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Criminal Justice

SECOND
CHANCE

A blackboard background with the words "SECOND CHANCE" written in white chalk. A silver stopwatch is positioned in the center, overlapping the word "SECOND". The stopwatch has two dials, one for minutes and one for seconds, and a ring at the top.

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The Clean Slate Act:

A Pathway to Criminal Justice Reform



Background

The *Clean Slate Act* is a federal bipartisan bill that, if passed, provides a *second chance* to Americans with low-level and nonviolent federal convictions. The legislation, introduced in 2021 by Congresswoman Lisa Blunt Rochester (D-Del.) and subsequently introduced in the Senate by Senators Bob Casey (D-Pa.) and Joni Ernst (R-Iowa), will grant qualifying Americans the ability to have eligible criminal records automatically expunged. Specifically, the *Clean Slate Act* empowers courts to automatically seal criminal records related to simple possession of a controlled substance, any nonviolent offenses involving marijuana, and an arrest for an offense that did not result in a conviction after one year of completing imprisonment, probation, or supervised release (H.R. 2864, 2021). Research shows criminal records can limit opportunities for education, housing, employment, and many other critical resources. The *Clean Slate Act* is an important step forward in helping ensure all Americans, despite their criminal convictions, have access to those opportunities.

The Need for Clean Slate Act

There are more than 70 million Americans with criminal records, and the United States possesses the highest incarceration rate in the world, outpacing sizable countries such as China and India. The World Prison Brief (2019) reports the U.S. prison population rate is 629 people per 100,000 of the national population. Once released, people formerly incarcerated face immense reentry barriers that prevent them from fully participating and reintegrating into society. More than 50% of people who were once incarcerated are reincarcerated within three years of release (Benecchi, 2021). With a minimal focus on rehabilitation, access to employment, and healthcare resources, America's recidivism numbers will inescapably rise.

Further, incarcerating millions of people is a costly endeavor. Federal spending on public prisons and jails costs taxpayers approximately \$80 billion annually (Lockwood & Lewis, 2019). Funds spent on mass incarceration have markedly failed to reduce crime and recidivism. The Clean Slate Act is a consequential step towards criminal justice reform that can alter the trajectory of individuals with criminal records. Currently, the federal government does not have a framework for sealing records. The *Clean Slate Act* can address this daunting issue by establishing a pathway to seal criminal records automatically.

Clean Slate Act and its Impact on the Black Community

The African American population is grossly overrepresented in the jail and prison populations, constituting a bevy of low-level and nonviolent prison sentences. The Sentencing Project (2021) concludes one in 81 Black adults is serving time in state prison. According to the ACLU (2020), marijuana arrests are responsible for over half of all drug arrests in the United States. African Americans, however, are 3.73 times more likely to be arrested for marijuana in comparison to their white counterparts despite similar usage rates. The criminal justice system remains steeped in racial disparities coupled with unequal repercussions. Moreover, African Americans represent a staggering 35% of those who have been formerly incarcerated despite making up only 12% of the general population (Craigie et al., 2020). Consequently, policies such as the *War on Drugs*¹ and draconian sentencing methods, including mandatory minimums, have precipitated insurmountable barriers for the Black population in employment, education, and housing. As a result, the *Clean Slate Act* can potentially ameliorate some of the institutional and structural consequences of a criminal record.

Exploring Criminal Record Barriers

Individuals possessing criminal records are often precluded from participating fully in society. The economic implications are also stark. Job applicants without criminal records are 60% more likely to receive a call back from prospective employers (Agan

¹ Policy propagated by President Nixon in 1971 that increased funding for drug enforcement agencies and greatly increased penalties and incarceration. This policy set the stage for mass incarceration, disproportionately affecting African Americans.

& Starr, 2017). Comparably, the National Conference of State Legislatures (2018) states employment barriers for people with criminal records, including licensing, contribute to a loss of 1.7 million workers and cost the overall economy \$78 billion. Similar barriers are present in housing, as background checks severely restrict housing stock and access for individuals with criminal records. In the realm of education, The Center for Community Alternatives (2020) reports that 66% of colleges collect salient criminal justice information through the admission process, potentially derailing college aspirations. As a result, record clearing for eligible formerly incarcerated persons should begin soon after release to streamline the reintegration process and decrease recidivism. In a survey conducted by Love and Schluskel (2022), misdemeanor convictions yielded five years or less waiting periods, while felony convictions resulted in seven years or less in the majority of states surveyed. Terminating waiting periods after the completion of sentences will allow for a rapid reintegration process and afford formerly incarcerated persons vital resources to rebuild their lives.

Benefits of Automatic Sealing

Currently, eight (8) states: California, Colorado, Connecticut, Delaware, Michigan, Oklahoma, Pennsylvania, and Utah have passed their own versions of clean slate legislation. Each of these states includes the automation of record clearance, while other states are considering similar legislation. Pennsylvania became the first state to enact its clean slate legislation in 2018. Since then, more than 40 million cases in Pennsylvania have been sealed, and over 1.2 million people have benefited from the legislation, providing life-changing opportunities in employment, education, and housing (My Clean Slate, 2022). Automatic sealing can also attenuate the cumbersome petition-based process of sealing records. For example, in Michigan, only 6.5% of eligible applicants received expungements within the first five years of eligibility because the petition-based process requires financial resources, time, and occasionally, legal counsel, often unaffordable to many low-income and marginalized groups (Prescott & Starr, 2020). Automatic sealing extrapolates state and federal databases to seal the records of eligible individuals with criminal records automatically. Those unaware of their sealing status will benefit from such legislation that will automate a burdensome process.

Policy Recommendations

- As legislators and policymakers consider the passing of the *Clean Slate Act*, the bill must include data-reporting mechanisms to measure impact, ensure racial equity is observed and that the records of African Americans are not sealed or cleared disproportionately.
- The federal government should provide grant incentives for technical support to allow states to implement Clean Slate legislation. The grants should be created to support eligible applicants and their navigation through the automatic-record sealing process, particularly in notifying eligibility and when records are automatically sealed.
- Currently, the *Clean Slate Act* covers nonviolent offenses involving marijuana and federal offenses without conviction. However, the Clean Slate Act should extend its scope and definition of low-level and nonviolent crimes. The term “violent” is often attributed to various criminal acts; in certain states, larceny is considered violent. Removing such language will extend the *Clean Slate Act’s* scope and impact.

Conclusion

In October 2022, President Biden pardoned thousands of people convicted under federal law for marijuana possession, coupled with ordering the Justice Department to review the classification of marijuana as a Schedule 1 substance (The New York Times, 2020). President Biden’s announcement serves as an overture to more substantive legislation.



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