, p. 4).
- “Increased availability of inexpensive or free opportunities for expungement can contribute to more successful reintegration of persons with criminal convictions into the workforce, families, and communities. Not only would this improve quality of life for the ex-offenders, but it could also increase public safety and reduce spending” (Summary 2, p. 23).
- “Using methods to control for selection bias and the effects of changes in the economy in our data, we find evidence that: (1) the record clearing intervention boosts participants’ employment rates and average real earnings, and (2) people seek record clearing remedies after a period of suppressed earnings” (Summary 3, p. 1-2).
- The Record Clearance Project’s cost-benefit analysis found that for the 52.7 clients served per year average, “There is an estimated overall gain of $303,552 in net benefits in a year and an estimated gain for the government of $34,308 in net benefits across three years. These cumulative net benefits would increase across time” (Summary 4, p. 5).
- “As a direct result of the legal outcomes achieved by Clean Slate, clients experience increased employability, housing eligibility, improvements in immigration status, and improvement in their sense of self-worth” (Summary 5, p. 1).

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INTRODUCTION

BACKGROUND DATA AND STUDIES ABOUT BARRIERS FOR PEOPLE WITH A CRIMINAL RECORD
Approximately 75 million American adults, or about one-in-three, have a criminal record. Almost half of US children have one parent with a criminal record. This is called a “two-generation barrier” as parents with a criminal record have lower earning potential, are more likely to be caught in a cycle of debt, be less educated, experiencing housing insecurity, and have unstable family relationships.

Every state provides some sort of “unmarking” remedy—like sealing of records of arrests that do not lead to a conviction, judicial record clearing of minor offenses, expungement, set-asides, and pardons (Summary 3). By law, people can seek expungement, set-asides, or unmarking of their past criminal record. Lawyers help in several ways: some public defender offices have started to provide post-conviction record clearing assistance; civil legal aid programs help with the collateral consequences (like barriers to employment); and a growing number of law schools and universities have created projects to clear records.

The US Department of Justice National Institute of Justice calls for “a holistic approach to offender reentry” essential for public safety. Central is employment: “Employment can play a meaningful role in reducing recidivism.” Prisoners who maintain social ties and meaningful employment are less likely to recidivate.

However, returning citizens can experience significant barriers to employment. They experience an unemployment rate on average of about 27 percent (compared to just five percent for the national average). This varies significantly by race: among black women who were formerly incarcerated the unemployment rate is 43.6 percent; black men have an unemployment rate of 35.2 percent; white women have an unemployment rate of 23.2 percent, and white men have an unemployment rate of 18.4 percent.

DATA AND STUDIES CONNECTING LEGAL AID TO COLLATERAL CONSEQUENCES
Legal aid programs and organizations can assist with civil collateral consequences of having a criminal record such as having to disclose prior convictions on job applications, secure an occupational license, or losing drivers’ license (Summary 3). This is particularly timely as more people are being released from prison. According to the US Department of Justice, as of 2016, the US had an estimated 1.5 million prisoners under state and federal jurisdictions. Between 2015 and 2016, approximately 626,000 prisoners were released and reentered society. They are part of the 95 percent of prisoners who are expected to reenter society.

Researchers at UC Berkeley sampled those who had their record cleared, or “set aside,” by East Bay Community Law Center’s Clean Slate Clinic (Summary 3). Using methods to control for selection bias and the effects of changes in the economy in their data, they found that: (1) the record clearing intervention boosts participants’ employment rates and average real earnings, and (2) people seek record clearing remedies after a period of suppressed earnings. A more recent study conducted by researchers at the University of Michigan showed that employment increased and wages rose 25 percent once individuals had received a set-aside (Summary 1). They also find “very low rates of recidivism, just 6% of all set-aside recipients are rearrested within five years of receiving their set-aside” (Summary 1, p. 4).

But it’s not just employment outcomes that are affected—another group of researchers interviewed 40 individuals with past criminal convictions to see the extent so which having minor convictions removed from their records or expunged has helped them reintegrate into society and desist through the Record Clearance Project (Summary 2). They found that they had reduced barriers to employment, cognitive improvements, and a feeling of a new identity.
Barriers to employment, combined with other barriers to full reentry—such as the inability to vote or receive federal loans—leads some to conclude that “without assistance from civil legal aid attorneys and public defenders equipped to handle the legal hurdles of reentry, many ex-offenders end up on the docket of the same public defender who helped them on the very offense for which they were originally incarcerated.” Without legal assistance, individuals who qualify for expungements or set-asides cannot access it. They have other legal needs as well: such as consumer debt, identity theft issues, and wage theft. Using data from the National Governor’s Association and from the Serious and Violent Offender Initiative, Henry finds that “reentry programs do not adequately address the legal needs” of formerly incarcerated individuals.

In addition to providing individual legal help with collateral consequences, legal aid programs and advocates are also working to reform and simplify record sealing and clearing and occupational licensing burdens. In 2017, the Center for American Progress, the National Employment Law Project (NELP), and Community Legal Services (CLS) launched a multi-state initiative to remove barriers to employment. This initiative partners with state leaders to advance clean slate automatic record-sealing an occupational licensing reforms. It is modeled after policy recently passed in Pennsylvania. In 2015, Pennsylvania passed a clean slate policy that automatically seals minor nonviolent cases after 10 years. This passed the state senate unanimously with broad bipartisan support.

RESOURCES FOR INDIVIDUALS WITH CRIMINAL RECORDS, LEGAL AID SERVICE PROVIDERS, AND POLICYMAKERS

Clean Slate Clearinghouse is a project funded by, and developed in partnership with, the U.S. Department of Labor and the U.S. Department of Justice. The site assists policymakers, legal service providers, and individuals with criminal records information about record clearance policies. On their site, Clean Slate Clearinghouse has an interactive map where visitors can learn more about each state’s juvenile and adult record clearance policies. They also have contact information for legal service providers, lawyer referral services, court forms, and state-specific guides.

In April 2018, Clean Slate Clearinghouse hosted a webinar. This webinar was coordinated and hosted by the Council of State Government’s Clean Slate Clearinghouse, funded by the US Department of Labor’s Employment and Training Administration and the US Department of Justice’s Bureau of Justice Assistance, with support from The Justice in Government Project at the American University Justice Programs Office. This webinar discussed how partnering with civil legal aid organizations in American job centers can increase employment outcomes. It provided a case study of the Prince Georges County Job Center, where they served almost 3,000 returning citizens. It provides information about how states can embed legal services within job centers and how legal aid service providers can assist jobseekers with criminal records.
University of Michigan researchers obtained set-aside records from the Michigan State Police and linked wage information on them through Michigan’s unemployment insurance system. They tracked approximately 4,000 individuals’ wages and employment status for three years before and after the individuals received a set-aside. They find that wages rose 25 percent versus the pre-expungement trajectory after two years. They find that the wage increase is “driven by unemployed people finding jobs and very minimally employed people finding steadier or higher-paying work” (p. 1). Further, only six percent of all set-aside recipients were rearrested within five years of the set-aside, and only two percent were rearrested for violence offenses. However, only 6.5 percent go through the expungement process within five years of being eligible. This study was funded by a National Science Foundation grant.

Methodology
They obtained set-aside records from Michigan State Police and linked wage information from Michigan’s unemployment insurance system, allowing them to track individuals who received set-asides and their wages. Michigan’s expungement law is representative of expungement laws throughout the US.

Highlights
- “We find that Michigan’s set-aside uptake rate is discouragingly low; our best estimate is that only 6.5% of eligible individuals receive them within five years of the date at which they first qualify. Although our data do not identify unsuccessful applicants, it is clear from follow-up inquiries with the Michigan State Police that the low uptake rate can be primarily attributed to individuals’ failure to apply, rather than to denials of applications by judges” (p. 4).
- “We find very low rates of recidivism: just 6% of all set-aside recipients are rearrested within five years of receiving their set-aside (and only 2% are rearrested for violent offenses), while reconviction rates are even lower” (p. 4).
- “Within one year, on average, an individual’s odds of being employed (earning any wages at all) increase by a factor of 1.13; her odds of earning at least $100/week (a slightly more demanding employment measure) increase by a factor of 1.23; and her reported quarterly wages increase a factor of 1.23 (increasing to 1.25 by the next year). These results suggest that those with expunged records gain access to more and better-paying jobs” (p. 5).
- “Only a small minority of people with records in Michigan are eligible for set-asides, and only a small minority of those individuals in fact receive them” (p. 22).
- “We find, on the one hand, that being employed is a very strong positive predictor of set-aside receipt in a particular quarter, increasing the odds by a factor of 1.78. … On the other hand, a recent wage loss is an even stronger predictor, increasing the odds of set-aside receipt by a factor of 2.29” (p. 28).
- “Although set-aside applications can be filed pro se, the process is far less difficult to navigate for an experienced attorney. Unfortunately, often, none is available. Criminal defense lawyers are typically long since out of touch with their clients by the time that they become eligible, and in most cases they do not advise their clients about the possible prospect of a set-aside five years in advance, either. Paid
attorneys are out of reach for most people with records. And legal aid or pro bono attorneys have often not been available” (p. 31).

• “All of these rates paint a consistent picture: recidivism among set-aside recipients is low. Overall, 3.4% are re-arrested and 1.8% are reconvicted for crimes within two years; 7.1% are re-arrested and 4.2% are reconvicted within five years. The numbers are much lower yet when we focus on the types of crimes that worry people most. For example, within five years, only 2.6% are re-arrested and 0.6% are reconvicted for violent crimes; 2.7% are re-arrested and 1% are reconvicted for felonies” (p. 35).

• “Our recidivism analysis should, at the very least, dispel any notion that current set-aside recipients pose any particular crime risk. Employers and landlords in Michigan should rest assured that set-asides are unlikely to be keeping information from them that they need to protect themselves” (p. 37).

• “Another possibility is that expungement reduces recidivism by alleviating social exclusion associated with criminal records. Former offenders face significant social stigma, which is exacerbated by the existence of public records that many states make available on the Internet” (p. 39-40).

• “[W]e estimate a substantial and statistically significant (p<0.001) upward turn in the employment-rate trajectory of set-aside recipients after they receive their set-asides” (p. 44).

• “By the end of that first year, relative to the pre-receipt trend, recipients have gained an average of $1,111 in quarterly wages (i.e., $4,444 per year), which is a 23% improvement over the pre-set-aside average; the net gain increases to $1,234 in the two-year estimate, a 25% improvement” (p. 45).


The researchers, who work as political scientists and criminologists, interviewed 40 individuals with past criminal convictions to see the extent to which having minor convictions removed from their records or expunged has helped them reintegrate into society and desist through the Record Clearance Project. They found that the interviewees had reduced barriers to employment, cognitive improvements, and a feeling of a new identity.

Methodology
They interviewed 40 individuals with past criminal convictions. Half had gone through a record clearing process and the other half had not yet begun the process to have their records cleared. The participants were obtained from the Record Clearance Project.

Highlights
• Within one year of release, half of returning citizens are unemployed and having a conviction on record can disqualify individuals from professional licenses, benefits, and housing.

• Of the 40 respondents, 38 had been denied employment because of criminal convictions before their record had been cleared. Of those who had completed the record clearance, only 2 of them were unemployed.

• “This sense of potential failure was so strong that respondents waited months or years before applying for work. Other respondents refused to look for work believing they could not get jobs that would sustain their standard of living” (p. 33).

• Angela, one of those interviewed who had her record cleared, says, “This job, the one I’m at right now,
had an opening, and they're subcontracted through the government. And I would have never thought to apply there. Because I think—I would hear government and we're gonna run an extensive background and ...I would've said, “No. It’s not for me. I'm too ashamed or they won't hire me because of my background.” And so because I have the expungement I was like, “Oh I'm just gonna give it a try” (p. 35).

- “Increased availability of inexpensive or free opportunities for expungement can contribute to more successful reintegration of persons with criminal convictions into the workforce, families, and communities. Not only would this improve quality of life for the ex-offenders, but it could also increase public safety and reduce spending” (p. 23).


Researchers at the University of Berkeley followed a random sample of people assisted by East Bay Community Law Center’s Clean Slate Clinic. They compared their before and after earnings as reported to the Social Security Administration when they received their record cleared. Controlling for the effects of changes in the economy, they found average employment rates grew after the Clean Slate Intervention from 75 percent to 80-85 percent. They also found that earnings increased, growing about one-third within three years of receiving the intervention.

Methodology
They used a timeframe research design to measure the impact of the Clean Slate Clinic’s record clearing intervention on employment outcomes. More information on the methodology is found in their appendix.

Highlights
- In California, those convicted of specific misdemeanors and felonies that did not result in a state prison sentence can petition to have the court set aside and dismiss their conviction. A set-aside allows the individual to answer “no” when asked about conviction history when seeking employment.
- They sampled East Bay Community Law Center’s Clean Slate Clinic participants’ average employment rates and earnings reported to Social Security before and after the record clearing. They conducted a random sample of 264 people.
- “In the years after Clean Slate treatment, the employment rate is generally above baseline. The effects are economically large, roughly five to ten percentage points. … [The estimates] suggest that Clean Slate intervention increases employment from the 75% baseline to 80% of 85%” (p. 48-49).
- “Given the apparent positive impact of the intervention on employment rates and earnings, state and local jurisdictions should increase the availability of record clearing services. The current patchwork of record clearing programs is the product of innovative lawyers and programs, but is not systematic, and many people with records have nowhere to get help” (p. 51).
- “The earnings dip experienced by people with criminal records prior to unmarking means that earlier intervention could increase wages and reduce harm” (p. 52).
- “People with criminal records seek the unmarking remedy after a period of declining earnings, in spite of active labor market participation. During or immediately after the intervention, average employment rates and earnings appear to rise, though the staying power of such increases is still unclear” (p. 58).
Undergraduate students at Stanford University for their policy practicum conducted a cost-benefit analysis of record expungement at the Record Clearance Project of San Jose State University in Santa Clara County. They found that the benefits expungements outweigh the costs both in the short-term and in the long-term.

**Methodology**

They conducted a cost-benefit analysis, which included the processing costs for the probation office and the court system, legal assistance, and perceived costs to employers. The benefits included increased income, increased GDP, increased tax revenues, a reduction in government assistance, a reduction in recidivism, and an increase in additional societal benefits, such as access to housing.

**Highlights**

- “Having one’s record expunged greatly increases the chances of being hired because it prevents a potential employer from seeing the criminal record of a job applicant. The stigma of a criminal record is enough to discourage more than half of employers from hiring someone. Expunging records helps improve economic productivity and increases tax revenue” (p. 4).
- “Estimated benefits of expungement outweigh costs by $5,760 per RCP client in one year. This number is an underestimate of the net benefits, because it does not include identified benefits that could not be quantified. Since most benefits accrue across years but costs do not, cumulative net benefits would increase over time” (p. 4-5).
- “After the first year, government’s expungement costs are zero but benefits of increased taxes and reduced public assistance continue to accumulate. Government’s estimated cumulative net benefits are $651 per RCP client in year 3 and continue to grow over time” (p. 5).
- “Through expunging the records of RCP’s average number of clients per year [52.7 clients], there is an estimated overall gain of $303,552 in net benefits in a year and an estimated gain for the government of $34,308 in net benefits across three years. These cumulative net benefits would increase across time” (p. 5).


The LFA Group conducted a program evaluation of the Clean Slate program in San Francisco. Individuals who have an arrest or criminal conviction can contact the Clean Slate program for assistance and advice about their record. Services include expungement, early termination of probation, reduction of felony to misdemeanor, certificate of rehabilitation, seal and destroy arrest record, and record of arrest and release. This report was prepared for the San Francisco Office of the Public Defender. LFA Group performs evaluation, research, and strategy development for organizations.

**Methodology**

LFA conducted a program evaluation.

**Highlights**

- “As a direct result of the legal outcomes achieved by Clean Slate, clients experience increased
employability, housing eligibility, improvements in immigration status, and improvement in their sense of self-worth” (p. 1).

- “Nearly half (49%) of Clean Slate’s clients have dependents; of those, 55% have two or three dependents. Just over one-third (36%) are employed, and most (75%) of those who are employed earn an annual income of $3,000 or less” (p. 6).

- “Nearly one-third (30%) of those seeking Clean Slate’s services were never convicted of any crime for which they were arrested” (p. 6).

- “When they first seek out the program, Clean Slate’s clients often have limited information about their legal rights or what is involved in cleaning up their criminal record. … In order to strengthen community awareness about the Clean Slate legal remedies, the staff attorney and paralegal conduct approximately four outreach sessions at locations in the community per month” (p. 13).

- “Clean Slate has a very high success rate on cases that are heard in court, particularly for CaPC§1203.4 and 17b cases. Ninety percent of all cases heard are granted” (p. 21).

- “Clean Slate assists clients with many collateral and related issues, such as employment, housing, public benefits, civic participation, immigration and other issues complicated by the criminal record. Staff spend time filing miscellaneous motions to correct state and local RAP Sheets, getting conditions taken off RAP Sheets that should have already been removed, and ensuring that all Clean Slate petitions successfully granted are reflected on the RAP Sheet” (p. 29).


This experimental audit study matches pairs of individuals—those without a criminal record and those with a criminal record—who applied for entry-level jobs to test the degree to which having a criminal record affects employment outcomes. Pager employed two teams of individuals—one African American and one white—and half of each team had a criminal record and the other half did not. Those teams then applied to similar jobs in the top entry-level industries in Milwaukee, WI. Pager found significant effects of race and presence of a criminal record.

**Methodology**

Pager used four male auditors—two black and two white—who were matched on presentation and physical appearance. Within each team, one was assigned a criminal record for a week and rotated every other week over several weeks. They would apply to 15 entry level job openings each week, with the same-race testers applying to the same jobs. After applying, they filled out a response form about the job application. Pager is a sociologist at Harvard University.

**Highlights**

- Pager found that for whites, 34 percent of those who did not have a record received a callback, compared to 17 percent who presented a criminal record. Thus, a criminal record reduces the likelihood of a callback by 50 percent for whites.

- For African Americans who did not have a criminal record, they received callbacks 14 percent of the time, compared to 5 percent who did have a criminal record. Thus, a criminal record reduces the likelihood of a callback by 72 percent.

- “No longer a peripheral institution, the criminal justice system has become a dominant presence in the lives of young disadvantaged men, playing a key role in the sorting and stratifying of labor market opportunities” (p. 962).
4. Supra note 1.
11. Supra note 1.
12. Supra note 2.
15. Supra note 3.
21. Supra note 5.