

Fact Sheet Series for Native nations and Alaska Native Villages Planning for Reentry - Expungement

An expungement is the “Process by which record of criminal conviction is destroyed or sealed from the state or Federal repository.” Each jurisdiction handles expungements differently; types of convictions eligible for expungement, process, and cost are all varying factors. Many jurisdictions limit expungements to certain kinds of misdemeanors. Other jurisdictions choose to automatically expunge certain records, such as juvenile crimes or those that fall under certain trafficking victim protection acts. Expungements are particularly important for people in reentry because an expunged record can increase access to jobs, education, and housing opportunities—all important factors for a successful reentry.

EXPUNGEMENT BASICS

What may be expunged?

- *Client’s past conviction and arrest records
- *Criminal charges that were improperly filed
- *Crimes for which the client has been pardoned

**Each jurisdiction limits the types of crimes that can be expunged and eligibility will likely vary across jurisdictions

How do people get their records expunged?

- Request court action
- Work with their public defender’s office
- Legal services
- Private attorney

Expungement Myths

Myth #1: Nolo contendere plea means a client is not guilty and will not have a record

Myth #2: Once a sentence or probation is complete, the conviction record disappears.

Myth #3: Deferred sentences are excluded from records

How can expungements benefit People in Reentry?

- Can allow them to answer “no” to common application questions such as:
 - ◊ “Have you ever been convicted of a crime?” and
 - ◊ “Have you ever been arrested?”
- Eliminates confusion a client may have about their record and what must be disclosed.
- Incentivizes truthful responses on employment and other applications
- Reduces the risk of landlords, employers, etc. improperly using their records which would otherwise be available on accessible databases.

EXPUNGEMENT IN FEDERAL AND STATE SYSTEMS

Federal Innovations

In 2003, Judge John Gleeson sentenced a woman to 15 months in prison for faking a car accident to collect on the insurance payment. In 2016, the woman asked the Judge to expunge her conviction from her criminal record, and while the Judge denied her expungement request he did provide her with a “federal certificate of rehabilitation” That is to say that rather than expunging the charge from the women’s record, Judge Gleeson “opted for forgiveness over forgetting.” Although it has no legal effect, the certificate acts as an indication that the person deserving of punishment is now fit to fully rejoin the workforce.

State Innovations

In 2016, the Kentucky General Assembly passed House Bill 40, which enables people with certain felony convictions to file an application requesting their conviction be vacated and expunged. Once the conviction is vacated and expunged, any time that a request comes through the court or other agencies regarding a conviction, they will reply that no record exists on the matter.

Further, those who have their record expunged will not have to disclose the incident on an application for employment, credit and other applications. Records expunged under this law cannot be used to restrict the right to register to vote.

POSSIBLE TRIBAL APPROACHES

1. Automatically seal certain offenses, similar to standard sealing of juvenile records and create an automatic process for expungement of these sealed records after a set time period
2. Automatically seal convictions resulting from guilty pleas made in order to access alternatives to incarceration, such as Healing to Wellness or Drug Court programs. Tribes can create a process to ‘unseal’ such convictions if the participant fails to complete the program requirements.
3. Create an automatic expungement process for arrest records that did not lead to a conviction, either as part of regular court process or through tribal legislation
4. Create an automatic expungement process for certain conviction records after a set time period in which there is no new offense
5. Clearly explain what expungement can and cannot do for people in reentry. For example, are their certain kinds of jobs or direct questions that would still require a disclosure of past arrests and convictions?
6. Create clear policies that explain acceptable and unacceptable uses of arrest and conviction records when determining eligibility for tribal housing, education, employment, and other tribal benefits. This includes clear policies on restricted questions related to sealed or expunged records.

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TRIBAL PROGRAM SPOTLIGHTS

Oklahoma Indian Legal Services Expungement Clinic

Oklahoma Indian Legal Services (OILS) in Ada, Oklahoma serves the Native community through a range of clinics that help tribal citizens with various legal issues. OILS has offered an expungement clinic where pro-bono attorneys are able to inform people of their rights, advise clients of what an expungement is, and make initial assessments of client qualifications and records.

The Yurok Tribe's Hoh-Kue-Moh Clean Slate Program

The Clean Slate Program offered by the Yurok Tribe's Hoh-Kue-Moh corporation provides tribal members an avenue to move forward from past legal indiscretions. Following traditional Yurok values of repayment between victim and offender, the program allows offenders to move on once they have restored balance between both sides. This program extends "the principle to allow for the offender to regain their place in the community as a contributing community member who having erred has acted in such a fashion that they get a fresh start." The purpose of the program is to remove misdemeanors and felonies from the records of individuals who have not committed a crime in the last 7 years. The program also offers the opportunity to seal juvenile records, reduce criminal records, obtain a certificate of rehabilitation, request early release from probation, and in certain circumstances get previous convictions overturned. The program helps eligible individuals fill out paperwork, collect the correct documents, and successfully navigate the expungement process.

REFERENCES

- I. Black's Law Dictionary 582 (6th ed. 1999)
- II. THE URBAN INSTITUTE, RELEASE PLANNING FOR SUCCESSFUL REENTRY: A GUIDE FOR CORRECTIONS, SERVICE PROVIDERS, AND COMMUNITY GROUPS, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411767-Release-Planning-for-Successful-Reentry.PDF> (last visited Nov. 7, 2016).
- III. NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION, WEBINAR 3: EXPUNGEMENT AND INDIAN COUNTRY: THE NEED TO ADDRESS PAST CRIMINAL HISTORIES FOR A BETTER FUTURE <http://www.naicja.org/our-programs/webinar-3> (last visited Nov. 3, 2016)
- IV. Jesse Wegman, A Federal Judge's New Model for Forgiveness, NY TIMES (Mar. 16, 2016), available at http://www.nytimes.com/2016/03/16/opinion/a-federal-judges-new-model-for-forgiveness.html?_r=0
- V. KENTUCKY COURT OF JUSTICE, HOUSE BILL 40: FEMALE EXPUNGEMENT (2016), <http://courts.ky.gov/Expungement/Pages/felonyexpungement.aspx>
- VI. OKLAHOMA INDIAN LEGAL SERVICES, INC., http://www.oilsonline.org/www.oilsonline.org/Welcome_to_OILS.html (last visited Nov. 3, 2016).
- VII. NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION, WEBINAR 3: EXPUNGEMENT AND INDIAN COUNTRY: THE NEED TO ADDRESS PAST CRIMINAL HISTORIES FOR A BETTER FUTURE <http://www.naicja.org/our-programs/webinar-3> (last visited Nov. 3, 2016)
- VIII. YUROK TRIBE, YUROK NONPROFIT OFFERS FIRST CLEAN SLATE IN INDIAN COUNTRY, http://yuroktribe.org/documents/clean_slate_announcement_FINAL.pdf (last visited Nov. 3, 2016).

ADDITIONAL RESOURCES

Expungement and Indian country: the Need to Address Past Criminal History for a Better Future: www.naicja.org/resources/Documents/Webinar%203%20-%20Expungement%20in%20Indian%20Country.FINAL%2002-18-15.pdf

The webinar discusses the general elements of expungement as well as programs that provide expungement for tribal members in Indian country.

Menominee Indian Tribe of Wisconsin Tribal Code: Article XIII: Expungement of Records: <http://ecode360.com/13784360>

Example of a tribal code that includes a provision on expungement of records.

Fair Chance-Ban the Box Toolkit: Opening Job Opportunities for People with Records: www.nelp.org/content/uploads/NELP-Fair-Chance-Ban-the-Box-Toolkit.pdf

Guide on how to start a fair chance campaign, including best practices. Also contains model local and state policies and laws.

Muscogee (Creek) Nation Reintegration Program: www.mcnrip.com

This program provided quality re-entry services to Muscogee citizens. It also provided education programs for at risk youth.

Oklahoma Indian Legal Services, Inc.: www.oilsonline.org/www.oilsonline.org/Welcome_to_OILS.html

Expungement clinic website.

Yurok Nonprofit Offers First Clean Slate in Indian Country: http://yuroktribe.org/documents/clean_slate_announcement_FINAL.pdf

This press release explains the Yurok Tribe's Hoh-Kue-Moh Corporation "Clean Slate Program." The Program helps to remove non-violent misdemeanors and felonies from the record of individuals who have not committed a crime in the last seven years.

Expungement Expansion Round-Up (2016 Edition): <http://csgjusticecenter.org/reentry/media-clips/expungement-expansion-round-up-2016-edition/>

Article that highlights new state expungement laws and programs. This page also provides links to other expungement related resources.

Standards for Hiring People with Criminal Records: <https://lac.org/toolkits/standards/standards.htm>

Website explaining roadblocks for people in reentry and how to remove them.