

**HB 1826:
Clean Slate Expansion.**

Testimony before the Pennsylvania House of Representatives Judiciary Committee
by **Lars Trautman, National Director**

Majority Chair Kauffman, Democratic Chair Briggs, and Members of the Pennsylvania House of Representatives Judiciary Committee:

Thank you for the opportunity to testify on HB 1826, Clean Slate Expansion.

My name is Lars Trautman, and I am the National Director of Right On Crime, a conservative organization dedicated to the advancement of criminal justice policies that promote public safety, individual liberty, and whole communities. Previously, I served as a resident senior fellow of criminal justice and civil liberties policy at the R Street Institute as well as counsel for the Homeland Security Committee in the U.S. House of Representatives. I began my career as an assistant district attorney, prosecuting hundreds of misdemeanors and felonies on behalf of the Commonwealth of Massachusetts.

Right On Crime routinely draws inspiration from states at the forefront of the fight to advance public-safety oriented improvements to our criminal justice system. These innovations provide valuable examples that other states and localities can adopt and adapt to better the lives of their own residents. Pennsylvania's first-in-the-nation Clean Slate law in 2018 was precisely this kind of policy, and since its enactment we have leveraged its successes in support of similar measures elsewhere.

With millions of records already sealed pursuant to the 2018 law, the sheer scale of this relief warrants sustained attention and, ultimately, praise.¹ Automating large portions of this process largely eliminated the unnecessary bureaucratic red tape standing between deserving Pennsylvanians and their legal right to a sealed record, thereby dramatically expanding the number of individuals able to benefit from these changes. Remarkably, it has done so without any identifiable detriment to public safety; instead, there have been stories of individuals enjoying their newfound ability to more seamlessly secure employment, housing and otherwise engage as productive members of society.

I cannot say that I am surprised by this result. Having pored over more criminal history records than I can count, I can attest that even to a well-trained eye they can be daunting to interpret. Of course, employers, landlords, and others less versed in these records would hesitate in the face of any kind of entry, whether relevant to the matter at hand or not. Indeed, the data show that even a single conviction for a minor offense can negatively affect present and future opportunities for the individual involved.²

¹ Aaron Moselle, "Pa. residents with court debt could have their records automatically sealed under new bill," *WHYY*, Oct. 22, 2020. <https://whyy.org/articles/pa-residents-with-court-debt-could-have-their-records-automatically-sealed-under-new-bill/>.

² Amanda Agan and Sonja B. Starr, "The Effect of Criminal Records on Access to Employment," *Am. Econ. Rev.: Papers & Proc.* 107, no. 5 (2017): 560-64. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2892&context=articles>.

While I expect that you will hear volumes about how this creates an injustice for the individual and harms the very businesses it's supposed to protect, as a former prosecutor I want to highlight its impact on public safety. There were few greater predictors of whether I would see a particular defendant again in the criminal justice system than their ability to secure employment and housing. Restoring their ability to access these basic needs provides an incentive during the early stages of rehabilitation—the promise of normalcy down the road as a reward for good behavior—and facilitates their continued law-abiding conduct thereafter.

What is more, the research is clear that the overwhelming majority of individuals who will recidivate, will do so in the first few years, well before they gain relief under Clean Slate.³ The record sealing offered by Clean Slate is thus a tool to facilitate rehabilitation and to reward the rehabilitated.

Any concerns that record sealing might undermine the rule of law or society's obligations to crime victims are misplaced. To begin with, under Clean Slate, law enforcement retain full access to all relevant criminal history records, ensuring that it does not interfere with their enforcement responsibilities. Likewise, it does not alter any penalties prescribed by law. Instead, it simply removes the prospect of numerous collateral consequences—many of which are extrajudicial sanctions that society imposes outside of a court of law. Similarly, restitution obligations remain in place while the law's potential to improve rehabilitative efforts can reduce recidivism and make it less likely that additional individuals will be victimized in the future. This positive outcome matches up well with my own experiences talking with victims about their goals for their unwilling involvement in the criminal justice process; generally, they prioritized sanctions geared toward rehabilitation and preventing future crime over those more punitive or retributive in nature.

The fact that the Committee is now considering an expansion of Clean Slate this session, however, tells me that you do not need me to go on at length about the successes of the original Clean Slate legislation. Instead, the pertinent question is how to build upon and improve this law.

A natural follow up question—indeed, the one the Committee is actively asking now—is whether these Clean Slate provisions, which have worked so well for many misdemeanor offenses, could similarly address some felony offenses. The short answer is a resounding yes.

I can answer this question with confidence because we see it every day across America. The vast majority of states allow record sealing for at least a limited subset of felony offenses.⁴ This includes even those states known for having little affection or patience for lawbreakers, including Arizona and Oklahoma. To my knowledge, the mere inclusion of a felony offense in these record sealing provisions has not led to any demonstrable harm to public safety.

I suspect that this is due in large part to the fact that these record sealing laws are selective and not all felonies were created equal. While the word “felony” carries with it strong connotations of dangerous, if not downright evil, conduct, this is not always the reality. Yes, it includes

³ “2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014),” *Bureau of Justice Statistics, U.S. Department of Justice*, May 2018. <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>.

⁴ “50-State Comparison: Expungement, Sealing & Other Record Relief,” *Restoration of Rights Project*, August 2022. <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2/>.

murders, rapes, and a host of other offenses that frankly have no business in the Clean Slate legislation that you are considering. But it also encompasses a handful of low-level, nonviolent offenses that, while still very much deserving a sanction and possibly incarceration, nevertheless share much more in common with the misdemeanors already covered by the existing Clean Slate law.

In particular, the low-level drug related felonies and property crimes included within HB 1826. While the label of either “felony” or “misdemeanor” provides a decent starting point for approaching these cases, it frequently does not tell us much about the severity of the conduct at issue. A far better reflection of the crime itself is the sentence actually handed down by the judge, who has had time to consider all pertinent facts, circumstances, and arguments. For this reason, the sentence-based cutoff contained within HB 1826 is a more accurate method of determining which of these drug related offenses merit the benefits of Clean Slate. Likewise, this preexisting judicial review and ruling on the severity of these cases make them good candidates for the automatic sealing provisions found in Clean Slate.

With the country still suffering from the opioid epidemic and the scourge of other drug addictions, it is understandable that policymakers would want to approach any alterations to laws affecting drug possession or distribution carefully. But any concerns that including low-level drug offenses in Clean Slate might make matters worse are misguided – nobody is going to suddenly start buying or selling drugs simply because they might have a chance at record sealing a decade later. On the other hand, expanding access to gainful employment and housing for those who made the mistake of getting involved with drugs a decade ago, or who suffered from an addiction that they have since found victory over, makes it less likely that they will revert back to that illegal habit.

Extending these benefits to felony convictions will likely prove even more impactful than it has for misdemeanors. A felony conviction brings with it additional stigma and collateral consequences, which can make it even more difficult for an individual to turn their life around. Providing an individual with the opportunity to have these barriers removed once they have maintained a law-abiding existence for many years is thus more valuable to both the individual and the rest of society.

Thank you again for the opportunity to testify regarding the importance and value of record sealing legislation. Pennsylvania has served as a role model for the rest of the nation on this topic, and I look forward to discussing with you how it can continue to do so moving forward.

Sincerely,
Lars Trautman

ABOUT THE AUTHOR



Lars Trautman brings a decade of experience as a prosecutor, Capitol Hill staffer, and public policy expert to his work shaping and advancing smart criminal justice policies and practices. He has particular expertise relating to prosecution, diversion and crisis response strategies, and pretrial justice.

Previously, Trautman worked for over three years as a resident senior fellow of criminal justice and civil liberties policy at the R Street Institute. In this role, he researched and wrote on a variety of criminal justice issues and provided expert advice and consultation to legislators, prosecuting attorneys, and other criminal justice stakeholders. Prior to his work at R Street, Trautman served as counsel for the Homeland Security Committee in the U.S. House of Representatives. Lars began his legal career as an assistant district attorney in Essex County, Massachusetts. In two and a half years as a prosecutor, he handled hundreds of misdemeanor and felony cases, including conducting dozens of trials.

Trautman earned his B.A. in political science from Johns Hopkins University, his M.A. in politics and international studies from Uppsala University in Sweden, and his J.D. from the University of Virginia School of Law. He lives in Austin, TX with his wife and two children.

About Right On Crime

Right On Crime is a national initiative of the Texas Public Policy Foundation supporting conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs.

