

# **The Left, the Right, and the Football Players**

HOW CLEAN SLATE AUTOMATED SEALING WAS PASSED IN PENNSYLVANIA

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November 2018



COMMUNITY LEGAL SERVICES CLIENT RONALD LEWIS SPEAKS AT A JUNE 2018 RALLY FOR CLEAN SLATE.

Pennsylvania has long had one of the narrowest laws in the country for the record clearing of criminal convictions. A 2016 law known as “[Act 5](#)” brought sealing of some misdemeanor convictions to the state—a modest step forward that itself did not come easily. But then, earlier this year, Pennsylvania catapulted to the forefront of record clearing, becoming the first state in the nation to adopt a groundbreaking new innovation: automated sealing of minor records by use of technology—a concept known as “Clean Slate.”

How did this groundbreaking law get enacted in such an unlikely place? By garnering support from almost everyone: Republicans, Democrats, Libertarians, the Left, the Right, business interests, district attorneys, the faith community, and even National Football League (NFL) players. This is the story of how Clean Slate became law in Pennsylvania and how it was shaped, unfolding in 10 not-always-easy, but replicable, steps—paving the way for many more states to follow suit and planting seeds for a paradigm shift in the treatment of criminal records.

## Step 1: Create the Concept

In December 2014 the Center for American Progress and Community Legal Services of Philadelphia teamed up to publish One Strike and You're Out, which documented how even a minor criminal record can be a life sentence to poverty and joblessness. In surveying familiar policy reforms to take down barriers to opportunity faced by the 70 million to 100 million Americans with criminal records—such as “ban the box” policies in hiring and reforms of public housing eligibility—we were struck by the need for a comprehensive approach that could truly allow an individual to move past a criminal record and move on with life. Meanwhile, from our vantage point as current and former legal aid attorneys, we were struck by how difficult remedies such as expungement and sealing can be to access, particularly for individuals unable to secure legal help, even if they are eligible to have their records cleared. How could we close the “second-chance gap,” as it is increasingly called, and bring the benefits of record clearing to scale? To these ends we put forth the new idea of “Clean Slate” automated sealing: enabling individuals with qualifying records to have those records sealed automatically, by computer query, instead of putting the burden on the individual to file record-clearing petitions.

Clean Slate was an appealing policy recommendation for a number of reasons:

- It helps people with records access many crucial needs, including employment, housing, and education.
- It helps children and families as well as the individuals with the records. Nearly half of American children now have at least one parent with a record, and the barriers associated with a parent’s record translate into serious hardship for the families.
- It closes the second-chance gap for millions of Americans who are eligible for record clearing but have not obtained it because of barriers such as lack of knowledge, lack of available or affordable legal assistance, and high filing fees.
- It saves resources for the people with records and the many players involved in sealing cases in the criminal justice system (such as district attorneys and court staff).

## Step 2: Start a State-Based Campaign

Early conversations with strange bedfellows revealed that the Clean Slate policy model had not just bipartisan but transpartisan political appeal among leading criminal justice advocates across the political spectrum. The Center for American Progress is a member of the [Justice Action Network](#), a coalition of progressive and conservative partners formed in 2015 to advocate criminal justice reform in Congress and in the states. The Justice Action Network joined the Center for American Progress and Community Legal Services in supporting, as one of the network's earliest state-level priorities, a Clean Slate campaign in Pennsylvania. The policy quickly appealed to progressive criminal justice reform leaders because of its potential to cut poverty, expand opportunity, and tackle the racial inequality driven by shutting tens of millions of workers of color out of the labor market; meanwhile, it proved appealing on the right as a tool for reducing criminal justice spending by helping individuals achieve reentry and avoid recidivism and by reducing a burdensome workload for the courts.

The Justice Action Network's support—and the engagement of its members—brought transpartisan credibility, with conservative and libertarian partners such as FreedomWorks, Right on Crime, and the Faith and Freedom Coalition lending unprecedented support for a record-clearing bill in Harrisburg. The network also brought critical resources, including a Harrisburg lobbying firm to carry out the day-to-day advocacy in the capitol. The Center for American Progress, Community Legal Services, and the Justice Action Network were the founding partners in the Pennsylvania campaign.

## Step 3: Craft the Bill

As the lead in-state partner familiar with Pennsylvania's record-clearing law, Community Legal Services drafted the original bill. The bill was designed to automate sealing for cases that were already eligible for expungement or sealing; these cases included nonviolent misdemeanor convictions after 10 crime-free years and nonconvictions 60 days after their conclusion. The bill also expanded sealing eligibility to reach first-degree misdemeanors. Although a modest expansion, this was the most that appeared politically feasible, given that misdemeanor sealing had just been introduced by Act 5 earlier in 2016.

In the drafting process, we came to understand that our bill had to be designed by reference to the data maintained in the two primary databases in which cases would be sealed, maintained by the Administrative Office of Pennsylvania Courts and the Pennsylvania State Police. For instance, although Act 5 had measured the 10-year crime-free period for sealing from date of completion of the sentence for the last case, we provided that under Clean Slate, the crime-free period would run from the date of disposition of the last case. The reason was that the two databases did not contain information about sentence completion, and if that information were required to identify cases for sealing, a computer query could not be produced. Throughout the legislative process, the availability of data for each Clean Slate eligibility condition remained a touchstone whenever a new proposal was made by legislators or stakeholders.

## Step 4: Identify the Key Sponsors

Our plan was to seek bipartisan sponsors, with key Republicans in the lead in both houses. Our lobbyist identified [Sen. Scott Wagner](#), a Republican from mostly rural York County and a relative newcomer with “juice.” Senator Wagner identifies as a fiscally conservative businessman who made a fortune in waste management. He originally won as a write-in



candidate in a special election and took Harrisburg by storm from there. (He was the Republican nominee for governor in 2018 but lost to the incumbent, Tom Wolf.) Senator Wagner saw Clean Slate as a workforce-development initiative, especially given employers' stated concerns about a skilled-worker shortage, as sealing cases would increase applicant pools by eliminating criminal records that he saw as barriers for employers as well as employees. He also testified to the rehabilitation of workers whom he has known to have criminal records and their need for second chances. He is widely viewed as one of the most conservative members of the Pennsylvania Senate.



SPONSORS OF CLEAN SLATE AT THE BILL'S INTRODUCTION: SEN. ANTHONY WILLIAMS (D), SEN. SCOTT WAGNER (R), REP. SHERYL DELOZIER (R), REP. JORDAN HARRIS (D).

On the House side, our lobbyist identified Rep. Sheryl Delozier, a Republican from Cumberland County, another midstate area. Representative Delozier is a member of the House Judiciary Committee and enjoys a strong relationship with its chair. She has strong business ties and was quickly receptive to the business case for the bill.

Lead Democratic sponsorship by two Philadelphians (Rep. Jordan Harris and Sen. Anthony Williams) delivered bipartisan support; as progressive stalwarts within the legislature and vocal leaders of its Black Caucus, both were considered more “predictable” champions of a bill such as Clean Slate. The ease and speed with which bipartisan cosponsorship of the bill materialized was a first for a sealing bill in Pennsylvania. Identical bills were introduced in the Senate and House in April 2016, well into the second half of the two-year legislative session.

## Step 5: Square Away Technological Feasibility

Before the bill could really move (and to avoid an untenable fiscal note based on misunderstanding of the bill), we needed to establish that Clean Slate was technologically feasible and without significant cost. The Pennsylvania Courts and the State Police were concerned that they would not be able to implement the automated sealing with their existing resources. To avoid their opposition and to allay similar questions among some members of the legislature, we needed consensus on feasibility.

Pennsylvania has an electronic-data environment that was very amenable to automated sealing of criminal-justice records. The data for the reports generated by the commercial-screening industry for Pennsylvania almost always originate with the Administrative Office of Pennsylvania Courts, selling the data to bulk purchasers that resell to the screeners. In regulated sectors such as elder care, child care, and schools, background checks are mandated by law to be obtained from the State Police. These two data sources contain centralized data, of good quality, and they have a history of transmitting information between them through a data portal.

Community Legal Services' deep knowledge of these databases and relationships with the Pennsylvania Courts and State Police's records staff from years of working with them were also helpful. Community Legal Services prepared a paper explaining how we believed that Clean Slate could be operationalized.

In November 2016 Community Legal Services attended a day of meetings in Harrisburg with legislative staff as well as the technology staff and their managers who would be responsible for implementing Clean Slate if it were to become law. The group talked through implementation issues, leading us to modify the original bills for the sake of feasibility. We also discussed which organization would have ultimate responsibility for approving cases for sealing, as the agencies were worried about being held responsible for mistakes. Not all details were resolved on that day. But we were rewarded with the conclusion by the Pennsylvania Courts and State Police that automated sealing could be implemented and primarily by in-house tech staff. After the meeting, the Pennsylvania Courts and State Police continued discussing potential implementation in anticipation of automated sealing becoming law.

“Getting the Pennsylvania Courts and the State Police on board marked a watershed moment toward Clean Slate’s passage.”

These discussions also helped Community Legal Services understand the operational realities and the policy implications of the bill. Clean Slate would not be a be-all and end-all of sealing because of limitations of the data. For instance, a significant minority of older cases in the databases do not contain grades (i.e., they cannot be identified as felonies or misdemeanors or by degree). Clean Slate would not seal these cases because obtaining the grades by searching many thousands of paper records for this information was not feasible. Petitions would continue to have to be filed in those cases. We understood that Clean Slate automates sealing on a “lowest common denominator” basis of the available data, reducing the cases in which individual filing is needed. But getting the Pennsylvania Courts and the State Police on board marked a watershed moment toward Clean Slate’s passage.

## Step 6: Get Bill Passed Through the Senate

Our Clean Slate bill had been easily—unanimously, actually—passed by the Senate in the 2015-16 legislative session, but we had run out of time to get it through the House. With the expiration of the 2015-16 legislative session, the bill had to be reintroduced in 2017. The new bills were S.B. 529 and H.B. 1419, introduced in May 2017.

As it had in the prior legislative session, Clean Slate moved quickly through the Senate, helped by Senator Wagner's prominence and the support of Sen. Stewart Greenleaf, a reformist chair of the Judiciary Committee. During its consideration in the Senate in both sessions, we negotiated with around two dozen stakeholders who had concerns large and (mostly) small about the bill, clearing away opposition and building consensus. Critical stakeholders we needed on board—or at least to remain neutral—were the district attorneys, from whom opposition on a record-clearing bill in Pennsylvania was likely enough to kill it. One major area of focus for them and others was which criminal records would be eligible for sealing both through Clean Slate and through expanded eligibility for filing by petition, and the list of exclusions became longer as we brought them and other key parties on board.

As amended, S.B. 529 raced through the Senate Judiciary Committee, where it was approved unanimously on June 6, 2017. It cleared the Senate, also unanimously, on June 28, 2017.

## Step 7: Get Traction in the House (Send in the Football Players)

No such clear path presented itself in the House. In Pennsylvania each chamber often takes up and passes its own version of a bill, with leadership then negotiating which version will be passed. But Rep. Ron Marsico, the House Judiciary Committee chair who was in his last term in the legislature, had his priorities, and whether Clean Slate would be one of them was not clear. Thus our first obstacle was how to get H.B. 1419 out of committee.

Our lobbyist came up with a novel idea for selling the importance of the bill. He knew that Representative Marsico was an ardent fan of Ohio State football. And so the Justice Action Network arranged for Maurice Clarett, a former Ohio State running back who was instrumental in the school's first national title, to meet with Representative Marsico. After his football career, Clarett got involved with criminal activity leading to his imprisonment. He now is a motivational speaker, urging young people not to repeat his mistakes. The meeting was very effective, with Clarett explaining to Representative Marsico the importance of the second chances offered by Clean Slate.

Meanwhile, several members of the Philadelphia Eagles—later to win Super Bowl LII—were looking for reentry initiatives to support. They were led by Malcolm Jenkins, who happened to have played his college football at Ohio State, where he won the Jim Thorpe Award as the nation's best defensive back. Jenkins was one of the most prominent NFL players to protest racial inequality in the criminal justice system by raising his fist during the national anthem. Jenkins concluded that Clean Slate epitomized the criminal-justice reforms that he was fighting for and agreed to support the legislation.

Jenkins and teammates Chris Long and Torrey Smith agreed to come to Harrisburg to support Clean Slate in meetings with House members and a press conference on their one available

off-day during football season, October 24, 2017 (the day after a Monday Night Football game). But before the day arrived, President Trump announced his opposition to NFL players' anthem protests. We worried that the players' support of the bill might backfire by endangering its bipartisan support.

Rather than the controversy eroding support for Clean Slate, the players were able to build support, with uniformly positive reactions to their appearance. They brought invaluable visibility to the bill, including on unlikely media outlets such as [espn.com](https://www.espn.com) and their own [social media](#). In the [press conference](#) on the capitol steps, they tied their personal experiences to the bill. Smith explained that his mother had been convicted of a felony when defending herself in an abusive relationship and that the family struggled economically as a result. When she was able to get her record cleared, her income increased to almost six figures and allowed her to buy a home.

The players' meetings with Representative Marsico and the House leadership also went very well. They left Harrisburg having built more commitment for the bill. Although it took some time (during which House staff rewrote the bill in large part to respond to concerns of House members), the bill emerged from committee on March 13, 2018.

## **Step 8: Consolidate Support from Business and the Right**

Having outsized influence in state legislative matters, the Pennsylvania Chamber of Business and Industry was a critical stakeholder. Over the course of the legislature's consideration of the bill, the state chamber and several local chambers came to support it as a measure to expand Pennsylvania's workforce. The bill was also amended to respond to the state chamber's concern about negligent-hiring liability if employers were sued for hiring persons with sealed records. Support from state and local chambers for record-clearing initiatives as a workforce development measure has been a trend around the country, most notably in



Kentucky and South Carolina. This support in Pennsylvania was cited by House Republicans as a significant factor in their support of the bill.

Meanwhile, a new player emerged. Koch Industries, which in recent years has thrown its support behind criminal-justice reform initiatives, took a shining to the bill and advocated it. The Pennsylvania chapter of the Koch-funded conservative advocacy group, Americans for Prosperity, began actively working to support the bill in the House.

## **Step 9: Get Behind One Bill**

H.B. 1419, as amended, was passed by the House by a 188-to-2 vote on April 11, 2018. That development created a state of play in which each chamber had passed Clean Slate bills (almost unanimously) but not the same bill. For Clean Slate to become law, one chamber would need to defer to the other's bill. Meanwhile, Senator Wagner resigned on June 4, 2018, to pursue his gubernatorial candidacy.


Pennsylvania does not have a conference committee structure in which to iron out differences between similar bills. Rather, a common method for resolving such differences is the wholesale "trading" of bills during budget season in late June. Thus the advocates' mission became to ensure that the caucus leaders would agree to one bill or the other during budget negotiations.

To show the bipartisan support for and power behind Clean Slate, advocates made a final push by holding a press conference on the capitol steps on June 18, 2018. The strange bedfellows lineup illustrated the consensus across party and ideological lines that had been built over the three years of the campaign: the legislative sponsors; the Pennsylvania and Pittsburgh Chambers; the Left as represented by the Center for American Progress; the Right as represented by FreedomWorks. Even the Pennsylvania District Attorneys Association moved from "neutral" to "support" for the rally, showing how far Clean Slate had come in developing a broad consensus. Community Legal Services' client Ronald Lewis shared his own experience of being held back by a minor, decade-old record, helping put a face on the hundreds of thousands of Pennsylvanians who would achieve a second chance when their records were cleared.



On June 22, 2018, H.B. 1419 was passed by the Senate, again unanimously. We bought the most expensive champagne we could find.

## Step 10: Have the Bill Signed

Gov. Tom Wolf had said since the introduction of the bills that he looked forward to signing Clean Slate, and he did not waver even when the original lead sponsor, Senator Wagner, became his general election opponent. On June 28, 2018, he did exactly that, with Clean Slate becoming Act 56 of 2018. In the midst of political speeches at the signing ceremony, Lewis's emotional remarks brought down the house. Lewis, who has a misdemeanor record and has publicly supported reentry efforts (pdf)  for several years, described the law as being like “a glass of water on a hot day.” He talked about coming from a community where a mistake is a life sentence and how Clean Slate brings hope where there was no hope. The campaign could not have ended on a truer note.



GOV. TOM WOLF SIGNS CLEAN SLATE INTO LAW.

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Pennsylvania's expanded eligibility for misdemeanor sealing, which most notably will permit many first-degree misdemeanors and second-degree simple assault convictions to be sealed, goes into effect on December 26, 2018. Its automated sealing, including the "backlog" of misdemeanors, summary offenses, and nonconvictions that are eligible, will be implemented within two years of signing, that is, by June 2020. This extended implementation period was requested by the Pennsylvania Courts and the State Police to design and test thoroughly the necessary computer programming. Meanwhile, we advocates have our eyes on the Christmas deadline to make sure that as many people as possible who are newly eligible for sealing will access it.

Pennsylvania was the first state to enact Clean Slate automated sealing, but it will not be the last. Clean Slate educational campaigns, supported by the W.K. Kellogg Foundation, have been moving forward in South Carolina, Colorado, and Michigan. Other states also have been looking at beginning similar efforts. Additional funding announcements paving the way for the expansion of Clean Slate are expected shortly.

Meanwhile, the U.S. Congress is learning from the states and seeking to take Pennsylvania's groundbreaking law to the federal level. Rep. Lisa Blunt Rochester (D-Del.) and Rep. Rod Blum (R-Ia.) introduced H.R. 6677, a Clean Slate bill to seal automatically certain federal cases, including nonviolent marijuana offenses, and to create the opportunity to seal other federal offenses by petition.

Clean Slate is not a remedy that will translate to every state. The electronic data environment must permit automated sealing through computer queries. But where it does, this powerful tool can, as Lewis said, bring hope where there is none. We encourage advocates to explore whether their state can bring such hope.



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