The Advocate's Guide to Automatic Record Clearance

Essential knowledge for crafting policy government can implement

October 2024

CODE *for* AMERICA

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Introduction

Welcome to the Advocate's Guide to Automatic Record Clearance, developed by the Clear My Record team at Code for America. Code for America's Clear My Record program designed this resource to help advocates integrate actionable technical best practices into automatic record clearance (otherwise known as "Clean Slate") policy. Prioritizing effective implementation from the very beginning ensures government can actually clear records and eliminate obstacles to employment, housing, education, and other essential aspects of people's lives.

At Code for America, we believe record clearance should be automatic, government-driven, and provided to people as soon as they become eligible for it. Our work is rooted in the notion that making automatic record clearance a routine government service is the most effective way to remove barriers caused by a criminal record.

Over the past five years of our engagement in automatic record clearance policy design, Code for America has come to understand that automatic record clearance policies are fruitful only when they are implementable. Code for America has provided policy design and implementation support in more than 20 states, working directly with government, policymakers, and advocates to develop a deep understanding of what influences a policy's *technical feasibility,* or the likelihood that government ultimately makes its automatic record clearance policy a reality.

Collaboration with The Clean Slate Initiative

Code for America works closely with The Clean Slate Initiative to support campaigns in successfully passing and implementing automatic record clearance policies. The best practices included in this guide are strategically aligned with The Clean Slate Initiative's vision for Clean Slate policies. Our collaboration, in deep partnership with state coalitions, is a collective effort that aims to strengthen a policy's impact and success.

What's included

Using this guide, advocates can find the essential information needed to ensure their policy is technically feasible. Whether someone is new to policy work or an experienced advocate, this resource offers best practices for designing **automatic record clearance policies that government can effectively implement.**

It's important to note that this is not a guide to best practices for political strategy. This guide focuses on technical feasibility, which is as important as political feasibility, because after a bill passes, automatic record clearance policies must be implemented by real-world government agencies. This guide therefore aims to make this crucial—but often overlooked—aspect of policy design accessible and actionable for advocates.

KEY SECTIONS

1. Learn the fundamentals of automatic record clearance

These sections are a launchpad, providing a solid foundation to understand key concepts.

- What is automatic record clearance?
- What is a "technically feasible" policy, and why is it important?

2. Explore how automatic record clearance actually works

Refer to these sections for a deep dive into the mechanics of automatic record clearance—where records are kept, who's in charge, and how it all comes together.

- Criminal records
- The main steps to automatic record clearance
- State agencies involved in automatic record clearance

3. Ensure a policy hits the mark

This section is a starting blueprint for crafting a technically feasible policy, filled with expert tips on eligibility criteria and process, and proven strategies to integrate them.

- Eligibility criteria best practices
- Process best practices

4. Seek support from Code for America

Discover how Code for America can be an ally, offering tools and strategies to boost the chances of getting a policy passed and put into action.

- How Code for America supports advocates in passing implementable policies in collaboration with The Clean Slate Initiative

Foundational knowledge

Before diving into the best practices, let's go over the fundamentals of automatic record clearance, implementation feasibility, and the government agencies that will be carrying out automatic record clearance.

What is automatic record clearance?

In a nutshell, the term "automatic record clearance" means that government initiates and completes the record clearance process.

Most states have some type of process to remove criminal records from public view, often called *sealing* or *expungement*. In this guide, *record clearance* is used as a catch-all term. What distinguishes *automatic* record clearance is that government clears eligible criminal records without requiring an individual to file a petition.

Automatic record clearance has a lot of associated terminology. Sometimes there are multiple terms for the same idea, but other terms might be used interchangeably, even if there are important distinctions. Key terms advocates will encounter include:

Government-initiated and *state-initiated* record clearance

Automatic record clearance is also commonly called "government-initiated" or "state-initiated" record clearance. These terms are all synonyms that refer to record clearance policies that do not require petitions.

Clean Slate record clearance policies

Many advocates use this term to describe automatic record clearance policies that make a broad range of records eligible for clearing.

The Clean Slate Initiative has a list of required criteria for a policy to be considered "Clean Slate."

Automation and *automated*

Although these terms often are used interchangeably with "automatic," it's important to note that they have different meanings in this context. "Automatic" refers to the outcome for people who receive relief without having to file petitions. "Automation" refers to the *technical process* by which the government uses technology to reduce manual work so that thousands of records can be cleared efficiently. Likewise, "automated" describes aspects of a record clearance process in which technology replaces much of the manual work. With that in mind, *automatic* record clearance processes should incorporate as much *automation* as possible so that governments can clear records efficiently.

What is a "technically feasible" policy, and why is it important?

A technically feasible policy is one that government can actually implement. When a policy is technically feasible, government has the data, systems infrastructure, and resources needed to follow the steps laid out in the policy, with as little manual intervention as possible. A technically feasible policy poses minimal perceived challenges for implementing agencies and therefore is more likely to gain government approval.

While government agencies will still have to work to implement a technically feasible policy (i.e. planning, decision-making, and building technology), setting them up for technical success from the beginning means any changes they ultimately must make are clear and doable.

Creating a technically feasible automatic record clearance policy always requires new language that will differ from a state's petition-based statute. *Petition-based eligibility* often includes criteria that simply don't work at the scale needed for automatic record clearance because someone must look up the data points manually (worse yet, these data points might not even exist in a complete, standardized manner).

Likewise, a *petition-based process* will include steps that don't make sense in a streamlined, petition-less process. Even small changes can have enormous implications for feasibility, and the recommendations in this guide are crafted with technical feasibility front and center.

"A technically feasible policy is one that government can actually implement. [...] Creating a technically feasible automatic record clearance policy always requires new language that will differ from a state's petition-based statute."

Criminal records

What is a criminal record?

A criminal record contains information about a person's interactions with the criminal legal system. This includes contact with law enforcement agencies and courts and may include information like arrests, charges, detentions, convictions, and more. The vast majority of criminal records in the United States exist at the state (versus federal) level.

The goal of automatic record clearance is to shield from public view criminal records a state typically would maintain and share publicly or with background checkers. Doing so enables individuals to pass routine background checks and gain access to employment, housing, and other opportunities that were previously unavailable due to a criminal record.

In most states, publicly accessible records are computerized criminal history reports and court records.

Computerized criminal history reports

A computerized criminal history report (CCHR, or sometimes *RAP sheet* or *CORI report*) is a statewide record of an individual's interactions with the criminal legal system.

Maintained by a state-level repository, these primarily fingerprint-based records are updated using information provided by police, prosecutors, corrections departments, courts, and other state actors.

Individuals can access their own CCHRs, but public availability varies by state. In some states, an individual can pay a fee to obtain someone else's CCHR. Law enforcement, certain public employees, and licensing agencies can access CCHRs.

Court records

Court records include information about how a case progresses in court—from charges to arraignment, verdict, and sentencing. Criminal courts maintain these case records within their jurisdictions, with some states utilizing a centralized data system.

Most court records are publicly available, often online, though some may require in-person access. They are commonly used for commercial background checks and may be sold in bulk.

The main steps of automatic record clearance

An automatic record clearance process will always differ from a state's petition-based process. The current petition-based eligibility criteria and process will *always* need at least *some* changes—even if minor— to allow an automatic record clearance policy to work at the necessary scale, ensure technical feasibility, remove unnecessary manual steps, and streamline government processes.

While state processes for automatic record clearance vary, there are three core steps the government must complete before a person can benefit from the process.

Step 1

The initiating agency identifies eligible records

The initiating agency—the agency with the most comprehensive and centralized data relevant to record clearance—identifies which records are eligible for clearance. This process is ideally done using automation instead of manual work as much as possible.

This is usually a state criminal history repository or the administrative office of a centralized court system. Note that this agency isn't necessarily the same agency where the petition process begins.

Step 2

The initiating agency notifies relevant record-keeping agencies about which records are eligible

The initiating agency informs other record-keeping agencies which records are eligible. This involves electronically transmitting information across agencies and using predefined data points to link those records. Automation allows this to happen at the scale needed to transmit thousands of records. However, in some cases, the necessary infrastructure for seamless data sharing may not exist, requiring coordination between agencies to build out the capability for large-scale data exchange.

Step 3

Relevant record-keeping agencies update their records to reflect record clearance

The relevant record-keeping agencies are responsible for clearing their respective records that have been determined to be eligible. However, in some instances, certain agencies may not need to take proactive steps but should establish internal procedures to ensure the records are not disclosed publicly (this may be helpful when the agency is not typically used in third-party background checks).

To fully realize the benefits of record clearance, impacted individuals need to know that their records are being cleared automatically. They must have an easy process to verify if and how their records have been impacted so they can make informed decisions based on their updated status. To support this, there should be accessible mechanisms in place that allow individuals to easily access and understand their own records, empowering them to take advantage of new opportunities that record clearance offers.

State agencies involved in automatic record clearance

State criminal legal system agencies play key roles in designing technically feasible policies and implementing automatic record clearance. Code for America works with these agencies to understand their systems and address technical challenges that may hinder the adoption of automatic record clearance policies. See the last section of this guide for more information. Two types of agencies are key actors in automatic record clearance processes: courts and criminal history repositories.

Courts

In most states, criminal courts operate at multiple levels and jurisdictions, such as county courts, municipal courts, courts that handle specific offense levels, and more. All of them maintain data about cases that progress through criminal court proceedings, such as charging, arraignment, verdicts, and sentencing. In an automatic record clearance system, all criminal courts must update their case records when they are eligible for clearance. In some states, courts may also be required to create record clearance orders, either to comply with state law or to mandate that other agencies clear their records.

Centralized court systems

In some states, all jurisdictions are connected through a centralized court system, where a single case management system is used to track cases and maintain records statewide. This unified system serves as the central access point for all court data across the state, regardless of the jurisdiction.

In states with such centralized court systems, the administrative office of the courts is often the most suitable agency to determine records eligible for relief. Given their comprehensive access to statewide case data, they can efficiently identify who qualifies for record clearance. Once eligibility is determined, the administrative office can then transmit this information to other relevant legal system agencies, including the criminal history repository, to ensure that records are updated accordingly.

Decentralized court systems

In other states, court systems are decentralized, meaning each court operates its own independent case management system without a connection to other courts or a statewide data system. While automatic record clearance is still possible in states with decentralized courts, an automatic process should not begin with decentralized courts because it is too technically and logistically complex for separate courts to determine which records are eligible due to the lack of centralized data. In such cases, the responsibility for initiating the automatic record clearance process must shift to the criminal history repository, since it is the only agency with access to centralized criminal history data.

Criminal history repository

The criminal history repository is the database, or the agency that maintains the database, that contains the official state-wide computerized criminal history reports (CCHR) for people who have been arrested by law enforcement agencies. Repositories usually rely on fingerprints to link separate records back to the same person, which allows them to generate CCHRs when requested. Repositories receive criminal history information from most—if not all—major criminal legal system entities in the state, although only certain data points get reported by those other entities, and sometimes this reporting has gaps. (For example, repositories often don't receive data regarding completion of a sentence).

The repository must maintain an accurate and updated record of criminal history, and in an automatic record clearance process, it may include the most comprehensive criminal history information available. As such, it may be the most suitable entity to select as the initiating agency when developing an automatic record clearance policy. This is especially true if the state has a decentralized court system in which each county or jurisdiction operates a court system that is not linked to other courts across the state.

Other actors

While the repository and courts have the largest roles in implementing an automatic record clearance policy, other actors may include:

- **Prosecutors**, who may have a discretionary ability to review and object to record clearance in specific circumstances.
- **Other criminal record-keeping actors** like corrections, probation, and police departments, or others who may, depending on state policy, be required to update their records to reflect record clearance.

Technical best practices

While Code for America is dedicated to collaborating with advocates to improve the technical feasibility of automatic record clearance policies, the purpose of this guide is to help advocates independently identify and incorporate technical best practices into bill drafts as soon as they start working on a policy.

These best practices were developed based on years of experience and observation of what policy choices influence technical feasibility across multiple states. By incorporating these practices, advocates can ensure that policies are as feasible as possible and are likely to align with the existing technology and data availability of their state's agencies.

Upon incorporation of these best practices, Code for America, in collaboration with The Clean Slate Initiative and state advocates, can continue meeting with state agencies to develop state-specific recommendations that further increase a policy's technical feasibility. Outlined below are best practices for designing criteria that determine which records are eligible for automatic record clearance and process steps that enable agencies to efficiently and effectively shield these records from public view.

As a reminder, this is not a guide to best practices for political strategy. The best practices presented here focus on increasing technical feasibility.

Eligibility criteria best practices

The first step of every automatic record clearance policy is determining which records are eligible for clearance. As hundreds of thousands or millions of records typically are under consideration, the process requires automation—not manual work—to operate at that scale. This means the government will need to develop an algorithm—a set of rules—based on the eligibility criteria in a policy so that it can sort through all of its available data and produce a list of eligible records.

To automate record eligibility determination, government must be able to understand all the criteria that make a person's record eligible and locate all the data points that confirm whether the record meets the criteria.

This data may be stored somewhere in a state's criminal legal system, but the ease of automated eligibility determination is contingent upon two factors: *where it's stored* and *how comprehensively it's stored*.

An algorithm won't be able to identify eligible records if the necessary data doesn't exist, has gaps, or cannot be easily accessed by the initiating agency.

In cases where government agencies can't use technology to assess eligibility, they might need to resort to manual intervention, which is time-consuming, inefficient, and expensive—and a factor that may elicit government resistance to a poorly crafted automatic record clearance policy.

Best practice 1

Make sure eligibility rules cite offenses that are specifically defined in statute.

Eligibility rules that are based on vague descriptions without clear legal definitions or are open to multiple interpretations will require government to spend time manually working to clarify criteria. Ultimately, this may hinder timely implementation.

Best practice 2

Specify that automatic record clearance only applies to digital or electronic records.

Electronic records enable agencies to use technology to accurately and efficiently identify eligible individuals at scale, utilizing digital data points within their system, without the need to locate, analyze, and redact historical paper records individually. Technology also allows agencies to update records within their systems digitally, instead of manually. Background check companies generally use digital records more than paper records as sources.

Best practice 3

Explore alternatives to "sentence completion" as an eligibility criterion, especially as the starting point for waiting periods.

"Sentence completion" could refer to many data points, including completing probation, parole, prison time, paying fines, or restitution. These varied data points are often hard to access or verify for the initiating agency, especially if they're lumped into one broad, non-specific category. One alternative option would be to verify which sentence completion criteria are available to the initiating agency and specify within policy that only those available should be used. This best practice especially applies to calculating waiting periods, since petition processes often base them on the date a sentence was completed. Because offense statutes usually have maximum sentences, adding the maximum sentence length to the date of final disposition or sentencing is an alternative option to waiting periods and would avoid the problems posed by limited sentence completion data.

Best practice 4

Avoid checks on incarceration status as a component of eligibility.

Data in Departments of Corrections (DOC) systems may not be easily accessible by courts or repositories, making it challenging for an initiating agency to determine if someone is currently incarcerated. Instead, use other available data points, such as sentencing information like disposition or sentencing date, sentence length, or maximum sentence, etc.

Best practice 5

Avoid eligibility criteria that refer to a specific registry or special license.

Requiring the initiating agency to verify someone's status on external registries or licenses can lead to challenges, especially if those systems aren't linked or if data isn't easily shared. Instead of requiring an agency to check someone's registration status directly, a policy should rely on indicators within the offense statute that mandate registration. This approach achieves the same outcome without the need to gather external data. A similar approach can be applied to special licenses like commercial driver's licenses (CDLs). Instead of excluding CDL holders from record clearance due to certain offenses, the policy could disqualify offenses that affect CDL eligibility. Alternatively, a policy could allow cleared records to be accessed specifically for CDL licensing purposes.

Best practice 6

Do not require out-of-state record checks for eligibility.

Many current petition-based policies require that someone has no intervening convictions or pending charges in order to be eligible for record clearance. Critically, a policy should specify that such checks are required only for in-state records that are accessible to the initiating agency. Currently, it is not possible to access comprehensive criminal history data across state lines without doing individual, manual checks.

Best practice 7

Don’t make unpaid fines, fees, or restitution disqualifiers to eligibility.

Often, fines, fees, and restitution data is managed across multiple systems, or not tracked at all, introducing a potentially complex and resource-intensive process to determine eligibility. Policies can stipulate that automatic record clearance does not waive a person’s responsibility to pay fines, fees, and restitution; those outstanding payments are simply not barriers to eligibility.

Process best practices

Following eligibility determination, the second step in automatic record clearance is for the initiating agency to inform relevant record-keeping agencies which records are eligible for clearance. Then the final step is for these agencies to update their records to reflect the clearance, shielding eligible records from public view. Automatic record clearance processes are far more streamlined than petition-based processes and are able to use technology to facilitate large-scale implementation. While not *all* details of a new process need to be explicit within a policy, it is important for a policy to include clearly defined guidance for relevant government agencies, including roles, responsibilities, and timelines, designed to support and align with technical feasibility.

Best practice 1: Specify the main initiating agency that will determine eligibility.

The agency with the best centralized set of data relevant to eligibility criteria should be the initiating agency, the agency primarily responsible for determining eligibility.

In states with a centralized court system, the administrative office of the courts often will be the best initiating agency. In states with a decentralized court system, the best initiating agency is the state's criminal history repository. Note that the best initiating agency for a state might not be the same as where the petition process starts.

Best practice 2: Specify who needs to send and receive notice of eligibility

Eliminate unnecessary inter-agency notifications.

Identify the agencies that need to be notified of what records are eligible for clearance. This most likely doesn't need to be all holders of criminal records, but should include agencies that will need to shield records from public view, or are closest to background checkers. For instance, every local police department might not need to be notified about eligible records, but courts should be notified given their need to shield records and their position as a main source for many background checkers. Requiring more inter-agency notification than absolutely necessary often yields a more complex and potentially challenging technical process.

Best practice 3: Specify who must shield records from public view

Specify—and consider limiting—agencies that need to update records within their systems to reflect record clearance.

The petition process may require many agencies to update records, but in an automatic process, having certain agencies simply receive notice of record clearance may be sufficient as long as they are instructed not to publicly disclose any of their records referenced in the notice (for example, a local police department could verify whether an arrest record has been automatically cleared before disclosing it to someone requesting records, rather than the department proactively reviewing all of its records and clearing the eligible ones). In terms of agencies that actively need to modify their records, focus on those that serve as primary sources for background checks. In most states, courts and repositories serve as sources.

Best practice 4: Provide clear timelines and cadences

Establish clear, reasonable timelines for agencies to act.

- The implementation process should include a reasonable effective date and timeframes for each agency's involvement in the record clearance process. This promotes accountability and facilitates inter-agency coordination. As an example, policies could require ongoing eligibility reviews on at least a quarterly basis, if not a monthly one. Records that are initially determined to be ineligible could re-enter the review queue at regular intervals as they may become eligible over time.
- Direct communication with implementing agencies will yield comfortable, state-specific timelines.

Best practice 5: Provide a way for individuals to learn how their records will be impacted

Government should create a process for ensuring impacted individuals know about their cleared records.

- Government agencies should provide free, easy to understand, on-demand, up-to-date information about a person’s current record**.**

Best practice 6: Include auditing and reporting mechanisms

Incorporate auditing to ensure that processes are conducted accurately and reporting requirements to provide visibility into clearance activities.

Transparency in the implementation process helps identify trends, challenges, and areas for improvement. Examples of information government should report include:

- Status of the development of new automatic record clearance processes
- Number of records sealed per established cadence
- Number of records that received objections and reasons for the objections
- Anonymized demographic information, such as race, age range, gender, and locations or jurisdictions of the records
- The most common eligible offense types
- The average age of the records cleared

What if all of these best practices can't be incorporated into a policy?

These best practices have been designed based on commonalities across states that explored, passed, and implemented automatic record clearance policies, and they should be the starting point for advocates pursuing technical feasibility in any state. That said, each state has unique political considerations and technical landscapes that may affect how particular best practices can be incorporated into an automatic record clearance policy. Code for America can help advocates figure out how to integrate these technical best practices or explore alternative approaches that align with their state's specific needs and conditions.

Summary of best practices

Eligibility criteria

- Make sure eligibility rules cite offenses that are specifically defined in statute.
- Specify that automatic record clearance only applies to digital or electronic records.
- Explore alternatives to “sentence completion” as an eligibility criterion, especially as the starting point for waiting periods.
- Avoid checks on incarceration status as a component of eligibility.
- Avoid eligibility criteria that refer to a specific registry or special license.
- Do not require out-of-state record checks for eligibility.
- Don’t make fines, fees, or restitution disqualifiers to eligibility.

Process criteria

- Specify the main initiating agency that will determine eligibility.
- Specify who needs to send and receive notice of eligibility
- Specify—and consider limiting—agencies that need to update records within their systems to reflect record clearance.
- Establish clear, reasonable timelines for agencies to act.
- Government should create a process for ensuring impacted individuals know about their cleared records.
- Incorporate auditing to ensure that processes are conducted accurately and reporting requirements to provide visibility into clearance activities.

How Code for America supports advocates in designing implementable policies in collaboration with The Clean Slate Initiative

As soon as a campaign starts, Code for America works directly with advocates, The Clean Slate Initiative, and the government agencies responsible for clearing records to provide support that goes beyond the best practices contained in this guide. Our role throughout a campaign—from when the first draft of Clean Slate legislation takes shape, all the way through a bill's journey in the legislature—is to help surface and solve technical implementation problems before they happen, shaping policy based on our technical expertise and input from government agencies involved in record clearance. The goal of this collaboration is to maximize the chances for successful bill passage and ultimately create the conditions for successful implementation.

Our services

- We review bill concepts, outlines, and drafts before and throughout the legislative session to provide tailored technical recommendations for a policy's eligibility criteria and new record clearing processes.
- We meet with criminal legal system agencies to assess the technical and data needs of an automatic record clearance policy.
- We review proposed bill amendments, identify technical challenges within them, and then propose solutions to any identified challenges.
- We help evaluate external stakeholders' feedback about a policy through a technical lens.
- We prepare technical talking points about a policy for advocates to use during the legislative session, including hearings.
- We provide demos to government agencies showing technical solutions to possible implementation challenges.

Are you involved in a Clean Slate campaign and/or looking for advice on specific, technical questions? Please contact us at clearmyrecord@codeforamerica.org with any questions.

We work on Clean Slate campaigns in collaboration with The Clean Slate Initiative. Interested in starting your own campaign? Please contact campaigns@cleanslateinitiative.org to learn more.