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## EXPUNGEMENT: ACCESS TO JUSTICE OR JUST MORE BUREAUCRACY? A COMPARISON AMONG THE STATES

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### I. INTRODUCTION

Early one morning, before the light of day, a woman is arrested when her abusive husband attempts to frame her for domestic violence. She has no criminal record nor been previously involved with the criminal justice system in any negative way. She is taken into custody, booked, and held. She is scared and feels isolated. No one in authority seems to believe she is innocent, but she is. Her husband is the bread winner and controls all the money. She knows she needs an attorney but worries how she will afford it. Even if she clears her name, this arrest is going to follow her for the rest of her life. Or will it?

This story is not the anomaly one would think. Even if someone is guilty, the emotions and repercussions are the same

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for everyone arrested: shame and stigma. This woman hired a lawyer and had the charges dismissed. At the time of dismissal, her attorney filed for expungement with the court for the woman's record to be cleared of arrest and charges. However, the cost was high—likely thousands of dollars. Furthermore, without the attorney, she would not have known to file the expungement or the process for obtaining it.

Why? Because expungement laws can be convoluted, and the process for obtaining expungement is unnecessarily burdensome and complex. Many Americans are unaware that expungement is an option,<sup>2</sup> and access to this remedy is hindered by an inability to understand the law and process.<sup>3</sup> For instance, many are unaware of the effect expungement can have on their lives. Once a criminal record is expunged, a convicted person no longer has to indicate they were convicted of *that* crime on a job application.<sup>4</sup> However, some states are getting it right. They are passing progressive laws meant to provide reasonable access to the layperson without inflicting unneeded bureaucracy.

Part II of this Note explores the factual and legal history of expungement laws. Part III discusses the wide spectrum of laws across the United States and labels which states are “progressive,” “moderate,” or “conservative.”<sup>5</sup> Part IV compares these laws, analyzes what they mean, and identifies which states excel in providing reasonable expungement processes and practices. Lastly, Part V examines the implications and side effects of granting and denying expungements from the perspective of the convicted person, the public, and the government. This Note seeks to encourage the “conservative” expungement states to acknowledge and adopt the vast benefits of broad expungement laws. Considering the minimal side effects to society, this Note

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<sup>2</sup> See Kassie R. Tibbott, *Invisible Bars: The Collateral Consequences of Criminal Conviction Records*, 46 VER. B.J. 41, 41 (2020), <https://search.issuelab.org/resources/694/694.pdf>.

<sup>3</sup> Margaret Colgate Love, *Relief From The Collateral Consequences Of A Criminal Conviction: A State-By-State Resource Guide*, 5 (Dec. 16, 2005), <https://search.issuelab.org/resources/694/694.pdf> (*emphasis added* to indicate that other convictions not expunged must still be disclosed).

<sup>4</sup> See *infra* Part V.

<sup>5</sup> See *infra* Part III (all of which are defined herein).

recommends that those states update their laws to parallel the majority of states because now is the time for progress.

## II. THE HISTORY OF EXPUNGEMENT LAWS IN AMERICA

Expungement is the process of wiping a person's criminal history such that the public is unaware it exists.<sup>6</sup> Some states call their expungement laws "clean slate legislation."<sup>7</sup> The concept of a "clean slate" is important in the expungement world because of the many unknown and unforeseen ramifications in having a criminal record. When a person serves their sentence, whatever that looks like, should that not be the end of punishment? While that should be the end, collateral consequences of convictions extend indefinitely for many. For those individuals, "punishments such as probation, fines, and even incarceration may be dwarfed in importance by what comes next: exclusion from employment[] [and] obstacles to social integration[.]"<sup>8</sup> But "[e]xpungement offers the possibility of sweeping aside a wide range of legal and socioeconomic consequences at once[.]"<sup>9</sup>

As of 2020, "somewhere between 19 and 24 million Americans ha[d] felony conviction records, and an unknown — but presumably much larger — number ha[d] misdemeanor conviction records."<sup>10</sup> When a person is convicted of a crime, they face immediate consequences. Conversely, consequences that are not directly related to the conviction but that occur after

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<sup>6</sup> See J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2463 (2020).

<sup>7</sup> See Madelynn Woolf, *A State for Second Chances: Utah's Clean Slate Legislation*, 2024 UTAH L. REV. 475, 482 (2024). Clean slate specifically refers to automatic expungement of criminal records, which will be discussed throughout this Note. *Clean Slate Law: Automatic Expungement of Criminal Records*, EAGLE EYE SCREENING SOL., <https://www.eagleeyescreening.com/clean-slate-law-automatic-expungement-of-criminal-records#:~:text=Clean%20slate%20laws%20are%20state,and%20some%20low%2Dlevel%20felonies> (last visited Aug. 1, 2024).

<sup>8</sup> Prescott & Starr, *supra* note 6, at 2468.

<sup>9</sup> *Id.* at 2463.

<sup>10</sup> *Id.* at 2461-62 (citing *The Economic Impacts of the 2020 Census and Business Uses of Federal Data: Hearing Before the J. Econ. Comm.*, 116<sup>th</sup> Cong. 12 (2019)).

the sentence is served are called collateral consequences.<sup>11</sup> Collateral consequences of a felony conviction include: barriers to employment,<sup>12</sup> housing,<sup>13</sup> losing the right to vote,<sup>14</sup> losing the right to possess a firearm,<sup>15</sup> social integration,<sup>16</sup> and immigration or deportation issues.<sup>17</sup> However, “[a]ccording to the Sentencing Project, there are over 44,000 collateral consequences of being involved in the justice system.”<sup>18</sup>

“Since judicial records are generally considered to be public records, they are usually available for inspection and copying by the public.”<sup>19</sup> Because public records are, as self-defined, public, anyone who requests a background check or a person's criminal history from a court may obtain that information.<sup>20</sup> Furthermore, attorneys or other legal staff with access to state databases can generally find criminal histories.<sup>21</sup> Thus, a convicted person's crimes follow them indefinitely or until action is taken. This is true even for innocent persons who were simply arrested for a misunderstanding and later had their charges dismissed. Expungement laws allow these people to take the action necessary to get a “clean slate.”

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<sup>11</sup> Love, *supra* note 3, at 2.

<sup>12</sup> *Id.* at 5; Tibbott, *supra* note 2, at 41.

<sup>13</sup> See, e.g., Anne Morrison Piehl, *Putting Time Limits on the Punitiveness of the Criminal Justice System*, HAMILTON PROJECT 9 (2016), [https://www.hamiltonproject.org/assets/files/reducing\\_punitiveness\\_piehl\\_policymemo.pdf](https://www.hamiltonproject.org/assets/files/reducing_punitiveness_piehl_policymemo.pdf).

<sup>14</sup> Woolf, *supra* note 7, at 477.

<sup>15</sup> See *id.* at 480.

<sup>16</sup> See, e.g., Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, 270 NAT'L INST. JUST. J. 42, 44 (2012).

<sup>17</sup> See *Padilla v. Kentucky*, 559 U.S. 356 (2010).

<sup>18</sup> *Certificates of Rehabilitation and Limited Relief*, NAT'L CONF. OF STATE LEGISLATURES (June 30, 2022), <https://www.ncsl.org/civil-and-criminal-justice/certificates-of-rehabilitation-and-limited-relief#:~:text=In%20effect%2C%20when%20a%20person,person's%20reliability%20and%20good%20character.>

<sup>19</sup> Stephen W. Shaw, *The DUI Article: Expungement of Criminal Records*, 82 ALA. LAW. 115, 115 (2021).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* The author also notes from personal experience, while working in Dean Maha Ayesh's Expungement Clinic at the Lincoln Memorial University Duncan School of Law, that Tennessee has a similar system of access as the Alabama system cited to in this footnote.

Traditionally, state expungement laws were reserved only for those arrested and released without being charged or dismissed charges.<sup>22</sup> Thus, historically, expungement remedies were limited.<sup>23</sup> Moreover, as each state has its own expungement laws, the history and development of those laws can look very different.

#### A. EARLY EXPUNGEMENT LAWS—1960'S TO 1980'S

Expungement laws have been based on common law<sup>24</sup>, statutory law<sup>25</sup>, or both<sup>26</sup> with the majority of states falling into the latter category.<sup>27</sup> Statutory laws generally laid out the requirements to obtain expungement, specifically the eligible crimes,<sup>28</sup> while judges have had discretion in determining whether expungement was warranted based on the person's rehabilitation.<sup>29</sup> Because of these limitations, historically people had uphill battles obtaining relief from the collateral consequences of felony convictions.<sup>30</sup>

Examining the history of expungement laws does not require one to even leave the twentieth century. Michigan, for example, has one of the oldest expungement laws on the books, dating back to the 1960s.<sup>31</sup> However, it was only in 1983 that a significant change to the statute eased the availability of relief.<sup>32</sup> This may be due in part to the American Bar Association issuing

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<sup>22</sup> See, e.g., Joseph C. Dugan, *I Did My Time: The Transformation of Indiana's Expungement Law*, 90 IND. L.J. 1321, 1335 (2015); see also Love, *supra* note 3, at 24.

<sup>23</sup> Brian M. Murray, *A New Era for Expungement Law Reform? Recent Developments at the State and Federal Levels*, 10 HARV. L. POL'Y REV. 361, 368 (2016).

<sup>24</sup> See Kristin K. Henson, *Can You Make This Go Away?: Alabama's Inconsistent Approach to Expunging Criminal Records*, 35 CUMB. L. REV. 385, 387 (2005).

<sup>25</sup> See, e.g., ARK. CODE ANN. § 16-93-1207(b)(1) (2024).

<sup>26</sup> See, e.g., *Commonwealth v. Wexler*, 431 A.2d 877, 879 (Pa. 1981); see also *State v. S.L.H.*, 755 N.W.2d 271, 274 (Minn. 2008).

<sup>27</sup> Murray, *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 369.

<sup>31</sup> Prescott & Starr, *supra* note 6, at 2481.

<sup>32</sup> *Id.*

standards on the legal status of prisoners in 1981.<sup>33</sup> These standards “urged jurisdictions to adopt ‘a judicial procedure for expunging criminal convictions’” to mitigate collateral consequences.<sup>34</sup> Michigan’s limited availability of expungement, before 1983, “was driven by the difficulties of accessing arrest records and the narrowness of the procedures available to seek expungement.”<sup>35</sup> While Michigan was ahead of its time,<sup>36</sup> by the end of the 1970s, most states had passed some form of expungement laws in response to “subtle problems of social and professional discrimination against convicted persons.”<sup>37</sup> Furthermore, the issues regarding limited availability of relief does not appear to be a problem that Michigan solely dealt with.<sup>38</sup> These reasons are one explanation for the slow roll of expungement laws in the 1900’s.

#### B. 1980’S TO 2000’S

Additionally, between the 1980’s and 2000’s, the “official [federal] government position” was that criminals should be “labeled” and “segregated for the protection of society, not reclaimed and forgiven.”<sup>39</sup> Because of this, states passed new collateral consequences and “disqualifications” to reinforce that position.<sup>40</sup> One new collateral consequence was the “[p]ermanent change in a criminal offender’s legal status[.]”<sup>41</sup> Furthermore, entering the new century, technological advances made it nearly impossible for a person to conceal their criminal record.<sup>42</sup>

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<sup>33</sup> Margaret Colgate Love, *Starting Over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URB. L.J. 1705, 1713-14 (2003), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1880&context=ulj> (citing ABA STANDARDS FOR CRIM. JUST., LEGAL STATUS OF PRISONERS Standard 23-8.2 (1983)).

<sup>34</sup> Love, *supra* note 33, at 1714.

<sup>35</sup> Prescott & Starr, *supra* note 6, at 2481 n.112 (internal citations omitted).

<sup>36</sup> *Id.* at 2481.

<sup>37</sup> Love, *supra* note 33, at 1714-15.

<sup>38</sup> This is the author’s opinion based on the research encompassed in this Note.

<sup>39</sup> Love, *supra* note 33, at 1716.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 1716-17.

### C. 2010'S TO TODAY

However, modern times have offered modern solutions. “Fair chance” reforms swept throughout the United States in 2013.<sup>43</sup> By 2018, “two-thirds of U.S. states adopt[ed] one or more” laws intended “to mitigate the reentry barriers faced by people with criminal records.”<sup>44</sup> Additionally, 43 states passed 153 laws in 2019 geared towards aiding reentry.<sup>45</sup> Thus, in a five-year span, over sixty percent of states had “attempted” to expand their expungement laws.<sup>46</sup> This expansion aimed to broaden eligibility requirements, limit the waiting period to obtain an expungement, amend the burden of proof the petitioner must show, and elucidate the legal effects expungement would have on a person. Moreover, this expansion of laws extended to include actual convictions, not just arrests or dismissals.<sup>47</sup>

Specifically, in 2018, Pennsylvania was the first state to adopt a “sweeping” automatic expungement program for non-violent misdemeanors committed by adults who remained crime-free for ten years.<sup>48</sup> By the following year, three more states followed Pennsylvania’s lead with even more expansive relief.<sup>49</sup> However, Maryland Governor Wes Moore offered the most broad and recent expungement relief in 2024. Instead of waiting for the state legislature to extend relief, the Governor signed a “nationally historic executive order,” which pardoned 175,000 persons convicted of various misdemeanor marijuana crimes.<sup>50</sup> In doing so, the Governor stated that “[n]o

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<sup>43</sup> Prescott & Starr, *supra* note 6, at 2463 n. 8.

<sup>44</sup> *Id.* at 2462-63.

<sup>45</sup> *Id.* at 2463.

<sup>46</sup> Ram Subramanian et al., *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*, VERA INST. FOR JUST. 11 (2014), <https://www.vera.org/downloads/publications/states-rethink-collateral-consequences-report-v4.pdf>.

<sup>47</sup> California, Colorado, Idaho, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, North Dakota, Ohio, Tennessee, Utah, Vermont, and Wyoming have all updated their laws to include convictions in some way. *Id.* at 12.

<sup>48</sup> Prescott & Starr, *supra* note 6, at 2464.

<sup>49</sup> *Id.* (stating that those states had shorter wait times and one state extended the relief to certain felonies as well).

<sup>50</sup> The Office of Governor Wes Moore, *Governor Moore Signs Nationally Historic Executive Order Pardoning 175,000 Maryland Cannabis*

Marylander should face barriers to housing, employment, or education based on convictions for conduct that is no longer illegal.”<sup>51</sup> He went on to say that “[w]e must continue to ... build a state and society that is more equitable, more just, and leaves no one behind.”<sup>52</sup> Not only did the qualified individuals not need to take any action to receive the pardon, but the barriers to housing, employment, and education were eliminated within two weeks of enactment.<sup>53</sup> Although a pardon is different than an expungement, as the crime is still present on a persons’ record, the record now states “pardoned.” However, the opportunity of expungement is still available, and eligible persons can apply for expungement, so their record is completely clean. Only time will tell if other states follow Maryland’s lead and restore a convicted person’s “civil death” to life.

### III. 50 STATE COMPARISON OF EXPUNGEMENT LAWS

“[A] criminal history is a hindrance to a person’s present and future ability to obtain employment, housing, education, or credit” and legislators must “protect persons from unwarranted damage which may occur when the existence of a criminal history continues indefinitely.”<sup>54</sup> State policies regarding expungement laws are intended “to favor the giving of second chances to offenders who are rehabilitated.”<sup>55</sup> However, public safety and equity are two primary concerns when passing expungement laws.<sup>56</sup>

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*Convictions*, MARLYAND.GOV (June 17, 2024), <https://governor.maryland.gov/news/press/pages/governor-moore-signs-nationally-historic-executive-order-pardoning-175000-maryland-cannabis-convictions.aspx>.

<sup>51</sup> *Id.* (Maryland legalized marijuana by referendum in 2022).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Del. Code Ann. tit. 11, § 4371.

<sup>55</sup> Neb. Rev. Stat. § 179.2405.

<sup>56</sup> Kristine Hamann, Patricia Riley, & Charlotte Bismuth, *The Evolving Landscape of Sealing and Expungement Statutes*, ABA CRIM. JUST. WINTER (Jan. 22, 2024), [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2024/winter/evolving-landscape-sealing-expungement-statutes/](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2024/winter/evolving-landscape-sealing-expungement-statutes/).

The notion of second chances is not profoundly accepted in all states. Throughout America, states vary in degree of progressiveness in regard to their expungement laws.<sup>57</sup> Contrary to what one may initially presume, conservative versus liberal laws do not follow the traditional political landscapes of the states.<sup>58</sup> For example, Tennessee is considered more progressive in expungement laws and access<sup>59</sup> while it maintains a generally universal conservative political platform.<sup>60</sup>

This section explores the extreme variance in expungement laws throughout the states by categorizing them in accordance with progressiveness. The Restoration of Rights Project has compiled and continually updates the data from which this Note relies.<sup>61</sup> The 50-State Comparison compiled by the Restoration of Rights Project offers a detailed analysis of expungement laws and procedures in each United States

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<sup>57</sup> See Restoration of Rights Project, *50-State Comparison: Expungement, Sealing, and Other Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CTR., <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2-2/> (last visited Aug. 10, 2024).

<sup>58</sup> See *infra* Part II.

<sup>59</sup> See Restoration of Rights Project, *Tennessee Restoration of Rights and Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CTR., [https://ccresourcecenter.org/state-restoration-profiles/tennessee-restoration-of-rights-pardon-expungement-sealing/#III\\_Expungement\\_sealing\\_other\\_record\\_relief](https://ccresourcecenter.org/state-restoration-profiles/tennessee-restoration-of-rights-pardon-expungement-sealing/#III_Expungement_sealing_other_record_relief) (last visited Aug. 10, 2024) (stating that Tennessee offers felony and misdemeanor relief, mandatory relief upon request for non-conviction records, and judicial certificates of rehabilitation); see also *infra* Part II.

<sup>60</sup> *Party affiliation among adults in Tennessee by political ideology*, PEW RSCH. CTR., <https://www.pewresearch.org/religious-landscape-study/database/compare/party-affiliation/by/political-ideology/among/state/tennessee/> (last visited July 23, 2024).

<sup>61</sup> COLLATERAL CONSEQUENCES RESOURCE CTR., *supra* note 57 (updated as of July 2024). The Restoration of Rights Project is under the Collateral Consequences Resource Center, which partners with various legal aid and criminal defense organizations across the Nation. Restoration of Rights Project, *About the Restoration of Rights Project*, COLLATERAL CONSEQUENCES RESOURCE CTR., <https://ccresourcecenter.org/restoration-about/> (last visited Aug. 10, 2024).



misdemeanors. Moderates include misdemeanors, non-convictions, and certain marijuana convictions. Conservative states encompass those offering relief for only non-convictions or no relief at all, with half the states offering no relief.

(3) The process for non-conviction record expungement is based upon whether the state offers automatic or mandatory relief, discretionary relief, or no relief.<sup>68</sup> Automatic and mandatory relief are grouped together because the automatic process is not comprehensive and may still require a court petition for relief.<sup>69</sup> The former will be designated progressive, while moderate states will encompass discretionary relief. Conservative states offer no relief.

(4) For judicial or correctional certificates, some states offer certificates of rehabilitation which assist the convicted person in obtaining employment or meeting licensing requirements.<sup>70</sup> States that offer both judicial and correctional certificates are progressive. The states categorized as moderate offer only one, and the conservative states offer none.<sup>71</sup>

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<sup>68</sup> Non-conviction 3A, the finding may become guilty. (last visited Aug. 22, 2024).

<sup>69</sup> COLLATERAL CONSEQUENCES RESOURCE CTR., *supra* note 57.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>71</sup> See Appendix A for the Restoration of Rights Project's tables breaking down the criteria and sorting the states accordingly.

Progressive <sup>72</sup> (12)	Moderate <sup>73</sup> (32)	Conservative <sup>74</sup> (5)	No Relief <sup>75</sup> (1)
California, Colorado, Connecticut, Delaware, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Pennsylvania, Vermont	Alabama, Arizona, Arkansas, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wyoming	Alaska, Florida, Hawaii, Maine, Montana	Wisconsin

<sup>72</sup> Progressive means those states met three of the four criteria in the broadest category.

<sup>73</sup> Moderate means those states met at least two criteria in the broadest or moderate category.

<sup>74</sup> Conservative means those states met provided relief in at least one criterion.

<sup>75</sup> No relief mean that this state did not provide any relief in any of the four criteria.

## A. PROGRESSIVE STATES

Of all fifty states, only two meet the progressive measure in all four criteria: New Jersey and New York. However, twelve states met enough criterion to be deemed progressive throughout this comparison: California, Colorado, Connecticut, Delaware, Maryland, Michigan, Minnesota, New Mexico, Pennsylvania, and Vermont.<sup>76</sup> The first criterion was certainly the most commonly met with results showing that thirty-eight states offer at least some felony and misdemeanor relief.<sup>77</sup>

As of 2024, only twenty-five states offer some form of automatic expungement for convictions, ranging from some felony relief to non-conviction relief only.<sup>78</sup> Those states remain more progressive than the surviving twenty-five states that offer no automatic relief.<sup>79</sup> Perhaps by coincidence or design, only twelve states made this criterion in the progressive category with nine overall progressive states in the list.<sup>80</sup> For the process of expunging non-convictions, thirty states made the progressive criterion. Contrastingly, for the fourth criterion, only three states met the progressive standard: New Jersey, New York, and Ohio.

## B. MODERATE STATES

The moderate category had an expansive and broad spread of results. Some states were progressive moderates, while others barely made the moderate list. Because of this, thirty-two states are deemed moderate.<sup>81</sup> Nine states met two

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<sup>76</sup> This list does not include the previous two states that also met the progressive criteria: New Jersey and New York.

<sup>77</sup> Restoration of Rights Project, *50-State Comparison: Expungement, Sealing, and Other Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CTR., <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2-2/> (last visited Aug. 10, 2024).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Maryland, New Mexico, and Vermont were the states that did not meet the progressive criterion in this area; however, all three met the moderate standard.

<sup>81</sup> Alabama, Arizona, Arkansas, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi,

progressive criteria, one moderate criterion, and one conservative or no relief criterion. As such, they were on the high end of the moderate list: Kentucky, Louisiana, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, and Virginia. The states that leaned toward the conservative end of moderate were: Arkansas, Kansas, Massachusetts, Nevada, North Dakota, Oregon, Texas, and West Virginia.

### C. CONSERVATIVE STATES

Five states were conservative across the board, with one additional state offering interesting results. Starting with the latter, Wisconsin is the only state that offers no relief in any criterion. Every other state under the conservative status offered relief in at least one area: Alaska, Florida, Hawaii, Maine, and Montana.

As to the first criterion, four of these six states have no expungement laws for adult convictions.<sup>82</sup> For the second criterion, twenty-five states in the U.S. have no automatic expungement for non-convictions or convictions. An additional eight states only offer automatic expungement for non-convictions. Again, three of our four conservative finalists provide no relief in the third criterion: Maine, Montana, and Wisconsin. As to the fourth criterion, twenty-nine states in the U.S. offer no certificates of rehabilitation.

### IV. TAKEAWAYS FROM THE 50 STATE COMPARISON

First, it is important to reiterate, there appears to be no correlation between geography or political affiliation among the categories. While the progressive group may make up more liberal ideological states, it does not encompass them all. For example, Massachusetts, generally considered a liberal state,<sup>83</sup>

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Missouri, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming make up the comprehensive list of moderate states.

<sup>82</sup> COLLATERAL CONSEQUENCES RESOURCE CTR., *supra* note 57 (Alaska, Florida, Hawaii, and Wisconsin have no expungement law for adult convictions).

<sup>83</sup> *Party affiliation among adults in Massachusetts*, PEW RSCH. CTR., <https://www.pewresearch.org/religious-landscape->

is only moderate with expungement laws.<sup>84</sup> Another example is Wisconsin, which offers no relief at all. Although generally considered a conservative state,<sup>85</sup> Wisconsin currently has a democratic governor.<sup>86</sup> As to geography, no group is centralized to a specific area. Each group spans coast to coast. The moderate category does have a concentration of southern states, but that speaks to the lack of political influence over these laws.

The most important criterion is the extent of relief granted because, as discussed below, the people that are primarily affected by the burdens of convictions are felons who obtain no relief in states that exclude felonies. The results of the first criterion shed a positive light regarding the high number of states that offer some felony and misdemeanor relief; however, what is really shown is that this criterion alone is not enough. If it were enough, thirty-eight states would be progressive instead of twelve.<sup>87</sup> To that point, only four states offer no relief of any kind.<sup>88</sup> However, even where relief is available, a convicted person may not understand how to obtain that relief or know they have a right to obtain it. The states that only offer misdemeanor relief are missing an opportunity to help a vast number of people. While misdemeanor convictions have some effect on a person's ability to find employment, they are not generally the ones that are denied because of their criminal record.<sup>89</sup>

The second criterion goes to the automatic record clearing of convictions, parallel to what "clean slate laws" do.<sup>90</sup>

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study/database/state/massachusetts/party-affiliation/ (last visited July 23, 2024).

<sup>84</sup> See *infra* Part III.

<sup>85</sup> *Political ideology among adults in Wisconsin*, PEW RSCH. CTR., <https://www.pewresearch.org/religious-landscape-study/database/state/wisconsin/political-ideology/> (last visited July 23, 2024).

<sup>86</sup> *Tony Evers*, BALLOTPEDIA, [https://ballotpedia.org/Tony\\_Evers](https://ballotpedia.org/Tony_Evers) (last visited July 23, 2024); *Former Governors -Wisconsin*, NAT'L GOVERNORS ASS'N, <https://www.nga.org/former-governors/wisconsin/> (last visited July 23, 2024). Wisconsin has also had democratic governors in the past. *Id.*

<sup>87</sup> See *infra* Part V.

<sup>88</sup> COLLATERAL CONSEQUENCES RESOURCE CTR., *supra* note 57.

<sup>89</sup> See *infra* Part V.

<sup>90</sup> EAGLE EYE SCREENING SOLUTIONS, *supra* note 7.

This process has the most potential for backlash because some may argue that a judge's determination on whether a person is rehabilitated is an important part of the expungement process. With automatic record clearing, a convicted person merely has to meet the requirements by staying crime free for the waiting period, which can be anywhere between two and ten years.<sup>91</sup> At that point, the person does not have to take any action, nor is there any oversight on "whether that person deserves expungement."<sup>92</sup> However, as shown in Part V and throughout this Note, the conviction record, compared to an arrest record, has the most negative effects on a person's life. Furthermore, the challenges to understanding one's rights and the process of expungement prevents those people from obtaining expungement. Thus, the automatic process means "that all ex-offenders will be treated equally."<sup>93</sup> Supported by the overall data showing that moderate states predominate in having no form of automatic clearing, the notion of public safety appears to overtake the equity consideration here.

The third criterion could easily be considered the most just; although, perhaps it is not the most valuable for providing the most relief since those most affected by a criminal record are those with convictions. The difference between the second and third criteria is that the second involves the process of expunging convictions compared to the process of expunging non-convictions (arrests or dismissals).<sup>94</sup> The process for expunging non-convictions should be automatic because relief remains elusive to the not guilty without a clear process. Arrest does not mean guilt, however. In today's modern age, when an arrest is made public, the court of public opinion rules. An arrest with no charges attached or when the charges are later dismissed should be eliminated from a person's record because, after all, they have not been found guilty by a court of law or a jury of their peers. The expungement could easily be done at the time of dismissal by the judge without expending judicial economy, before a person must hire a lawyer, or go through the bureaucracy of filing a petition. However, twenty states have no form of automatic expungement for non-convictions, or the

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> COLLATERAL CONSEQUENCES RESOURCE CTR., *supra* note 57.

relief is discretionary.<sup>95</sup> Establishing this procedure alone could make a momentous impact on relief for those who deserve it the most: the non-convicted and hopefully nonguilty. Moreover, does not due process require it?

The fourth criterion could be considered the least important because it offers the least relief to a convicted person. Certificates of rehabilitation allow a convicted person to present the certificate to a potential employer to show the employer they will not be liable for hiring a convict because the person has been rehabilitated.<sup>96</sup> This is important because some employers “fear a negligent-hiring lawsuit if an employee hired with a criminal record commits a crime while on the job.”<sup>97</sup> Furthermore, approximately ninety-two percent of employers use background checks in making hiring decisions.<sup>98</sup>

Certificates of rehabilitation “are distinct from other tools because they make the criminal history of an individual fully public, for all to see[,]” which is “premised on principles of transparency both of one’s criminal history and journey of rehabilitation.”<sup>99</sup> Varying state laws allow a petitioner to seek the certificate from either a court, a parole board, a clemency board, or a board of corrections.<sup>100</sup> Additionally, many states

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.* For example, in Arizona, courts are empowered to issue a “Certificate to Second Chance to a person whose conviction has been set-aside.” The certificate is notated on the criminal history and has the effect of removing barriers to occupational licensing and “provides an employer of the [statutory] protections [] (limited negligent hiring liability)...” Restoration of Rights Project, *Arizona Restoration of Rights and Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CTR., [https://ccresourcecenter.org/state-restoration-profiles/arizona-restoration-of-rights-pardon-expungement-sealing/#III\\_Expungement\\_sealing\\_other\\_record\\_relief](https://ccresourcecenter.org/state-restoration-profiles/arizona-restoration-of-rights-pardon-expungement-sealing/#III_Expungement_sealing_other_record_relief) (last visited Aug. 10, 2024).

<sup>97</sup> Prescott & Starr, *supra* note 6, at 2469.

<sup>98</sup> Heather J. Garretson, *Legislating Forgiveness: A Study of Post-Conviction Certificates as Policy to Address the Employment Consequences of a Conviction*, 25 PUB. INTEREST L.J. 1, 8 (2016).

<sup>99</sup> *Certificates of Rehabilitation and Limited Relief*, NAT’L CONF. OF STATE LEGISLATURES (June 30, 2022), <https://www.ncsl.org/civil-and-criminal-justice/certificates-of-rehabilitation-and-limited-relief#:~:text=In%20effect%2C%20when%20a%20person,person's%20reliability%20and%20good%20character.> (stating that expungement procedures do just the opposite).

<sup>100</sup> *Id.*

require a waiting period to obtain a certificate.<sup>101</sup> For example, Arizona requires a two to five year waiting period depending on the level of felony a person was convicted.<sup>102</sup> Some states actually prevent an employer from denying a felon employment when they present a certificate of rehabilitation.<sup>103</sup> Other states require public employers to consider the certificate, but not private employers.<sup>104</sup> However, employers may not know what a certificate of rehabilitation is, and scholars have surmised “that certificates are of limited value because employers are unwilling to rely on them.”<sup>105</sup> Thus, education about what these certificates mean and the effect they have are important in increasing their effectiveness. With most states not having any form of relief,<sup>106</sup> these certifications could be a viable solution to obtaining employment without passing extensive or progressive expungement laws and takes into consideration society’s interest in safety, as discussed in Part V.

Overall, it appears the progressive laws are centralized in all the same states. States with the broadest laws tend to offer the other criterion. Some moderate states are making significant headway by continuing to broaden their relief, like Tennessee,<sup>107</sup> but the biggest deficit in these results is the lack of automatic expungement for non-convictions.

Notwithstanding these results, one empirical study regarding expungement results in Michigan, designated for our purposes as progressive, noted that “among those legally eligible for expungement, just 6.5% obtain it within five years of eligibility.”<sup>108</sup> Of those who successfully obtained

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<sup>101</sup> *Id.*

<sup>102</sup> Restoration of Rights Project, *Arizona Restoration of Rights and Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CTR., [https://ccresourcecenter.org/state-restoration-profiles/arizona-restoration-of-rights-pardon-expungement-sealing/#III\\_Expungement\\_sealing\\_other\\_record\\_relief](https://ccresourcecenter.org/state-restoration-profiles/arizona-restoration-of-rights-pardon-expungement-sealing/#III_Expungement_sealing_other_record_relief) (last visited Aug. 10, 2024).

<sup>103</sup> NAT’L CONF. OF STATE LEGISLATURES, *supra* note 99.

<sup>104</sup> *Id.*

<sup>105</sup> Garretson, *supra* note 98, at 34.

<sup>106</sup> COLLATERAL CONSEQUENCES RESOURCE CTR., *supra* note 57.

<sup>107</sup> See Joy Radice, *Access-to-Justice Challenges for Expungement in Tennessee*, 30 FED. SENT’G REP. Nos. 4-5, 277 (2018), [https://ir.law.utk.edu/cgi/viewcontent.cgi?article=1582&context=utklaw\\_facpubs](https://ir.law.utk.edu/cgi/viewcontent.cgi?article=1582&context=utklaw_facpubs).

<sup>108</sup> Prescott & Starr, *supra* note 6, at 2461.

expungement, thirty percent were black, almost sixty-one percent were male, and the average age was twenty-six.<sup>109</sup> The inference drawn is that, even in progressive states, expansive laws are not enough. Access to expungement and being informed of the expungement option are important considerations for convicted persons to obtain relief.<sup>110</sup>

In summary, all four-criterion evaluated across the fifty states are critical to consider when evaluating a state's expungement laws and processes. Ideally, states should (1) allow for certain felony and misdemeanor convictions to be eligible for expungement, (2) provide automatic expungement for certain felony and misdemeanor convictions, (3) make expungement of non-conviction records automatic without a waiting period, and (4) offer certificates of rehabilitation at the request of the petitioner after proper showing of proof. As shown by the progressive states, these laws and regulations would not be incredibly burdensome to enact and implement.

## V. THE IMPACT OF GRANTING EXPUNGEMENTS FROM ALL PERSPECTIVES

### A. A FELON'S PERSPECTIVE

While the benefit for expungement laws is having the criminal proceedings deemed as though they never occurred,<sup>111</sup> there are many other considerations to take into account beyond those of the convicted person, including the public and the government. The felon receives the benefit of a free criminal record while also having some collateral consequences resolved. However, the public is now in the dark as to potentially important and harmful actions of the person. The government now has additional duties to carry out to ensure the record is gone from government databases and, in some cases, non-governmental databases.

For the felon, expungement results in the person lawfully: saying "that they were not arrested, charged, or convicted; deny[ing] that they have a criminal record; respond[ing] "no" when asked whether they have a criminal record; stat[ing] that no record exists; and/or swear[ing] under

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<sup>109</sup> *Id.* at 2494.

<sup>110</sup> *Id.* at 2486-87.

<sup>111</sup> *See, e.g.,* ALA. CODE § 15-27-6(b) (2024).

oath that they have no record without risking a prosecution for perjury.”<sup>112</sup> These benefits include the ability to say “no” on employment applications,<sup>113</sup> which is especially important considering that “limited employment opportunities are perhaps the most troublesome” of all the collateral consequences of felony convictions.<sup>114</sup> Employment applications generally ask about prior criminal history.<sup>115</sup> The applicant can either lie, which has its own consequences if discovered, or tell the truth and greatly risk not being hired. “Many employers report that they take steps to avoid hiring individuals with [criminal] records” because of bias, stigma, and lack of trust in the person.<sup>116</sup> In fact, twenty-seven percent of persons formerly imprisoned are unemployed, according to Prison Policy Initiative.<sup>117</sup>

However, one empirical study suggests that convicted persons “with expunged records gain access to more and better paying jobs.”<sup>118</sup> “Within one year [of expungement], on average, an individual’s odds of being employed (earning any wages at all) increase by a factor of 1.13; their odds of earning at least \$100/week ... increase by a factor of 1.23 ... (and are sustained in subsequent years).”<sup>119</sup> There has also been evidence that employment after incarceration reduces the chance that the felon will reoffend.<sup>120</sup> Furthermore, an even lower chance of recidivism is shown in states with automatic

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<sup>112</sup> Hamann, Riley & Bismuth, *supra* note 56.

<sup>113</sup> *Id.*

<sup>114</sup> Love, *supra* note 3, at 2.

<sup>115</sup> Allyson Fredericksen & Desiree Omli, *Jobs After Jail*, ALL. FOR A JUST SOC’Y (Feb. 2016), [https://jobgap2013.wordpress.com/wp-content/uploads/2016/02/ajs\\_job\\_after\\_jail\\_report\\_final\\_pdf.pdf](https://jobgap2013.wordpress.com/wp-content/uploads/2016/02/ajs_job_after_jail_report_final_pdf.pdf).

<sup>116</sup> Prescott & Starr, *supra* note 6, at 2469.

<sup>117</sup> Ritesh, *Criminal Record Statistics That Can Shock You in 2024*, TECHJURY (Jan. 2, 2024), <https://techjury.net/blog/criminal-record-statistics/>.

<sup>118</sup> Prescott & Starr, *supra* note 6, at 2467.

<sup>119</sup> *Id.*

<sup>120</sup> Christy Visher, Sara Debus, & Jennifer Yahner, *Employment After Prison: A Longitudinal Study of Releasees in Three States*, URB. INST.: JUST. POL’Y CTR. 8 (2008), <https://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releasees-in-Three-States.PDF>.

expungement laws.<sup>121</sup> This is noteworthy because where expungement is not automatic, only a small group of people who are eligible for relief apply for and obtain expungement.<sup>122</sup>

These facts shed a different light when viewed through the lens of various demographics and their involvement in the criminal justice system. Empirical studies suggest that the majority of those with felony records in the United States are people of color.<sup>123</sup> Not only are black Americans overrepresented in prisons, but they disproportionately carry the consequences of a felony record.<sup>124</sup> Altogether, it can be inferred that hinderance to expungement relief is a contributing factor to black Americans unemployment statistics. Estimation suggests “that almost half of U.S. children have a parent with some form of criminal record (including arrests).”<sup>125</sup> Not only are black Americans disproportionately affected, but so are their innocent children. Governor Wes Moore even stated that racial disparity was one reason the pardon for marijuana convictions was so important.<sup>126</sup>

While the employment problem may be resolved through expungement laws, restoring the right to vote and the ability to possess a firearm generally requires further action after a felony conviction.<sup>127</sup> Restoration of rights is a long

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<sup>121</sup> Mackenzie J. Yee, *Expungement Law: An Extraordinary Remedy for an Extraordinary Harm*, 25 GEO. J. POVERTY L. & POL’Y 169, 179 (2017), <https://www.law.georgetown.edu/poverty-journal/in-print/volume-25-issue-1-fall-2017/expungement-law-an-extraordinary-remedy-for-an-extraordinary-harm/>.

<sup>122</sup> Prescott & Starr, *supra* note 6, at 2467.

<sup>123</sup> S.K.S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010*, 54 DEMOGRAPHY 1795, 1796 (2017), <https://www.jstor.org/stable/45047318>.

<sup>124</sup> *Race and Ethnicity*, PRISON POL’Y INITIATIVE, [https://www.prisonpolicy.org/research/race\\_and\\_ethnicity/](https://www.prisonpolicy.org/research/race_and_ethnicity/) (last visited Aug. 10, 2024) (claiming black Americans make up thirteen percent of the population but represent thirty-eight percent of prison population).

<sup>125</sup> Prescott & Starr, *supra* note 6, at 2471.

<sup>126</sup> MARYLAND.GOV, *supra* note 50.

<sup>127</sup> See CONSEQUENCES RESOURCE CTR., *supra* note 58. Restoration of Rights Project, *Tennessee Restoration of Rights and Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CENTER, <https://ccresourcecenter.org/state-restoration-profiles/tennessee-restoration-of-rights-pardon-expungement->

process that typically involves a motion and hearing in front of a judge.<sup>128</sup> There is no restoration of rights “as of right,” and it can be a laborious process.<sup>129</sup> While these consequences are not the focus of this Note, it is important to highlight what repercussions can be resolved by expungement, and which cannot.

## B. A MISDEMEANANT’S PERSPECTIVE

Up to this point, this Note has focused primarily on discussions of felony convictions. However, “[f]or a person convicted of a low-level misdemeanor, the long-term harm resulting from a criminal record can far outweigh the short-term harm the person caused to society.”<sup>130</sup> This means that when passing laws, legislators should consider the minimal harm to society compared to the harm coming from stigma and employment issues. This concept was evident in the number of moderate states allowing for misdemeanor expungement.<sup>131</sup> Because of the minimal harm to society that generally flows from a misdemeanor, those convicted are even more deserving of a clean slate.

Another consideration is the arduous expungement process and waiting period for both felons and misdemeanants. Generally, “expungement laws require individuals to go through a judicial process to apply for relief, usually giving judges the discretion to deny the petition.”<sup>132</sup> Furthermore, stringent eligibility requirements, such as the type of crime, severity of the crime, or number of convictions, create a barrier to expungement.<sup>133</sup> As discussed herein, most states have some sort of waiting period, for instance Utah has a five-year waiting

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sealing/#III\_Expungement\_sealing\_other\_record\_relief (last visited Aug. 10, 2024). For example, in Tennessee, the convicted person must file “a petition in the circuit court of the county of residence with proper notice to both federal and state prosecutors and proof of character.” Tennessee Code Annotated § 40-29-102 (2024).

<sup>128</sup> *See id.*

<sup>129</sup> CONSEQUENCES RESOURCE CTR., *supra* note 57 (explaining that every state has a different process for restoring right).

<sup>130</sup> Hamann, Riley, & Bismuth, *supra* note 56.

<sup>131</sup> *See infra* Part III.

<sup>132</sup> Prescott & Starr, *supra* note 6, at 2465.

<sup>133</sup> *Id.*

period while Pennsylvania has a ten-year waiting period.<sup>134</sup> Thus, even if relief is eventually granted, the convicted person's collateral consequences exist at the point of reentry when it is most critical for them to get on their feet. Unless the state offers automatic expungement upon completion of sentence, this can last for a significant period of time.

### C. A PROSECUTOR'S PERSPECTIVE

Even if the petitioner makes it past all those hurdles, prosecutors are generally allowed an opportunity to object to a petition for expungement.<sup>135</sup> The American Bar Association has suggested that, for misdemeanor convictions, the public safety aspect is less important because of the low-risk nature of the crime, such that states requiring a petition instead of automatic expungement can be counter-productive, especially when it comes to employment.<sup>136</sup> This is highlighted by empirical data showing convicted persons who experience clear economic improvements due to the employment benefits of expungement pose little public-safety risks.<sup>137</sup>

### D. AN EMPLOYER'S PERSPECTIVE

For a business running a background check, an employer would not know that the applicant was a felon. Moreover, in the workplace, just because expungement "erases an individual's involvement with the criminal justice system," it does not erase the persons "actual conduct and certainly not his conduct's effect on others."<sup>138</sup> Do average citizens want the ability to know whether their neighbor has a criminal history for burglary to better guard themselves? Or would a church member want to know that their deacon was formerly incarcerated for embezzlement? The presumption is yes.

The interest in self-preservation must be balanced with the convicted persons need for finality in punishment. While some people do change, recidivism rates tilt in favor of the average citizen's interest. The United States has some of the

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<sup>134</sup> *Id.* at 2464.

<sup>135</sup> Hamann, Riley, & Bismuth, *supra* note 56.

<sup>136</sup> *Id.*

<sup>137</sup> Prescott & Starr, *supra* note 6, at 2467.

<sup>138</sup> See *In re Matter of Finley*, 457 P.3d 263, 268 (Nev. App. 2019).

worst recidivism rates in the world.<sup>139</sup> As of November 2023, eighty-two percent of convicted persons were re-arrested within ten years of release, according to the Department of Justice.<sup>140</sup> Forty-three percent of convicted persons were re-arrested within a year of release.<sup>141</sup> While arrest does not equate to guilt, these statistics are staggering. Again, access to unencumbered employment reduces these rates. Perhaps, these factors contribute to some states' hesitance in passing more progressive expungement laws in favor of the public's safety interest.

#### E. A CHILD'S PERSPECTIVE

Another consideration is how a person's criminal history affects their children. As stated above, a significant number of children have a parent with a criminal record. This could affect whether a parent can volunteer at their school (and perhaps in some cases for good reason). It could affect what birthday parties the child is invited to or their inclusion in extracurricular activities. As is said, "[t]he sins of the father is visited upon the children."<sup>142</sup>

#### F. A GOVERNMENT PERSPECTIVE

Expungement laws do not write themselves. Crafting laws that are fair and understood by a lay person and that will pass the rejection stage by the voters is not an easy job. This takes time, research, and dedication by legislators who are dedicated to the cause. Even after the laws are passed, police

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<sup>139</sup> *Recidivism Rates by State 2024*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/recidivism-rates-by-state> (last visited Aug. 10, 2024).

<sup>140</sup> Tenzing Lahdon, *From the Desk of BJA*, JUST. MATTERS NEWSL. (Nov. 27, 2023), <https://bjaj.org/news/justice-matters/desk-bja-november-2023#:~:text=A%20U.S.%20Department%20of%20Justice,formerly%20incarcerated%20people%20were%20rearrested.> (findings were based on compiled data from twenty-four states).

<sup>141</sup> *Id.*

<sup>142</sup> John F. Walvoord & Roy B. Zuck, *Is it true the sins of the fathers are visited upon the children?*, BIBLE.ORG, <https://bible.org/question/it-true-sins-fathers-are-visited-upon-children> (last visited Aug. 10, 2024).

may still know that the person had a criminal record.<sup>143</sup> Published judicial opinions or media reports regarding the person or crime would still exist.<sup>144</sup> Although, when information or a background check is requested, government officials must respond that no record exists, or no record is available when information or a background check is requested.<sup>145</sup> Additionally, petitions take filing with the clerk and sometimes a motion in front of a judge. This means expungement requires use of scarce judicial economy that could be better used for other reasons. Said another way, the time the court takes to hear expungement requests takes away from time that could be used for their vast caseload, and time away from those cases add costs to the litigants.

#### G. DOES THE ACT OF EXPUNGEMENT REALLY MATTER IN THE INTERNET AGE?

Opponents may contend that the benefits of expungement almost certainly do not outweigh the high probability that an internet search would likely result in some form of “outing” of a person’s criminal record. Some states do have expungement laws regarding non-governmental databases, but that is not the norm.<sup>146</sup> Through this balancing act of interests, one could suggest that the possibility of an outing should not be a consideration at all. The governments main concern is ensuring they have done their end of the deal, not whether a person’s nefarious deeds will be exposed by some other means.

#### H. THE MOVE TOWARD UNIFORM EXPUNGEMENT LAWS

In summary, the extreme variance in laws across the fifty-states denies fundamental fairness to every convicted person. Why should a person who commits a crime in

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<sup>143</sup> See, e.g., *Sealing and Expunging Criminal Records in California*, CAL. CT. REC., <https://californiacourtrecords.us/criminal-court-records/federal-and-state/sealing-expunging/#:~:text=Such%20sealed%20or%20expunged%20criminal,and%20a%20few%20other%20agencies>. (last visited Aug. 10, 2024).

<sup>144</sup> Hamann, Riley, & Bismuth, *supra* note 56.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

California receive a clean slate while a person convicted of the same crime in Florida receives nothing? The disparity among the states is a severe problem with an easy solution: uniform expungement laws.

Uniform laws are not a novel idea. For instance, the Uniform Commercial Code exists in which states are free to adopt all or part or none.<sup>147</sup> The availability of uniform laws and the prospect of a state being left behind in an area of law could be motivating factors that encourage conservative states to expand their expungement laws. Another possibility is a nationwide database and procedure wherein a convicted person could petition at one location for all convictions for any state. This solution would be more costly and take considerable other resources and time compared to the development of uniform laws. However, in the long run, it would be most beneficial for the most people because the database could also be a central location for nationwide background checks. This is especially true considering out-of-state convictions can affect whether a convicted person is eligible for expungement in a particular state.<sup>148</sup>

Additionally, non-progressive states should look at New York or New Jersey as a model for their own expungement laws and use their data to determine what is working and what is not. For example, New York has one of the shortest waiting periods for expungements and automatic sealing of records of misdemeanors at three years and eight years for felonies.<sup>149</sup> This is important because it limits the length a convicted person

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<sup>147</sup> *Uniform Commercial Code and Contracts for the Sale of Goods*, LAW SHELF,

<https://www.lawshelf.com/shortvideoscontentview/contracts-the-uniform-commercial-code> (last visited Aug. 10, 2024).

<sup>148</sup> See Prescott & Starr, *supra* note 6, at 2484; see also, e.g., Restoration of Rights Project, *Tennessee Restoration of Rights and Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CENTER, <https://ccresourcecenter.org/state-restoration-profiles/tennessee-restoration-of-rights-pardon-expungement-sealing/> (last visited July 25, 2024).

<sup>149</sup> Restoration of Rights Project, *New York Restoration of Rights and Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CTR., [https://ccresourcecenter.org/state-restoration-profiles/new-york-restoration-of-rights-pardon-expungement-sealing/#III\\_Expungement\\_sealing\\_other\\_record\\_relief](https://ccresourcecenter.org/state-restoration-profiles/new-york-restoration-of-rights-pardon-expungement-sealing/#III_Expungement_sealing_other_record_relief) (last visited Aug. 12, 2024).

experiences the collateral consequences to a time where re-offense is the most likely to occur. The extent of felonies covered is also very broad with all felonies included except sex offenses and class A felonies subject to a life sentence.<sup>150</sup> This is important to the balance of interests between the felon and the public described above. People should know about possible violent predators because the public's safety is a primary concern; however, the law allows for an embezzler to be rehabilitated. This is also balanced by the fact that, in New York, if the convicted person re-offends during the waiting period, the waiting period starts over from the time of sentence imposition or release from incarceration of the subsequent crime.<sup>151</sup> This is true even if the crime occurs in a different state or is a marijuana conviction.<sup>152</sup> This balances the public's interests because a convicted person cannot go somewhere else, continue to commit crimes, then come back in a few years to get a clean slate. Furthermore, after conviction, the criminal record will still be available for limited purposes, such as where background checks are required for federal or state employment with children or elderly persons.<sup>153</sup> This ensures that the most vulnerable population of citizens are protected while not interfering with a convicted person's ability to obtain employment in other fields or with private employers. Lastly, expungement for dismissals or acquittals is automatic at the termination of the criminal process, which means non-guilty people do not have to wait or do anything to obtain an expungement.<sup>154</sup> New York expungement laws encompass all the right things by limiting collateral consequences, having automatic procedures upon expiration of the waiting period, including a broad array of felonies, and incorporate measures to ensure continued public safety. This is what the legislators in conservative and even moderate states should look to and implement in their own states for the benefit of most people.

As a final note, this is not an endorsement for all crimes to be eligible for expungement. New York's model of included felonies is getting it right. Convictions for sex offenses and homicide are crimes that are not worthy of a clean slate because

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

of their long-term and lasting effects on society. When a family or a victim is incapable of forgetting the crime, then society should not forget either. Furthermore, acts of violence beget more violence,<sup>155</sup> and sex crimes have higher recidivism rates than other crimes.<sup>156</sup> However, the goal of this Note is to show the benefits of expungement for those crimes deemed to be the least harmful to society and to suggest that more states apply a progressive standard in allowing relief. One cannot escape the revolving door of misdeeds when labeled and treated as less than due to, sometimes, a single mistake. We are more than a note; we are a whole song.<sup>157</sup>

## VI. CONCLUSION

The story of the woman introduced in the beginning was true, and the situation worked out for her. However, as shown throughout this Note, hers is not the norm. And what did it cost her? It was not free nor was it easy. Something of this importance must be at least accessible in terms of access to information and ease of process. The challenges faced by convicted persons throughout the U.S. because of their criminal record are considerable, such that this topic should be one discussed and resolved, not pushed aside. A person is arrested, tried, convicted, and then serves their sentence. That is supposed to mean they have paid their debt to society. However, that is not a reality for most convicted persons. The shame and stigma of their wrongdoing follows them like a

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<sup>155</sup> See C.S. Widom, *Does Violence Beget Violence? A Critical Examination of the Literature*, 106 PSYCH. BULL. (1989). "Hate begets hate; violence begets violence; toughness begets a greater toughness. We must meet the forces of hate with the power of love.... Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that." Dr. Martin Luther King, Jr. Josh Silverstone, "*Hate begets hate; violence begets violence; toughness begets a greater toughness.*", LINKEDIN, <https://www.linkedin.com/pulse/hate-begets-violence-toughness-greater-josh-silverstone/> (last visited Aug. 10, 2024).

<sup>156</sup> Roger Przybylski, *Recidivism of Adult Sexual Offenders*, SEXUAL OFFENDER MGMT. ASSESSMENT & PLAN. INITIATIVE 4 (July 2015), <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/recidivismofadultsexualoffenders.pdf>.

<sup>157</sup> Community Resilience Model (CRM) ® Training on July 17, 2024, TRAUMA RES. INST., <https://www.traumaresourceinstitute.com/training-faculty>.

scarlet letter with expungement being their only hope for a clean slate.

This Note has attempted to show the wide array of expungement laws throughout the United States while emphasizing the benefits of expungement. Progressive states are leading the way by offering both felony and misdemeanor relief and, in some cases, automatic expungement. Moderate states are attempting to balance the people's interest and their own, compared to convicted persons, in passing meaningful but limited laws. Conservative states are behind the times, frankly. Impinging upon a person's ability to have a non-conviction removed from their record cannot be found in logic or reason. These states need to look to their neighbors and to equality by recognizing that convicted persons are still citizens, still capable of meaningful interactions in society, and still worthy of a second chance.

Appendix A<sup>158</sup>

## (1) Authority for expunging, sealing, or setting aside convictions

Broader felony & misdemeanor relief (17, D.C.)	Limited felony & misdemeanor relief (21)	Misdemeanors & pardoned felonies (5)	Misdemeanor relief (3)	No general sealing or set-aside <sup>+</sup> (4, federal)
Arizona <sup>^</sup>	Connecticut	Alabama	Iowa	Federal
Arkansas	Delaware	Georgia	Montana	Alaska
California	Idaho	Maine**	South Carolina	Florida
Colorado	Kentucky	South Dakota		Hawaii
D.C. <sup>++</sup>	Louisiana	Texas		Wisconsin
Illinois	Maryland			
Indiana	Mississippi			
Kansas	Missouri			
Massachusetts	Nebraska*			
Michigan	New Jersey			
Minnesota	North Carolina			
Nevada	Oklahoma			
New Hampshire	Oregon			
New Mexico	Pennsylvania**			
New York	Rhode Island			
North Dakota	Tennessee			
Ohio	Utah			
Washington	Vermont			
	Virginia <sup>++</sup>			
	West Virginia			
	Wyoming			

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<sup>158</sup> COLLATERAL CONSEQUENCES RESOURCE CTR., *supra* note 57.

(2) Automatic record clearing – convictions

A range of non-convictions, misdemeanors & certain felonies (9)	A range of non-convictions & misdemeanors (3, D.C.)	Certain minor misdemeanors only (1)	Certain marijuana-related records (11, D.C.)	A range of non-convictions only <sup>+</sup> (8)
California*	D.C.*	South Dakota	D.C.	Alaska
Colorado	Oklahoma		California*	Indiana
Connecticut*	Utah		Connecticut*	Kentucky
Delaware	Virginia*		Illinois	Maryland
Michigan			Maryland	Nebraska
Minnesota			Minnesota*	New Hampshire
New Jersey*			Missouri	North Carolina
New York			New Jersey*	South Carolina
Pennsylvania			New Mexico	
			New York	
			Vermont**	
			Virginia*	

## (3) Process for expunging or sealing adult non-conviction records

Automatic relief <sup>†</sup> (21, D.C.)	Mandatory relief upon request (9)	Discretionary relief (less burdensome/ restrictive) (9)	Discretionary relief (more burdensome/ restrictive)* (8)	N/A (3, federal)
Alaska	Hawaii	Alabama	Florida <sup>@@</sup>	Federal
California	Idaho	Arizona	Iowa	Maine <sup>@@</sup>
Colorado	Louisiana	Arkansas	Kansas	Montana <sup>@@</sup>
Connecticut	Mississippi	Georgia	Missouri	Wisconsin <sup>@@</sup>
Delaware <sup>**</sup>	New Mexico	Illinois	North Dakota	
D.C. <sup>**</sup>	Rhode Island	Massachusetts <sup>***</sup>	South Dakota	
Indiana	Tennessee	Nevada	Washington	
Kentucky	Texas	Ohio	West Virginia <sup>@</sup>	
Maryland	Wyoming	Oregon		
Michigan				
Minnesota				
Nebraska				
New Hampshire				
New Jersey				
New York				
North Carolina				
Oklahoma				
Pennsylvania				
South Carolina <sup>^</sup>				
Utah				
Vermont				
Virginia <sup>**</sup>				

(4) Judicial and correctional certificates of relief

Judicial Certificates (11)	Correctional Certificates (7)	Both (3)
Alabama	Connecticut	New Jersey
Arizona	Georgia	New York
California	Iowa	Ohio
Colorado	Kentucky	
Illinois	Maryland	
Louisiana	Michigan	
New Mexico	Rhode Island	
North Carolina		
Tennessee		
Vermont		
Washington		