

# HCR 106 CLEAN SLATE STUDY GROUP

REPORT TO THE LEGISLATURE

March 19, 2020

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### Impact of a Criminal Record

An estimated 70-100 million U.S. adults have a criminal record.<sup>1</sup> These records range from non-conviction arrests to serious felony convictions. In Louisiana, our expungement law implements the intent of the legislature to provide opportunities to break the cycle of recidivism, increase public safety, and assist the growing number of people with convictions to obtain gainful employment.<sup>2</sup> Our expungement law balances the needs of law enforcement agencies to protect public safety with the desire to afford employment opportunities to all Louisiana citizens.<sup>3</sup>

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<sup>1</sup> Goggins, B. R., DeBacco, D. A., & Law and Policy Program. (2018). *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report* (Document No: 251516). Retrieved from <https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf>

<sup>2</sup> Louisiana Code of Criminal Procedure Article 971.

<sup>3</sup> *Id.*

Clearing criminal records produces substantial and measurable benefits.<sup>4</sup> For example, a recent Michigan study found that individuals who successfully petitioned to expunge their criminal records saw their wages rise an average of 25% over two years, driven both by "unemployed people finding jobs and very minimally employed people finding steadier or higher-paying work."<sup>5</sup> Additional research has shown that people who benefit from record-clearing have subsequent arrest rates that are lower than the general population, and after 3-8 years criminal records no longer predict future offending.<sup>6</sup> Despite these measurable benefits and existing state statutory schemes that allow for expungement, most people who are eligible do not access it because the petition-based process is complex, burdensome, and expensive.

## History of the HCR 106 Study Group

Expungements of criminal records provide not only a direct path to employment and housing, but also enable eligible citizens to mentally and emotionally close a chapter in their lives. Louisianans who are eligible to have their records expunged face an expensive and complex filing procedure. Louisiana is not unique in this area, as bureaucratic barriers exist in every state around the country, which is why many states are now looking at ways to provide for automated expungement processes that reduce the long-term impacts of a criminal record.

In 2018, Pennsylvania was the first state to enact "Clean Slate" legislation, automating the process for qualifying misdemeanors and all non-convictions.<sup>7</sup> The relevant agencies including the courts and the criminal repository worked together to enable their technology to process statutorily granted record clearing based on a computer program. Since that time Pennsylvania is on track to clear as many as 30 million records through automation, taking the onus of the payment of fees and filing off those seeking to clear their records.<sup>8</sup>

Representative Edward "Ted" James introduced "Clean Slate" legislation in Louisiana last legislative session, based on the "Clean Slate" model introduced in Pennsylvania. Stakeholder agencies and advocates realized that additional time would be needed to create a Louisiana version of "Clean Slate." The original legislation was converted into House Concurrent Resolution 106, requesting the Louisiana District Attorneys Association, the Louisiana Supreme Court, the Louisiana Clerks of Court, the Louisiana Public Defender Board, the Louisiana Sheriffs' Association, the Louisiana State Police, the Justice and Accountability Center of Louisiana, and Voice of the Experienced "to study and evaluate the process and procedure for automatic record-clearing for individuals who remain free from convictions for a certain period of time."

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<sup>4</sup> Prescott, J.J. and Starr, Sonja B., Expungement of Criminal Convictions: An Empirical Study (March 16, 2019). Harvard Law Review, Forthcoming; U of Michigan Law & Econ Research Paper No. 19-001; U of Michigan Public Law Research Paper No. 635. Available at SSRN [ssrn.com/abstract=3353620](https://ssrn.com/abstract=3353620)

<sup>5</sup> Ibid.

<sup>6</sup> Blumstein, Alfred and Nakamura, Kiminori, Redemption in the Presence of Widespread Criminal Background Checks (May 2009). American Society of Criminology, Volume 47, Number 2. Available at: [www.search.org/files/pdf/Redemption\\_Blumstein\\_Nakamura\\_2009Criminology.pdf](http://www.search.org/files/pdf/Redemption_Blumstein_Nakamura_2009Criminology.pdf)

<sup>7</sup> See Community Legal Services' My Clean Slate Pa [mycleanslatepa.com](http://mycleanslatepa.com).

<sup>8</sup> Karimi, F. (2019, June 28). Pennsylvania is sealing 30 million criminal records as part of Clean Slate law, CNN. Available at [www.cnn.com/2019/06/28/us/pennsylvania-clean-slate-law-trnd/index.html](http://www.cnn.com/2019/06/28/us/pennsylvania-clean-slate-law-trnd/index.html)

The Louisiana District Attorneys Association launched the Study Group with our first meeting in August 2019, when they led the group through an overview of Louisiana’s expungement law. The group also began discussing each agency’s role in the expungement process, particularly in regard to data and technology limitations, and what the costs might be to make changes in their systems. Several participants mentioned that establishing a Clean Slate process in Louisiana could inform and assist several other ongoing statewide reforms, notably ICIJIS and the Louisiana Commission on Justice System Funding. Ultimately, everyone agreed that Louisiana could benefit from a Clean Slate process. We identified that we needed help navigating our data and technology, and it was agreed we would investigate inviting organizations from the National Clean Slate Initiative (CSI), a coalition of nonprofits who engage with state-based organizations to advance automated record clearance policies.

At our second meeting, held at the LDAA in September 2019, the team that automated record clearing in Pennsylvania joined via videoconference. They shared that it took about a year to coordinate between their courts and state police to identify cases and work on the initial backlog of eligible records, and eighteen months overall to plan for implementation. When asked about whether Louisiana should consider retroactive application of Clean Slate, Pennsylvania indicated that the same technology changes would have to happen, regardless of whether the law was prospective or not. In terms of costs, the Pennsylvania District Attorneys Association indicated that their administrative role in expungements was reduced as a result of automation. The group again engaged in a discussion about the state and flow of Louisiana’s criminal records and expressed some trepidation about how it might work here. The Pennsylvania team also recommended the assistance of Code for America. At the end of the meeting, it was decided that we would invite the non-profit technical assistance provider Code for America to join us in investigating “Clean Slate” for Louisiana.

We met again in October 2019 at the LDAA, and were joined by staff from Code for America, a member of the CSI, who discussed their program, Clear My Record. Clear My Record began in 2016 and partners with government agencies to use technology and design to help implement Clean Slate policies. They walked us through a data mapping exercise, the conclusion of which is further discussed in the Data Analysis section below and the product of which is included in the Appendix. They noted that most state agencies already have business processes in place that can be adapted to automate record clearing, and the Louisiana Supreme Court and the Louisiana State Police started to consider what might be needed to pull a batch of relevant data for analysis.

In November 2019 we met at the office of East Baton Rouge District Attorney Hillar Moore, where the IT departments of the involved agencies participated in a discussion around how to provide this set of de-identified data in an ethical manner. We learned that an MOU and data sharing agreement would likely be necessary, as it was in other states, prior to sharing data with Code for America for analysis, and agreed to establish Data and Legal Committees. Prior to the Legal Committee meeting, the group agreed an overview of expungement law would be useful. Representative James indicated that he would sponsor any legislation needed to move the effort forward. Right on Crime and the Office of the Public Defender in East Baton Rouge also joined us for this meeting.

At our meeting in January of this year, the Office of the District Attorney in East Baton Rouge and the Louisiana State Police provided an overview of expungement law in Louisiana, and we began to identify areas of the law that might need change in order to implement Clean Slate in Louisiana. Code for America reviewed the data flow document that is discussed further below, and all agreed that the meeting of the Data Committee would be postponed until the data sharing agreements were in place and Code for America could conduct a preliminary analysis of the data. We also scheduled a meeting of the Legal Committee in February, which is discussed further below in the Legal Perspective section. Code for America also would begin to work separately with the government agencies holding criminal record data to facilitate the analytic process.

The final meeting of the study group was in March 2020, where we engaged in a final review of the data flow diagram and involved processes, as well as the eligibility charts, all of which are attached in the Appendices. We also discussed consensus legislation HB 241, but noted that further investigation was needed as to whether CCrP 977 (D)(2) was tied to national highway safety funding. HB 510 may also need further narrowing to address the concerns of LSP. Representative James was present and requested that members of the Study Group share their expertise and experience when the bills come up for hearing. The Study Group also made final additions to the draft resolution to create a legislative task force, continuing the work of this Study Group.

Over the course of the seven meetings of the Study Group (including the Legal Committee, discussed further below), we had consistent and engaged representation of all the agencies and organizations named in the resolution and the additional participation of Right on Crime, the Office of the Public Defender in East Baton Rouge, and Louisianans for Prison Alternatives. Everyone was committed to discussing the issues and learning from each other, as well as identifying obstacles and finding solutions.

## Enacted Clean Slate Laws

### [Pennsylvania Act 56 of 2018](#)

Pennsylvania passed the country's first Clean Slate bill in 2018 and is currently implementing the new law which is estimated to clear 30 million records.<sup>9</sup> Here is an overview of Pennsylvania's Clean Slate process:

1. The Pennsylvania Administrator of the Courts (AOC) identifies, using code logic, the eligibility of all offenses statewide. Eligible misdemeanor conviction offenses are sent to the Pennsylvania State Police (PSP) in monthly batches.<sup>10</sup> Eligible non-convictions and summary convictions are automatically pre-approved and are not sent for review.
2. PSP has 30 days to validate the eligibility of the misdemeanor conviction offenses sent in each batch.
3. The AOC prepares for each county batches of offenses that are eligible for Clean Slate and the misdemeanor conviction offenses that were validated by PSP. Orders are "signed" automatically.
4. Once the batch is approved by the county court, the following happens automatically:

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<sup>9</sup> Ibid.

<sup>10</sup> In Pennsylvania, the statutory scheme provides that only misdemeanors, non-convictions, and summary convictions are eligible for record clearing.

- docket entries for the order are automatically recorded on each case;
- each eligible offense is marked as “Limited Access” and removed from public court record.

Once this is done, an offense is also removed from the individual’s criminal history, which is maintained by the state police.

### [Utah HB 431 of 2019](#)

Utah followed suit in 2019 and passed the country’s second Clean Slate law. Utah is automating their current law as it relates to record clearing. Here is an overview of Utah’s Clean Slate process:

1. The Utah Administrator of Courts (AOC) searches records on a monthly basis to identify all Clean Slate eligible cases.
2. The AOC provides notice to prosecutors of eligible cases; prosecutors have 35 days to e-file an objection.
3. If no objection is filed, an expungement order is issued by the court (note: this is done by the AOC. Because this is a judicial act, the Utah Supreme Court needed to authorize the AOC by standing order to do this. This power extends to auto expungements only.
4. A list of expunged cases and copies of individual expungement orders are sent to the Utah Department of Public Safety to be removed from the Utah Criminal History Database and FBI records.
5. Notice is given to Utah Law Enforcement Agencies and the Department of Corrections to update records to reflect expunged cases.

### [California AB 1076 of 2019](#)

Passed in 2019, AB 1076 establishes a new automated record clearing process with similar eligibility criteria to their current petitioned-based process for all eligible offenses and non-convictions that occurred on or after January 1, 2021. Of note, California has a non-unified court system. Here is an overview of California’s Clean Slate process:

1. On a monthly basis, the California Department of Justice reviews records in the statewide criminal justice database to identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure.
2. The bill authorizes the prosecuting attorney or probation department no later than 90 calendar days before the date of a person’s eligibility for relief, to file a petition to prohibit the department from granting automatic relief.
3. If there are no objections, the DOJ makes an update to the state summary criminal history information to document the relief granted.
4. The bill requires the DOJ, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which relief was granted. The bill prohibits the court from disclosing information concerning an arrest or conviction granted relief, with exceptions.

## Currently Proposed Clean Slate Legislation

### [California AB 2793](#)

Introduced February 21, 2020, AB 2793 seeks to modify AB 1076 by allowing for automated

retroactive relief for all eligible offenses and non-convictions that occurred on or after January 1, 1973.

### Washington HB 2793

HB 2793 of 2019-2020 in Washington State creates a court-driven process for reviewing and vacating criminal convictions (Washington's state-specific remedy for record clearance) based on current statutory eligibility requirements, beginning July 1, 2022. The bill also includes provisions that require the Administrative Office of the Courts (AOC) to assess the types of information that should be reported or entered into their state's judicial information systems in order to improve the reliability of the process, and mandates that the AOC report its findings by December 1, 2020. HB 2793 recently passed out of the house 79-18-0-1 but was amended to be a study bill and pilot program by the Senate Law and Justice Committee at the end of February 2020. The bill passed with broad bipartisan support for the goal of increasing the number of people who can meaningfully access relief by automating the process for vacating a conviction, and is currently awaiting the Governor's signature.

### **Michigan**

Michigan's Legislature is currently considering a package of seven bills that will expand eligibility for record clearance and automate the process. Under existing law, Michigan's criteria for record clearance is narrow, costly, and cumbersome. A recent study conducted by the University of Michigan Law School found that only 6.5% of people who met the eligibility criteria for record clearance in Michigan successfully had their record expunged within five years of first qualifying.<sup>11</sup> As such, the coalition working on Clean Slate in Michigan, led by Safe and Just Michigan, is currently supporting a package of seven bills that would amend Michigan law to allow for, among other things, the expungement of traffic offenses, let more people with multiple crimes apply, and require multiple felony offenses to be treated as a single conviction, provided they occurred.

- [HB 4980](#) (Automation bill)
- [HB 4981](#) (Adds certain traffic offenses to list of eligible offenses)
- [HB 4982](#) and [HB 5210](#) (HB4982 allows for the expungement of marijuana offenses if the offense would not have been a crime if committed after the use of recreational marijuana by adults became legal in Michigan. HB 5210 clarifies that an individual entitled to relief under HB 4982 cannot seek resentencing in another criminal case if the conviction now eligible for record clearance resulted in additional charges.)
- [HB 4983](#) (Shortens eligibility waiting period for certain offenses)
- [HB 4984](#) (Expands the number of offenses eligible and shortens the eligibility waiting periods)
- [HB 4985](#) (Treats multiple offenses arising from one event as a single offense for purposes of calculating eligibility)

The package passed the House in October and is currently with the Senate Judiciary Committee (Michigan's Legislature meets year-round). The final policy and associated fiscal note(s) will be determined after Senate action (see the Fiscal Concerns section below).

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<sup>11</sup> Prescott, J.J. and Starr, Sonja B., Expungement of Criminal Convictions: An Empirical Study (March 16, 2019). Harvard Law Review, Forthcoming; U of Michigan Law & Econ Research Paper No. 19-001; U of Michigan Public Law Research Paper No. 635. Available at SSRN: <https://ssrn.com/abstract=3353620>

## Fiscal Concerns

While every state has nuances related to process, data, and systems, as well as accompanying unique challenges, fiscal costs in any given state are largely related to programming to identify eligible cases, and business and system developments to process and update those cases. While these needs have not yet been identified in Louisiana, fiscal costs generally may be lowered through a number of strategies:

- Writing a clean slate policy that is technically feasible helps lower costs by reducing the complexity of an implementation process. This cost is not necessarily related to the charge level or numbers of convictions processed, but the ability of agencies to work with existing and available criminal conviction data within existing systems. Data analysis (described in the below section) is helpful to inform a feasible policy and process.
- Leveraging existing business processes allows states to focus on building *upon* systems, instead of creating new ones, which helps to streamline processes and cut costs. Some examples of existing processes that may be leveraged include: existing automatic clearance of non-conviction records or juvenile records; automatic disposition reporting; and electronic disposition reporting.

In addition, the Clean Slate Initiative (CSI), with the technical help of Code for America, can support and elevate government's capacity to implement Clean Slate policies by reducing the time and resources that agencies need to invest.

In addition to the six Study Group meetings identified above and the Legal Committee meeting described below, a sub-group of the LDAA and Justice and Accountability Center were able to participate in a December conference call with Code for America and Crime and Justice Institute, including a staff member who participated in the Clean Slate Initiative in Utah. Through this conversation, and the additional research of Crime and Justice Institute, the Study Group was able to come to a better understanding about the costs that might be involved in bringing Clean Slate to Louisiana, including the following:

### **Pennsylvania**

According to the Pennsylvania State Police (PSP), a large portion of the costs associated with Clean Slate automation were related to computer programming and application development. An estimate received from PSP's contractor totaled \$195,000 in one-time costs. These costs were related to making the necessary programming changes to the Computerized Criminal History Record Information System (CCHRI) and the Pennsylvania Access to Criminal History (PATCH) system. According to the Pennsylvania Administrator of the Court, a one-time cost of \$50,000 was necessary in order to complete Clean Slate automation. In total, the fiscal note for Pennsylvania's Clean Slate bill was \$245,000.

### **Utah**

Clean Slate was supported by legislators from both parties as a fiscally conservative policy because it reduced the steps involved in processing paper-based petitions. Engagement from state agencies on questions of implementation during the early development of the policy resulted in a modest fiscal note. The fiscal note for Utah's Clean Slate legislation required a \$957,200 one-time, initial investment, and \$691,000 of ongoing funds for a total of \$1,648,200. The implementation costs and benefits of Clean Slate included the following:

- the estimated potential loss of future revenues to agencies as a result of eliminating application and filing fees collected for certain expungement petitions;
- the potential reduction of staff and other process savings that could occur to agencies due to automation eliminating the need for manual petition review;
- the initial cost of coding to determine eligible cases;
- Necessary computer programming and system development to process automatic cases;
- Limited ongoing system maintenance costs.

Utah is also receiving technical assistance from Code for America to map out process changes and to write logic for the identification of Clean Slate eligible cases.

### **Washington**

Washington’s provisional fiscal note estimates \$4,978,506 in costs to the Administrative Office of the Courts (AOC) and Washington State Patrol (WSP). This is an initial assessment and in no way represents an anticipated final cost.

### **Michigan**

Michigan’s Legislature is currently considering a package of seven bills that, in addition to proposing Clean Slate automation, also aim to expand the eligibility criteria for record clearance. In Michigan, bills that are introduced as a package are assessed for fiscal impact as a whole. As such, it is difficult to determine what costs are projected from the individual bill that proposes Clean Slate automation, HB 4980.

We learned that, in terms of cost, once you embark upon automating record clearing, the cost likely will be the same whether one type or all types of records are automated. The question for Louisiana, at this point in time, is more about the state of our data and how systems already communicate with each other. Without that information, we are not yet able to determine a cost.

## **Data Analysis**

Criminal conviction data analysis helps to inform the impact and implementation of Clean Slate policy in Louisiana in a number of ways:

- Understanding the overall impact of automatic record clearance:
  - Looking at the data helps to determine how many people might be eligible for relief under current and proposed state law, including where and how many people drop out of eligibility and for what reasons.
- Understanding how the data corresponds to current and proposed state eligibility laws:
  - Looking at the data helps to determine the technical feasibility of existing record clearance laws and test possible approaches that solve for challenges.
- Scoping potential data outputs:
  - With data, record updating technology can be further assessed to determine what appropriate technological updates, if any, are necessary.

Code for America is available to provide data analysis services in partnership with the Louisiana State Police and the Louisiana Supreme Court. Conversations are currently underway between all parties to assess the legal and ethical needs related to sharing de-identified data.

Code for America was able to work with all stakeholders in the Study Group to develop a diagram of the flow of criminal justice system data, a critical step to understanding where the majority of the data lies and how systems might interact to implement Clean Slate. Unsurprisingly, the Supreme Court and State Police are at the center of the data flows. Please see Appendix A: Data Flow Chart.

## Legal Perspective

Louisiana's expungement law, similar to that of other states, provides a statutory framework within which there is little room for discretion. Rather, expungement-seekers must navigate the rules promulgated by the legislature in order to determine whether they are eligible for an expungement. After many years, and many legislative sessions, however, some conflicts between the expungement-related articles in the Code of Criminal Procedure and portions of the Louisiana Revised Statutes have arisen. Additionally, some areas of expungement law have been left somewhat vague and open to differing interpretations from the several agencies involved in facilitating expungements.

Nonetheless, we were able to work with Code for America to develop the following charts that explain the expungement law and process in Louisiana. Please refer to Appendix B: Expungement Process Map; Appendix C: Eligibility Flow Chart, Misdemeanors; and Appendix D: Eligibility Flow Chart, Felonies. The charts are guidelines and should not be considered a definitive representation of the law.

With an understanding of the expungement law and process, the Legal Committee met in February to discuss current inconsistencies in the statutory language of expungement laws and to determine whether a consensus could be reached about potential legislative change. The focus of this group was to determine where statutory amendments would pave the way for automation and efficiency for the purposes of Clean Slate in the future. Lawyers and/or representatives from Louisiana State Police, Department of Corrections, Louisiana Public Defender Board, Louisiana District Attorney Association, Office of the Governor, Louisiana Supreme Court, Office of the District Attorney in East Baton Rouge, Office of the Public Defender in East Baton Rouge, Code for America, and Justice and Accountability Center attended this meeting.

## Legislation Resulting from the Legal Committee

During the Legal Committee meeting, nearly thirteen topics were discussed. The following three achieved consensus and resulted in proposed legislation:

- As discussed above in the "Data Analysis" section, Code for America has indicated that in order to assist in creating Louisiana's Clean Slate framework, it is necessary that it have access to sample data sets. The Office of State Police, Bureau of Criminal Identification and Information, maintains the central repository of criminal history record information for the State of Louisiana. La. R.S.

15;575, et seq., establishes the Bureau and sets forth its duties and responsibilities with respect to disseminating information contained within its records. Specifically, these statutes authorize the Bureau to release criminal history record information to federal, state, and municipal criminal justices agencies and other enumerated agencies when expressly authorized by law. Furthermore, La. R.S. 44:3(A)(7) exempts from public view the records maintained by the Bureau. Therefore, Louisiana State Police (LSP) is statutorily prohibited from disclosing any information relating to the criminal history records it maintains to Code for America, including de-identified or redacted data. To overcome this, there must be a narrow, time-limited exception created to allow LSP to share de-identified (or redacted) data with Code for America for the purposes of Clean Slate. The Committee discussed creating a two year window of sharing between LSP and CfA for the purposes of Clean Slate. Code for America would be required to maintain strict confidentiality of all data and provide some proof of destruction of all information upon completion of Clean Slate or the end of the sharing window. The 2020 legislative remedy for this is [HB 510](#).

- Participants in the meeting also discussed the various issues surrounding the waiting period between felony conviction expungements and the potential ramifications of removing the waiting period between felony conviction expungements that is found in La. C.Cr.P. art.978(D) and agreed that the time required between expungements should be removed from the statutory language in those articles. For the purposes of Clean Slate, an individual may become eligible for multiple expungements once the required cleansing period (generally 5 or 10 years, depending on whether the conviction is a misdemeanor or a felony) is completed. An automated system cannot adequately assess which eligible record should be prioritized first for expungement and any rule created (i.e. most recent in time or most “serious”) would mean individuals would have no say in deciding which eligible conviction they want expunged first. Both the district attorney and public defender present agreed that the required time lapse in between eligible expungements is a significant barrier for individuals seeking employment. The 2020 legislative remedy for this is Section 2 of [HB 241](#).
- Participants also discussed amending La. C.Cr.P. art. 975 to clarify that only individuals in “physical custody or incarcerated by the Department of Corrections” are ineligible to file for an expungement. For the purposes of automation, there is insufficient data to know when people are simply on probation or serving other misdemeanor sentences. Under current law, later misdemeanor convictions do not prevent eligible misdemeanor expungements except for those currently under some other form of supervision. The only way all parties will know about eligibility is if the person is in the Department of Corrections physical custody or assigned to a sentence “at hard labor.” Amending La. C.Cr.P. art. 975 allows for clarity and aligns with the current data being shared between agencies. The 2020 legislative remedy for this is Section 1 of [HB 241](#).

For the additional areas of the law that were discussed, some Legal Committee members required more information to decide their policy stance, did not believe that the cited contradiction related directly to Clean Slate automation, desired further research prior to implementation, or preferred a more incremental approach to Clean Slate. Those areas of discussion included:

- La. C.Cr.P. art. 890.3 allows for the District Attorney to designate an offense listed in La. R.S. 14:2(B) - (Crimes of Violence) as NOT a crime of violence for the purposes of sentencing or eligibility for drug court. For the purposes of an expungement, La. C.Cr.P. art. 978(B)(1) states that no

expungement shall be granted for any offense listed in La. R.S. 14:2. Therefore, an individual could receive a suspended or deferred sentence, or drug probation under La. C.Cr.P. art. 890.3 and have been recognized to not have committed a crime of violence for sentencing purposes, but not be eligible for an expungement by the prohibition in La. C.Cr.P. art. 978. During the meeting it was unclear whether this provision is used in practice by many DA's and whether there would be consequences to sentencing or plea agreements being made. More data is required to understand whether this carve out requires any amendments for the purposes of Clean Slate.

- La. C.Cr.P. art. 893(E)(1)(b) prohibits the deferral of any violation of the Uniform Controlled Dangerous Substance law punishable by more than five (5) years. This prohibition is currently inclusive of all Possession with Intent to Distribute offenses which can be sentenced for between one (1) and ten (10) years. This was tabled as several possible amendments were proposed that could address this through: (1) changing the parameters of La. C.Cr.P. art. 893(E) and La. C.Cr.P. art. 978; or, (2) changing the sentencing guidelines of La. R.S. 40:966-69. Further discussion with other stakeholders and sentencing data is likely necessary to understand if this requires alignment for the purposes of Clean Slate.
- La. C.Cr.P. art. 893(E)(2) limits deferred sentences to once in a lifetime, even though elsewhere in the same Article 893 dismissals are also permitted for intensive incarceration and drug court programs. There is arguably a conflict within the law. Further, in practice, multiple judges may grant 893 deferrals to defendants without knowledge of pre-existing 893s. This issue is similar to the one raised above regarding multiple eligible expungements in that, if and when Louisiana moves to automatic record clearing, the expungement-seeker would not have any way to determine which of their 893 dismissals they would like to choose for expungement.
- A conflict in the law exists where La. C.Cr.P. art. 976(B) does not permit expungement of DWIs where the defendant participated in pretrial diversion until five years after arrest, even though La. C.Cr.P. art. 894 permits expungement upon completion of probation. Through discussion, we learned that the language in Article 976 arose due to Highway Safety Funding considerations, and it was determined that we would not seek to remedy this conflict during the upcoming session.
- We discussed the discrepancy that drives Louisiana's "interim expungement," a law that exists solely to address one scenario, where an individual is arrested for a felony sex offense and then later convicted of any misdemeanor but may only expunge the underlying felony arrest and not the otherwise eligible misdemeanor conviction. Some members of the Study Group noted that this runs contrary to the policy where one might be arrested for a felony sex offense and later convicted of an expungement-eligible felony offense, and therefore eligible for a full expungement. It was not the will of the group to rectify this discrepancy.
- La. C.Cr.P. art. 978(E) permits expungement for six particular convictions, provided four conditions are met. One of the conditions is proof of ten years of consecutive employment. Through discussion, we learned that there is no consistent manner in which this can be proven up, and further it excludes people with disabilities, retired people, and veterans receiving benefits from obtaining an expungement – this is in addition to the difficulties that would arise in attempting to automate this law. The group did not reach consensus on whether and how to include this in the Clean Slate recommended legislative package.

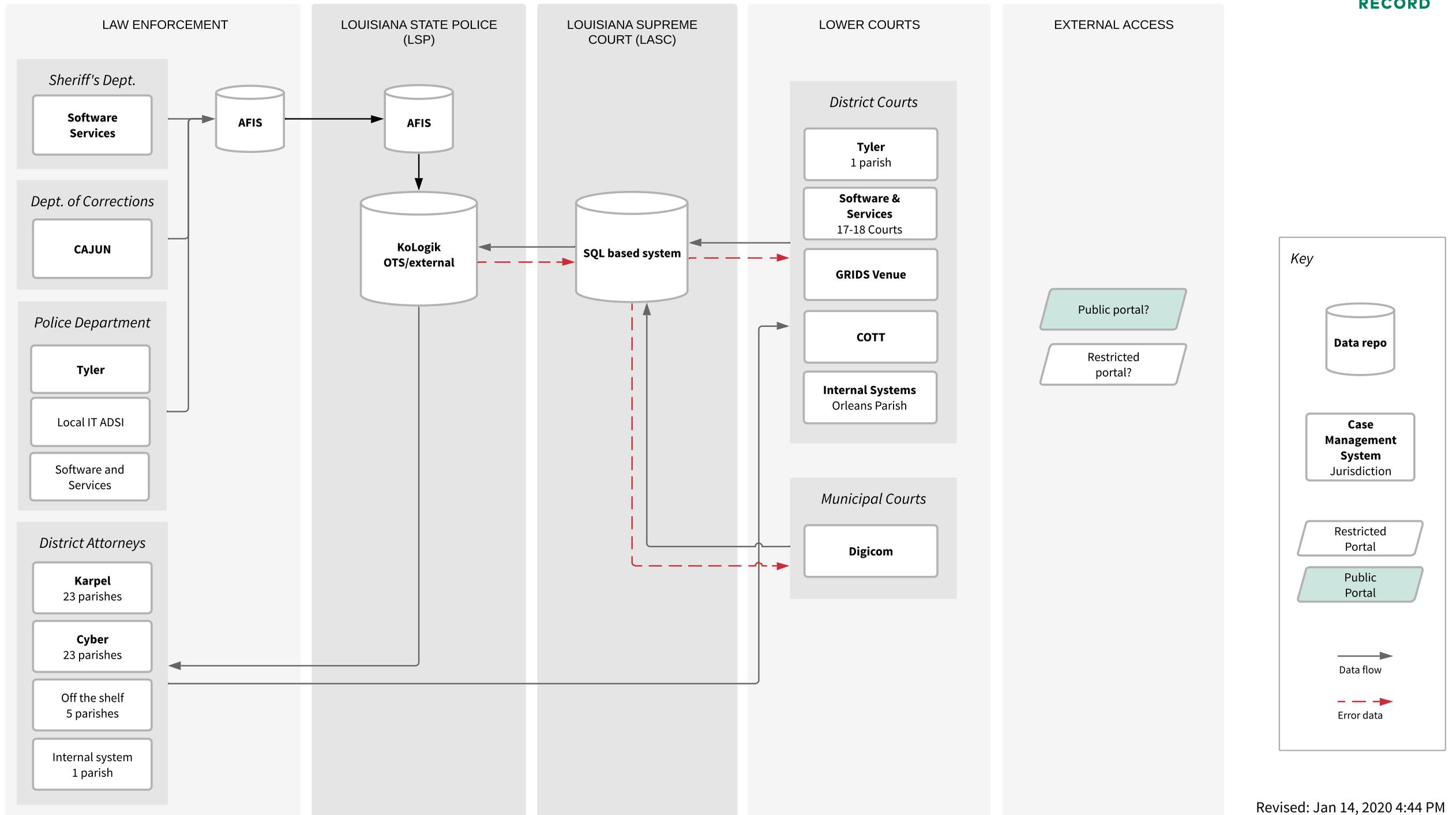
The Legal Committee also discussed expungement discrepancies surrounding First Offender and Executive Pardons, as well as a potential Habitual Offender law conflict and confidentiality of records, but upon additional legal research were able to resolve some of the issues raised.

## Recommendations

The Study Group offers the following recommendations to the legislature:

1. Create an official legislative task force with at least one legislator and add the Department of Corrections, Right on Crime, Louisianans for Prison Alternatives, the Louisiana Commission on Law Enforcement, and a member of the business community (this is now [HCR 29](#));
2. Enact the consensus clean up legislation described above;
3. Draft automation legislation for introduction in the 2021 legislative session;
4. Connect with other technology-based criminal justice system enhancements, like time calculation for DOC, the Commission on Justice System Funding, and the ICJIS working group, to determine areas of overlap and mutually beneficial improvements; and
5. Recommend agency funds necessary to automation to be included in Gov budget prior to the 2021 legislative session.

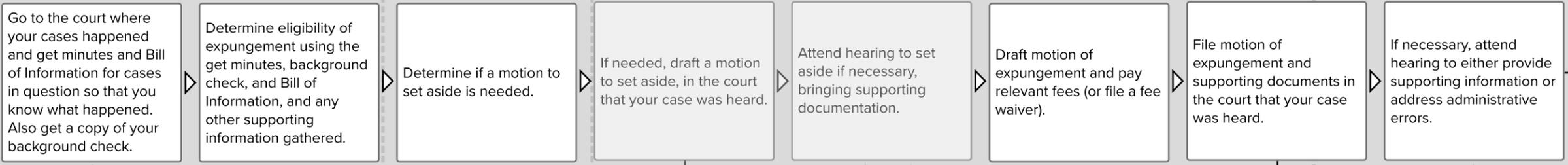
# Louisiana HCR 106 Clean Slate Study Group | Data Flow Diagram



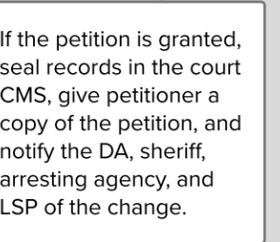
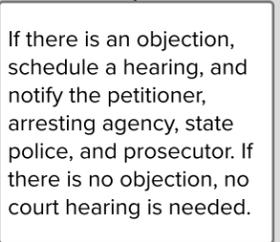
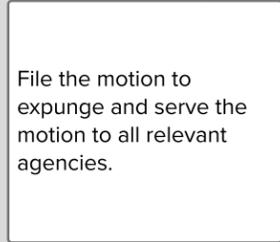
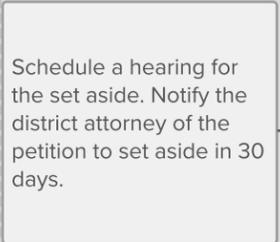
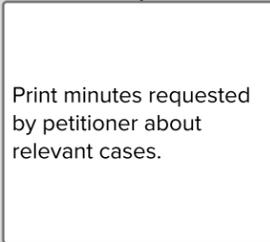
CLEAR MY RECORD  
**Louisiana Expungement Process**



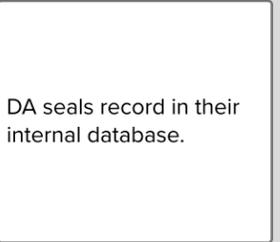
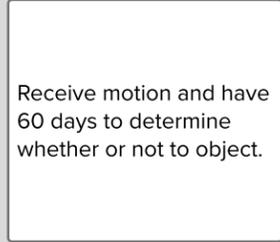
**PETITIONER**



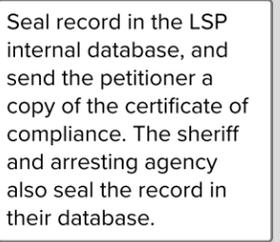
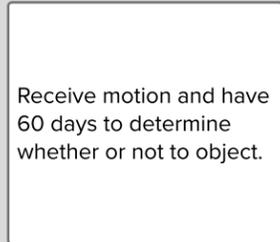
**COURTS**



**DISTRICT ATTORNEY**

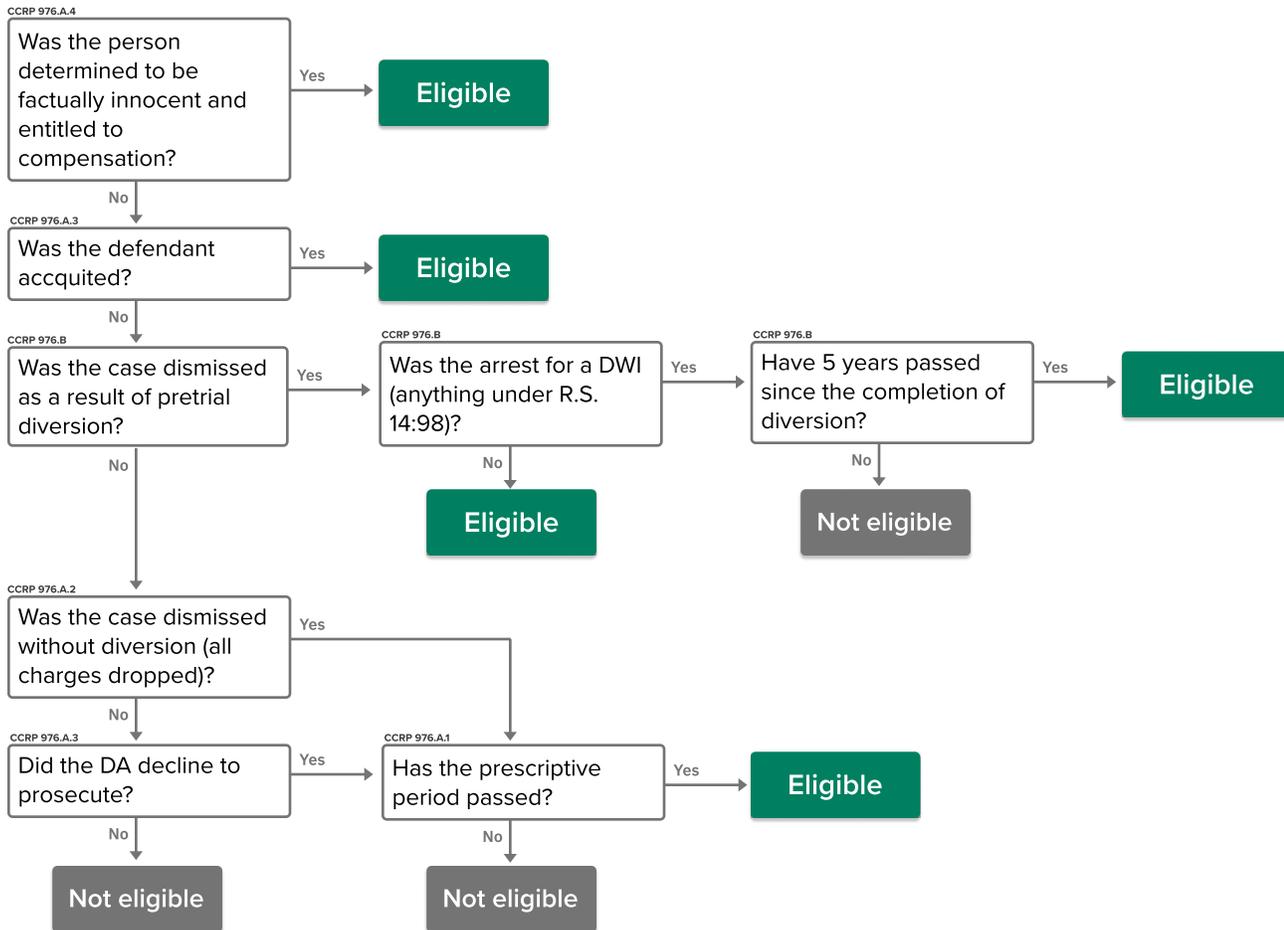


**STATE POLICE AND ARRESTING AGENCY**



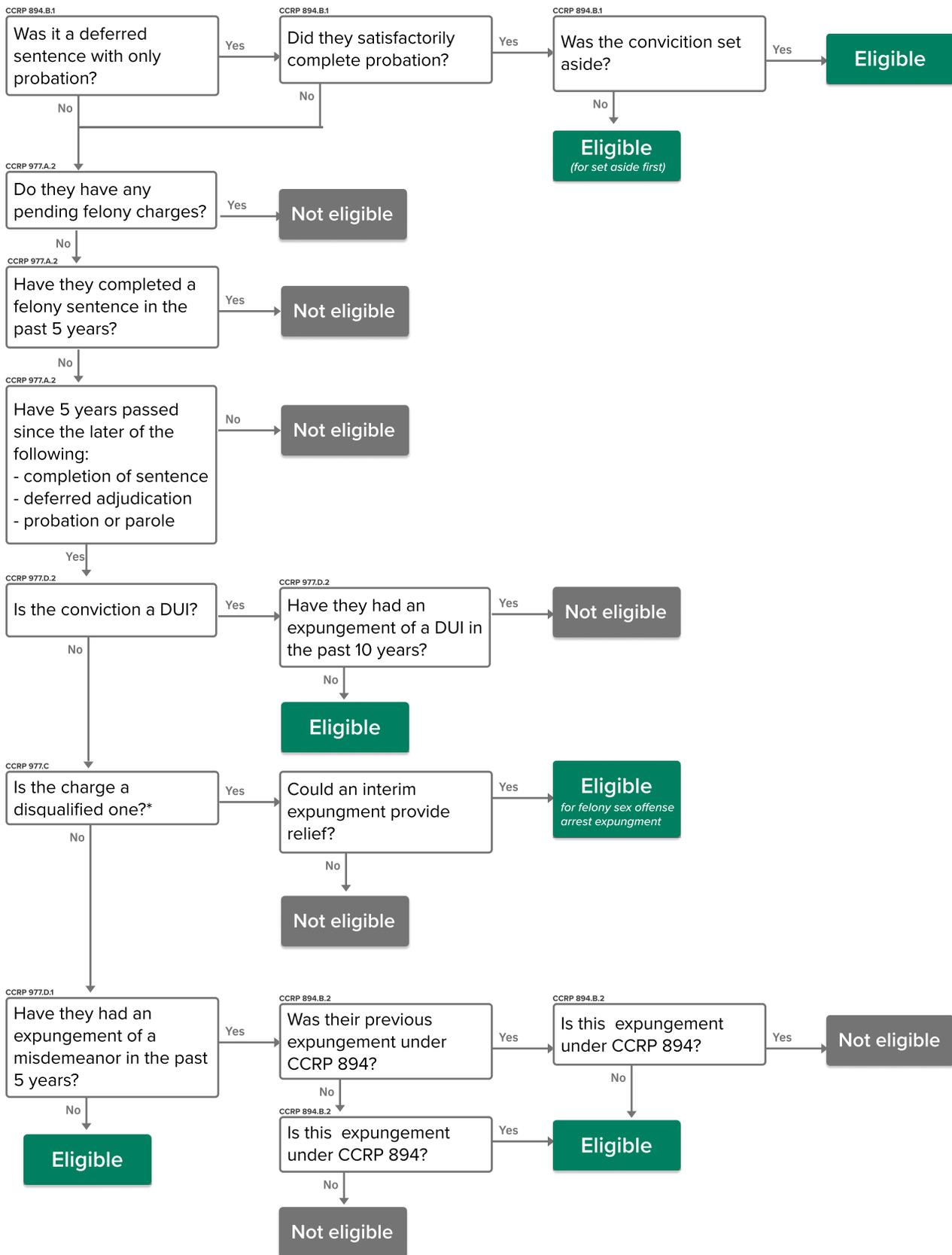
# Louisiana Eligibility | Non-Convictions (Petition)

CCRP 976



# Louisiana Eligibility | Misdemeanors

CCRP 894 and CCRP 977



# Louisiana Eligibility | Felonies

CCRP 893 and CCRP 978

