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The Connecticut Clean Slate Law

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Note

The Connecticut Clean Slate Law

KRISTEN E. SKRAJEWSKI

By erasing or sealing criminal records, Clean Slate policies propose a second-chance opportunity of employment, housing, and education to thousands of Americans. In targeting the archaic and inaccessible processes of expunging and sealing records, Clean Slate ambitiously pursues economic and public safety policy goals. In 2021, Connecticut joined the states devoted to ascribing to these goals when it enacted a Clean Slate law that aids thousands of Connecticut residents who face major disadvantages as a result of misdemeanor or low-level felony records stemming from years-old convictions.

Supporters of Connecticut's Clean Slate law theorize that without the barriers imposed by criminal records preventing people from pursuing their goals or providing for their families, previous offenders will obtain employment, return to school, or otherwise positively contribute to the economy and society following their record expungements.

However, supporters of Clean Slate policies have made extensive promises of Clean Slate's expected success, effects, and costs without extensive data. Moreover, Connecticut's Clean Slate law does not address many Americans' understandable concerns about the felonies eligible for record expungements, including implications such as recidivism following expungements. Although some research suggests positive outcomes following the enactment of Connecticut's Clean Slate law, the statute lacks sufficient methods for data collection, tracking, and retention needed to effectively predict its effects and properly balance public safety with the expected benefits of expunging records, leading to a multitude of unanswered questions and trepidations.

Only a few states have enacted Clean Slate laws, but there is boisterous support for the second-chance opportunity promised by Clean Slate policies. With time, research, and support from other states, Connecticut's Clean Slate law could be both a catalyst in state criminal record reform and a huge leap forward in criminal justice reform for the entire nation.

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The Connecticut Clean Slate Law

KRISTEN E. SKRAJEWSKI*

INTRODUCTION

In the United States, one out of every three adults has a criminal record, and nearly fifty percent of children have a parent with a criminal record.¹ As of 2020, about 80 million Americans have some type of criminal record²—24 million more than the number of Americans with four-year college degrees.³ The majority of these millions of Americans with criminal records have not been imprisoned and are unlikely to offend again or be violent offenders,⁴ but they are still facing the consequences of sometimes

* J.D., University of Connecticut School of Law, May 2023. Thank you to Professor Anna VanCleave, who provided crucial guidance and wisdom on criminal record reform; to my Articles team for believing in this Note; to my colleagues of the *Connecticut Law Review* for their essential input and premiere editorial process; to Rick Metzroth and Riley Breakell for their invaluable leadership, contributions, and support; to my family and friends for their endless love and encouragement; to Janice for her impeccable advice, care, and reassurance; and to Tyler for being my rock and sounding board throughout law school and life.

¹ REBECCA VALLAS ET AL., CTR. FOR AM. PROGRESS, REMOVING BARRIERS TO OPPORTUNITY FOR PARENTS WITH CRIMINAL RECORDS AND THEIR CHILDREN: A TWO-GENERATION APPROACH 1, 27 (2015) [hereinafter VALLAS ET AL., PARENTS], <https://www.americanprogress.org/wp-content/uploads/sites/2/2015/12/CriminalRecords-report2.pdf> (“We find that the number of U.S. children who have at least one parent with a criminal record ranges from 33 million—44.8 percent of minor children in the United States—to 36.5 million—49.5 percent of minor children.”).

² The Department of Justice reported in 2022 that states have over criminal records for over 114 million people as of the end of 2020, though this number “includes persons with records in multiple states and may contain records of persons now deceased.” BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2020, at 19 tbl.1 (2022), <https://www.ojp.gov/pdffiles1/bjs/grants/305602.pdf>. To account for this, the NELP has suggested reducing this total number by thirty percent. MICHELLE NATIVIDAD RODRIGUEZ & MAURICE EMSELLEM, NAT’L EMP. L. PROJECT, 65 MILLION “NEED NOT APPLY”: THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT 3 n.2 (2011), https://www.nelp.org/wp-content/uploads/2015/03/65_Million_Need_Not_Apply.pdf. This results in 80,063,550 Americans with criminal records. See VALLAS ET AL., PARENTS, *supra* note 1, at 1 n.3.

³ As of 2021, over 56 million Americans have a four-year college degree. See *Table 104.30. Number of Persons Age 18 and Over, by Highest Level of Educational Attainment, Sex, Race/Ethnicity, and Age: 2021*, NAT’L CTR. FOR EDUC. STAT.: DIGEST OF EDUC. STAT. (2021), https://nces.ed.gov/programs/digest/d21/tables/dt21_104.30.asp.

⁴ See TERRY-ANN CRAIGIE ET AL., BRENNAN CTR. FOR JUST., CONVICTION, IMPRISONMENT, AND LOST EARNINGS: HOW INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM DEEPENS INEQUALITY 6, 10–12 (2020), <https://www.brennancenter.org/media/6676/download> (“about 7.7 million living Americans have at some point been imprisoned, about 12.1 million have been convicted of a felony without being imprisoned for it, and about 45 million have been convicted of at least one misdemeanor”); REBECCA VALLAS ET AL., CTR. FOR AM. PROGRESS, A CRIMINAL RECORD SHOULDN’T BE A LIFE SENTENCE TO POVERTY 2 (2021) [hereinafter VALLAS ET AL., LIFE SENTENCE], <https://www.americanprogress.org/>

decade-old mistakes.⁵ Traditionally, 80 million Americans had only one option for relief: petition for their records to be sealed or expunged, with the decision determined solely by the applicable state laws and state classifications of the crime.⁶ In response to the “slow and inefficient”—and sometimes wholly inaccessible—processes of sealing and expunging records,⁷ states began searching for more effective and efficient methods to offer second chances. Now, Clean Slate policies offer people with criminal records a new method for second chances.

Implemented through state legislation, Clean Slate installs automated methods for states to award people a fresh start at life without the frustration, high costs, or barriers ingrained in the traditional record sealing and expungement processes.⁸ Clean Slate operates by erasing or sealing the records of certain state crimes for eligible people in states that have enacted a Clean Slate law.⁹

Following years of unsuccessful attempts at enacting criminal record reform methods and countless politicians promising new tactics to erase

wp-content/uploads/sites/2/2021/05/A-Criminal-Record-ShouldnE28099t-Be-a-Life-Sentence-to-Poverty.pdf (“once an individual with a prior conviction remains crime-free for four to seven years, their risk of recidivism is no greater than the risk of arrest among the general population”); *Reported Violent Crime Rate in the United States from 1990 to 2020*, STATISTA (Sept. 29, 2021), <https://www.statista.com/statistics/191219/reported-violent-crime-rate-in-the-usa-since-1990/> (showing the drastic decrease in reported violent crime in the United States from 1990).

⁵ Anne Teigen, *On the Same Page: Clearing Criminal Records for Those Who’ve Earned a Second Chance*, NAT’L CONF. ST. LEGISLATURES (Aug. 24, 2020), available at <http://web.archive.org/web/20220926024051/https://www.ncsl.org/research/civil-and-criminal-justice/clearing-criminal-records-for-those-who-ve-earned-a-second-chance-magazine2020.aspx> (“For many Americans . . . having a record for a minor criminal offense or an arrest without a conviction can be a lifelong barrier . . .”); DEVAH PAGER & BRUCE WESTERN, INVESTIGATING PRISONER REENTRY: THE IMPACT OF CONVICTION STATUS ON THE EMPLOYMENT PROSPECTS OF YOUNG MEN 20 (2009), <https://www.ojp.gov/pdffiles1/nij/grants/228584.pdf> (finding that sixty-three percent of employers surveyed “probably or definitely would not” hire applicants with criminal records); Elaina R. McWilliams & Bronwyn A. Hunter, *The Impact of Criminal Record Stigma on Quality of Life: A Test of Theoretical Pathways*, 67 AM. J. CMTY. PSYCH. 89, 89 (2021) (noting impacts including “economic access of missed educational and occupational opportunities during incarceration, strained family relationships, and the loss of child custody”).

⁶ See *50-State Comparison: Expungement, Sealing & Other Record Relief*, RESTORATION RTS. PROJECT (April 2023) [hereinafter *50-State Comparison*], <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2/> (showing the systems for expunging and sealing criminal records in applicable states and states with no options for record clearing).

⁷ See, e.g., *Connecticut – Expungement*, ILR CJEI: CRIM. RECORD ONLINE TOOLKIT (2017), <https://cjei.cornell.edu/fix-your-record/sealing-and-expungement/expungement/connecticut-expungement> (outlining the eligibility requirements and sixteen-step process to apply for an expungement in Connecticut); Pauline Quirion, *2022 Second Chance & Opportunities Bills*, MASSLEGALSERVICES (Apr. 4, 2022), <https://www.masslegalservices.org/content/2022-second-chance-opportunities-bills-1> (describing the existing sealing process in Massachusetts, which requires “each petition [to be] mailed in and processed one-by-one by the Commissioner of Probation’s office,” as “inefficient, has long backlogs, is hard to understand, underutilized, and not easily accessible.”).

⁸ See generally CLEAN SLATE INITIATIVE, <https://cleanslateinitiative.org/> (last visited Apr. 22, 2023). Although the initiative aims to expunge records in all states, Clean Slate does not apply to federal convictions. VALLAS ET AL., LIFE SENTENCE, *supra* note 4, at 5–11.

⁹ CLEAN SLATE INITIATIVE, *supra* note 8.

criminal records,¹⁰ states settled upon this novel legislative approach to criminal record reform.¹¹ In 2018, Pennsylvania was the first state to enact a Clean Slate law,¹² and Connecticut recently became one of nine other states to pass its own Clean Slate law.¹³ With the enactment of Connecticut's Clean Slate law in 2021,¹⁴ rather than be judged or denied opportunities because of a crime committed at least seven years prior, thousands of people with Connecticut criminal records will personally experience the transformative power of a clean slate.¹⁵

Among the Connecticut Clean Slate law's attractive attributes is the second-chance opportunity for many nonviolent offenders.¹⁶ But more data collection, tracking, and retention is necessary to determine the new opportunities available and recidivism rates for previous offenders.¹⁷ Additional research and data collection in these areas would strengthen Connecticut's law and, considering other states may look to Connecticut as a model when considering their own Clean Slate bills, could improve similar legislation across the country and bring long-term positive results.

This Note offers an analysis of Connecticut's Clean Slate law and encourages data collection, tracking, and retention for an accurate measure of Clean Slate's successes and failures in Connecticut. This Note also calls on other state legislatures to amend their current legislation to implement significant improvements to their criminal record systems, such as

¹⁰ See Christie Thompson, *These Political Candidates Are Embracing Their Criminal Records*, MARSHALL PROJECT (June 23, 2020), <https://www.themarshallproject.org/2020/06/23/formerly-incarcerated-political-candidates> (addressing candidates' speeches regarding criminal justice reform).

¹¹ *What is the Clean Slate Initiative?*, CLEAN SLATE INITIATIVE, <https://cleanslateinitiative.org/about> (last visited Jan. 2, 2023).

¹² Act No. 2018-56, 2018 Pa. Laws 402 (codified at 18 PA. CONS. STAT. §§ 9121-9122.5, 42 PA. CONS. STAT. §§ 6307-6308 (2019)); see Jan Murphy, *Gov. Tom Wolf Signs Law That Opens the Door to Giving Ex-Criminal Offenders a "Clean Slate,"* PENNLIVE (June 28, 2018, 6:54 PM), https://www.pennlive.com/politics/2018/06/gov_tom_wolf_signs_law_that_op.html (noting that Pennsylvania was "blazing a trail" by becoming the first state to enact a Clean Slate law).

¹³ *State Tracker*, CLEAN SLATE INITIATIVE, <https://www.cleanslateinitiative.org/states> (last visited Apr. 22, 2023).

¹⁴ An Act Concerning the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor and Felony Offenses, Prohibiting Discrimination Based on Erased Criminal History Record Information and Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences, Pub. Act No. 21-32 § 3, 2021 Conn. Acts 263, 266 (Reg. Sess.), as amended by An Act Concerning Court Operations and the Uniform Commercial Real Estate Receivership Act, Pub. Act No. 22-26 § 34, 2022 Conn. Acts 118, 140-41 (Reg. Sess.) (codified at CONN. GEN. STAT. § 54-142a(e) (2023)).

¹⁵ 64 CONN. GEN. ASSEMB. H. PROC. 7139 (2021) [hereinafter HOUSE DEBATE] (statement of Rep. Steven Stafstrom, Co-chair, H. Judiciary Comm.) ("Passage of this Bill will help some 300,000 residents of our state find more stable housing, achieve higher income and better employment and unlock educational opportunities for families in every town in our state.").

¹⁶ CONN. GEN. STAT. § 54-142a(e) (2023).

¹⁷ Recidivism is "the rearrest, reconviction, or reincarceration of an ex-offender within a given time frame." NATHAN JAMES, CONG. RSCH. SERV., RL34287, OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINTEGRATION INTO THE COMMUNITY, AND RECIDIVISM 5 (2015), <https://sgp.fas.org/crs/misc/RL34287.pdf>.

enacting their own Clean Slate laws or implementing anonymous data collection methods.

For the Connecticut Clean Slate law to be a tool for effective criminal record reform both within Connecticut and as a model for other Clean Slate legislation across the country, however, Connecticut's law requires more research, data collection, tracking, and retention. By strengthening its Clean Slate law, Connecticut can be a catalyst in criminal record reform nationwide.

I. THE CLEAN SLATE LANDSCAPE AND ITS ROLE IN CONNECTICUT

By targeting the negative implications associated with having a criminal record, Clean Slate legislation purports to aid millions of people with criminal records.¹⁸ A criminal record limits opportunities in employment, housing and mortgage financing, and secondary schooling.¹⁹ Felony convictions in particular cost the U.S. economy "about \$78 billion to \$87 billion in annual GDP."²⁰ Furthermore, having a criminal record leads to "barriers to employment, housing, education, and other basics," regardless of whether the crime was violent.²¹

Criminal record reform in general is a highly publicized and widely discussed topic, and its prominence in American politics is notable. Criminal record reform has sparked controversy in recent debates and influenced past elections,²² especially in the areas of incarceration rates, reentry programs, and "Ban the Box."

¹⁸ *What is the Clean Slate Initiative?*, *supra* note 11.

¹⁹ See VALLAS ET AL., LIFE SENTENCE, *supra* note 4, at 1 ("Nine in 10 employers, 4 in 5 landlords, and 3 in 5 colleges and universities now use background checks to screen out applicants with criminal records."); REBECCA VALLAS & SHARON DIETRICH, CTR. FOR AM. PROGRESS, ONE STRIKE AND YOU'RE OUT: HOW WE CAN ELIMINATE BARRIERS TO ECONOMIC SECURITY AND MOBILITY FOR PEOPLE WITH CRIMINAL RECORDS 37 (2014), <https://www.americanprogress.org/wp-content/uploads/sites/2/2014/12/VallasCriminalRecordsReport.pdf> ("A clean slate—or at least a lesser one—is the surest way toward a better employment future.").

²⁰ Monica Nation & Gary Winfield, Opinion, *Opinion: Clean Slate is Common Sense for CT's Recovery*, CONN. POST (May 24, 2021), <https://www.ctpost.com/opinion/article/Opinion-Clean-Slate-is-common-sense-for-CT-s-16191523.php>.

²¹ VALLAS ET AL., LIFE SENTENCE, *supra* note 4, at 1.

²² See, e.g., *Beyond One-Liners: A Guide to the Democratic Debate on Criminal Justice*, MARSHALL PROJECT (Aug. 1, 2019, 3:25 PM), <https://www.themarshallproject.org/2019/08/01/beyond-one-liners-a-guide-to-the-democratic-debate-on-criminal-justice> (describing the criminal justice issues raised during a 2020 Democratic presidential debate); Orion Rummier, *Where the Top 2020 Democrats Stand on Criminal Justice Reform*, AXIOS, <https://www.axios.com/2020-democrats-criminal-justice-9dc0df63-b2ae-41bf-8374-27b3ed1b9667.html> (Sept. 9, 2019) (breaking down each Democratic 2020 presidential candidate's ideas for criminal justice reform); Lauren-Brooke Eisen & Andrew Cohen, *How Criminal Justice and Police Reform Fared in the Election*, BRENNAN CTR. FOR JUST. (Nov. 5, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/how-criminal-justice-and-police-reform-fared-election> (touching on the important issues as raised in the election conversations).

A. *The Need for Clean Slate Policies*

1. *Incarceration Rates*

Clean Slate laws are intended to help people erase their criminal records, but they may also help decrease incarceration rates in subsequent years.²³ Lower incarceration rates, which are linked to criminal convictions, lead to long-term positive effects on individuals and society in a number of ways,²⁴ but their effects on economic and emotional strains are the most noteworthy.²⁵ Not only does a high incarceration rate affect states with increased costs for prison funding,²⁶ but it also affects individuals and families, especially children growing up with one or more incarcerated parents. These children are more likely to suffer from physical and mental conditions and are more prone to behavioral problems and missing school than those without an incarcerated parent.²⁷ A failure to graduate from high school “increases chances of being unemployed, welfare-dependent, and incarcerated.”²⁸ The Connecticut Clean Slate law may help avoid this generational effect and indirectly decrease the prison populations and number of people with criminal records, resulting in fewer costs for states and fewer personal costs for individuals.

High incarceration rates are a timely issue for both conservative and progressive states since all incarcerated people have criminal records or have been charged with a crime. Although Connecticut has “incarceration rates below the national average,” Connecticut incarcerates people at over twice the rate of the other eleven founding countries of NATO.²⁹ Moreover, incarceration is costly; states, including Connecticut, pay upward of \$50,000

²³ See Teigen, *supra* note 5 (theorizing that more Americans will live a crime-free life without a criminal record, since “having a record for a minor criminal offense or an arrest without a conviction can be a lifelong barrier to acquiring family economic security and leading a successful, crime-free life”).

²⁴ Ronnie K. Stephens, *Annual Prison Costs a Huge Part of State and Federal Budgets*, INTERROGATING JUST. (Feb. 16, 2021), <https://interrogatingjustice.org/prisons/annual-prison-costs-budgets/> (“The connection between per-pupil spending and state prison budgets is well-documented. Increased class sizes affect literacy, and low literacy rates increase a person’s risk of going to jail. Teachers also struggle more with behavior when students are jammed into a single classroom. This results in more discipline and out-of-school suspensions. Kids are more likely to commit crimes during suspensions or when they are expelled from school.”).

²⁵ See *id.* (connecting prison populations with the financial strains on states and the emotional and physical strains on individuals, such as children and teachers).

²⁶ *Id.* (describing the effects of high prison costs on state budgets).

²⁷ See Kristin Turney, *Stress Proliferation across Generations? Examining the Relationship Between Parental Incarceration and Childhood Health*, 55 J. HEALTH & SOC. BEHAV. 302, 314 (2014) (“children of incarcerated parents, compared with their counterparts, are a vulnerable population who are disadvantaged across an array of health outcomes”).

²⁸ Emily Bever Nichols & Ann Booker Loper, *Incarceration in the Household: Academic Outcomes of Adolescents with an Incarcerated Household Member*, 41 J. YOUTH & ADOLESCENCE 1455, 1457 (2012).

²⁹ Emily Widra & Tiana Herring, *States of Incarceration: The Global Context 2021*, PRISON POL’Y INITIATIVE (Sept. 2021), <https://www.prisonpolicy.org/global/2021.html> (select Connecticut from drop-down menu at figure 2).

per inmate³⁰ and millions to billions of dollars per year in total.³¹ In 2015, Connecticut reportedly paid over one billion dollars in prison expenditures for a prison population of under seventeen thousand people.³² The prison population in Connecticut has decreased since then,³³ but incarceration, legal proceedings, and investigations still cost states like Connecticut exorbitant amounts of money and cause families unfathomable turmoil.³⁴

Aside from financial costs, “[e]very crime has social costs.”³⁵ These social costs include compromised community safety, increased policing, new sanctions, costs endured by victims of the crimes, including associated trauma and stigma, and lost community and economic capacities.³⁶

2. Reentry Initiatives

Reentry, or “offender reentry,” is the transition from life in prison or jail to life in a community.³⁷ Thousands of individuals are released from confinement every year,³⁸ and their integration into society poses a multitude of political, economic, and social concerns, especially for people of color.³⁹ Recent offenders often struggle adapting to their communities and reentering the job force, especially with the social stigma surrounding criminal records.⁴⁰ Many of these individuals “are likely to struggle with substance abuse, lack of adequate education and job skills, limited housing options, and mental health issues.”⁴¹ However, there are some safeguards and incentives in place to deter people convicted of crimes from recidivism and

³⁰ CHRIS MAI & RAM SUBRAMANIAN, VERA INST. OF JUST., *THE PRICE OF PRISONS: EXAMINING STATE SPENDING TRENDS, 2010–2015*, at 7 (2017), <https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf>.

³¹ Stephens, *supra* note 24.

³² MAI & SUBRAMANIAN, *supra* note 30, at 8 tbl.1.

³³ See *Growth in Mass Incarceration*, SENT’G PROJECT, <https://www.sentencingproject.org/research> (last visited Apr. 23, 2023) (select Connecticut from drop-down menu) (showing the decrease of the Connecticut prison population over the last ten years).

³⁴ Stephens, *supra* note 24; VALLAS ET AL., PARENTS, *supra* note 1; U.N. Off. on Drugs & Crime [UNODC], *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, at 7, Crim. Just. Handbook Ser. (rev. ed. 2018) [hereinafter UNODC], https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf.

³⁵ UNODC, *supra* note 34, at 7.

³⁶ *Id.* at 7, 55.

³⁷ *Overview of Reentry*, NAT’L INST. JUST. (June 7, 2013), <https://nij.ojp.gov/topics/articles/overview-reentry>.

³⁸ ANGELA HANKS, CTR. FOR AM. PROGRESS, *BAN THE BOX AND BEYOND 1* (2017), <https://www.americanprogress.org/wp-content/uploads/sites/2/2017/07/FairChanceHiring-report.pdf> (“Each year, more than 600,000 people are released from federal and state prisons in need of jobs that provide economic security.”).

³⁹ *Id.* (noting that returning to society from imprisonment is “especially” difficult for “citizens of color, who already face multiple barriers to labor market entry”); PAGER & WESTERN, *supra* note 5, at 4–5 (finding that a criminal record reduced the likelihood of a callback or job offer twice as much for Black candidates as for white candidates).

⁴⁰ See sources cited *supra* note 5.

⁴¹ *Overview of Reentry*, *supra* note 37.

other proposed measures aimed at helping previous offenders readjust to life outside of prison.⁴²

Congress has passed initiatives to mitigate the public's reentry trepidations, such as the Second Chance Act of 2007, which "encourage[s] the development . . . [of] programs that enhance public safety and reduce recidivism, such as substance abuse treatment, alternatives to incarceration, and comprehensive reentry services,"⁴³ and the Serious and Violent Offender Reentry Initiative, which funded "improve[ments to] the criminal justice, employment, education, health and housing outcomes for people returning to the community after prison."⁴⁴

3. "Ban the Box"

One proposed initiative to eliminate "the stigma of a conviction or arrest record"⁴⁵ with respect to employment opportunities is "Ban the Box."⁴⁶ "Ban the box" operates "by removing conviction and arrest history questions from job applications and delaying background checks until later in the hiring process."⁴⁷ This effort aspires to provide a fair job application process to potential employees with criminal records.⁴⁸ Adopted in some form federally and in thirty-seven states, including Connecticut,⁴⁹ this nationwide initiative "give[s] . . . job seekers a chance at meaningful employment" and removes the negative connotation associated with having a criminal record.⁵⁰ However, both employees and employers possess understandable concerns about working alongside a recent or past offender, so without a "box" or

⁴² Some tools include education, prison rehabilitation programs, reintegration programs, the "acquisition of new skills, full-time employment or significant life partnership," and familial changes. UNODC, *supra* note 34, at 3–4, 8.

⁴³ Second Chance Act of 2007, Pub. Act No. 110-199, §3(a)(3), 122 Stat. 657, 658 (2008) (codified as amended at 34 U.S.C. § 60501(a)(3)).

⁴⁴ *The Serious and Violent Offender Reentry Initiative: The Basics*, NAT'L INST. JUST. (Mar. 26, 2012), <https://nij.ojp.gov/topics/articles/serious-and-violent-offender-reentry-initiative-basics>.

⁴⁵ BETH AVERY & HAN LU, NAT'L EMP. L. PROJECT, BAN THE BOX: U.S. CITIES, COUNTIES, AND STATES ADOPT FAIR-CHANCE POLICIES TO ADVANCE EMPLOYMENT OPPORTUNITIES FOR PEOPLE WITH PAST CONVICTIONS 2 (2021), <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-Oct-2021.pdf>.

⁴⁶ The "box" refers to an area on job applications that applicants must check if they have ever been arrested or convicted of a crime, thus allowing employers to quickly determine an applicant's criminal history and consider it in the hiring process. HANKS, *supra* note 38, at 5.

⁴⁷ AVERY & LU, *supra* note 45, at 2.

⁴⁸ *Id.*

⁴⁹ *See id.* ("Nationwide, 37 states and over 150 cities and counties have adopted what is widely known as 'ban the box' . . ."); Thomas Ahearn, *Federal "Ban the Box" Law "Fair Chance Act" Takes Effect December 20, 2021*, ESR (Dec. 17, 2021), <https://www.esrcheck.com/2021/12/17/federal-ban-the-box-law-december-20-2021/> ("[F]ormer United States President Donald J. Trump signed into law the 'National Defense Authorization Act (NDAA) for Fiscal Year 2020' (S. 1790) that included a 'Ban the Box' bill" that "give[s] ex-offenders a chance to find work in the U.S. Federal government.").

⁵⁰ Craig Arnold & Jamie Dimon, *Nearly 70 Million Americans Have Criminal Records. We Must Give Them a Second Chance*, CNN BUS. PERSPS. (Apr. 27, 2021, 10:47 AM), <https://www.cnn.com/2021/04/27/perspectives/second-chance-hiring-dimon/index.html>.

another measure to proactively determine a person's criminal history, employees and employers may need another avenue to ensure safety, cooperation, and accountability in the workplace.⁵¹

B. *Connecticut's Adoption of Clean Slate*

In recognition of the mass incarceration, reentry, and “Ban the Box” initiatives, as well as their inherent consequences,⁵² the Connecticut legislature met in early 2021 to discuss a proposed law “concerning the . . . erasure of criminal records for certain misdemeanor and felony offenses [and] prohibiting discrimination based on erased criminal history record information,” now known as Clean Slate.⁵³ In support of the legislation, numerous citizens shared their personal experiences of possessing a criminal record in Connecticut with the lawmakers and the press.

Marquita Reale commented that no one would hire her and she could not provide for her family because of her felony record.⁵⁴ Although she made one nonviolent mistake over a decade prior with drug possession, she still suffers from the consequences associated with being labeled a felon.⁵⁵ She was elated that Clean Slate would be “taking a scarlet letter off her” by erasing her low-level felony.⁵⁶

Lonnie Spaulding, a leader of the CONECT advocacy group, said that while growing up in New York surrounded by ex-offenders and criminals, he “turned to a life of crime, selling drugs and stealing and stuff like that.”⁵⁷ At seventeen years old, Lonnie “was sentenced to a sentence of three to five years in the Youth Detention Center” where he remained “until [he] was

⁵¹ Employers have “valid concerns about hiring someone with a criminal record,” such as worrying about “their company’s reputation” and “the safety of themselves and their staff.” Lila Gaylor, *Everything to Know About Hiring Someone with a Criminal Record*, INSPIREITY, <https://www.insperity.com/blog/hiring-candidates-with-criminal-records-isnt-always-bad-for-business/> (last visited Apr. 22, 2023).

⁵² In a 2019 survey, less than “3 in 4 respondents said they’d feel comfortable working for an employer if some of their colleagues have nonviolent criminal records . . . [and] only 1 in 3 said they’d feel comfortable working for an employer if some of their colleagues had violent criminal records.” Furthermore, “only about 1 in 3 [respondents] said they’d feel comfortable buying goods or services from businesses if the customer-facing employee had a violent criminal record.” Dana Wilkie, *How Do Your Workers Feel About Colleagues with Violent Criminal Records?*, SHRM (Oct. 14, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/hiring-people-with-criminal-records.aspx>; see also Gaylor, *supra* note 51 (“[H]iring someone with a criminal record can make employers nervous. And job candidates with a criminal history do tend to carry a negative stigma.”).

⁵³ Pub. Act No. 21-32, 2021 Conn. Acts 263, 266 (Reg. Sess.). The legislative history is available at *Substitute for Raised S.B. No. 1019 Session Year 2021*, CONN. GEN. ASSEMB. [hereinafter *Legislative History*], https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2021&bill_num=1019 (last visited Apr. 22, 2023).

⁵⁴ Kelan Lyons, *Narrowed ‘Clean Slate’ Bill Wins Final Passage*, CT MIRROR (May 27, 2021), <https://ctmirror.org/2021/05/27/narrowed-clean-slate-bill-wins-final-passage/>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Judiciary Comm. Pub. Hearing of March 10, 2021*, 2021 Leg., Reg. Sess. 316 (Conn. 2021) (statement of Lonnie Spaulding, CONECT), reprinted in 2021 J. STANDING COMM. HEARINGS, JUDICIARY 2667, 2989–90 (2021).

21.”⁵⁸ Now, as a self-employed businessman for thirty-five years, he supports redemption, purposefully hires people with criminal records, and highlights the burdens of having a criminal record, as someone who, too, suffers the burdens of his decades-old mistakes.⁵⁹

Clean Slate directly helps people like Marquita and Lonnie by knocking down the barriers associated with criminal records and awarding necessary relief and redemption in the form of a second chance. The Connecticut Clean Slate bill’s proponents contended that by offering a new path to a fresh start for an estimated 360,000 eligible people starting in 2023,⁶⁰ it would provide increased access to higher education, employment, and housing opportunities; decreased rates of poverty; and easier transitions into communities.⁶¹ Recognizing this, after years of highly controversial and unproductive record expungement and sealing systems,⁶² the Connecticut state legislature passed a law aimed at efficient and effective criminal justice reform.

Clean Slate received support from Connecticut residents following its enactment on June 10, 2021,⁶³ with the Connecticut Business and Industry Association (CBIA) commenting that “Connecticut’s law is among the most comprehensive in the country.”⁶⁴ Governor Ned Lamont’s authorization of the Clean Slate bill rendered Connecticut as the sixth state to enact Clean Slate, following Pennsylvania, Utah, New Jersey, Michigan, and Virginia.⁶⁵

In the past, Americans have exhibited split opinions about a Clean Slate law and criminal record reform in general; some states were seemingly opposed to the changes pledged by Clean Slate, whereas others, like

⁵⁸ *Id.* at 316–17.

⁵⁹ *Id.*

⁶⁰ Dwayne David Paul, *Connecticut Needs a Strong Clean Slate Bill*, CT MIRROR (May 27, 2021, 12:01 AM), <https://ctmirror.org/2021/05/27/connecticut-needs-a-strong-clean-slate-bill-dwayne-david-paul/> (noting that under the old method of petitioning for pardons, the Board of Pardons and Paroles only issued an average of 626 pardons per year and “would need 577 years to clear its backlog” of those eligible).

⁶¹ *See id.*; *Clean Slate*, CONECT [hereinafter CONECT], <http://www.weconnect.org/clean-slate-2/> (last visited Jan. 2, 2023) (stating that the benefits of Clean Slate include access to higher education and jobs).

⁶² *See* Wilkie, *supra* note 52 (stating that although those with criminal records will benefit from criminal record reform, employers and employees alike have “valid concerns” about working with an offender); *Connecticut – Expungement*, *supra* note 7.

⁶³ *See Legislative History*, *supra* note 53.

⁶⁴ “*Clean Slate*” Law Erases Some Criminal Convictions, CBIA (Aug. 23, 2021), <https://www.cbia.com/news/hr-safety/clean-slate-law-erases-some-criminal-convictions/>; *Governor Lamont Signs Clean Slate Bill That Will Wipe Away Certain Criminal Records*, NBC CONN. (June 10, 2021, 3:19 PM) [hereinafter *Governor Signs Bill*], <https://www.nbcconnecticut.com/news/local/governor-lamont-signs-clean-slate-bill-that-wipe-away-certain-criminal-records/2505945/>. Automatic record expungements began on January 1, 2023. Pub. Act No. 21-32 § 2, 2021 Conn. Acts 263, 266 (Reg. Sess.).

⁶⁵ *Governor Signs Bill*, *supra* note 64; *State Tracker*, *supra* note 13.

Connecticut, were strongly in favor.⁶⁶ Since Connecticut's enactment, though, many states are shifting their views, with Delaware, Oklahoma, Colorado, and California also enacting versions of Clean Slate.⁶⁷ Notoriously "tough" states on record reform, such as Georgia, Louisiana, Kentucky, Nebraska, and North Carolina are also examining Clean Slate or expanding access to traditional petition-based record reform methods.⁶⁸ Additionally, the Clean Slate Initiative, an advocacy group that works to enact Clean Slate bills across the country, launched campaigns in 2021 in Delaware, Oregon, New York and Texas.⁶⁹ However, some states, notably New York, failed to pass Clean Slate bills in recent years.⁷⁰ Furthermore, Clean Slate has been on the dockets of the U.S. House of Representatives and Senate since 2018, but it has failed to pass.⁷¹

Connecticut's passage of Clean Slate in 2021 could signal a shift in Americans' attitudes in criminal record reform, leading to a nationwide movement of second chances.⁷² However, there is currently insufficient data on the long-term successes and implications of Clean Slate in Connecticut, and insufficient measures in place to ensure data is properly collected, tracked, and retained.⁷³ Although in theory Clean Slate policies grant many Americans a second chance by helping to decrease incarceration rates,

⁶⁶ See generally MARGARET LOVE & DAVID SCHLUSSEL, COLLATERAL CONSEQUENCES RES. CTR., THE REINTEGRATION AGENDA DURING PANDEMIC: CRIMINAL RECORD REFORMS IN 2020, at 11–17 (2021) (listing actions taken by various states to implement criminal record reform but noting that five governors vetoed reforms).

⁶⁷ *State Tracker*, *supra* note 13; Press Release, Clean Slate Initiative, Delaware Becomes Fifth State in the Nation to Offer Clean Slate, Reducing Barriers for People with Arrest and Conviction Records (Nov. 9, 2021), <https://www.cleanslateinitiative.org/news/delaware-becomes-fifth-state-in-the-nation-to-offer-clean-slate-reducing-barriers-for-people-with-arrest-and-conviction-records>.

⁶⁸ *Id.* at 3–4.

⁶⁹ Press Release, Clean Slate Initiative, National Momentum Grows as Four States Launch Clean Slate Campaigns (Feb. 16, 2021), <https://cleanslateinitiative.org/media/national-momentum-grows-as-four-states-launch-clean-slate-campaigns/>.

⁷⁰ *State Tracker*, *supra* note 13; Rick Calder & Zach Williams, *NY Politicians Fail to Pass Bill That Would Seal Criminal Convictions*, N.Y. POST (June 4, 2022, 1:19 PM), <https://nypost.com/2022/06/04/albany-pols-fail-to-pass-bill-that-would-seal-criminal-convictions/>. See generally *In the Press*, CLEAN SLATE N.Y., <https://www.cleanslateny.org/press> (last visited Apr. 22, 2023) (collecting news sources on the status of Clean Slate legislation in New York).

⁷¹ Clean Slate Act of 2018, H.R. 6677, 115th Cong. (2018); Clean Slate Act of 2019, H.R. 2348, 116th Cong. (2019); Clean Slate Act of 2020, S. 5047, 116th Cong. (2020); Clean Slate Act of 2021, S. 1380, 117th Cong.; Clean Slate Act of 2021, H.R. 2864, 117th Cong.

⁷² See Anthony Barr & Kristen Brody, *Dramatically Increasing Incarceration Is the Wrong Response to the Recent Uptick in Homicides and Violent Crime*, BROOKINGS: AVENUE (Nov. 2, 2021), <https://www.brookings.edu/blog/the-avenue/2021/11/02/dramatically-increasing-incarceration-is-the-wrong-response-to-the-recent-uptick-in-homicides-and-violent-crime/> (describing the nationwide shift from a "tough-on-crime" rhetoric to alternatives to incarceration and rehabilitation for offenders); James Cullen, *The History of Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration> (detailing the bipartisan movement toward reformation of the criminal justice process, notably mass incarceration).

⁷³ See, e.g., CONECT, *supra* note 61 (stating the goals of Clean Slate without providing studies or estimating how the goals will be achieved).

financial costs, and social costs associated with criminal records while awarding a wide range of benefits to previous offenders and their families,⁷⁴ without substantive data to support their promises, the large-scale and long-term effects of Clean Slate are merely untested theories.

C. *The Expungement and Sealing Processes*

Traditional record expungement processes are expensive and burdensome, and prison systems impose large financial burdens to the economy and society.⁷⁵ Record expungements and sealing are available in most states, but they are limited to a handful of crimes, with eligible crimes differing by state.⁷⁶ Each state maintains its own requirements and procedures for the record expungement and sealing processes, which can cause more aggravation and disappointment to Americans beginning these processes, especially because “many eligible individuals simply may not know that [expungement and sealing] remedies are even an option.”⁷⁷ For example, some states, including Connecticut, have lengthy and complicated processes.⁷⁸ Other states, such as Maine, Florida, and Alaska, offer neither record expungements nor the general sealing of records.⁷⁹ Thus, many citizens may be understandably confused about which procedure is available to them, what convictions are eligible, and how to begin the process.

The standard record expungement process allows eligible Americans to permanently erase their criminal records, but it is accompanied by a multistep process, high—and often repeated—costs, and strict eligibility requirements.⁸⁰ In many states, record expungements are often a lengthy and expensive process, and applicants typically have low rates of successfully getting their records expunged.⁸¹ Furthermore, some offenses are generally

⁷⁴ VALLAS & DIETRICH, *supra* note 19, at 34–37; Paul, *supra* note 60; CONECT, *supra* note 61.

⁷⁵ See J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2468–76 (2020); *Pardon FAQs*, CT.GOV, <https://portal.ct.gov/BOPP/Pardon-Division/Pardon/Pardon-FAQs> (last visited Apr. 22, 2023) (explaining the expungement process in Connecticut, including a fee required to be paid to the State Police “for processing and providing your State Police Criminal History Report (rap sheet)”); Stephens, *supra* note 24; VALLAS ET AL., PARENTS, *supra* note 1, at 3 (discussing the financial and emotional effects on children and families resulting from parental incarceration and parental criminal records).

⁷⁶ KENNY LO, CTR. FOR AM. PROGRESS, EXPUNGING AND SEALING CRIMINAL RECORDS 2 (2020), https://www.americanprogress.org/wp-content/uploads/sites/2/2020/04/04-23_Expunging-and-Sealing.pdf; Prescott & Starr, *supra* note 75, at 2468–76.

⁷⁷ *Id.*

⁷⁸ *Connecticut – Expungement*, *supra* note 7 (outlining the pre-Clean Slate sixteen-step process to apply for an expungement in Connecticut).

⁷⁹ *50-State Comparison*, *supra* note 6; *Sealing of Records*, LEGAL INFO. INST. (July 2021), https://www.law.cornell.edu/wex/sealing_of_records.

⁸⁰ See generally Prescott & Starr, *supra* note 75, at 2468–76; *Connecticut – Expungement*, *supra* note 7 (describing the eligibility requirements and sixteen-step process to apply for an expungement in Connecticut).

⁸¹ See *50-State Comparison*, *supra* note 6 (showing the expungement and sealing record systems in states and estimating the success rates and time frames for expungements).

ineligible even if record expungements are generally available in a state.⁸² Those who do qualify for a record expungement must wait an extensive amount of time to get their decade(s)-old records erased, after waiting a set number of years from the date of their prior convictions.⁸³

The standard sealing process is similarly complicated, as it requires court approval and merely hides records from the public rather than erasing them.⁸⁴ While sealed records appear to the public as if a criminal record conviction has been resolved or cleared, traces of expunged records “(e.g., complaints, arraignments, fingerprints, photographs, police reports, arrest registers) literally vanish and no indication is left behind that information has been removed.”⁸⁵ Although sealed records are invisible to most criminal background checks and inquiries, some states allow the government and certain employers access to these records.⁸⁶ Moreover, courts may retain the discretion to disclose sealed records or leave eligible material unsealed, either pursuant to statutes or simply in the “interests of justice.”⁸⁷

Connecticut offers two traditional forms of relief—absolute pardons and certificates of employability.⁸⁸ Both absolute pardons and certificates of employability differ from Clean Slate’s record expungements. While absolute pardons result in record erasures, like under Clean Slate, there are specific criteria and procedures necessary to apply for and to be granted an absolute pardon.⁸⁹ Although any person with a Connecticut criminal record can apply for an absolute pardon, few people are eligible and many will need to attend a hearing.⁹⁰ Conversely, Clean Slate’s automated erasures do not require an application or hearing for recent offenses and apply more broadly.⁹¹

⁸² *Id.*

⁸³ *Connecticut – Expungement, supra* note 7; *Pardon FAQs, supra* note 75.

⁸⁴ *Sealing of Records, supra* note 79 (explaining that “only a court can seal records” and sealed records are “stored away from public access”).

⁸⁵ NICOLA J. PANGONIS, OFF. OF THE MASS. COMM’R OF PROB., CRIME AND CONSEQUENCE: THE COLLATERAL EFFECTS OF CRIMINAL CONDUCT § 18.2.1 (2013).

⁸⁶ See Elliot Hannon, *Pennsylvania’s Landmark Clean Slate Law Goes into Effect, Sealing About 30 Million Criminal Records*, SLATE (June 28, 2019, 7:33 AM), <https://slate.com/news-and-politics/2019/06/pennsylvania-clean-slate-law-seals-30-million-nonviolent-misdemeanor-criminal-records.html> (reporting that sealed records remain accessible to employers using certain background checks for government positions); *Sealing of Records, supra* note 79 (“the nature of storing records varies widely by state”).

⁸⁷ 34B N.Y. JURIS. 2D, *Criminal Law: Procedure* §§ 3776–77 (2016).

⁸⁸ *Pardon FAQs, supra* note 75.

⁸⁹ An absolute pardon can be thought of as a complete forgiveness of a prior crime with no lingering repercussions—similar to an expungement but vastly different from a sealing. *See id.*

⁹⁰ Eligibility for absolute pardons depends on factors including the type of crime committed and “how much time has passed since the conviction date for the Connecticut offense(s).” *See id.* “An Absolute Pardon . . . if granted, results in complete erasure of your official Connecticut adult criminal record.” *Id.*

⁹¹ CLEAN SLATE CT, <https://cleanslatect.org/> (last visited Apr. 23, 2023). For both misdemeanor and felony convictions that occurred before January 1, 2000, the person must file a petition. CONN. GEN. STAT. § 54-142a(e)(1) (2023). Like the rest of Clean Slate, there is no fee for these petitions. *Id.* § 54-142a(k).

Certificates of employability are “for employment and licensing purposes only” and do not seal or expunge records.⁹² Rather, they aim to prevent criminal history job discrimination,⁹³ similar to “ban the box.” Although a certificate of employability is a great avenue to pursue for those with Connecticut criminal records concerned about a criminal record affecting employment prospects, it *only* applies to employment.⁹⁴ Conversely, a record expungement under Clean Slate applies to employment, housing, public opinion, finances, and more.⁹⁵ The implementation of Clean Slate in Connecticut addresses the challenges associated with absolute pardons and certificates of employability and offers an alternative method—a novel, burdenless, and cost-free way for people to erase their criminal records.

D. *How the Connecticut Clean Slate Law Functions*

The Connecticut Clean Slate law automatically erases the criminal records of eligible people after a set period of time following specific convictions.⁹⁶ Similar to Connecticut’s absolute pardon system, Connecticut’s Clean Slate law does not guarantee eligibility for all people with criminal records. Only convictions that carry no more than five years of imprisonment are eligible for erasure.⁹⁷ Those eligible must complete their sentence and avoid any further convictions for a designated period.⁹⁸

For misdemeanor convictions, previous offenders must wait seven years from the date of the conviction to be eligible for an erasure.⁹⁹ For all eligible felony convictions, people must wait ten years from the date of the conviction to be eligible for a record erasure.¹⁰⁰ Ineligible felony convictions include those involving prison sentences longer than five years, all Class A, B, and C felonies regardless of the sentence, and convictions involving family violence, certain crimes dealing with children, and sexual violence and nonviolence.¹⁰¹ Eleven months after passing Clean Slate but before it went into effect, the legislature amended the legislation to further exclude from eligibility twenty specific Class D felonies and three misdemeanors,

⁹² *Pardon FAQs*, *supra* note 75.

⁹³ *See id.* (explaining that the certificate “is an official State document certifying that despite your criminal history, you should not be prevented from getting a job or a license and makes it illegal for an employer or prospective employer to deny employment based on your criminal history alone”).

⁹⁴ *Id.*

⁹⁵ CLEAN SLATE CT, *supra* note 91.

⁹⁶ CONN. GEN. STAT. § 54-142a(e)(1) (2023).

⁹⁷ *Id.*

⁹⁸ *Id.* § 54-142a(e)(1), (3).

⁹⁹ *Id.* § 54-142a(e)(1).

¹⁰⁰ *Id.*

¹⁰¹ *See id.* § 54-142a(e)(1)–(2). The law enumerates offenses ineligible for erasure even if they were misdemeanors or Class D or E felonies, including “[a]ny conviction designated as a family violence crime[, or] . . . that is a nonviolent sexual offense or a sexually violent offense.” *Id.* § 54-142a(e)(2).

including assault in the second degree with a firearm, strangulation, enticing a minor, incest, and several elder abuse crimes.¹⁰²

Upon eligibility, the relevant court clerk will notify all law enforcement agencies that had information about the offense and direct them to delete their records.¹⁰³ Those with erased records “shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.”¹⁰⁴

However, there is no provision mandating previous employers, companies, or schools to erase these records, nor does the law prevent news sources or the Department of Motor Vehicles from reporting erased crimes. Rather, the law specifically provides that “[n]othing in this subsection shall . . . require the Department of Motor Vehicles to erase criminal history record information on an operator’s driving record.”¹⁰⁵ The law goes even further, stating that “[w]hen applicable, the Department of Motor Vehicles shall make such criminal history record information available through the Commercial Driver’s License Information System,” even after a Clean Slate erasure.¹⁰⁶ Thus, external sources other than law enforcement are free to maintain, erase, or share records even after they are erased from the criminal record system.

Connecticut’s choice to advance its existing criminal-record modification systems through a new method, rather than altering its pardon systems or reverting to only sealing records, could signify an ongoing push for greater criminal record reform within the state.¹⁰⁷ However, questions and concerns linked to Clean Slate remain unanswered and unaddressed.

E. *Misdemeanors and Felonies*

In Connecticut, both misdemeanors and felonies are categorized by classes, ranging from classes A through D for misdemeanors and A through E for felonies, with Class D misdemeanors being the least serious misdemeanors and Class E felonies being the least serious felonies.¹⁰⁸ Connecticut’s Clean Slate record expungements apply to those citizens with any class of misdemeanor and Class D and E felonies.¹⁰⁹ Most Connecticut residents with misdemeanor records will qualify for a record expungement

¹⁰² An Act Concerning Court Operations and the Uniform Commercial Real Estate Receivership Act, Pub. Act No. 22-26 § 34, 2022 Conn. Acts 118, 140–41 (Reg. Sess.) (codified at CONN. GEN. STAT. § 54-142a(e)(2)(C)–(D) (2023)).

¹⁰³ *Id.* § 54-142a(g)(1).

¹⁰⁴ *Id.* § 54-142a(g)(2).

¹⁰⁵ *Id.* § 54-142a(e)(6).

¹⁰⁶ *Id.*

¹⁰⁷ See Dave Collins, *Legislative Session Called “Historic” for Justice Reforms*, AP NEWS (June 11, 2021), <https://apnews.com/article/66e53413b4aa04c63ed46db336800ade> (describing Connecticut’s decision to enact Clean Slate as “historic for criminal justice reform”).

¹⁰⁸ CONN. GEN. STAT. § 53a-26 (2023) (misdemeanors); *id.* § 53a-25 (felonies).

¹⁰⁹ *Id.* § 54-142a(e)(1).

after waiting the required seven years, but only a handful of residents with felony records will qualify to have those crimes erased, even though the differences between some misdemeanors and felonies may be negligible.¹¹⁰

The misdemeanor convictions eligible for erasure include reckless endangerment, rioting, criminal trespass, second- and third-degree stalking, and escaping from custody on non-felony charges.¹¹¹ Class D and Class E felonies in Connecticut include interference with a police officer that results in the death of another person, assault in the second degree with a motor vehicle while under the influence, third-degree robbery, third-degree burglary without a firearm, third-degree larceny, third-degree identity theft, and bigamy¹¹²—all of which are still potentially eligible for erasure,¹¹³ even after the legislature updated Clean Slate to remove some violent crimes from eligibility in 2022.¹¹⁴

II. THE PROMISES AND LIKELY OUTCOMES OF CONNECTICUT’S CLEAN SLATE LAW

Along with erasing criminal records, supporters of Clean Slate purport that its policies will “improve[] public safety” and “boost[] the economy.”¹¹⁵ Supporters also argued that Connecticut’s Clean Slate bill would “jump-start . . . economic recovery and reduce recidivism at the same time” following COVID-19, and “deliver roughly \$1.2 billion in increased annual earnings for Connecticut citizens with records.”¹¹⁶

One notable Clean Slate supporter and co-sponsor of the bill, Representative Steven Stafstrom, said during the House of Representatives’ debate on the bill that

[p]assage of this Bill will help some 300,000 residents of our state find more stable housing, achieve higher income and better employment and unlock educational opportunities for families in every town in our state. . . . [T]he economic impact of the Bill before us cannot be understated. Based on a 2016 study by the University of Michigan, it can be estimated that removing the shackles of a past criminal conviction for the folks we seek to in this Bill can grow our economy by over a

¹¹⁰ For example, coercion can be either a Class A misdemeanor (Class A being the most serious class of misdemeanors) or a Class D felony. *Id.* § 53a-192. Abuse of an elderly, blind, or disabled person can be a Class A misdemeanor, Class C felony, or Class D felony. *Id.* §§ 53a-321 to -323. Forgery can be a Class C felony, Class D felony, or Class B misdemeanor. *Id.* §§ 53a-138 to -40.

¹¹¹ *Id.* §§ 53a-63 to -64, 53a-175 to -76, 53a-107 to -109, 53a-181d to -181e, 53a-171.

¹¹² *Id.* §§ 53a-167a, 53a-60(d), 53a-136, 53a-103, 53a-124, 53a-129d, 53a-190.

¹¹³ See HOUSE DEBATE, *supra* note 15, at 7156–58 (statement of Rep. Craig Fishbein) (raising concerns about some violent crimes, some of which were already excluded under the bill and some of which were excluded when the legislature updated the bill the following year).

¹¹⁴ See *supra* note 102 and accompanying text.

¹¹⁵ CONECT, *supra* note 61.

¹¹⁶ Nation & Winfield, *supra* note 20.

billion dollars in gross domestic product per year. It can raise family incomes by between 10 and 20% in a year. And . . . it will make our community safer by encouraging folks to be less likely to re-offend. In fact, we have seen in other states that have passed clean slate legislation, that the recidivism rate of someone who has an erased criminal conviction is [reduced].¹¹⁷

There are many avid proponents for Connecticut's Clean Slate bill but also vocal critics among organizations, individual citizens, religious groups, and advocacy parties.¹¹⁸ Connecticut's Clean Slate bill allows for the erasure of serious violent and nonviolent offenses, including some felonies that pose threats to vulnerable communities, workplaces, and schools. Clean Slate will allow, for example, a person convicted of cyberstalking a sixteen-year-old resulting in a "reasonable fear of . . . death of or serious bodily injury"¹¹⁹ to have their record erased after ten years if they do not acquire further convictions, even if they served up to five years in prison for the crime.¹²⁰ Thus, under Clean Slate, if a person's past offense fits into a certain category, the record of that criminal history will be automatically expunged regardless of the circumstances in which the crime occurred and without input from victims.¹²¹

During the House debate, Representative Craig Fishbein noted that because "[i]t's very difficult to get convicted of a crime in this state," prosecutors offer many offenders the opportunity to plead guilty to lesser charges, meaning that "more than likely they haven't been convicted of what they were charged with."¹²² This is a valid point; under the law, someone who assaults another by means of a deadly weapon with the intent to cause serious physical injury "is guilty of assault in the first degree."¹²³ This is a Class B felony punishable by up to twenty years in prison with a mandatory

¹¹⁷ HOUSE DEBATE, *supra* note 15, at 7139–40.

¹¹⁸ *See id.* at 7138–416 (transcribing the lengthy House debate on May 27, 2021, before Representatives passed the Bill as amended 91 to 56); Lyons, *supra* note 54 (critiquing the Clean Slate Bill passage in Connecticut and showing support and criticisms from a variety of people); *Governor Signs Bill*, *supra* note 64 (showing support from people about the passage of Clean Slate in Connecticut); Julia Bergman, "The Right Balance": Lamont Shows Concerns Over "Clean Slate" Bill, CONN. POST, <https://www.ctpost.com/news/article/The-right-balance-Lamont-shows-concerns-16224503.php> (June 4, 2021, 6:22 PM).

¹¹⁹ CONN. GEN. STAT. § 53a-181f (2023).

¹²⁰ *Id.* at § 54-142a(e) (notably excluding first-degree stalking under § 53a-181c from eligibility for erasure, but not second- or third-degree stalking or electronic stalking under §§ 53a-181d to -181f).

¹²¹ *See* HOUSE DEBATE, *supra* note 15, at 7154 (statement of Rep. Craig Fishbein) ("[I]t doesn't matter under this legislation, really, for the most part, the underlying facts. If you are convicted of this, it's going to get erased.").

¹²² *Id.* at 7154–55; *see also id.* at 7228 (statement of Rep. Greg Howard) ("[I]f you get convicted of an assault [in the second degree], there is a likelihood you probably committed assault [in the first degree] and made a . . . plea agreement to get to assault two and so on and on down.").

¹²³ CONN. GEN. STAT. § 53a-59 (2023).

minimum sentence of five years.¹²⁴ However, an offender is not guaranteed to be charged with this crime; the prosecutor, in focusing on “readily provable” charges,¹²⁵ may in their discretion decide instead to charge the offender with assault in the third degree, which is a misdemeanor eligible for erasure under Clean Slate.

Alternatively, consider a kidnapping—ineligible for erasure as a Class A or B felony¹²⁶—that is pled down to reckless endangerment, a misdemeanor.¹²⁷ Further, even a manslaughter charge, which requires a finding of recklessness,¹²⁸ could be pled down to a misdemeanor charge of criminally negligent homicide,¹²⁹ with all traces of the crime erased from the offender’s record seven years later under Clean Slate. Representative Stafstrom did not directly respond to these concerns during the debate.¹³⁰

Connecticut’s law partially addresses such concerns through its eligibility requirements.¹³¹ Perhaps the required time between a conviction and a record expungement—seven years for misdemeanors or ten years for felonies—will bring relief to those concerned about public safety, as studies show that the likelihood of recidivism decreases with the increased time previous offenders go without reoffending.¹³² Indeed, this was Representative Stafstrom’s response to Representative Fishbein during the House debate.¹³³ However, the Connecticut law’s record expungements have only recently gone into effect, and Connecticut has yet to implement plans for data collection, tracking, and retention of those whose crimes are erased, so we can only speculate what will occur in the future.

A. *Systemic Racism Surrounding Incarceration Rates and Criminal Records*

Supporters of the Connecticut Clean Slate bill also hope that it will provide relief to Black, Indigenous, and Latino communities.¹³⁴ With the steady rise of employers, landlords, and school admissions staff utilizing

¹²⁴ *Id.*; JAMES ORLANDO, CONN. GEN. ASSEMB. OFF. OF LEGIS. RSCH, 2023-R-0082, CONNECTICUT PENAL CODE — UPDATED AND REVISED 4 (2023), <https://www.cga.ct.gov/2023/rpt/pdf/2023-R-0082.pdf>.

¹²⁵ Memorandum from Jeff Sessions, U.S. Att’y Gen., to federal prosecutors, Department Charging and Sentencing Policy 1 (May 10, 2017), <https://www.justice.gov/archives/opa/press-release/file/965896/download> (“prosecutors should charge and pursue the most serious, readily provable offense”). See generally James Vorenberg, *Decent Restraint of Prosecutorial Power*, 94 HARV. L. REV. 1521 (1981) (discussing the justifications for prosecutorial discretion and arguing for more accountability).

¹²⁶ CONN. GEN. STAT. §§ 53a-92, -94 (2023).

¹²⁷ *Id.* at §§ 53a-63 to -64.

¹²⁸ *Id.* at §§ 53a-55 to -56a.

¹²⁹ *Id.* at § 53a-58.

¹³⁰ See HOUSE DEBATE, *supra* note 15, at 7160–63.

¹³¹ CONN. GEN. STAT. § 54-142a(e) (2023).

¹³² JAMES, *supra* note 17, at 1, 6–7; Prescott & Starr, *supra* note 75.

¹³³ HOUSE DEBATE, *supra* note 15, at 7162.

¹³⁴ See VALLAS ET AL., LIFE SENTENCE, *supra* note 4, at 1–3.

criminal background checks,¹³⁵ communities of color have been the greatest afflicted.¹³⁶

Furthermore, high incarceration rates disproportionately affect minorities in every state, but even more so in Connecticut.¹³⁷ “Black people are incarcerated at more than double the rate of white people” across all states,¹³⁸ but in Connecticut, “Black men are four times more likely to be incarcerated than white men.”¹³⁹ Close to fifty percent of Black men in Connecticut have a conviction record,¹⁴⁰ showing that the current criminal record system has a notable and “significantly disparate impact on people of color.”¹⁴¹

Supporters of Connecticut’s Clean Slate bill hoped it would address such longstanding disparities by predominantly benefiting minorities.¹⁴² During the House debate, Representative Jason Rojas noted the conviction and incarceration disparities in the state before saying Clean Slate was “our opportunity to do something, to right some of the wrongs of our criminal justice system.”¹⁴³ One study estimated that Clean Slate would indeed “decrease racial disparities” because it would reduce the percentage of Black Connecticut residents who have a record from 30% to 10% and that of Black males from 48% to 17%.¹⁴⁴ But this reduction, while admirable, does not mean that record erasures would predominantly help Black residents and

¹³⁵ One survey found that over ninety-five percent of employers use criminal background checks for at least some job candidates in the hiring process. STERLING, *HIRING REIMAGINED* 14 (2022), <https://www.sterlingcheck.com/wp-content/uploads/2022/07/TSK-3424-ST-GBL-EN-CORP-RPT-Q2-22-Hiring-Reimagined-Report-WEB.pdf>. See VALLAS ET AL., *LIFE SENTENCE*, *supra* note 4, at 1 (noting that an overwhelming majority of employers, landlords, and colleges “now use background checks to screen out applicants with criminal records”).

¹³⁶ See VALLAS ET AL., *LIFE SENTENCE*, *supra* note 4, at 1 (stating that the barriers imposed by having a criminal record “disproportionately [affect] communities of color”).

¹³⁷ Jordan Fenster, *Racial Disparities Persist in CT Prisons, Even as the Population Dropped*, CONN. POST, <https://www.ctpost.com/local/article/Racial-disparities-persist-in-CT-prisons-even-as-15651213.php> (Oct. 17, 2020, 6:50 PM) (finding that “42.7 percent of Connecticut’s prisoners were Black, 26.4 percent were Hispanic and 29.9 percent were white”).

¹³⁸ VALLAS ET AL., *LIFE SENTENCE*, *supra* note 4, at 14.

¹³⁹ COLLEEN CHIEN ET AL., *PAPER PRISONS INITIATIVE, THE CONNECTICUT SECOND CHANCE PARDON GAP*, 3 (Mar. 10, 2021, 10:00 AM), <https://paperprisons.org/states/pdfs/reports/The%20Connecticut%20Second%20Chance%20Absolute%20Pardon%20Gap.pdf>.

¹⁴⁰ *Id.* at 1–2, 2 n.6 (finding that 48% of adult Black men in Connecticut have a conviction).

¹⁴¹ Fenster, *supra* note 137 (quoting Mike Lawlor, Associate Professor of Criminal Justice, University of New Haven).

¹⁴² See CONECT, *supra* note 61 (“Clean Slate is a racial justice issue. . . . The effects of this systemic racism will persist for decades to come without Clean Slate.”); Nation & Winfield, *supra* note 20 (“Through Clean Slate legislation, we can help the disproportionately large number of Black and Latinx individuals impacted by the justice system get back on their feet.”); Paul, *supra* note 60 (“We must pass [Clean Slate] because it would begin to repair the harms of a decades of inequality under the law.”); Kelan Lyons, *For Many with Criminal Convictions in Their Past, the ‘Clean Slate’ Bill Would Open Doors Long Closed*, CT MIRROR (March 21, 2021, 5:00 AM), <https://ctmirror.org/2021/03/10/for-many-with-criminal-convictions-in-their-past-the-clean-slate-bill-would-open-doors-long-closed/> (“Any Clean Slate relief would immensely benefit Black residents . . .”).

¹⁴³ HOUSE DEBATE, *supra* note 15, at 7413.

¹⁴⁴ CHIEN ET AL., *supra* note 139, at 1.

other people of color. Despite a disproportionate number of Black people possessing convictions as compared to white people, given that Connecticut's population is 79% white,¹⁴⁵ the total number of white people with conviction records in Connecticut is still three times higher than the total number of Black people with convictions.¹⁴⁶ Thus, the Clean Slate law will likely erase more total records belonging to white people than those of people of color.

Although the foundations are promising, there is a long way to go to ensure that Connecticut's law will make significant, positive impacts on criminal record reform and accomplish the goals its supporters have advertised. Alone, it will not solve the racial disparities within Connecticut's criminal justice system, especially considering the insufficient measures available to collect, track, and retain the data needed to successfully address and rectify these disparities.

B. *Public Safety*

Many Americans once believed that in order to fight high crime rates, states should increase incarceration rates,¹⁴⁷ with the hope that prison sentences and criminal convictions would deter criminal acts.¹⁴⁸ However, over the past decade, an increasing number of Americans now purport that high incarceration rates lead to more crime and more criminal convictions, both of which decrease public safety.¹⁴⁹ Proponents of Clean Slate legislation are like-minded; advocates for Connecticut's Clean Slate bill argued that by erasing criminal records, the likelihood of recidivism

¹⁴⁵ *QuickFacts: Connecticut*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/CT> (last visited Apr. 24, 2023) (showing the population of Connecticut is 78.8% white and 12.7% black).

¹⁴⁶ This was calculated by combining the census data, *id.*, with the data from CHIEN ET AL., *supra* note 139, which found that 15% of white people and 30% of Black people in Connecticut had records. *Id.* at 2. Fifteen percent of 78.8% of the population gives 118.2 white people with convictions per 1,000 total residents ($.15 * .788 * 1000$), while 30% of 12.7% of the population gives 38.1 Black people with convictions per 1,000 total residents ($.127 * .3 * 1000$). $118.2 \div 38.1 \approx 3.1$ times as many white people with convictions than Black people with convictions.

¹⁴⁷ See Barr & Brody, *supra* note 72 (describing “the ‘tough-on-crime’ rhetoric that characterized the 1980s and ‘90s for Republicans and Democrats alike,” as characterized by future President Donald Trump’s argument that “we don’t have *too many* people in prison. Quite the contrary.” DONALD J. TRUMP, *THE AMERICA WE DESERVE* 107 (2000)); Cullen, *supra* note 72 (showing the rise in mass incarceration during the Reagan administration).

¹⁴⁸ See generally BERT USEEM & ANNE MORRISON PIEHL, *PRISON STATE: THE CHALLENGE OF MASS INCARCERATION* (2008) (investigating the causes and consequences of mass incarceration).

¹⁴⁹ Cullen, *supra* note 72 (citing JOSEPH R. BIDEN JR. ET AL., *SOLUTIONS: AMERICAN LEADERS SPEAK OUT ON CRIMINAL JUSTICE* (Inimai Chettiar & Michael Waldman, eds., 2015), as “a bipartisan consensus that mass incarceration is a mistake”); Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer*, VERA INST. JUST. (July 2017), https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf; Katherine Beckett & Bruce Western, *Governing Social Marginality*, 3 PUNISHMENT & SOC’Y 43, 44–45 (2001) (finding that incarceration rates are correlated with local governments’ spending on welfare and not strongly related to crime rates).

decreases because people can more easily access “jobs, housing, and higher education” so that they are not compelled to commit criminal acts again.¹⁵⁰

Although currently underdetermined, the positive relationship between Connecticut’s Clean Slate law and reduced recidivism rates is strengthened when considering employment. State Senator Gary Winfield wrote that “[s]table employment is a meaningful factor when predicting whether a person will reoffend. By automatically clearing eligible criminal records, we . . . reduce the likelihood of recidivism and make our communities safer.”¹⁵¹ He cited a study that found that people in Michigan with expunged records “pose a lower crime risk than the general population [of Michigan] as a whole.”¹⁵²

Another reason for the expected improvement in public safety through erasing criminal records is that the record expungements awarded in the various Clean Slate bills do not apply to “most violent crimes [such as] criminal sexual conduct and alcohol-related driving offenses”¹⁵³ and “crimes related to terrorism and national security.”¹⁵⁴ Connecticut’s Clean Slate bill will erase the records of people convicted of crimes that are deemed less dangerous by the legislature, most of which are misdemeanors.¹⁵⁵

However, there are valid concerns about granting anyone with a criminal record an expungement. Although people eligible for a Clean Slate expungement have been conviction-free for at least seven or ten years, and many of their records contain misdemeanors or nonviolent felonies, among the current Class D felonies eligible for automatic record expungement under Clean Slate are crimes that relate to violent conduct, such as rioting or cyberstalking.¹⁵⁶ Additionally, in Connecticut, a felony conviction or a conviction of certain misdemeanors disqualifies a person from receiving an

¹⁵⁰ See CONECT, *supra* note 61 (“When people’s records are erased, they gain access to jobs, housing, and higher education. Recidivism rates dramatically decrease as a result. *That makes everyone safer.*”).

¹⁵¹ Nation & Winfield, *supra* note 20.

¹⁵² *Id.* (quoting Prescott & Starr, *supra* note 75, at 2514).

¹⁵³ Gus Burns, *Up to 1 Million Michigan Residents May Be Eligible for “Clean Slate” Criminal Expungements*, MLIVE (Apr. 13, 2021, 1:37 PM), <https://www.mlive.com/public-interest/2021/04/up-to-1-million-michigan-residents-may-be-eligible-for-clean-slate-criminal-expungements.html>.

¹⁵⁴ Daniel Moore, *Reschenthaler, Casey See Bipartisan Momentum for “Clean Slate” Bill in Congress*, PITT. POST-GAZETTE (May 9, 2021, 6:00 AM), <https://www.post-gazette.com/news/politics-nation/2021/05/09/Guy-Reschenthaler-Bob-Casey-clean-slate-criminal-records/stories/202105090034> (stating that Pennsylvania residents “convicted of sex offenses or crimes related to terrorism and national security would not be eligible for record sealing” and that Clean Slate “also prevents” residents with “more than two nonviolent felonies or . . . [a] convict[ion] of a violent felony” to have their records sealed).

¹⁵⁵ See *supra* notes 101–02 and accompanying text; CHIEN ET AL., *supra* note 139, at 2; HOUSE DEBATE, *supra* note 15, at 7191 (statement of Rep. Tom O’Dea) (arguing that strangulation is “too violent to be allowed erasure”).

¹⁵⁶ See *supra* notes 111–13, 119–20.

eligibility certificate for a pistol or revolver.¹⁵⁷ With such records erased, this person can apply for a gun permit without such a restriction.¹⁵⁸

Once a record is expunged, there are limited measures to prevent past offenders from recommitting previous crimes or elevating their past criminal acts. Although Clean Slate proponents suggest that those granted pardons will focus on education and careers, which makes it less likely that they will reoffend,¹⁵⁹ the data needs to be collected, tracked, and retained to determine whether Clean Slate has a negative, positive, or any impact on public safety in Connecticut.

III. PROPOSED DATA COLLECTION, RETENTION, AND TRACKING

To best evaluate the success of Clean Slate in Connecticut and its goal—to provide a second-chance opportunity for previous offenders—Connecticut should implement a data collection, tracking, and retention program with various resources to gather and store data related to erased records. Without an effective method to determine whether previous offenders commit crimes after their offenses are expunged, it will be extremely difficult to accurately determine whether Clean Slate is beneficial to previous offenders or hurtful to society, or whether Clean Slate can be a catalyst in criminal record reform or merely a minor step toward resolving disparities in the criminal justice system.

Under a data collection, retention, and tracking program, a state agency would ensure that the records are properly expunged and inaccessible to the public, while also providing information on these records for two limited purposes. It would provide identifiable notices of expunged records to Connecticut state judges for sentencing purposes only, and it would provide anonymized copies of the records to a task force charged solely with anonymous data collection and tracking.

A. *Judicial Access and Retention of Past Criminal Records*

As of April 2023, the Connecticut Clean Slate law has insufficient measures to collect, track, and retain data—specifically recidivism data. The criminal records of people who have had offenses erased under the law retain no indication that the person ever committed those crimes. While this fact may help reformed individuals find jobs and reintegrate into their communities, these same rationales do not apply to those who offend again.

¹⁵⁷ CONN. GEN. STAT. § 29-36f(b) (2023). Restricting a person’s right to obtain a gun permit, and thus, restricting a person’s right to own a gun might implicate a Second Amendment issue. Although thought-provoking and constitutionally relevant, this falls outside this Note’s scope.

¹⁵⁸ HOUSE DEBATE, *supra* note 15, at 7157–58 (statement of Rep. Craig Fishbein) (raising the issue of pistol permit eligibility); Bergman, *supra* note 118 (discussing further debate among House members).

¹⁵⁹ See CONECT, *supra* note 61 (alleging that rates of repeat offenses decrease “[w]hen people’s records are erased,” because “they gain access to jobs, housing, and higher education”). See generally VALLAS & DIETRICH, *supra* note 19; Teigen, *supra* note 5.

If a person receives a Clean Slate record expungement and then commits another crime, the existence of their record erasure should remain sealed, but only until the sentencing of a new crime. To balance public safety concerns with the promise of a clean slate, Connecticut state judges should retain access to the otherwise-expunged criminal records for sentencing purposes only.¹⁶⁰

When determining an offender's sentence, it is imperative for judges to have knowledge of and access to all past criminal convictions. Sentencing abides by different rules than the process to determine guilt.¹⁶¹ At trial, evidence of past crimes is inadmissible to prove "the bad character, propensity, or criminal tendencies" of the accused.¹⁶² When a defendant is convicted and reaches sentencing, however, facts about the defendant's background and past crimes, along with types of evidence inadmissible at trial, are admissible and may be relied upon.¹⁶³

Connecticut state judges should be able to utilize otherwise-expunged criminal records in sentencing. In accordance with the purpose of Clean Slate to give offenders a fresh start, the records should remain sealed and inaccessible to all persons until the sentencing stage of a new conviction. At that point, however, the rationales behind Clean Slate no longer apply—the offender cannot reap the benefits of a fresh start because they have a new conviction on their record. Therefore, the presiding judge should be able to unseal the file and use the knowledge of the offender's previous crimes to determine a more accurate sentence.

Under federal sentencing guidelines, each crime committed constitutes a higher recommended total sentence.¹⁶⁴ Connecticut does not have sentencing guidelines,¹⁶⁵ leaving the determination to the discretion of the court, except where it is limited by statute. However, the statutes include enhanced sentences for "persistent offenders"¹⁶⁶—those who have previously been convicted and imprisoned. For a "persistent offender of crimes involving assault" and certain other crimes, the law instructs the court to, "in lieu of imposing the sentence authorized for the crime, . . . impose the sentence of imprisonment authorized . . . for the next more serious degree of misdemeanor or felony."¹⁶⁷

¹⁶⁰ Although there is an argument for whether federal judges should also retain access to otherwise-expunged criminal records for sentencing purposes only, this argument falls outside this Note's scope.

¹⁶¹ U.S. SENT'G GUIDELINES MANUAL § 3E1.1 (U.S. SENT'G COMM'N 2021).

¹⁶² Conn. Code Evid. § 4.5(a) (2023); *see also* Fed R. Evid. 404(b) ("Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.").

¹⁶³ Conn. Code Evid. § 1.1(d)(3) (noting the evidence code does not apply to sentencing proceedings).

¹⁶⁴ U.S. SENT'G GUIDELINES MANUAL § 1B1.3 (U.S. SENT'G COMM'N 2021).

¹⁶⁵ *Excessive Sentencing Project – Connecticut*, NAT'L ASS'N CRIM. DEF. LAWS. (Oct. 16, 2014), <https://www.nacdl.org/mapdata/ExcessiveSentencingProject-Connecticut>.

¹⁶⁶ CONN. GEN. STAT. §§ 53a-40 to -40f (2023).

¹⁶⁷ *Id.* § 53a-40d.

For example, if someone had previously spent time in prison for committing second-degree assault that did not result in serious injury, which is a Class D felony,¹⁶⁸ and that person is then convicted of third-degree assault, a misdemeanor,¹⁶⁹ that person would be a persistent offender of crimes involving assault. The judge could sentence this persistent offender to up to five years in prison, the maximum for a Class D felony,¹⁷⁰ even though sentences for misdemeanors are ordinarily limited to a maximum of one year in prison.¹⁷¹ However, if Clean Slate has erased the offender's Class D felony, the offender would no longer be classified as a persistent offender eligible for sentence enhancement but as an ordinary offender eligible for a standard sentence—potentially probation or a conditional discharge.¹⁷² Therefore, the judge's sentence for the new assault would differ solely on the basis of whether the offender had previously benefited from Clean Slate's record expungements. This is not the purpose of Clean Slate that its proponents had in mind. Thus, judges need access to the otherwise-expunged records for sentencing purposes.

Once sentencing is complete, the record should be resealed and inaccessible to both the presiding judge and all other persons. By retaining data on erased records to allow state judges at sentencing to consider an offender's past convictions, Clean Slate can prioritize public safety and also preserve a reformed individual's promise of a clean slate.

B. *Connecticut Task Force Data Collection, Tracking, and Retention*

While Connecticut state judges should retain access to the otherwise-expunged criminal records for sentencing purposes, a Connecticut task force should also retain access to the expunged records for data analysis purposes. This task force should collect and track anonymized criminal records so that it can measure the effects of Clean Slate—specifically recidivism—without any identifying factors. Thus, the state of Connecticut could perform data analysis on Clean Slate's effect on public safety without factoring in biases or affecting people with expunged criminal records.

First, the state should establish a task force aimed solely at anonymous data collection, tracking, and retention of Clean Slate-expunged criminal records. This task force could easily be organized and implemented by the Governor's office; the office of Governor Ned Lamont was instrumental in supporting Clean Slate policies and enacting Connecticut's Clean Slate

¹⁶⁸ *Id.* § 53a-60. If the assault resulted in serious injury, the offense is a Class C felony and therefore not eligible for erasure under Clean Slate. *Id.*

¹⁶⁹ *Id.* § 53a-61.

¹⁷⁰ *Id.* § 53a-35a.

¹⁷¹ *Id.* § 53a-36. Third-degree assault in which a person “with criminal negligence . . . causes physical injury to another person by means of a deadly weapon, a dangerous instrument or an electronic defense weapon” carries a mandatory one-year prison sentence. *Id.* § 53a-61.

¹⁷² *Id.* § 53a-29.

law.¹⁷³ Once organized, the task force should mirror a state agency in performing its data collection, tracking, and retention. For instance, the Clean Slate task force could mirror the Connecticut State Department of Education (CSDE), an agency aimed at educational data collection supported by Governor Lamont's office.¹⁷⁴ Weekly, the CSDE collects "Learning Models and Enrollment" data; monthly, the CSDE collects "Student Membership and Attendance" data. The CSDE utilizes this data across Connecticut to "evaluate and monitor attendance and participation trends that are essential to student achievement."¹⁷⁵

Similarly, the Clean Slate task force could collect data on a weekly or monthly basis to evaluate and monitor recidivism trends after Clean Slate expungements. To accomplish this, the task force must have limited access to the otherwise-expunged records. Although this provides a state agency with access to the records, such access would not defeat the purpose of Clean Slate because the records would only remain visible to this task force and would be anonymized. The agency providing the unexpunged criminal records to the Connecticut state judges would scrub all identifying factors from the records, replace the offenders' identities with numbers, and provide these anonymized records to the task force. Once the task force receives the anonymized criminal records, it can track whether the "number" commits a crime through the Connecticut judicial system.

The process would proceed as follows: First, a person is deemed eligible for a Clean Slate expungement. Second, the agency responsible for expunging records performs three actions: assign a number to the person's record;¹⁷⁶ provide a sealed copy of the identifiable record to the Connecticut judicial system (to be unsealed only at sentencing as described above); and provide a copy of the anonymized records to the task force. Third, the agency expunges or directs others to expunge the records from all other places. Fourth, the task force tracks whether the "number" is resentenced through anonymized Connecticut judicial system reporting. By utilizing this structure, the task force can anonymously and precisely track recidivism rates following Clean Slate expungements.

The state legislature could use this recidivism data to add or remove crimes eligible for exclusion, similar to the eligible crime adjustments it

¹⁷³ See *Governor Signs Bill*, *supra* note 64.

¹⁷⁴ Press Release, Conn. State Dep't of Educ., CSDE Announces New Data Collections to Better Evaluate and Support Student Participation and Engagement During the 2020–21 Academic Year (Sept. 18, 2020), <https://portal.ct.gov/SDE/Press-Room/Press-Releases/2020/CSDE-Announces-New-Data-Collections-to-Better-Evaluate-and-Support-Student-Participation-Engagement>.

¹⁷⁵ *Id.*

¹⁷⁶ To ensure Clean Slate functions as intended to give people a fresh start, this assignment should be performed in such a way that the mere fact that a person has been assigned a Clean Slate number is hidden from the public and prosecutors. However, this fact should be available to a judge at sentencing as the signal to examine the full record of an offender's otherwise-expunged offenses.

made to the Clean Slate law in 2022.¹⁷⁷ The data could also help other states that are looking to enact Clean Slate laws to balance public safety with the benefits of granting its residents a clean slate.

CONCLUSION

As the nation emerges from the COVID-19 pandemic, millions of Americans will reenter the job market in search of a new career path. “One of the biggest challenges to rebuilding our post-pandemic economy is getting people back to work as quickly as possible.”¹⁷⁸ The passage of Clean Slate legislation signifies an improvement in criminal record reform by helping millions of Americans with criminal convictions obtain a job, provide for one’s family, establish a stable lifestyle, refrain from reoffending, and rebuild the economy. Along with nine other states, Connecticut is leading a revolution in criminal record reform that will have far-reaching effects for years to come. Although it is too early to tell definitively, Connecticut’s Clean Slate Bill could positively impact people of color and have long-term progressive effects on criminal record reform, but it could also create short-term costs for society. By collecting, tracking, and retaining concrete data focused on Clean Slate’s effects on previous offenders and society, states like Connecticut can ensure that Clean Slate is the novel and effective criminal record reform initiative that Americans need.

¹⁷⁷ See *supra* note 102 and accompanying text.

¹⁷⁸ Nation & Winfield, *supra* note 20.

