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What Does It Take to Get a Real Clean Slate?

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Special to the Legal

When we first meet people at our community expungement clinics it is typically years after their last contact with the criminal justice system and yet they are still dealing with the consequences. They are mothers, fathers, sons, daughters, grandparents, coaches, students, caretakers and mentors. They have degrees, certificates, professional licenses, letters of support and hours of volunteer experience. However, those holding the keys to opportunity, such as employers, landlords and banks, never discover this because their personal history—who they are and what they have to offer—is replaced by a criminal history record.

Criminal history records carry a tremendous amount of stigma. In Pennsylvania, they are publicly available and include information pertaining to any charges that have been brought against a person in the commonwealth. This includes charges for which they were never convicted. Employers, landlords, institutions of higher education, community organizations, and even elected official's offices use this information to assess



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risk. However, a criminal record by itself is a poor risk-assessment tool because it reveals nothing more than the official actions that our criminal justice system chose to take against an individual. They provide minimal insight about the event that precipitated those proceedings and no information about the person behind the record.

Despite this, criminal records are often used to mindlessly deny people opportunities with little or no consideration for who they are and what they have to offer. I have represented multiple men and women in their 70s who were denied housing in assisted-living facilities based on charges that

occurred more than a quarter century ago. I have met someone who was denied the opportunity to volunteer at an elected official's office due to her record, only to be given a letter of recommendation from that same office when applying for a new job. Just as odd is when people are told, "We can't hire you due to your record, but if you get it expunged we would love to have you." The fact that the same person, with the same experiences, would be treated differently simply due to the existence of a criminal history record illustrates the stigma surrounding them.

For those struggling with this stigma on a daily basis, an expungement represents the only realistic opportunity to take back their personal history and participate fully in society. In Pennsylvania, expungement eligibility generally depends on the outcome of the original case. All charges that resulted in nonconviction dispositions (e.g., not guilty, judgment of acquittal, dismissed, withdrawn, nolle prossed) are eligible to be expunged by court order as soon as the case is closed. Any charges that resulted in convictions (e.g., guilty, guilty plea) may only be expunged under limited circumstances.

For most people, the best way to get information related to a conviction expunged is to apply for and be granted a pardon by the governor. To say that the pardon process is the “best” option belies the bleak reality. The process is procedurally overwhelming, intrusive, and can be daunting for those with limited funds or education. It requires applicants to gather and submit unfamiliar court documents, a slew of personal records and information, and explain why they deserve a pardon without official guidance on what factors the Board of Pardons and the governor may consider. As an indication of how difficult just completing the application is, only around 16 percent of the more than 3,500 pardon applications that were purchased in 2017 were successfully completed and filed with the Board of Pardons.

Successfully submitting the application is only the first step. After completing the application, applicants will wait up to a year before being visited by an investigator from the Pennsylvania Board of Probation and Parole for an in-home interview. The investigator may also speak with family, friends and neighbors before writing a report for the five-member Board of Pardons to consider when deciding whether to grant a public hearing. If a hearing is granted, the applicant must come before the Board of Pardons in the Supreme Court courtroom in Harrisburg. At this hearing, before a courtroom full of strangers, they are asked range of personal questions such as: what was on their mind at the time of the incident, whether they ever consume alcohol, and whether they have received treatment for psychiatric disorders. If the

board recommends them, it is ultimately up to the governor to decide whether to grant a pardon.

All told, the pardon process typically takes two to four years to navigate successfully, and those who succeed must still petition for an expungement afterward. Clearly, this is not an ideal process for those simply seeking the opportunity to move beyond a criminal record and participate fully in society. However, it is the best option because there are few alternatives. The only other way to remove a past misdemeanor or felony conviction from your record is to wait until you turn 70 or wait until you have been dead for three years. As a commonwealth, what message are we sending when being over 70 or cold in the ground are the only conditions under which someone may be considered deserving of a second chance?

It is also important to recognize that the indiscriminate use of criminal records negatively affects families, neighborhoods and society as a whole. Many individuals with records struggle to find employment, and if they do they can expect to take home 40 percent less annually than someone without a record. This lack of opportunity means the ones they care for (e.g. spouses, children, elderly family members) will likely suffer a lower quality of life. Additionally, families must deal with the added stress of supporting their loved one financially and emotionally.

Entire communities also feel the strain. Policies that respond punitively to social issues such as poverty, mental illness and substance abuse have resulted in neighborhoods where many, if not most, of the residents have a

criminal record. Businesses are less likely to be attracted to these neighborhoods because many of the residents are considered unemployable due to their records. This means fewer employment opportunities, even for those residents who do not have a record. Furthermore, with so many people unemployed or underemployed, the neighborhood lacks a solid tax base on which to support schools, infrastructure and general maintenance in the community. Consequently neighborhoods that have traditionally been economically forgotten continue to be disadvantaged and underserved.

As legal practitioners, we need to think long and hard about whether this is sound policy. In Philadelphia alone, we subject roughly 400,000 of our neighbors to various forms of social ostracism based on criminal records to our own detriment and with no public safety benefit. Legislation such as Clean Slate demonstrates a desire to move in a different direction and will certainly help people take advantage of opportunities they might otherwise be denied. However like its forerunner, Act 5, it will leave many good people without a genuine opportunity for a second chance. With momentum building toward real justice reform, now is not the time to rest. Whether through an overhaul of the pardon process or the creation of a new process, we must come together now to provide additional routes to redemption. •