



**Policy Recommendations To Mayoral Candidates Brandon Johnson And Paul Vallas**

**“BREAKING THE GENERATIONAL CYCLE OF ARREST, INCARCERATION AND RECIDIVISM BY DISMANTLING STRUCTURAL RACISM IN FIRST DISTRICT COOK COUNTY”  
A BLUE-PRINT FOR LEADERSHIP ON RE-ENTRY  
Prepared By Get Cleared, Illinois - P.O.W.E.R In  
Collaboration With Cabrini Green Legal Aid**



THE CHICAGO COMMUNITY TRUST  
EQUITY • OPPORTUNITY • PROSPERITY

**Underwritten by The Building Collective POWER Program of the Chicago Community Trust and Special Consideration Fund of the Field Foundation of Illinois**

## **"CREATING STANDARDS CONSIDERATIONS FOR OBJECTIONS TO PETITIONS FOR SEALING & EXPUNGEMENT IN COOK COUNTY AND BREAKING STRUCTURAL SYSTEMS RACISM"**

The State's Attorney's efforts to reform the criminal legal system and bring more equitable treatment to Black and Latino populations, while laudable and effective in some areas, have fallen short in the expungement and sealing of criminal records. This is due in large part to the lack of established standards and consistent application of the standards by the State's Attorney's Office (SAO) when making decisions on whether or not to object to the expungement and sealing of arrest records. In particular, Kim Foxx's reform measures which are intended to consider past and present socioeconomic impacts on individuals instead of generic categorization, are nonexistent. As a result, Black and Latino populations are overwhelmingly being revictimized again by the criminal legal system during the process which should instead be assisting them in overcoming the circumstances that contributed to their obtaining a criminal record in the first place. Inconsistent application of subjective criteria by the many SAO offices and continual rotation of individual Assistant State's Attorneys is exacerbating the problem.

In all cases, we recommend that standards be based on existing statutory criteria specified in the Criminal Identification Act (the "Act") and applied with consideration of past and present socioeconomic factors, including the recognition that patterns of arrests can evidence inequities, implicit biases, and structural racism within the criminal legal system, especially in highly surveilled and over-policed communities of color. With the understanding that reasonable minds may differ, we request the establishment of a joint working group of interested experts to convene and work on the establishment of agreed standards the SAO will employ when considering petitions.

We respectfully submit as a starting point the following excerpt from the Act that provides guidance. When an objection is filed, "[t]he court may consider the following:

- (A) the strength of the evidence supporting the defendant's conviction;
- (B) the reasons for retention of the conviction records by the State;
- (C) the petitioner's age, criminal record history, and employment history;
- (D) the period of time between the petitioner's arrest on the charge resulting in the conviction and the filing of the petition under this Section; and
- (E) the specific adverse consequences the petitioner may be subject to if the petition is denied."

720 ILCS 2630/5.2(d)(7).

Note that items (A), (B) and (D) only apply to convictions and therefore do not apply to non-conviction expungement petitions.

When making “public policy” objections, the SAO takes the position that the public’s interest in having access to the petitioner’s criminal history outweighs the petitioner’s interests in having the record sealed or expunged. Typically, objections fall within three categories: recency of engagement with the criminal system, the nature of the offense, and length of the petitioner’s criminal history. The following points, while not exhaustive, are offered to encourage discussion of factors the SAO should consider to avoid exacerbating the harms that result from past and present inequities and to give people a fair chance to rebuild their lives.

**Considerations for objections due to “recency” of engagement with the criminal system:**

- **What kind of engagement with the criminal system is of concern to the State? Convictions only? Any arrest, even if it ends with the case being dismissed?**
- **How long is long enough? 3 years? 5 years? 7 years? 10 years?**
  - **Recall that a conviction is only eligible to seal 3 years from the date the petitioner completed his/her most recent sentence. So, for any valid petition to seal convictions, at least 3 years will have passed since the last conviction. However, the ASA could object if the petitioner’s record reflects any criminal engagement since the last sentence was completed, even if the engagement was an arrest that did not result in a conviction.**

**Considerations for objections due to the “nature” of the offense:**

- **ASAs usually object when the person was convicted of a crime of violence or a forcible felony. Does the age of the case matter?**
- **Which crimes of violence would prompt an objection?**
- **Is the decision to object based on the number of arrests or convictions for crimes of violence? How many?**

**Considerations for objections due to length of criminal history:**

- **How many arrests does it take for a person’s criminal history to be considered “lengthy”?**
- **Do the ages of the cases matter? (This is related to the recency issue: Does it matter how long a person’s record was if it has been X years with no criminal engagement?)**
- **Are convictions or arrests that do not result in convictions treated the same? In other words, would a person who has 20 arrests but only 1 conviction be flagged as having a lengthy criminal history?**