

# REFORMING WAITING PERIODS: FOSTERING EQUITY AND UNLEASHING EMPLOYMENT OPPORTUNITIES

*A Clean Slate Policy Short by [Jesse Kelley](#) and [Dr. Laura Chavez](#)*

## Executive Summary

Research indicates that after a waiting period of 5 to 7 years without criminal activity, most individuals with records pose no more significant threat to public safety than the general population. By aligning legislative waiting periods with research findings, we reinforce the concept of rehabilitation- a cornerstone of the American correctional system. Shortening waiting periods increases the employability of qualified workers, which improves the economy, strengthens businesses, and transforms the lives of those seeking a meaningful career.

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## Importance of Eligibility Determination: Waiting Periods are a Key Factor

Petition-based record-clearing policies can be convoluted, expensive, and time-consuming, deterring eligible applicants.<sup>1</sup> As a result, only a small portion of those eligible are actually granted relief.<sup>2</sup> A combination of legal criteria, application process accessibility, legal assistance, institutional attitudes, public perception, and technological infrastructure can impact the effectiveness of record sealing.<sup>3</sup>

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<sup>1</sup> See: Murray, Brian M. "Retributive expungement." *U. Pa. L. Rev.* 169 (2020): 665.

<sup>2</sup> Chien, Colleen. "America's paper prisons: The second chance gap." *Mich. L. Rev.* 119 (2020): 519.

<sup>3</sup> The Clean Slate Initiative advocates for automatic record sealing - a process where records are shielded from public view. Please note that different states use varying terms for similar processes including but not limited to expungement, set aside, and clearance.

Clean Slate policies solve the problems associated with petition-based record sealing by shifting the administrative burden<sup>4</sup> of record clearing from the individual to the government. The policies are designed to employ algorithms and software so that governments can make uniform eligibility determinations and automatically clear the records of eligible individuals.

As such, eligibility criteria are paramount. Jurisdictions have varying rules regarding who qualifies for relief. Generally, non-conviction records (e.g., arrests that resulted in dismissal) and non-violent or misdemeanor convictions are more likely to be eligible, while violent or serious convictions may not be eligible. Additionally, most jurisdictions require a certain waiting period from the disposition or sentence completion of a conviction before one can become eligible for relief, demonstrating the individual's commitment to rehabilitation.

Indeed, existing petition-based record clearance laws and Clean Slate automatic record sealing policies<sup>5</sup> will benefit from a critical review and legislative inclusion of appropriate evidence-based waiting periods. In many cases, this may involve a statutory reduction of waiting periods for individuals seeking record sealing.

## Research Findings: Lengthy Waiting Periods Cause Greater Harm to Individuals and Communities

Reducing the time a person must wait for record relief can ameliorate some collateral consequences,<sup>6</sup> support successful reentry, and, therefore, enhance public safety. Swift record sealing enables rehabilitated individuals to

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<sup>4</sup> For a thorough analysis of how administrative burdens are defined and function in the United States, see Herd, Pamela, and Donald P. Moynihan. *Administrative burden: Policymaking by other means*. Russell Sage Foundation, 2019.

<sup>5</sup> The Clean Slate Initiative passes and implements laws that automatically clear eligible records for people who have completed their sentence and remained crime-free. As such, we believe that a uniform, government-initiated process is better than a petition-based process based on research surrounding access, income, and complexity of the petition-based process. See <https://bit.ly/3RBZ2Lf>

<sup>6</sup> Collateral consequences are legal and regulatory restrictions that prohibit people convicted of crimes from accessing opportunities that are otherwise available to those without convictions. See the National Inventory of Collateral Consequences of Conviction, funded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice for a thorough listing of collateral consequences by state. <https://niccc.nationalreentryresourcecenter.org/>

reintegrate into society more effectively, minimizing the risk of future interaction with the legal system.

The single most reliable data point that predicts future reoffending is the amount of time since a person's last conviction.<sup>7</sup> In addition, most people with a conviction have only one; 75% of people with a first conviction do not have a second conviction within ten years.<sup>8</sup>

Decreasing the waiting period that a person must remain crime-free before becoming eligible for record clearing should be as short as practicable to maintain public safety.<sup>9</sup>

Waiting periods should be based on the available evidence around recidivism and its drivers. The pivotal "Redemption Study," funded by the National Institute of Justice, introduced the concept of "time to redemption," which represents the duration after which an individual with a record presents a similar hiring risk to someone who has never been arrested.

The researchers, Alfred Blumstein, and Kiminori Nakamura, examined the records of all adults arrested for the first time in 1980 in New York to ascertain who was subsequently arrested again, who was not, and how long individuals remained crime-free. They identified the "point of redemption," where the likelihood of a person with a prior arrest committing a new crime is statistically indistinguishable from a similar person in the general population.<sup>10</sup>

Blumstein and Nakamura found that individuals who were arrested at a very young age, or whose first arrest was for a more serious crime, took approximately eight years to reach the point of redemption, while those who

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<sup>7</sup> Shawn D. Bushway, Paul Nieuwbeerta, and Arjan Blokland, "The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?" *Criminology*, Vol. 49, No. 1, 2011

<sup>8</sup> Bushway, Shawn D. "Resetting the Record: The Facts on Hiring People with Criminal Histories." RAND Corporation. (2024). <https://doi.org/10.7249/RBA2968-1>

<sup>9</sup> "The high bar for sealing in most jurisdictions means that this remedy is effectively not available to most people with criminal records during the period of reentry when it would be beneficial." Miller, Andrea; Briana Paige; and Allison Trochesset, Collateral Consequences of Criminal Records, Caseload Highlights: Special Issue, November 12, 2021. p. 3. <https://bit.ly/3PwA2TE>

<sup>10</sup> Blumstein, Alfred and Kiminori Nakamura. (2009). [Redemption in the presence of widespread criminal background checks](#). *Criminology*, 47(2), 327-359.

were older at the time of their first arrest or were convicted of less serious offenses arrived at that point in as few as 3 or 4 years.<sup>11</sup>

Record-clearing policies that have unduly long waiting periods for eligibility fail to account for the evidence that, after just a few years, individuals pose no greater risk to public safety than the general public.<sup>12</sup> Not only that, but excessively long waiting periods can jeopardize public safety by excluding otherwise eligible job candidates from obtaining employment.

The vast majority of employers run criminal background checks on applicants<sup>13</sup> to assess the risk of future criminal behavior among job candidates. However, employers tend to overemphasize the importance of conviction records without considering the nuances of an individual's situation, such as the time elapsed since the offense. This can result in suitable job candidates being overlooked.<sup>14</sup>

While employers neglecting to hire individuals with criminal records certainly has an impact at the individual level for job seekers, there is also a societal implication for public safety. Research consistently demonstrates a strong correlation between macroeconomic unemployment rates and property crime,<sup>15</sup> with this trend especially pronounced among men with low labor skills.<sup>16</sup>

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<sup>11</sup> Id. See also: <https://www.ojp.gov/pdffiles1/nij/226872.pdf>

<sup>12</sup> Love, Margaret and David Schlüssel (February 2022). Waiting for Relief: A National Survey of Waiting Periods for Record Clearing at page 6, "...new research would seem to cast doubt on the legitimacy of concerns that shortening waiting periods necessarily raises public safety concerns. Indeed, to the contrary, it suggests that it may be possible to reconcile the seemingly inconsistent policy goals of facilitating and recognizing rehabilitation through shorter waiting periods."  
<https://ccresourcecenter.org/wp-content/uploads/2022/02/Waiting-Periods-Draft.2.22.21-2.pdf>

<sup>13</sup> According to the National Consumer Law Center (NCLC), around 94% of employers use criminal background checks on job applicants. See:  
<https://www.nclc.org/topic/background-checks/#:~:text=About%2094%25%20of%20employers%20and,offenses%2C%20or%20omit%20disposition%20information.>

<sup>14</sup> Bushway, Shawn D., and Nidhi Kalra. "A policy review of employers' open access to conviction records." Annual Review of Criminology 4 (2021): 165-189.

<sup>15</sup> Fluctuations in unemployment rates at the macro level have been associated with property, but not violent crime rates. See: Cook, Philip J. "Property crime-yes; violence-no: Comment on Lauritsen and Heimer." Criminology & Pub. Pol'y 9 (2010): 693.

<sup>16</sup> For a thorough review of the literature, see Chalfin, Aaron, and Justin McCrary. "Criminal deterrence: A review of the literature." Journal of Economic Literature 55, no. 1 (2017): 5-48.

Reduction in unemployment rates may have accounted for a sizeable portion of the decline in property crime rates in the 1990s,<sup>17</sup> and according to research conducted by Min-Jen Ling, a one percentage point increase in unemployment can increase property crime by 1.8 to 4 percent, potentially explaining up to 30 percent of the reduction in property crime levels in the 1990s.<sup>18</sup>

Unemployment is also linked to recidivism at the individual level among those with criminal records. Theoretically, employment (particularly high-quality, stable employment) can reduce individuals' economic motivations for crime, provide a stable social environment, and create routines that are not conducive to criminal behavior.<sup>19</sup>

Researcher Garima Siwach analyzed the impacts of the 2008-2009 recession in New York on employment and recidivism and found that rates of rearrest significantly increased when people with criminal records were denied employment. The impact was higher for property crime arrests and was more pronounced for men and Black individuals with criminal records who face even stronger barriers to employment.<sup>20</sup>

Other researchers have examined the relationship between employment and recidivism among people under parole supervision following incarceration. One study found that for those on parole deemed "low risk" for recidivism, having a job reduced the likelihood of being returned to prison by nearly 14 percentage points.<sup>21</sup> Another study found that individuals on parole who obtained higher quality jobs (characterized by higher wages, longer tenure, and more union coverage) were significantly less likely to be re-arrested or re-incarcerated.<sup>22</sup>

<sup>17</sup> Raphael, Steven, and Rudolf Winter-Ebmer. "Identifying the effect of unemployment on crime." *The journal of law and economics* 44, no. 1 (2001): 259-283. Gould, Eric D., Bruce A. Weinberg, and David B. Mustard. "Crime rates and local labor market opportunities in the United States: 1979-1997." *Review of Economics and statistics* 84, no. 1 (2002): 45-61.

<sup>18</sup> Lin, Ming-Jen. "Does unemployment increase crime?: Evidence from US Data 1974-2000." *Journal of Human resources* 43, no. 2 (2008): 413-436.

<sup>19</sup> See LaBriola, Joe. "Post-prison employment quality and future criminal justice contact." *RSF: The Russell Sage Foundation Journal of the Social Sciences* 6, no. 1 (2020): 154-172

<sup>20</sup> Siwach, Garima, Shawn D. Bushway, and Megan Kurlychek. "Legal mandates in criminal background checks: an evaluation of disparate impact in New York State." *Available at SSRN 2986384* (2017).

<sup>21</sup> Raphael, Steven, and David F. Weiman. "The impact of local labor market conditions on the likelihood that parolees are returned to custody." *Barriers to reentry? The labor market for released prisoners in post-industrial America* (2007): 304-332.

<sup>22</sup> LaBriola, Joe. "Post-prison employment quality and future criminal justice contact." *RSF: The Russell Sage Foundation Journal of the Social Sciences* 6, no. 1 (2020): 154-172

Taken together, these findings underscore the important relationship between employment and recidivism. Employers excluding people with records from the labor market on the basis of their record alone has direct consequences for society in terms of lost wages as well as public safety.<sup>23</sup> After an appropriate period of time has elapsed, criminal records should no longer be a barrier to employment.<sup>24</sup>

Automatic record clearing coupled with shortened waiting periods can enhance not just public safety but also individuals' reintegration into society. In fact, researchers J.J. Prescott and Sonja Starr found that individuals who had their records cleared in Michigan had no greater risk of recidivism than the general population five years after clearance.<sup>25</sup>

Other research has found that record clearance reduces individuals' likelihood of committing future crimes by increasing their successful reintegration through employment, housing, and other opportunities.<sup>26</sup>

Blumstein and Nakamura called for an overhaul of "forever rules" that indefinitely restrict employment opportunities for people with records. In an op-ed published in the New York Times, they argued that it is unreasonable for individuals to be perpetually punished for a single arrest that happened many years ago.<sup>27</sup>

Records should be sealed after a short time for low-level, non-serious offenses. Incorporating the concept of redemption can mitigate barriers to employment, contributing to reduced recidivism rates. Waiting periods - a key consideration in record relief policies - should be based on empirical evidence of the diminished probability of reoffending as indicated by the "point of redemption."

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<sup>23</sup> Bushway, Shawn D., and Nidhi Kalra. "A policy review of employers' open access to conviction records." *Annual Review of Criminology* 4 (2021): 165-189.

<sup>24</sup> Kurlychek, Megan C., Robert Brame, and Shawn D. Bushway. "Scarlet letters and recidivism: Does an old criminal record predict future offending?." *Criminology & Public Policy* 5, no. 3 (2006): 483-504.

<sup>25</sup> Prescott, J. J., and Sonja B. Starr. "Expungement of criminal convictions: An empirical study." *Harv. L. Rev.* 133 (2019): 2460.

<sup>26</sup> Adams, Ericka B., Elsa Y. Chen, and Rosella Chapman. "Erasing the mark of a criminal past: Ex-offenders' expectations and experiences with record clearance." *Punishment & Society* 19, no. 1 (2017): 23-52.

<sup>27</sup> Blumstein, Alfred and Kiminori Nakamura. (2012, January 9). [Paying a Price Long After the Crime](#). New York Times.

Examining the relationship between record relief and recidivism illustrates the connection between increased public safety and shorter waiting periods. Creating a fair and rehabilitative justice system that holds individuals accountable and offers genuine opportunities to rebuild lives and contribute positively to communities creates a more balanced and prosperous society.

## **Calls to Action: Reduce Waiting Periods Pursuant to Research**

Prompt record sealing has the potential to significantly reduce the likelihood of reoffending. Lengthy waiting periods for record relief can inadvertently hinder the reintegration of individuals with records into society.

When the record sealing process is expedited, individuals can more quickly secure stable employment, housing, and education, which reduces the likelihood of resorting to unlawful activities out of necessity.

This approach is a proactive investment in rehabilitation and successful reintegration, ultimately leading to safer communities. Furthermore, it aligns with the principles of fairness and justice, acknowledging that individuals who have paid their debt to society deserve a genuine chance at a fresh start.

Given these benefits, passing legislation to reduce waiting periods is a practical and effective strategy for bolstering public safety.

## **Result: Working Toward Equity**

Long waiting periods disproportionately affect individuals from marginalized communities, exacerbating existing social and economic inequalities. By reforming waiting periods, we can address systemic disparities and ensure that the benefits of rehabilitation and second chances are extended more equitably.

Lengthy waiting periods impede timely access to opportunities for personal growth and development and perpetuate disadvantage cycles, particularly for marginalized communities. By streamlining these waiting periods, we aim to foster a fairer and more inclusive system, allowing individuals to rebuild their lives and contribute meaningfully to society.

## Action: Including Periods of Supervision:

Integrating probation or parole periods into waiting periods for sealings is a pragmatic approach that recognizes the rehabilitative nature of these supervisory programs.

Including probation or parole time in the waiting period ensures that individuals seeking sealing have completed their entire rehabilitative journey, demonstrating sustained adherence to the conditions imposed by the legal system.

By considering probation or parole as an integral part of the waiting period, policymakers acknowledge the comprehensive nature of the reintegration process and ensure that individuals have fulfilled all court-mandated obligations before becoming eligible for record relief.

Simultaneously, including supervision will, in practice, keep waiting periods to the prescribed length of time where a person reaches the “point of redemption.” Considering this policy change can foster a more holistic and nuanced perspective on the relationship between probation, waiting periods, record relief, and the successful reintegration of individuals into society.

*Jesse Kelley is a former Criminal Defense Attorney and the Senior Policy Strategist at The Clean Slate Initiative. Dr. Laura Chavez is the Director of Research and Data at The Clean Slate Initiative and a former academic with experience in local government.*