

Expunging Records, Opening Doors: A Profile of Face Forward Grantees' Expungement Services

Jennifer Henderson-Frakes and Hannah Diaz, Social Policy Research
Johanna Lacoë and Lindsay Reed Feinberg, Mathematica Policy Research

Study background

Mathematica Policy Research and Social Policy Research Associates are conducting a study of DOL-funded grants targeting justice-involved youth to understand how well the grants are working, inform future funding, and promote knowledge sharing among current and prospective grantees.

In 2014, law enforcement agencies made about 1 million juvenile arrests, each of which generated a record.¹ Having a juvenile record reduces a youth's prospects in life by limiting employment, educational, and housing opportunities long after the incident's resolution. Yet a juvenile record does not have to permanently restrict a youth's opportunities. Youth with juvenile records can reduce or completely bar public access to their records by expunging or sealing them.²

Since 2009, policymakers in 31 states and Washington D.C. have created or expanded expungement policies.³ Still, expungement policies can be complex and rules vary widely by state. Recognizing that youth could benefit from assistance navigating this process, the U.S. Department of Labor (DOL) awarded \$100 million in Face Forward grants to fund programs that give "youth a chance to succeed in the workplace and to avoid the stigma of a juvenile record."⁴ In addition to supporting education and workforce development services for youth with juvenile records, the grants required programs to offer expungement and other record mitigation services and allowed the use of grant funds for collaboration with nonprofit legal service providers.

To understand more about the expungement services offered by the Face Forward grantees, the study team interviewed six grantees and the partners providing legal services in December 2015.⁵ This policy brief reviews expungement policies nationwide and presents information about how Face Forward grantees and their legal services partners designed and provided expungement services. The brief also describes grantees' lessons learned. These lessons could help current Face Forward grantees and programs offering similar services to a similar population that face similar challenges.

Key Findings

- Grantee staff reported that youth have a poor understanding of the accessibility and impact of their juvenile records on their future employment prospects, and the cost and complexity of the expungement process.
- Staff believe that educating youth and their families about these issues could improve take-up of these services.
- State policy requirements—particularly age of eligibility and required waiting periods—make it challenging for grantees to provide expungement services within a two-year grant period. Thus, grantees might have to refocus efforts on how to effectively position youth to start expungement after program participation ends.
- Due to lengthy expungement processes and fewer youth meeting eligibility criteria than expected, as of December 2015, grantees have successfully expunged very few records.

Figure 1 shows how eligibility criteria, waiting periods, costs, and processes for expunging juvenile records vary by state for youth in Face Forward programs across the country.

Figure 1. Variations in state expungement policies

What types of records can be expunged?

Expungement is available in most states, but many states limit the types of offenses eligible for expungement. For example, states can limit eligibility to nonviolent and status offenses (that is, actions that would not be considered offenses if committed by an adult).

When can records be expunged?

Time plays a role in the expungement process in some states. For example, 40 states require youth to reach a certain age (usually 18 or 21) before beginning the expungement process. Other states stipulate that youth wait a period of time, such as two or five years, after their cases close before they become eligible for expungement.

What do youth have to do?

In 15 states, an automatic administrative process expunges records, but most states require the youth or another entity to file a request for expungement. Another 16 states require notifying youth about the availability of expungement, but only 7 of those states provide notification of the steps of the process and 8 notify youth of eligibility requirements.

Are there costs associated with expungement?

Most states assess a fee for expungement, placing a financial burden on youth. Only 14 states do not require any fee, and several states have a fee of more than \$50. States can impose this fee in addition to any restitution-related fees the court orders youth to pay as compensation to a victim for damages or injuries related to a crime.

Is expungement permanent?

States differ in how they handle expunged records if another offense occurs in the future. Some states' law enforcement or courts will uncover a previously expunged record if a youth is later convicted of a crime as an adult. Other states maintain the expungement.



Note: This figure summarizes information from Shah et al. (2014).⁶

FACE FORWARD EXPUNGEMENT SERVICES

The Face Forward programs we studied partnered with university law centers or nonprofit legal services organizations to provide one or more of the following expungement services:

1. **Educating youth and families about expungement.** Several programs offered orientations and workshops to educate Face Forward youth and their families about the expungement process.
2. **Screening records for eligibility.** All Face Forward programs screened youths' juvenile records to determine eligibility for expungement. In most cases, the legal service provider had sole responsibility for determining eligibility, but some programs assigned an initial eligibility review to the grantee case manager. Some providers could access youths' juvenile records from the courts, whereas others depended on the youth requesting the records to provide them to the partners for screening.
3. **Helping file for expungement.** Eligible youth who chose to pursue expungement could receive help from legal partners, for example, through one-on-one meetings, hands-on clinics, and filing petitions with the court. While a lawyer is not required for all cases, one legal partner indicated that they act as formal legal representation for youth as part of the partnership arrangement. Others were not able to provide legal representation due to the uncertainty of the workload that

would be involved, although they did make referrals to other organizations as needed, such as university law clinics or a volunteer lawyer network.

4. **Training case workers on expungement.** Face Forward youth might first become aware of expungement through contact with a grantee case worker. As a result, partners provided training to improve case workers' understanding of the expungement process and its potential benefits to Face Forward youth.

FACE FORWARD BEST PRACTICES AND LESSONS LEARNED

At the time of our interviews, the Face Forward programs had identified fewer youth eligible for expungement than expected and had completed the lengthy expungement process for only a handful of records. Low expungement rates are likely caused by state policies that require youth to wait a number of years after their sentences end before they become eligible for expungement or subsequent infractions that occur during the waiting period. Still, the programs offered several approaches that they felt could improve youths' chances of expunging records.

- **Educating youth and their families about the benefits of expungement.** Some eligible youth did not seek expungement services because they believed their records would be sealed automatically when they turned 18, even if this was not the case. Programs recognized that educating youth and their families helped highlight the importance of expungement and alert youth who were unaware of their eligibility, or who were not knowledgeable about the cost or complexity of the process. Even youth ineligible for expungement during the grant period could benefit from information about the expungement process to prepare to file for expungement in the future, particularly in states where youth must document the burden caused by the juvenile record. Toward this end, one program noted that more youth attended one-on-one meetings with legal partners than when partners held open hours at the Face Forward program office.
- **Assisting eligible youth who might not complete the process within the grant period.** The lengthy and complex expungement processes could prevent some eligible youth from expunging their records before Face Forward grant funding ended. One legal partner noted that the process generally takes one to two years to complete. As a result, programs suggested interim steps to prepare youth to advance through the process even if their records were not expunged during the grant period. For example, one program developed a road map of steps youth can take to build a strong case for expungement, including tools for documenting job denials due to the juvenile record and a list of resources that will be available in the future.
- **Effectively leveraging the expertise of legal partners.** Leveraging the expertise of legal partners benefited programs in multiple ways. Legal partners cross-trained case managers to help them convey the importance of expungement to Face Forward youth. Legal partners were also better suited to assess records for eligibility and deliver expungement services to Face Forward youth than program staff. In addition, connections with legal partners aided youth with other legal concerns, prompting programs to suggest expanding the role of the legal partners to provide legal advice or advocacy in areas such as housing or special education. A critical element in effectively leveraging the services of legal partners was the contractual agreement between the Face Forward program and the legal services provider. Some grantees noted that the type of agreement—either paying legal partners a fixed amount for the grant period or on a fee-for-service basis—influenced how frequently the grantee used the legal service partner. Some partners felt that the fixed amount established at the beginning of the partnership made the program more likely to take up the services. Though grantees were required to partner with legal service organizations, the fee-for-service arrangement produced a disincentive for programs to use legal services and challenged legal partners in planning for staffing needs.
- **Working with the juvenile justice system.** Face Forward programs reported that developing a positive relationship with the juvenile justice system—including judges, probation departments, and public defenders—was a key factor in providing expungement services. These relationships made it easier to access arrest and court records or made sealing or expungement hearings less confrontational. One program found that developing the expungement services in collaboration with the juvenile justice system might improve chances of successful expungement.

The contents of the publication do not necessarily reflect the views or policies of DOL.

Suggested citation for this brief: Henderson-Frakes, Jennifer, Hannah Diaz, Johanna Lacoë, and Lindsay Reed Feinberg. “Expunging Records, Opening Doors: A Profile of Face Forward Grantees’ Expungement Services,” Oakland, CA: Mathematica Policy Research and Social Policy Research Associates, 2018.

This project was funded, either wholly or in part, with Federal funds from the U.S. Department of Labor’s Employment and Training Administration under Contract # DOL-Q121A21886/ DOL-U131A22085. The contents of the publication do not represent the views or policies of the Department.

¹ Office of Juvenile Justice and Delinquency Prevention. “Statistical Briefing Book: Estimated Number of Juvenile Arrests, 2014.” Washington, DC: U.S. Department of Justice, OJJDP, 2014. Available at <http://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qaDate=2014>. Accessed May 19, 2016.

² All states and the District of Columbia offer either record sealing or expungement, or both. Thirty-one states offer record sealing, which involves concealing but not eliminating the contents of a record. When sealed, a record is no longer accessible to the general public without a court order, though law enforcement can still gain access. People are not required to report the existence of sealed records. Thirty-five states offer record expungement, which eliminates arrest, charge, or conviction records and allows a person with a juvenile record to move forward with a clean slate and truthfully claim no prior record. Although expungement can mean the physical destruction of a juvenile record, in some states limited information from expunged records remains accessible to law enforcement and other government agencies. Fifteen states offer both sealing and expungement, and some states automatically seal juvenile records but consider them for expungement only after the juvenile reaches a certain age or a makes a request. From here on we use the term expungement to refer to both expungement and record sealing.

³ Subramanian, R., R. Moreno, and S. Gebreselassie. “Relief in Sight? States Rethink the Collateral Consequences of a Criminal Conviction, 2009-2014.” Vera Institute of Justice, 2014. New York. Available at <http://www.vera.org/pubs/states-rethink-collateral-consequences> [June 6, 2016].

⁴ U.S. Department of Labor. “Notice of Availability of Funds and Solicitation for Grant Applications for Face Forward—Serving Juvenile Offenders.” SGA/DFA PY-12-09. Washington, DC: U.S. DOL, 2009.

⁵ Six programs were selected based on an iterative process. We first reviewed notes from our site visits to FF grantees, and then emailed FF1 and FF2 grantees a short set of questions on the nature of any expungement/record sealing services offered. Based on the email responses we received from 12 grantees, and the breadth and diversity of their services, we then identified five grantees (including two intermediaries) and their legal services partners with whom to conduct follow-up telephone interviews. For one intermediary grantee, we also conducted an interview with a sub-grantee. The interviews lasted between 45 minutes to an hour and focused on topics including service delivery and goals, local laws and requirements, partnerships, and lessons learned.

⁶ Shah, R.S., L. Fine, and J. Gullen. “Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement.” Philadelphia, PA: Juvenile Law Center and Community Legal Services of Philadelphia, 2014. Available at <http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf>. Accessed [June 6, 2016].

