

**EXPUNGEMENT OF ARREST RECORDS
IN DRUG COURT:
DO CLIENTS KNOW WHAT THEY'RE MISSING?**

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Expungement of arrest records is believed to be an important element of pre-plea drug courts. The opportunity for record expungement may be an incentive for some drug offenders to enter drug court and receive treatment, may reduce the stigma and collateral consequences of having an arrest record, and may extend the effects of drug court beyond graduation, when clients are no longer under the court's jurisdiction. Some data, however, indicate that many drug court graduates never apply for record expungement. This may be a result of not clearly understanding the concept of expungement, not understanding the requirements for obtaining expungement, or not recognizing the potential value of record expungement.

To examine these issues, we surveyed clients (N = 191) from three misdemeanor and three felony drug courts about their understanding of the expungement process. Findings revealed that (1) nearly one-half of these individuals could not define the term "expungement" or confused it with having their charges dropped, (2) virtually none of the offenders could correctly identify all of the requirements to obtain expungement beyond completing the drug court program, and (3) few were able to identify more than one potential benefit of expungement. These findings suggest the need for enhanced educational strategies to ensure that drug court graduates who meet the requirements for record expungement ultimately obtain these important benefits.

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ARTICLE SUMMARIES

BENEFITS OF EXPUNGEMENT

[1] There are three ways in which drug court clients and society can benefit from expungement: it can be an incentive to induce an offender into treatment; it can assist the offender in avoiding stigma; and it may be an effective means to keep graduates involved in recovery post-program.

METHODS

[2] The sample of drug court clients was drawn from three misdemeanor courts and three felony courts in Delaware and Pennsylvania. Participants were given a 5-minute survey testing their knowledge of expungement.

RESULTS

[3] Although many participants entered drug court in order to have their charges expunged, only slightly more than half could correctly define it, and almost none could explain the process.

DISCUSSION

[4] If the process of expungement could be improved by automated filing of petitions and continuing education about the process and benefits of expungement, it could be leveraged to increase aftercare participation.

INTRODUCTION

In many pre-plea or diversionary drug courts, offenders who satisfactorily complete the program may have their criminal charges dropped. Further, they may be eligible to apply for record expungement after remaining arrest-free for an additional waiting period (typically anywhere from 6 months to 3 years, depending on the jurisdiction) and meeting other obligations, such as filing a petition and paying a filing fee (Eastman, 2002). Expungement is generally defined as the permanent extraction of all records on file within a court, correctional facility, or law enforcement agency related to a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system (Eastman, 2002). Although record expungement may not necessarily lead to a literal erasure of the arrest record from all databases, under most circumstances it will legally allow an individual to say, truthfully, on such documents as employment applications or housing applications that the arrest never happened.

[1] There are at least three potential ways in which record expungement may be beneficial to the offender and to society. First, record expungement may serve as an incentive for some individuals to enter drug court and receive treatment and case management services. However, the relative attractiveness of this opportunity to offenders remains unclear. It is possible, for example, that some defendants may be more highly motivated to enter drug court by the short-term opportunities of avoiding sentencing, having their criminal charges dropped, or retaining their driver's license. Nevertheless, one might assume that the opportunity for record expungement still plays a further role in some individuals' decisions to enter drug court.

Second, the opportunity for record expungement may be seen as a way to avoid the stigma and collateral consequences of having a criminal arrest record. The existence of an arrest

record may create roadblocks for offenders who are trying to rebuild their lives, support themselves and their families, and become productive members of society (Wexler, Melnick, & Chaple, 2005). Even if the criminal charges were dropped, having been arrested for a drug crime can still have devastating consequences for one's reputation and employability (Boyd, 2002; Demleitner, 2002). For example, in many jurisdictions, a record of a past criminal arrest can still be considered for purposes of increasing the sentence in a future criminal case, even if the prior charge was dropped in a diversion program (e.g., *McMillan v. Pennsylvania*, 1986; *United States v. Kammerdiener*, 1981). In addition, depending on the state, it may be permissible to discriminate against a job applicant based solely on an arrest record if the arrest is relevant to the job functions; for example, drug use may be job-related for bus drivers or childcare workers (e.g., Eastman, 2002). Moreover, even when it is not permissible or legal for a potential employer or landlord to refuse an applicant on the sole ground that the applicant has an arrest record (but no conviction), this is rarely acknowledged as the reason for denying the application. If legal action is taken, the burden of proof will ordinarily be on the applicant to prove that the arrest was the primary reason for the denial. Few individuals have the time, know-how, or resources to challenge such a denial in court. Clearly, then, it is in offenders' best interest to have their arrest records expunged. This can go far in reducing the stigma associated with having a criminal record for a drug offense and may improve a drug court graduate's chances of obtaining gainful employment, housing opportunities, student loans and grants, as well as government subsidies such as food stamps and temporary assistance to needy families (TANF) (e.g., Alexander & Walz, 1974; Demleitner, 2002).

Third, the opportunity for record expungement may work as an effective means for extending the positive effects of drug court following completion of the program. At the moment an offender graduates from a pre-plea drug court, the

court ordinarily loses legal jurisdiction over the case. The criminal charges are dropped, and the court's authority to order aftercare services as a condition of pre-trial monitoring or pre-sentencing release may be terminated. This leaves the criminal justice system with little leverage over graduates to coerce or entice them to continue in aftercare treatment. However, it is possible that the opportunity for record expungement could provide sufficient leverage to ensure graduates' continued involvement in aftercare and maintenance of sobriety (e.g., Marlowe, Elwork, Festinger, & McLellan, 2003). The opportunity to have one's arrest record expunged after an additional waiting period may act as a second "carrot" to incentivize graduates to remain abstinent from drugs and crime-free even after they are no longer under the jurisdiction of the court.

Despite the seemingly significant benefits of record expungement, our research in one state indicated that few drug court graduates actually applied for it. Out of 1,302 eligible drug court clients who completed a misdemeanor drug court program in Wilmington, Delaware between December 1998 and March 2004, only 78 (6%) filed petitions for expungement of their arrests. Given that less than 15% of the graduates were re-arrested during the 6-month waiting period between graduation and eligibility for expungement, this means that roughly 80% of graduates who were otherwise eligible for record expungement did not apply. There are several possible explanations for this.

One explanation is that drug court graduates may not fully understand the meaning of expungement, or may confuse it with *nolle prosequere* (i.e., prosecutorial decision not to prosecute further). Although many drug courts provide all clients with a thorough explanation of expungement, we do not know how well the clients comprehend this information, or whether they remember it 1 to 2 years later when it becomes relevant to them. In fact, research suggests that individuals who use illicit substances may have particular

problems with comprehending and retaining important information, both because of factors unique to substance abusers and because of the wide range of conditions that are co-morbid to substance abuse (McCrary & Bux, 1999). Acute drug intoxication or withdrawal may impair attention, cognition, or retention of important information (Munro, Saxton, & Butters, 2000; Saxton, Munro, Butters, Schramke, & McNeil, 2000; Tapert & Brown, 2000; Victor, Adams, & Collins, 1989). Limited educational opportunities, chronic brain changes resulting from long-term drug or alcohol use, prior head trauma, poor nutrition, and co-morbid health problems (e.g., AIDS-related dementia) are common in individuals with substance abuse or dependence diagnoses, and may reduce concentration and limit understanding. In addition, information regarding the opportunity for record expungement is typically presented to defendants shortly following their arrest, when they are deciding whether or not to enter the drug court program. This is likely to be a very stressful time for many individuals, which may further limit their ability to understand and retain important information.

It is also possible that many drug court graduates may not have the resources or wherewithal to obtain record expungement. Record expungement often requires at least a minimal understanding of the legal system and the petitioning process (Eastman, 2002). For instance, in jurisdictions in which the expungement process is not automatic, the individual must ordinarily file a petition with the court, which may require the assistance of an attorney. If the arrest record contains factual errors or was not properly updated, the applicant might need to appeal an erroneous denial, which might also require the assistance of an attorney, additional filing fees, and court appearances.

It is also possible that drug court clients may not fully appreciate the potential benefits of having their arrest records expunged. Although courts typically describe the potential benefits at admission to drug court (e.g., employment

opportunities, licensing applications, professional certifications), it is possible that clients may not fully anticipate the value of expungement until they are actually faced with a specific need for it. For example, drug court clients may not appreciate that having their arrest record expunged will allow them to honestly report to potential employers, loan officials, and various social service agencies that they have not been arrested for a drug-related offense, until they are actually sitting in an office and are directly faced with this issue.

Finally, some drug court graduates may not apply for record expungement because they may simply not be interested in the opportunity. For some individuals, the benefits of expungement, even if fully understood, may not be perceived as important enough to motivate them to pursue it. This may be particularly true for individuals with prior criminal arrests or convictions. These individuals may feel that they have nothing to gain from having their current arrest record expunged, because, in the end, they will still have a criminal record.

The purpose of the present study was to determine what proportion of clients in a sample of six drug court programs (1) understood the meaning of the term “expungement,” (2) knew the requirements for obtaining expungement, and (3) appreciated the potential benefits of having their arrest record expunged.

METHODS

[2] The sample was drawn from three misdemeanor courts and three felony courts located in rural, urban, and suburban counties within the State of Delaware, and in the urban city of Philadelphia, Pennsylvania (see Table 1). All three of the misdemeanor programs are in Delaware, and are situated in the urban city of Wilmington, the suburban State Capital of Dover, and the rural farming community of

Georgetown. Two of the three felony courts are also in Dover and Georgetown, Delaware, with the third located in Philadelphia, Pennsylvania.

Table 1. Drug Court Characteristics

Location	N	Setting	Charge	Program length	Expungement waiting period
Wilmington, DE	60	Urban	Misdemeanor	14 weeks	6 months post-graduation
Dover, DE	9	Suburban	Misdemeanor	14 weeks	3 years post-graduation
Georgetown, DE	14	Rural	Misdemeanor	14 weeks	3 years post-graduation
Dover, DE	40	Suburban	Felony	6 months	3 years post-graduation
Georgetown, DE	7	Rural	Felony	6 months	3 years post-graduation
Philadelphia, PA	61	Urban	Felony	1 year	1 year post-graduation

Eligible charges for the three misdemeanor drug court programs include possession or consumption of cannabis, possession of drug paraphernalia, and possession of hypodermic syringes. The programs are scheduled to be at least 14 weeks in length, although most clients require 5 to 6 months to satisfy the conditions for graduation. To be eligible to petition for record expungement, clients must (1) successfully graduate from the drug court program, (2) pay all court fees, and (3) wait the required amount of time following program completion without any new arrests or convictions. The misdemeanor programs in Dover and Georgetown are virtually identical in structure to the program in Wilmington and have virtually the same eligibility and graduation criteria. One important difference between the three misdemeanor programs is that clients in Wilmington are required to be conviction-free for 6 months post-graduation before they can petition for expungement of their qualifying arrest, whereas clients in the Dover and Georgetown

programs are required to be conviction-free for 3 years post-graduation.

Eligibility criteria differ slightly between the Delaware and Philadelphia felony courts. Eligible charges for the felony courts in Dover and Georgetown, Delaware include possession or consumption of narcotics, possession with intent to distribute illicit drugs, distribution or manufacturing of illicit drugs, and maintenance of a dwelling for the consumption or distribution of illicit drugs. The programs are scheduled to be a minimum of 6 months in length, although most clients require nearer to 12 months to graduate. The Delaware felony programs require graduates to be conviction-free for 3 years before they can petition for record expungement. Eligibility criteria for the Philadelphia drug court program require offenders to be charged with a felony drug offense that does not carry a mandatory sentence, the most common of which was possession with intent to deliver a controlled substance. Additionally, eligible offenders can have no more than two prior non-violent convictions. The Philadelphia program is scheduled to be a minimum of 1 year in length, and graduates are required to be conviction-free for 1 year before earning the opportunity for expungement of their qualifying arrest. Unlike the Delaware courts, the Philadelphia court automatically files the expungement petition on behalf of all eligible offenders.

Surveys were administered to 191 offenders who had voluntarily entered the six drug court programs. Within 2 weeks of their entry into the drug court, clients were asked whether they would be interested in completing an anonymous 7-item survey. Clients who consented to participate were administered the survey by trained research interviewers. All clients who were asked to participate in the survey consented to participate. Survey participants were primarily male (78%), with a mean age of 26.0 years ($SD = 8.3$). The sample had relatively equal proportions of African-

Americans (48%) and Caucasians (47%), followed by a much smaller proportion of Hispanics (2%).

The surveys, which took approximately 5 minutes to complete, included five open-ended questions and two Likert-scale questions to examine the following:

- (1) the reasons clients decided to enter the drug court program (open-ended);
- (2) the meaning of the term “expungement” (open-ended)¹;
- (3) the perceived importance of the expungement opportunity (4-point Likert scale);
- (4) the eligibility criteria for expungement (open-ended);
- (5) the required waiting period before one can petition for expungement (open-ended);
- (6) the potential benefits of record expungement (open-ended);
- (7) the likelihood of seeking expungement in the future (4-point Likert scale)².

Because question 1 asked for open-ended, subjective responses about why the clients chose to enter drug court, we had independent raters code the responses and we calculated inter-rater reliability. Responses to this question were coded into 5 separate categories: (1) to have their arrest record expunged, (2) to have their charges dropped, (3) to retain their driver’s license, (4) to receive treatment, and (5) due to other external pressures (e.g., suggested by an attorney or family member). The raters achieved an 87% inter-rater agreement (Kappa = .84). We did not calculate inter-rater

¹ Clients who answered incorrectly were provided with the correct definition of expungement before proceeding to the subsequent items

² This item was not administered to the Philadelphia drug court clients because the expungement petition is filed automatically by that court.

reliability for the remaining open-ended questions, because they were not subjective in nature and had clearly quantifiable correct answers.

Finally, all participants were asked whether they had any past criminal arrests and/or convictions. This variable was examined because, as mentioned earlier, it is possible that having a prior criminal record may diminish or otherwise influence a client's desire to seek expungement for new charges.

RESULTS

[3] A total of 191 participants from the six different courts completed the expungement survey. Forty-three percent ($n = 83$) of the study sample was recruited from the three misdemeanor drug courts and 57% ($n = 108$) was recruited from the three felony drug courts. Forty-one percent of the sample ($n = 79$) reported having prior criminal charges, of which 41% ($n = 32$) were from misdemeanor courts and 59% ($n = 47$) were from felony courts. Analyses revealed *no* significant differences between participants with or without prior criminal charges or between participants charged with misdemeanors or felonies on any of the survey items.

As shown in Table 2, the most commonly reported reasons for entering the drug court programs were to receive treatment (43%), to have their record expunged (36%), to have their charges dropped (35%), to keep their driver's licenses (14%), and as a result of other external pressures (2%).

Table 2.
Survey Items and Responses

Item	Response	Percent	N
† Main reasons for entering drug court	Treatment	43%	82
	Expungement	36%	68
	Charges dropped	35%	66
	Retain drivers' license	14%	27
	External pressures	2%	4
Definition of "expungement"	Current charges erased (correct)	58%	111
	Don't know	31%	59
	Current charges dropped (incorrect)	5%	9
	Entire criminal record erased (incorrect)	6%	12
* Importance of expungement in decision to enter?	Extremely	86%	95
	Somewhat	8%	9
	A little	2%	2
	Not at all	5%	5
† Possible benefits of expungement	Employment opportunities	77%	148
	Reduce stigma	17%	32
	Eligibility for housing assistance	6%	12
	Reduce sentence if convicted in future	5%	9
	Eligibility for government benefits	5%	9

	Eligibility for government loans	5%	10
† Expungement eligibility criteria	Successfully complete drug court	80%	153
	Remain abstinent	33%	63
	Avoid new arrests	21%	40
	Wait required amount of time	19%	37
	Pay court fines and fees	18%	34
	Avoid new convictions	9%	17
	Petition the court for expungement	5%	10
Post-graduation wait until qualified for expungement	Correct	61%	117
	Incorrect	39%	74
** Likelihood of seeking expungement	Extremely	85%	110
	Somewhat	6%	8
	A little	5%	6
	Not at all	5%	6

* Includes only participants who correctly defined the term “expungement.”

** Includes only participants from the Delaware drug courts.

† Percentages can add up to more than 100% due to clients providing more than one response.

Fifty-eight percent of the participants ($n = 111$) were able to correctly define the term “expungement” as having one’s current qualifying treatment court charges (arrests) erased from their record. The balance of the participants either provided an incorrect response or were unable to generate a response, with 5% ($n = 9$) of the participants confusing record expungement with having one’s current charges dropped, 6% ($n = 12$) defining it as having one’s entire criminal record wiped clean, and 31% ($n = 59$) unable to provide a response.

Of the 111 participants who correctly defined expungement, 86% ($n = 95$) reported that the opportunity for expungement was “extremely important” in their decision to enter the drug court program. Additionally, 8% ($n = 9$) described expungement as being “somewhat important,” 2% ($n = 2$) described expungement as being “a little important,” and 5% ($n = 5$) described expungement as “not at all important” in their decisions to enter the drug court program.

When asked to identify the potential benefits of having their arrest records expunged, 77% reported that expungement may improve their chances for future employment, 17% reported that expungement would increase their self-esteem, 6% reported that expungement would increase their eligibility for housing assistance, 5% reported that expungement would reduce their sentence if convicted in the future, 5% reported that expungement would increase their eligibility for government benefits, and 5% reported that expungement would improve their opportunity to obtain government loans. Participants reported an average of 1.2 ($SD = 0.8$) potential benefits.

When the entire sample, after being provided with the correct definition of record expungement, was asked to list the eligibility requirements for having their records expunged, 80% correctly identified successfully completing the drug court program, 33% correctly identified remaining

drug abstinent, 21% correctly identified avoiding any new arrests, 19% correctly identified waiting the required amount of time, 18% correctly identified paying court fines and fees, 9% correctly identified avoiding new convictions, and 5% correctly identified petitioning the court for expungement. Overall, participants were able to recall an average of 1.8 (SD = 1.2) eligibility requirements, and only 2% of the drug court clients were able to correctly identify all of the requirements for expungement. When asked about the required waiting period between graduation from the drug court program and being eligible for expungement, 61% provided a correct response.

Finally, when the Delaware drug court clients were asked about how likely they would be to seek expungement in the future, 85% reported that they would be “extremely likely,” 6% reported that they would be “somewhat likely,” 5% reported that they would be “a little likely,” and 5% reported that they would be “not at all likely.” As mentioned earlier, Philadelphia drug court clients were not asked this question because the expungement process is automatic in that jurisdiction.

DISCUSSION

[4] It is widely assumed that the opportunity for record expungement in pre-plea drug courts is an important incentive for offenders to enter drug court programs and to maintain their involvement in aftercare and continued sobriety once they graduate and are no longer under the court’s jurisdiction. However, results of our survey suggest that nearly one-half of the clients could not correctly define the term “expungement,” virtually none (2%) of the clients could correctly identify all of the requirements to obtain expungement, and few were able to identify more than one potential benefit of expungement. As it stands, the limited understanding of expungement and its potential benefits may significantly diminish its ability to function as a “secondary

carrot” for enhancing adherence to post-graduate abstinence and service utilization and likely contributes to the small number of expungement petitions that are actually filed.

Importantly, however, of the participants who correctly understood the concept of expungement, the majority (88%) reported that the opportunity for expungement was “extremely important” to their decision to enter drug court. This suggests that educating clients about the process of expungement could make record expungement function as a more effective reinforcement of drug abstinence and program compliance. That is, if graduates understood the benefits of expungement, they might strive harder to satisfy the requirements for expungement.

The current study highlights the need for enhanced strategies to ensure that more graduates who meet the requirements for record expungement ultimately obtain this important benefit. One such strategy might involve developing enhanced orientation procedures to help drug court clients better understand the meaning and potential benefits of record expungement. Although courts typically provide detailed information on these issues, it is possible that there is room to enhance these efforts by, for example, providing clients with continuing education about the benefits of expungement, administering brief quizzes or questionnaires, or providing written discharge plans that remind graduating clients about the opportunity and benefits of expungement. In addition, clients may be better served if this information were provided as part of an ongoing process rather than a one-time event. For example, drug court staff might provide expungement information to clients at regular intervals (e.g., status hearings and at graduation) throughout the program. Finally, many jurisdictions have begun to automate the record expungement process. In some of these jurisdictions, the drug court files the expungement petition on behalf of the graduate and pays the associated filing fees.

Future research should examine the effectiveness of these strategies for increasing drug court clients' understanding of record expungement and its potential benefits. Research might also examine ways of leveraging record expungement to promote increased participation in aftercare programs. For example, jurisdictions may be able to shorten the required waiting periods for expungement contingent upon regular participation in aftercare programs. Research in this area could help to inform public policy, improve outcomes for drug court clients, and reduce offender recidivism and its associated costs to society.

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