

# Criminal Record Clearing: The Terminology

## POLICY SNAPSHOT

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### Introduction

Roughly 70 million adults in the U.S. have a criminal record. Additionally, more than 1 million youth are charged with crimes and acquire juvenile court records each year. This amounts to roughly 1 in 3 Americans. Of those, millions are eligible to have their records cleared; however, a University of Michigan Law School [study](#) shows that less than 10% of Americans get their records expunged, even if they are entitled to it. This problem—called [the Second Chance Gap](#) by some researchers who study the issue—is causing growing concern among policymakers across the country.

In recent years, policymakers and criminal justice stakeholders have paid increasing attention to the substantial barriers to employment, housing and social integration that criminal records can pose. These indirect sentencing consequences are often referred to as [collateral consequences](#). Some examples include restrictions on public benefits eligibility and occupational licensing.

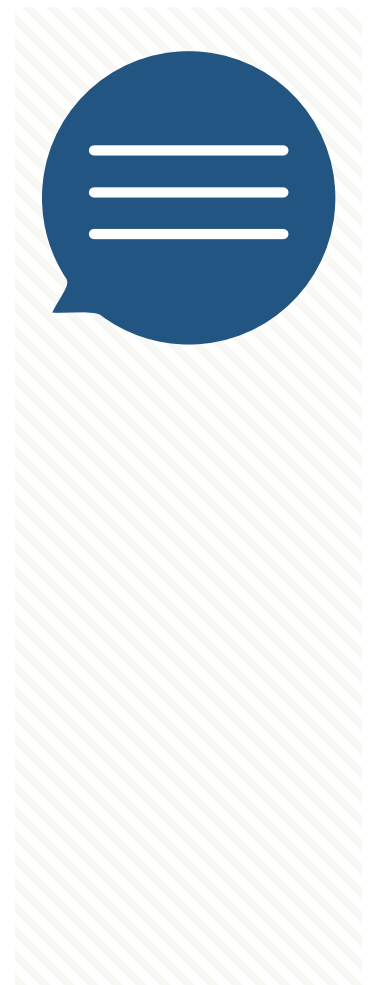
Some collateral consequences have a direct link to public safety matters, making them important to many policymakers. For example, people convicted of assault or physical abuse are pro-

hibited from working with children or the elderly for the safety of the community. Similarly, barring someone who was convicted of fraud from a position of public trust is in the best interest of the community. Through criminal record-clearing policies, legislators are attempting to balance community safety with effectively reintegrating people with prior criminal records into the community.

States often use a variety of language to describe record clearance, including annulment, destruction, dismissal, erasure, expungement, sealing, set-aside and vacatur. In fact, some states may use the same language, but the terms have drastically different meanings. As such, it is important to identify and know your individual state's definitions of these terms. This policy snapshot will define and explain the variety of terminology used by states when enacting criminal record-clearing laws.

### Terminology

Despite language differences, the commonality between states' criminal record-clearance laws is they enable an individual's criminal history information to be removed from easy public access, most often with the goal of improving employment and other outcomes for the affected person.



## TERMINOLOGY

<b>Annulment</b>	The act of nullifying or making void.
<b>Destruction</b>	To damage (something) so thoroughly as to make unusable, unreliable or nonexistent; to ruin.
<b>Dismissal</b>	Termination of an action, claim or charge without further hearing, especially before a trial; a judge's decision to stop a court case with an order or judgment that imposes no civil or criminal liability on the defendant with respect to the case.
<b>Erasure</b>	The removal of a conviction (especially for a first offense) from a person's criminal record.
<b>Expungement</b>	To remove from a record, list or book; to erase or destroy.
<b>Sealing</b>	To prevent access to (a document, record, etc.), especially by court order; to seal the record of the proceedings.
<b>Set-Aside</b>	To annul or vacate (a judgment, order, etc.).
<b>Vacatur</b>	The act of annulling or setting aside.

*\*Definitions taken from Black's Law Dictionary (11th ed. 2019)*

## Examples of Terminology

As you will see below, states have vastly different and nuanced approaches to record clearing. What might be called expungement in one state may be entirely different to expungement in another. A few examples of states' definitions for record clearing are described below.

### ANNULMENT

Under **New Hampshire law**, a person whose record is annulled shall be treated in all respects as if he or she had never been arrested, convicted or sentenced. However, upon conviction of any crime committed after the order of annulment, the prior annulled conviction may be considered by the court in determining habitual offender status and sentencing. The law provides that court records relating to an annulled arrest, conviction or sentence shall be sealed and available only to the person whose record was annulled, his or her attorney, a court for sentencing, or for law enforcement personnel for legitimate law enforcement purposes.

Additionally, the law states in any application for employment, license or other civil right or privilege, a person does not have to report his or her criminal conviction. A person may be questioned about a previous criminal record only in terms such as, "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"

### DISMISSAL

Under **Louisiana law**, completion of a deferred sentence allows a court to dismiss the case. Deferred sentencing is a process in which courts postpone sentencing as long as the defendant abides by certain restrictions, such as supervised or unsupervised probation. Because sentencing has not been carried out, the case remains active throughout the deferral period and may be dismissed upon completion. Dismissing the case has the same effect as an acquittal, except the criminal record may be considered a prior offense in any subsequent prosecution. However, the criminal record may be considered as a prior offense and provide the basis for subsequent prosecution of the party as a multiple offender. Additionally, Louisiana law expressly states that nothing shall be construed as being a basis for destruction of records of the arrest and prosecution of any person convicted of a misdemeanor.

## ERASURE

Under **Connecticut law**, any person who receives an erasure shall be deemed to have never been arrested within the meaning of the general statutes and may so swear under oath.

## EXPUNGEMENT

Under **Delaware law**, expungement means all law enforcement agency and court records— including any electronic records—relating to a case in which an expungement is granted are destroyed, segregated or placed in the custody of the State Bureau of Identification. They are not typically released.

In contrast, under **Indiana law**, **I.C. 35-38-9-6**, expungement only prohibits the release of the person's records to anyone without a court order. If a person is required to register as a felony sex offender, expungement does not release him or her from that responsibility. Also, expungement of a crime of domestic violence does not restore a person's right to possess a firearm.

## SEALING

Under **Arkansas law**, sealing means to expunge, remove, sequester and treat as confidential the record or records in question. It does not include the physical destruction of a record of a conviction unless noted specifically in the law.

The **law** allows the person whose record has been sealed to have most privileges and rights restored. However, sealing in Arkansas does not reconfer the right to carry a firearm if that right was removed as the result of a felony conviction. When a person's record is sealed, it shall be deemed as a matter of law that it never occurred, and a person does not have to admit to having committed a crime. A sealed record can still be used in certain court proceedings, such as to determine habitual offender status, and may still be examined when applying for licensure from a health care agency or for a position in law enforcement.

By contrast, the definition of sealing in **Colorado** is very different. Under **Colorado law**, a sealed arrest or other criminal records are still available to law enforcement agencies, criminal justice agencies, prosecuting attorneys, or agencies required to conduct a criminal history record check on an individual. Employers, state and local government agencies, officials, landlords and employees cannot require an applicant to disclose any information contained in sealed conviction records in any application or interview, with some exceptions. Finally, sealing does not mean there is any physical destruction of conviction records.

## SET-ASIDE

Under **Michigan law**, a person receiving a set-aside is considered not to have been previously convicted, with some exceptions. Like Indiana's expungement, Michigan's set-aside has no effect on sex offender registration.

By contrast, under **Nebraska law**, an order to set aside a conviction nullifies the conviction and removes all civil disabilities and disqualifications imposed. This means (among other things) a person with nullified felony convictions has the right to be a part of jury and hold public office. To determine whether to set aside the conviction, Nebraska courts consider the behavior of the offender after sentencing and the likelihood that the offender will not engage in further criminal activity. Once again, like Michigan's set-aside and Indiana's expungement, Nebraska's set-aside does not affect sex offender registration.

## VACATUR

Under **Washington law**, vacatur means the offender's conviction cannot be included in his or her criminal history for sentencing purposes. Again, the offender is released from "all penalties and disabilities resulting from the offense," meaning he or she has the right to vote, be a part of a jury and run for public office. The offender also does not have to disclose the vacated conviction on employment applications. Additionally, a conviction that has been vacated may not be disseminated or disclosed by any law enforcement agency to anyone other than criminal justice enforcement agencies in the state.

## Resources

- [Clean Slate Clearinghouse](#)
- [Criminal Record Clearing Process](#)
- [Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities](#)
- [Expungement of Criminal Convictions: An Empirical Study](#)
- [Restoration of Rights Project: Expungement, Sealing and Other Record Relief](#)
- [The Second Chance Gap](#)

*NCSL's Criminal Justice Program is in Denver, Colo., at 303-364-7700, or [cj-info@ncsl.org](mailto:cj-info@ncsl.org).*

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