

Testimony of Dr. Sarah Lageson
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Assemblymen and Assemblywomen, thank you for your time today and your work on this extremely important issue.

I am an Assistant Professor at Rutgers University-Newark in the School of Criminal Justice. I want to note that any opinions I express in this testimony are my own and do not represent any official policy or position of the university. I am currently conducting a study of criminal record expungement in New Jersey, funded by the National Institute of Justice. I want to briefly share some of preliminary findings.

Our study follows 100 expungement seekers in New Jersey. We have currently enrolled 71 participants and began the project in June 2017. We monitor the expungement process with legal aid clients and analyze their official criminal records and background checks from third parties for errors and accuracy. We also conduct periodic interviews with each participant to track their progress.

Unfortunately, we see very high rates of attrition, even when the client is being served by a legal aid organization, due to two things: 1) the cost of expungement, and 2) incorrect, dated, and inaccessible records.

To properly fill out an expungement petition, the petitioner must request a copy of their Computerized Criminal History (CCH) through a “personal record request,” from the New Jersey State Police. This version of the criminal record includes all arrests and dismissed charges, unlike the copy of the criminal record a prospective employer might see that only includes convictions.

This currently costs \$40.66 and is brokered through a third party called Identogo that provides digital fingerprinting services. Petitioners often cannot, or chose not to, pay this fee. For expungement to be effective and accessible, this fee should be waived.

Participants also drop out of the expungement process when facing the \$75 filing fee, plus the certified mail costs of serving the petition and (if approved) the expungement order to over ten criminal justice agencies. These fees should be waived for an automatic expungement and the petitioner should not be responsible for the cost of certified mailings.

Second, over half of our participants have serious errors on their records that can be nearly impossible to fix. For instance, one participant had his expungement petition denied by a judge for not reporting an arrest from the late 1990’s. The arrest did not appear on his CCH and we could not locate it in the court or police records. The arrest was actually violation of a juvenile family court order. But, the version of the client’s criminal record obtained by the judge “counted” this as an arrest. It took nearly a year to figure out this data entry error and to resubmit the petition.

We have also encountered many arrests or charges, many from decades ago, that do not have final dispositions recorded in the CCH. An expungement petition will be denied if the petitioner cannot include disposition paperwork from courts. However, this has been impossible for some clients to obtain because courts cannot locate these older records in their files. Automatic expungement will not correct fundamental database errors.

Unresolved criminal records are an issue in other jurisdictions as well. One report has estimated an 80 percent error rate in criminal record databases.¹ The National Employment Law Project (NELP) has estimated that 50 percent of FBI criminal history reports fail to include information on the final disposition of the case.²

The coordinator role you propose is essential. I would highlight several issues to keep in mind. First, the coordinator should interface directly with local police, state police, probation, and courts to access records because each entity has their own system of data management. Expungement is time-consuming and expensive to manage, and the courts may be faced with tens of thousands of potential expungements.

There also needs to be clarity on what “automatic” expungement means. There are no automated data entry processes in the New Jersey criminal justice system. Currently, expungements need to be manually entered within each entity’s database. Specifically, a person with an expungement order has to serve the order via certified mail to:

- the Attorney General,
- the Superintendent of State Police Expungement Unit,
- the county prosecutor,
- the magistrate of the municipal court,
- the chief of police where the arrest was made,
- the chief law enforcement officer of any other New Jersey law enforcement agency that participated in the arrest,
- the warden of any institution where the expungement-seeker was incarcerated,
- and if applicable, the state grand jury and county probation.

The coordinator will need to navigate each of these systems directly and independently to ensure compliance with an expungement order, then routinely audit each of these entities. Other states that have legislated “automatic” expungements or record sealing have not put these measures in place and records are not being properly updated. This can create serious issues for the petitioner who can now be accused of lying to a prospective employer, landlord, or criminal justice agency who still sees the arrest or conviction on the internet, in a background check, or in an un-updated governmental database.

The public awareness campaign is commendable and I would urge the committee to target people who were previously ineligible for any form of expungement because of marijuana convictions. If this automatic expungement goes into effect, they should be encouraged to apply for general record expungement should they become eligible under these new guidelines.

Finally, many of our participants believe that a legal expungement will erase that part of their criminal record from third party background checks and from the internet. This is simply not the case. The record of their arrest will remain available even after an expungement. For a truly effective expungement, they will need to directly serve their order to a number of consumer reporting agencies and website operators and independently monitor compliance. This enormous need has yet to be remedied by any expungement law. Thank you for your time today and thank you for your service.

¹ Alan Rosenthal, Emily NaPier, Patricia Warth, and Marsha Weissman. “Boxed Out: Criminal History Screening and College Application Attrition.” *Center for Community Alternatives*, March 2015,

² Madeline Neighly and Maurice Emsellem, “Wanted: Accurate FBI Background Checks for Employment. Reward: Good Jobs,” National Employment Law Project, July 2013