

Systemic Reform of the Criminal Expungement Process for Philadelphia County

August 3, 2023

Capstone Report
Isaac Rice



Table of Contents

<u>Executive Summary</u>	1
<u>Background</u>	1
<u>The Problem</u>	1
<u>Key Recommendations</u>	2
<u>Introduction</u>	3
<u>Why Seek a Criminal Expungement?</u>	4
<u>The Criminal Expungement Process in Philadelphia County</u>	5
<u>The Players</u>	5
<u>The Process</u>	6
<u>Contextual Legal Framework</u>	7
<u>Methodology – Process Evaluation</u>	8
<u>Quantitative Data</u>	8
<u>Qualitative Data</u>	11
<u>Key Findings</u>	13
<u>Key Recommendations</u>	14
<u>Limitations</u>	15
<u>Of Expungements Generally</u>	15
<u>Of This Report</u>	16
<u>Going Forward</u>	16
<u>National Policy Environment</u>	16
<u>Recommendations for Future Improvement</u>	17
<u>Recommendations for Future Research</u>	17
<u>Appendix A – Court Data and Interview Information</u>	19
<u>Appendix B – DAO Interview Questions</u>	19
<u>Appendix C – Pennsylvania State Police Interview Questions</u>	19

Executive Summary

Background

To get an eligible criminal record expunged, a person must file a petition with the Philadelphia Court of Common Pleas, who then schedules a hearing date for the petition. The Philadelphia District Attorney's Office (DAO) reviews these petitions in advance of the hearing date and files either a consent or an objection with the Court. If a filer's expungement is approved—either through a consent or an approval after an objection hearing—the Court sends an order to destroy all records of the criminal offense to the Pennsylvania State Police, who notify all law enforcement to do the same. Once this is completed, the filer then receives notice the expungement has been executed.

The Problem

In Philadelphia County, the process to file for and get a final resolution of a criminal expungement petition took 9 months on average before the COVID-19 Pandemic.¹ The process has become significantly backlogged and is now taking up to 24 months to complete.² Criminal records eligible for expungement cause obstacles in obtaining numerous quality of life activities such as obtaining employment, federal educational assistance, and professional licensures, and these obstacles disproportionately affect low income communities and communities of color.

This capstone report explores the reasons causing the backlog through a mixed methods evaluation of the current process for criminal expungement petitions in Philadelphia County and recommends changes to improve the efficiency of the process for all parties involved, from the filer to the court to the DAO to law enforcement. Quantitative and qualitative data was gathered from each party involved to generate recommendations each party could take to improve the process.

Without change, the DAO, and organizations that represent filers and assist with the filing process like Philadelphia Lawyers for Social Equity (PLSE), agree that the backlog of expungements will only continue to grow.

This backlog contributes to the adverse economic impact expungable criminal records create. According to research published in 2022, for example, 64% of unemployed men in their 30s have a criminal record.³ Not all of those records are expungable offenses, but only 46% of those men with records were convicted.⁴ This suggests that criminal records eligible for expungement contributes to obstacles in finding employment.

¹ PLSE, "Expungements."

² PLSE, "Expungements."

³ Iacurci, Greg. "64% of Unemployed Men in Their 30s Have Criminal Records, a Barrier to Landing a Job." *CNBC*, February 22, 2022. <https://www.cnbc.com/2022/02/22/64percent-of-unemployed-men-in-their-30s-have-criminal-records-a-barrier-to-landing-a-job.html>.

⁴ Iacurci, "64% of Unemployed Men in Their 30s Have Criminal Records, a Barrier to Landing a Job."

Economists estimated in 2020 that criminal records as barriers to employment nationally prevented \$78-\$87 billion lost in gross domestic product annually.⁵

Key Recommendations

Data collected from the Court of Common Pleas shows that the aggregate number of criminal expungements will continue to increase, and currently, less than 10% of all expungable offenses actually get expunged nationally.⁶

Each party in the expungement process, therefore, must take action to improve the efficiency of the process, but there are a few key areas of change that will have the most impact, such as improving the Court's filing system, increasing the amount of petitions able to be processed over a month before a scheduled hearing date, and reducing the signing backlog and the case-by-case analysis for the DAO and the Court.

Here are specific recommendations for each party to improve the process:

For the Court

- 1) The filing system should be changed into a two-track filing system: one for petitions most likely to be consented to, and a catch-all for the rest.
 - a) Scheduling hearings for every petition despite over 90% of petitions going uncontested, and thus not needing a hearing, slows processing time significantly.
 - b) Probable consents could also be split into two – (1) likely consents, which could be automated into a verification process rather than an investigatory process, and (2) petitions for which the DA requires further investigation.
- 2) If a two-track system is not feasible, allow for large batch consents of expungement petitions by working with parties like PLSE and the DAO to allow access to criminal history information.
- 3) Alter design of website for filing petitions to increase clarity of what information is required to reduce instances of double filing.

For the DAO

- 1) Continue to work with the Court to expand processing date and response times beyond 6 weeks before hearing date to increase processing speed.
- 2) Work with PLSE and similar organizations, and with the Court, on large batch expungements.
- 3) Petition the Court for changes to the filing system and work with the Court on implementation.

⁵ Center for American Progress. "Expunging and Sealing Criminal Records," January 28, 2022. <https://www.americanprogress.org/article/expunging-clearing-criminal-records/>.

⁶ Prescott, J.J., and Sonja Starr.

- 4) Create uniform procedure for Assistant District Attorneys assigned to cases before hearing date, such as uniform deadlines for objections before hearing date.

For Law Enforcement

- 1) Streamline the process for local law enforcement's procedures for deletion of records and notification to filer that records have been deleted.
 - a) Proliferate these procedures to local law enforcement offices.
 - i) These procedures could include deadlines for local law enforcement record deletions, as well as deadlines for notification of the filer that deletion has occurred.
- 2) Provide a point of contact in the Pennsylvania State Police Office to all regular filers of expungement petitions like PLSE.
- 3) Create an electronic system by which Court Expungement orders can be sent directly to State Law Enforcement.
- 4) Continue to meet with the Court and DAO to discuss best practices and encourage flexibility for any proposed changes to the process.
 - a) Work with the DAO to complete batch expungements to reduce backlog until further changes to the process are completed.

For Filers

- 1) Encourage diligence in information provided and transparency to organizations to avoid double filings.
- 2) Organizations like PLSE should continue to meet with the Court and DAO on possible changes to procedures and process.
- 3) Bring attention to the issue by pressuring city council members and the incoming mayor to devote more resources to processing expungement petitions and reduce the backlog.

Introduction

Nearly one third of U.S. adults have been arrested, and an estimated 13.2 million misdemeanor cases are filed in the United States each year.⁷ That is a lot of criminal

⁷ Prescott, J.J., and Sonja Starr. "Evaluating the Effects of Criminal Record Set-Asides." Community Legal Services of Philadelphia (CLS), March 26, 2021. <https://clsphila.org/wp-content/uploads/2021/04/Prescott-Slides.pdf>; Staff, Ccrc. "'The Scale of Misdemeanor Justice.'" Collateral Consequences Resource Center, March 27, 2018. <https://ccresourcecenter.org/2018/03/27/the-scale-of-misdemeanor-justice/>.

records. An increasing number of people seek to move on from their past criminal record histories by petitioning for a criminal expungement.

To “expunge” is to “strike out, obliterate, or mark for deletion.”⁸ A criminal expungement is a process through which records of a criminal conviction are destroyed.⁹ Expungements are ordered through a court process, and in the United States, there are no federal statutes that govern the process.¹⁰

Criminal expungements are governed instead by individual state laws, and where applicable, the discretion of the parties of the process, such as the specific court, the district attorney’s office, and the state and local police.¹¹ State laws also vary substantially on what records are eligible for expungement.¹² This eligibility variation can be for the waiting period for an expungement, the class and type of conduct sought to be expunged, and the number of previous convictions an individual has.”¹³

The specific circumstances can also alter the exact process for a criminal expungement. Some states have adopted automatic expungement for the completion of an accelerated rehabilitative disposition program (ARD), and some also have specific processes for juvenile record expungement.¹⁴

Non-citizens as well may still be eligible to petition for a criminal expungement, but the expungement may not change the use of a previous conviction in consideration of immigration status by the federal government.¹⁵ However, a criminal expungement can strengthen an individual’s case against deportation.¹⁶

Why Seek a Criminal Expungement?

Individuals seek criminal expungements because criminal record histories, including arrests that did not result in conviction, show up on background checks conducted by colleges, employers, state licensing boards, and landlords.¹⁷ Some individuals seek expungement for restoration of parental rights or certain civil rights like gun licensure and seeking public office. Criminal records can also affect public benefit eligibility for education and housing, as well as sex offender registration status.¹⁸ A criminal record

⁸ “Expunge.” In The Merriam-Webster.Com Dictionary, February 24, 2023. <https://www.merriam-webster.com/dictionary/expunge>.

⁹ ABA. “What Is ‘Expungement?’,” November 20, 2018. https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/what-is-_expungement/.

¹⁰ “What Is ‘Expungement?’ .”

¹¹ Philadelphia Lawyers for Social Equity. “Expungements,” August 9, 2022. <https://plsephilly.org/expungements/>.

¹² Prescott, J.J., and Sonja Starr.

¹³ Prescott, J.J., and Sonja Starr.

¹⁴ Axelson, Karen. “A Clean Slate: Automatic Expungement Laws Explained.” GoodHire, September 8, 2022.

<https://www.goodhire.com/blog/clean-slate-laws/>.

¹⁵ LexisNexis. “Nunez-Reyes v. Holder, 646 F.3d 684,” July 14, 2011.

<https://plus.lexis.com/api/permalink/a036ca98-8005-4957-afd6-7fe72ea487ca/?context=1530671>.

¹⁶ Prescott, J.J., and Sonja Starr.

¹⁷ Prescott, J.J., and Sonja Starr.

¹⁸ Prescott, J.J., and Sonja Starr.

can lead to discrimination despite laws against such discrimination like Title VII of the Civil Rights Act of 1964.¹⁹

Criminal record discrimination, or other adverse consequences of having a public criminal record, disproportionately affects low-income communities and communities of color who also have disproportionate rates of police interactions and arrests.²⁰ While only 8% of adults have had a felony conviction in the U.S., 33% of those adults are black men.²¹ These adverse impacts can also further entrench systemic socioeconomic disadvantages across generations, and have significant effects on children’s long-term outcomes whose parents have a criminal record.²²

Individuals who receive criminal expungements receive numerous benefits, such as becoming eligible for public benefits, state licensures, and receiving a clean slate for previous conduct and restoring personal privacy. Recipients have also been shown to have substantial increases in employment and overall wages and maintain a low recidivism rate.²³

According to a 2021 study, however, only about 6.5% of individuals eligible for criminal expungement receive one.²⁴

The Criminal Expungement Process in Philadelphia County

The Players

1) Filer and the filer’s legal representation

Philadelphia County has a population of 1.57 million people as of 2021.²⁵ The number of people arrested within Philadelphia County from 2013-2023 steadily decreased each year.²⁶ Total arrests were between 24,000-30,000 from 2013-2019, and between 13,000-16,000 from 2020-2022.²⁷ Total arrests for the County for 2023 as of the end of July are 13,745.²⁸ These figures suggest that thousands of Philadelphians become eligible for criminal expungements each year.

¹⁹ Aaron Hotfelder, J.D., University of Missouri School of Law. “Pennsylvania Law on Use of Criminal Records in Hiring.” [www.nolo.com](https://www.nolo.com/legal-encyclopedia/pennsylvania-law-employer-use-arrest-conviction-records-hiring.html), February 4, 2014. <https://www.nolo.com/legal-encyclopedia/pennsylvania-law-employer-use-arrest-conviction-records-hiring.html>.

²⁰ NAACP. “Criminal Justice Fact Sheet,” November 4, 2022. <https://naacp.org/resources/criminal-justice-fact-sheet>.

²¹ Prescott, J.J., and Sonja Starr.

²² Center for American Progress. “Expunging and Sealing Criminal Records.”

²³ Prescott, J.J., and Sonja Starr.

²⁴ Prescott, J.J., and Sonja Starr.

²⁵ Census Bureau QuickFacts. “U.S. Census Bureau QuickFacts: Philadelphia County, Pennsylvania.” Accessed February 28, 2023. <https://www.census.gov/quickfacts/philadelphiacountypennsylvania>.

²⁶ Philadelphia District Attorney’s Office. “Arrests - PhilaDAO Data Dashboard,” February 27, 2023. https://data.philadao.com/Arrest_Report.html.

²⁷ “Arrests - PhilaDAO Data Dashboard.”

²⁸ “Arrests - PhilaDAO Data Dashboard.”

Filers can obtain legal representation to help with the expungement petition process. Legal services for low-income individuals such as PLSE and Community Legal Services assist thousands of Philadelphians each year to file petitions.

2) Philadelphia District Attorney's Office (DAO)

The DAO reviews petitions for expungement and relevant criminal records and decides to consent or object to petitions.

4) Philadelphia Court of Common Pleas

Petitions flow through the Court, and hearings are held for petitions the DAO objects to.

4) Pennsylvania Law Enforcement

State law enforcement is responsible for the actual deletion of criminal records for consented and approved petitions.

The Process

1. Does a filer have an eligible criminal record for expungement?
 - a. A record of arrest that does not result in conviction, such as an acquittal, a charge resulting in a verdict of not guilty, charges dropped, and summary offense convictions can be eligible for criminal expungement if an individual goes five years or more without an arrest.²⁹ Summary offenses include disorderly conduct, retail theft of under \$150, and underage drinking, among other things.³⁰ An individual that is arrested may still be eligible for expungement depending upon the specific circumstances of the subsequent arrest.
2. If these circumstances apply to an individual, that individual can fill out an expungement petition.
 - a. For every arrest, a separate expungement petition must be filled out and filed with the Philadelphia County Courts, which are processed by the Philadelphia Court of Common Pleas.³¹
 - b. There is a filing fee of usually less than \$100 not including any cost of representation or cost of obtaining criminal history records.³²
 - c. Philadelphia does have free legal services through organizations such as PLSE which is the partner organization for this Capstone. PLSE serves people with household incomes less than 200% of the federal poverty guidelines.³³ For a household of one, 200% of the federal poverty guidelines for 2022 was

²⁹ PLSE, "Pardons."

³⁰ PLSE, "Pardons."

³¹ PLSE, "Expungements."

³² Philadelphia Courts. "Criminal Expungement Form 790." Accessed February 28, 2023.

<https://www.courts.phila.gov/pdf/forms/criminal/expungement-790.pdf>.

³³ "Expungements."

\$27,180 annual income.³⁴ PLSE only represents people with convictions in Philadelphia County.³⁵

3. While filing an expungement petition, the filer is required to schedule a hearing date.³⁶
4. The DAO will then review the petition prior to the hearing and decide whether to consent or object to the petition.
 - a. If objected to, the hearing will occur, and the Court will follow the balancing test from *Wexler* to decide whether to grant or deny the petition.³⁷
 - b. Most hearings do not occur, however, because over 90%, are consented to.³⁸
 - c. A filer is notified by the Court if the petition is denied after the hearing.
5. If consented to, or approved by the Court after a hearing, the petition will be sent along with the consent to the Court where a judge will issue an expungement order.³⁹ The order will require any public entity, such as the DAO, law enforcement, and any court, to erase the criminal record.⁴⁰
6. The order is then sent to the Pennsylvania State Police.
 - a. The State Police review and verify the order and then match it to any relevant criminal records they have.
 - b. The State Police then notify any other local law enforcement of the expungement order, as well as the FBI before deleting their records.
7. A notice is eventually sent to the filer confirming the record deletion.⁴¹

Contextual Legal Framework

Criminal expungements in Pennsylvania are governed by 18 PA Ca.C.S. § 9122, and a more recent “Clean Slate” law passed in 2018.⁴²

The Pennsylvania Supreme Court also created a balancing test for courts to follow when considering a particular case for expungement in the 1981 case *Commonwealth v. Wexler*.⁴³ Courts are to balance an “individual’s right to be free from the harm attendant

³⁴ PA Department of Community & Economic Development. “Income Eligibility,” June 28, 2022. <https://dced.pa.gov/housing-and-development/weatherization/income-eligibility/>.

³⁵ PLSE, “Expungements.”

³⁶ PLSE, “Expungements.”

³⁷ PLSE, “Expungements.”

³⁸ PLSE, “Expungements.”

³⁹ PLSE, “Expungements.”

⁴⁰ PLSE, “Expungements.”

⁴¹ PLSE, “Expungements.”

⁴² The Official Website for the Pennsylvania General Assembly. “Title - 18.” Accessed February 28, 2023. <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM>; The Official Website for the Pennsylvania General Assembly. “2018 Special Session #-1 Act -1.” Accessed February 28, 2023. <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018>.

⁴³ “Com. v. Wexler,” Justia Law, accessed February 28, 2023, <https://law.justia.com/cases/pennsylvania/supreme-court/1981/494-pa-325-0.html>.

to maintenance of the arrest record against the Commonwealth's interest in preserving such records.”⁴⁴

Two other PA Supreme Court cases, *Commonwealth v. D.M.* and *Commonwealth v. Armstrong*, held that acquitted defendants are automatically entitled to expungement, and that an individual is entitled to expungement after successful completion of an ARD program barring an overriding societal interest in retaining the record, respectively.⁴⁵

Section 9122 sets out the process described below. The Clean Slate law sets a ten-year waiting period during which an individual must have no convictions punishable by a year or more in prison and pay all outstanding obligations relating to the offense.⁴⁶ After ten years, any second- and third-degree misdemeanors and ungraded criminal offense records are eligible for an automated seal.⁴⁷

There are also limited access petitions for similar offenses. Limited access and clean slate seals are different than a traditional criminal expungement and go through a different filing process with the courts.⁴⁸ Limited access petitions do not destroy criminal records and still release criminal record history to certain state agencies and criminal justice agencies.⁴⁹ In short, an expungement destroys a record, whereas limited access and sealing records merely hide them from public view.

Methodology – Process Evaluation

To collect information on why the backlog of expungements has occurred, a mixed method approach was adopted to collect both quantitative and qualitative information about the criminal expungement process in Philadelphia County. The type of data collected is listed below, followed by key findings.

Quantitative Data

From the Philadelphia Court of Common Pleas

The Court of Common Pleas’ Motions Desk provided aggregate filing data for the number of expungement petitions filed each year through the e-filing system listed in the chart below. The data goes back until 2013 because that is the year e-filing began. The Court had data on the number of petitions filed, the number of partial petitions

⁴⁴ “Com. v. Wexler.”

⁴⁵ “Commonwealth v. D.M,” Casetext, accessed February 28, 2023, <https://casetext.com/case/commonwealth-v-dm>; “Com. v. Armstrong,” Justia Law, accessed February 28, 2023, <https://law.justia.com/cases/pennsylvania/supreme-court/1981/495-pa-506-0.html>.

⁴⁶ “2018 Special Session #-1 Act -1.”

⁴⁷ Philadelphia City Government. “PA Clean Slate Law.” Accessed February 28, 2023.

<https://www.phila.gov/media/20190724193740/Day-2-Session-3-PA-Clean-Slate-Law-Harris.pdf>.

⁴⁸ “PA Clean Slate Law.”

⁴⁹ “PA Clean Slate Law.”

filed, and the number of objections filed for each year. Prior to 2013, petitions were filed by hand, and had extremely low utilization rates.

Aggregate Filings of Criminal Expungements

Time Period	Petitions e-filed	Partial Petitions e-filed	Objections by the Commonwealth
January 2023	1, 176	494	185
2022	13, 919	5, 380	1, 930
2021	12, 199	4, 479	917
2020	7, 905	2, 790	453
2019	13, 405	4, 159	580
2018	9, 057	2, 218	2, 418
2017	8, 617	1, 634	619
2016	8, 016	N/A	N/A
2015	7, 253	N/A	N/A
2014	6, 935	N/A	N/A
2013	3, 872	N/A	N/A
Total from 2018 – 2022 (last 5 years with full records)	56, 485	19, 026	6, 298

Analysis

Using the total numbers of objections divided by the total number of expungement petitions filed with the Court including full and partial expungements from 2018-2022, the percent of petitions objected to on average over those five years is 8.34%

(6,298/(56,485 + 19,026)). This number is a rough calculation due to several limitations of the data listed below. This percentage does, however, track with rough estimates provided by all the parties to the process gathered for this report.

The aggregate filing data also shows a steady increase in the total number of petitions filed since e-filing was adopted. This trend breaks in 2020 due to the COVID-19 pandemic where courts were not able to continue normal operation. The trend of steady increases in aggregate filing data has gotten back on track since 2021.

It is unclear exactly why petitions continue to increase. PLSE and government sources suggested that the adverse impacts of criminal records, especially to employment, and the accessibility of filing a petition for expungement online have increased awareness to the process. PLSE, and local city council members also hold expungement clinics to increase awareness.

Limitations

The Court's data did not eliminate duplicate filings, or re filings due to circumstances like incorrect information. The year 2013 did not account for the full year because e-filing started in May 2013. Objections were not in the system until the middle of 2017. Prior to 2017, all petitions went to the scheduled hearing. Partial expungements were coded as motions to redact charges until 2017, and the Court's software has not retained records prior to the change in terminology.

The chart also does not include expungements that occur automatically through the completion of an ARD program, or motions for limited access to criminal records.

From the District Attorney's Office (DAO)

The DAO reported that petitions that go to an objected hearing are exceedingly rare, and most petitions end up getting consented to.

From Philadelphia Lawyer's for Social Equity (PLSE)

PLSE reported working on 3,500-4,000 expungement petitions annually with roughly 2,500 clients. A single incidence with law enforcement, therefore, can result in multiple expungement petitions if there are multiple charges when those charges become eligible for expungement. Of these clients, the average petitions filed per client is between 2-3 because each arrest or charge must get its own petition to be expunged.

Other legal service organizations such as Community Legal Services also assist with expungement petitions. The remainder of petitions come from *pro se* filers (those representing themselves), or filers represented by individual attorneys.

From Pennsylvania State Police

The State Police reported processing roughly 40,000 expungement orders annually statewide.

Qualitative Data

Voluntary qualitative interviews were conducted with representatives from each of the parties listed below. All interviews were focused on the criminal expungement process for Philadelphia County for that entity and ways in which the process could be improved, or conversely, stopped at any time. The interviews were semi-structured and answered the model questions listed in the Appendixes of this report.

From the Philadelphia Court of Common Pleas

The Court of Common Pleas Motion's Desk participated in a voluntary interview for this report. The primary focus of the interview was the collection of quantitative filing data for criminal expungement petitions.

The Court's staff did express that double filings are a problem for organizations like PLSE. The double filing can be due to several different issues, such as a client filing a petition *pro se* and not informing a legal service organization of the prior filing.

Petitions must be scheduled for a hearing date with the Court as a part of the filing process. The maximum number of hearings per day is 60. Once a day hits 60 scheduled hearings, the day is closed, and the next business day is opened for scheduling. The current hearing dates are approximately 9 months from the time of filing.

From the District Attorney's Office (DAO)

The DAO's process for criminal expungement petitions begins by reviewing petitions according to their scheduled hearing date. The DAO processes petitions that are scheduled for hearings between 4 and 6 weeks from the current date. The DAO reported that this is by the Court's request, and recently the Court agreed to move the processing of petitions to 6 weeks in advance as opposed to 4 weeks.

An Assistant District Attorney will review the 60 petitions scheduled for a hearing 6 weeks from the current date on a case-by-case basis. The DAO sees relevant criminal histories attached to each petition on a list they receive from the Court.

The majority are consented to, with some exceptions such as patterns of domestic violence, as well as those with current warrants for arrest. After a decision to consent or object to all 60 petitions scheduled for a given day is reached, a paralegal will file the response with the Court. For objections, a different Assistant District Attorney will be assigned to the case in the days or week preceding the scheduled hearing.

The DAO reported that the attorney assigned to processing expungement varies and is usually assigned based on current caseloads. The DAO reported that it has the capacity to increase the number of petitions it reviews, but it can only do so if the Court also increases its ability to process petition responses further in advance of scheduled hearing dates.

The DAO acknowledged that expungement petitions are backlogged more than in previous years, and the backlog will grow if changes are not implemented. The DAO

emphasized that there are bottlenecks to the process at the listing stage and the signing stage. In other words, when all petitions are scheduled for a hearing date regardless of likelihood of objection, this causes a bottleneck of thousands of petitions to process, and when petitions are consented to there is a second backlog for the Court to process the orders of expungement.

The DAO further reported that doing large batches of expungement petitions with organizations like PLSE could be a feasible method for reducing the backlog, but there would need to be coordination with the Court to make records accessible with each petition.

The DAO also noted that organizations like PLSE have increased the number of partial petitions filed over the course of the last year or so. This increase in partial expungements, the DAO described, can increase processing times, and some partial petitions are not within the typical reasons for expungements. The DAO noted, for example, partial expungement petitions for individuals convicted of similar more serious offenses, which may increase the likelihood of objection and thus proceeding to a court hearing.

From Philadelphia Lawyers for Social Equity (PLSE)

PLSE further reported that over 90% of the petitions they assist with go uncontested and do not have a hearing. The number that do go to a hearing is still significant. PLSE reported that expungement petitions concerning homicides, domestic violence, violent crimes, and some other specific circumstances are the petitions most likely to go to hearing.

PLSE expressed optimism and willingness to continue to work with the DAO and the Court on improving the efficiency of the process.

A hearing was also observed for filers represented by PLSE for this report. The hearing included three petitions, all of which resulted in either consents or extensions for the DAO to gather additional information. None of the hearings ended in objections.

From Pennsylvania State Police

The State Police receives orders from the 67 counties in Pennsylvania for expungement by mail. This can cause some issues because the police follow these orders to the letter and there is not a uniform expungement order used by all the counties. Some orders, therefore, can be worded in such a way as to produce an unintentional result or list inaccurate records.

The State Police processes orders efficiently in under 30 days and would view going over that timeframe as an issue. Processing these orders includes receiving and verifying the court order and then matching the order to records in the criminal record database. The State Police then send notices to the FBI as well as any other law enforcement agency that has accessed the records and fingerprints that have been ordered for deletion. The State Police indicated the records database has records of all outside party access of any criminal record files for these notifications. After notifying all parties to delete any

copies they may have of relevant criminal records, the State Police then erase the criminal records from their database.

The State Police also noted that “pseudo-expungements” occur after successful completion of an ARD program and the records are not completely removed; unlike a full expungement order, they are only limited from the public record.

Key Findings

Filer and the filer’s legal representation

Duplicate filings can be an issue for filers. This can be due to a variety of reasons, but increased clarity for filers through the Court’s system and additional procedures for organizations like PLSE to catch double filings can help reduce the expungement backlog.

Philadelphia Court of Common Pleas

The Court’s filing system is the largest contributor to the backlog and inefficiency of the criminal expungement process. The data indicates that less than 10% of petitions are objected to. Mandating that all petitions must file a court date despite over 90% of petitions never reaching a hearing, therefore, bogs down the process.

The Court could also update its website for filers to add additional clarity and simplicity to reduce accidental double filings.

Philadelphia District Attorney’s Office (DAO)

Increasing the number of petitions processed by the DAO well in advance of the scheduled hearing date is a way to reduce the expungement backlog. This will require coordination with the Court to increase its capacity.

This can be accomplished through the Court altering its filing system, or by large batch expungement petition processes in coordination with the Court and organizations like PLSE.

Pennsylvania Law Enforcement

Current processing time is efficient for State Law enforcement, but creating additional procedures to increase uniformity could improve efficiency further. Procedures could be implemented such as a standard form for Court Orders for expungements that are sent to law enforcement, a digital system to receive orders from each county, and deadlines for local law enforcement to delete records after notification by state police.

Key Recommendations

For the Court

- 1) The filing system should be changed into a two-track filing system. One for petitions most likely to be consented to and a catch-all for the rest.
 - a) Scheduling hearings for every petition despite over 90% of petitions going uncontested slows processing time significantly.
 - b) Probable consents could also be split into two – likely consents which could be automated into a verification process rather than an investigatory process and petitions for which the DA requires further investigation.
- 2) If a two-track system is not feasible, allow for large batch consents of expungement petitions by collaborating with parties like PLSE and the DAO to allow access to criminal history information.
- 3) Alter design of website to file petitions to increase clarity of what information is required to reduce instances of double filing.

For the DAO

- 1) Continue to work with the Court to expand processing date and response times beyond 6 weeks before hearing date to increase processing speed.
- 2) Work with PLSE and similar organizations, and with the Court on large batch expungements.
- 3) Petition the Court for changes to the filing system and work with the Court on implementation.
- 4) Create uniform procedure for Assistant District Attorneys assigned to cases before hearing date, such as uniform deadlines for objections a set amount of time before the hearing date.

For Law Enforcement

- 1) Streamline the process for local law enforcement's procedures for deletion of records and notification to filer that records have been deleted.
 - a) Proliferate these procedures to local law enforcement offices.
 - i) Procedures such as deadlines for local law enforcement record deletions and deadlines for notification of the filer that deletion has occurred.
- 2) Provide a point of contact in the Pennsylvania State Police Office to all regular filers of expungement petitions like PLSE.
- 3) Create an electronic system by which Court Expungement orders can be sent directly to State Law Enforcement.
- 4) Continue to meet with Court and the DAO to discuss best practices and have flexibility for any proposed changes to the process.
 - a) Work with the DAO to complete batch expungements to reduce backlog until further changes to the process are completed.

For Filers

- 1) Diligence in information provided and transparency to organizations to avoid double filings.

- 2) Organizations like PLSE should continue to meet with the Court and DAO on possible changes to procedures and process.
- 3) Bring attention to the issue by pressuring city council members and the incoming mayor to devote more resources to processing expungement petitions and reduce the backlog.

Limitations

Of Expungements Generally

Criminal expungements are different from pardons.⁵⁰ A pardon is legal forgiveness of an offense and is granted by public officials like the governor in Pennsylvania.⁵¹ Petitioning for a pardon is a separate process, housed under the executive rather than judicial branch of government, and individuals usually seek pardons for criminal records not eligible for expungement.⁵² Criminal expungements are limited only to a court order to destroy the primary public records, such as arrest data that did not result in conviction, that would appear on a background check.⁵³ In other words, most convictions must first go through a pardon process, and the public records that are destroyed from an expungement do not include any media stories or other records that exist in the public view, such as online. Some states instead require the record be sealed rather than destroyed, which has a substantially similar effect of treating the criminal conduct as if it had never occurred.⁵⁴

Courts in different parts of the country also have differing opinions on the limitations of criminal expungements.⁵⁵ The Tenth Circuit, which is the federal appeals court for six mid- to southwestern states including Colorado and New Mexico, for example, described expunged arrests and convictions as “never truly removed from the public record.”⁵⁶ The Court explained that an expungement does not “privatize criminal activity,” and noted that court records and police may permanently document the expunged incident even after expungement.⁵⁷ Meanwhile the Third Circuit, the federal appeals court for states like Pennsylvania and New Jersey, noted that because criminal expungements are only available after a statutory period, the record of criminal conduct may linger in public news sources, or online.⁵⁸

⁵⁰ ABA.

⁵¹ Philadelphia Lawyers for Social Equity, “Pardons,” October 6, 2020, <https://plsephilly.org/pardons/>.

⁵² PLSE, “Pardons.”

⁵³ PLSE, “Pardons.”

⁵⁴ ABA.

⁵⁵ ABA.

⁵⁶ Thomson Reuters. “Nilson v. Layton City, 45 F.3d 369, 372” January 6, 1995.

[https://www.westlaw.com/Document/Ida31354b970c11d9bdd1cfdd544ca3a4/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cbt1.0](https://www.westlaw.com/Document/Ida31354b970c11d9bdd1cfdd544ca3a4/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cbt1.0).

⁵⁷ “Nilson v. Layton City.”

⁵⁸ Thomson Reuters. “Nunez v. Pachman, 578 F.3d 228,” August 26, 2009.

[https://www.westlaw.com/Document/I582ec11e923311deabded03f2b83b8a4/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cbt1.0](https://www.westlaw.com/Document/I582ec11e923311deabded03f2b83b8a4/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cbt1.0).

Although expungements will create a clean slate for traditional background checks for employment, any employment that requires a more extensive background check, such as a security clearance screening, will probably still find some records.⁵⁹

The limits of criminal expungement, like eligibility, therefore, depend upon the specific circumstances of the conduct sought to be expunged, the relevant state laws, and the discretion of the parties involved.

Of This Report

These recommendations only work to the extent the parties of the process adopt them. There needs to be a level of buy-in to improve the system for any positive change to occur.

These recommendations present multiple paths forward to reduce the backlog and streamline the expungement process. Adopting an automation process for some petitions, for example, would take significant effort, but it would be a first of its kind program nationally.

Another path would be for the filers like PLSE and the DAO to hone a large batch petitions process for likely consents. This path would require less effort than an automation process but could still reduce the backlog.

The recommendations in this report are starting places. Each comes with tradeoffs, requires cooperation from other parties of the process, and some require additional time and resources than what is currently allotted.

Additional resources earmarked for processing expungement petitions could also go a long way in reducing the backlog. Communities putting pressure on local officials, such as city council members and the incoming mayoral administration, to increase the budget for expungement petition processing is another viable path.

Going Forward

National Policy Environment

Not all states allow for criminal expungements.⁶⁰ Pennsylvania's Clean Slate law, however, is part of a general trend towards expanding criminal expungements and record sealing nationwide.⁶¹ From 2009-2014, 31 states expanded the scope of criminal

⁵⁹ Moyer, Sara. "Will an Expunged Record Show Up on a Background Check?" Gross McGinley Law Firm, Allentown PA, February 21, 2023. <https://www.grossmcginley.com/resources/blog/will-an-expunged-record-show-up-on-a-background-check/>.

⁶⁰ "Nunez-Reyes v. Holder."

⁶¹ "Expunging and Sealing Criminal Records."

expungements, and more recently states have begun passing legislation to reduce barriers to employment requiring licensures.⁶²

There remains, however, a broad variability in state laws on criminal expungements. California recently enacted the nation’s broadest law on sealing criminal records, while New York still has no formal law to expunge a criminal record, only to seal in specific circumstances.⁶³

Recommendations for Future Improvement

Although there are states without expungement and some opposition to criminal expungement expansion, there is broad support for the criminal expungement process from advocacy organizations, some government officials, and impacted communities.⁶⁴ Despite no federal statute to increase uniformity, states can improve their own process through process evaluations which is the goal of this capstone.

Improving the efficiency and awareness of the criminal expungement process in any jurisdiction reduces disproportionate adverse impacts for low-income and minority communities while working within current legal frameworks. More generally, the usage rate of 6.5% for successful criminal expungements for those eligible is low. Criminal expungement laws were designed to reduce barriers to employment, housing, and education for all citizens.⁶⁵ It is in the best interest of the public generally to improve the efficacy of existing expungement processes.

One such improvement is the automation of expungements which is being considered by several states.⁶⁶ Other more local improvement recommendations are the focus of this capstone. Some organizations, such as the Clean Slate Initiative, also advocate for legislative changes like Clean Slate laws, and expanding the scope of criminal expungements.⁶⁷

Recommendations for Future Research

- 1) Research into limited access petitions, and criminal expungements in different counties.
- 2) Research into state-wide initiatives for criminal expungements.

⁶² “Expunging and Sealing Criminal Records.”

⁶³ Karlamangla, Soumya. “California Will Allow People to Clear Criminal Records After Serving Time.” The New York Times, November 28, 2022. <https://www.nytimes.com/2022/11/28/us/california-criminal-record-law.html>; System, New York State Unified Court. “Sealed Criminal Records.” N.Y. State Courts, Office of Court Administration. Accessed February 28, 2023. <https://www.nycourts.gov/404/index.shtml>.

⁶⁴ Karlamangla, Soumya; “National Record Clearing Project,” December 2, 2022. <https://clsphila.org/national-record-clearing-project/>.

⁶⁵ ABA.

⁶⁶ Hernández, Kristian. “More States Consider Automatic Criminal Record Expungement.” The Pew Charitable Trusts, May 25, 2021. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/05/25/more-states-consider-automatic-criminal-record-expungement>.

⁶⁷ Clean Slate Initiative. “EVERYONE DESERVES A SECOND CHANCE.” Accessed February 28, 2023. <https://www.cleanslateinitiative.org/>; Community Legal Services.

- 3) Research into automation efforts of expungement petitions that can be implemented in different jurisdictions, including Pennsylvania.
- 4) Research into nationwide expungement status to find common ground for federal bill to expedite criminal expungements.

Appendix A – Court Data and Interview Information

The Court allowed participation in a meeting with PLSE in early February 2023, as well as a meeting with the Motion's Desk during the same time to gather information for this report. All information was collected voluntarily with informed consent.

Appendix B – DAO Interview Questions

- 1) What is the DAO's procedure for reviewing criminal expungement petitions from start to finish?
- 2) Are there procedures for categorizing petitions for which need further review versus probable consents or are petitions just assigned and stay with the assigned person?
- 3) How long does the average petition stay with the DAO before the DAO comes to a decision for consents where the hearing is waived?
- 4) What is your perspective on the current filing system for petitions with the Court of Common Pleas and the way petitions get to the DAO?
- 5) How many petitions does the DAO typically have currently processing, ballpark?
 - a) Of those how many (ballpark) are likely consents without hearings and how many go to a hearing?
- 6) What are your standard objections for petitions for expungement?
- 7) How many ADA's are assigned to review petitions for expungement?
- 8) Has this number increased given the significant increase of petitions for expungement following the City and the United Way's large investment in criminal record clearing through the Promise grant?
- 9) If yes, does the DA's office have a plan to address the court similarly increasing dedicated resources to handle the increase? If no, do you plan to restructure the process of review of petitions to handle the increase?
- 10) What would be most helpful for your office, from organizations like CLS and PLSE that file large amounts of petitions for expungement?

Appendix C – Pennsylvania State Police Interview Questions

- 1) Get him to describe his scope of duties.
- 2) Be sure to find out what "expungement" means to him – I am not sure "erase everything" is what he will say, so get specifics if you can.
- 3) what exactly does he and his office do when they receive an expungement order from a court.
- 4) What problems do they face in actually doing it?
- 5) Ask him how you can be helpful TO HIM AND HIS OFFICE, that is, what recommendations would he want to be sure you included in your report {if he asks, you can say you are virtually certain it will be going to the Lt Gov's office)

- 6) Ask him about the automatic expungement of PARDONED offenses – what problems would there be to immediately expunging any crimes listed in a Charter of Pardon signed by the Gov [there will be a bill introduced this fall on that]
- 7) Who is the best point of contact in your office for correcting any errors made regarding an order of expungement?
- 8) What are the dates on the orders of expungement your team is currently processing? (He may refuse to answer this; it's NBD if so.)
- 9) Has your team noted an increased in orders, and is increasing staffing something that would be helpful for you all?