

# Cutting Edge Issues in Record Clearance

2021 SEARCH Symposium  
on Justice Information Technology, Policy, and Research

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# Agenda

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- I. The Second Chance Gap
- II. Automating Clean Slate
- III. The Record Clearing Gap

# I. The Second Chance Gap

Colleen Chien, *Professor, Santa Clara University School of Law*  
(with JJ Prescott, *University of Michigan Law School*)

# Research Summary

## 1. Expungements are effective\*

*Expungement of Criminal Convictions, Prescott and Starr (2021)*

## 1. Hardly anyone gets expungements

*America's Paper Prisons: The Second Chance Gap, Chien (2020)*

## 1. Clean Slate provides a path forward\*

# Trends driving expungement

## Lots of...

1. Americans have criminal records.



1. Collateral consequences from having a record.



1. Lost wages, opportunity, lost productivity...  
that could be regained by limiting the impact  
of records.

# First, the good news

## 1. Expungements are effective\*

*Expungement of Criminal Convictions, Prescott and Starr (2020)*



## Expungement of Criminal Convictions: An Empirical Study

Community Legal Services of Philadelphia  
& National Record Clearing Project  
March 26, 2021

J.J. Prescott and Sonja Starr  
Universities of Michigan and Chicago  
HARVARD LAW REVIEW (2021)

# Prescott-Starr Study

1. Studied set-asides in Michigan - removal of conviction from database though record remains available for some purposes
1. Studied **petition-based** expungements of “first-time” convictions after 5 year waiting period

# Findings

***LOW RECIDIVISM:*** Set-aside recipients have extremely low subsequent rearrest and reconviction rates.

***EMPLOYMENT/WAGE IMPROVEMENTS:*** Recipients see substantial increases in employment rates and wages.

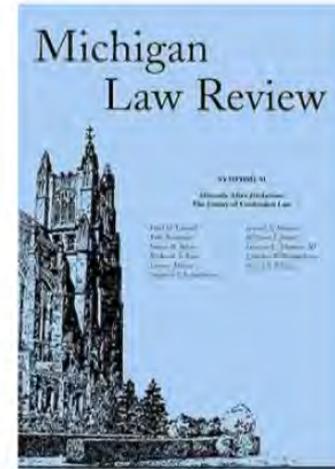
**Expungements are effective\***

# Now, the bad news

## 2. Hardly anyone gets expungements

*America's Paper Prisons: The Second Chance Gap, Chien (2020)*

**America's Paper Prisons:  
The Second Chance Gap  
Mich. Law Rev. (2020)**



# The Second Chance Gap: Paper Overview

1. Defines “the second gap” and explores why it exists
1. Through data work and analysis, measures it in various domains
1. For expungement, measures the non-convictions second chance gap across the country using a dataset of 60K background checks.
1. Reports on the convictions second chance gap in about 10 states

# **Defining the “Second Chance Gap”**

**The difference between eligibility and delivery of second chances.**

# Two types of Second Chance Gaps

- **Uptake Gap**: the share of those eligible for relief who have applied for or received it. **Reflects the effectiveness of the administration of the law.**
- **Current Gap**: the share of those currently with criminal records who could clean their record. **A product of the generosity of the law and effectiveness of its administration.**

# Getting the Work Done

## TO DO

7100 Enabled Terra Randolph (Fort Bend County) to ask about the status of our request. Someone in her office responded. We cannot get expungement statistics for Fort Bend County.  
 7113 Talked to Lisa Cox and re-submitted Denton County data request  
 7110 Called Terra Randolph (Fort Bend County) and enabled her the expungement statistics request.  
 719 Called Lisa Cox. She did not pick up. left a message.  
 717 Called Lisa Cox. She did not pick up. Called Fort Bend County Attorney's Office and left a message for Terra.  
 72 Followed up with Lisa David (Williamson County) and Harris County. Called Lisa Cox, she did not pick up.  
 721 Called Lisa Cox. She did not pick up.  
 630 Called Lisa Cox. She did not pick up.  
 629 Called Collin County District Clerk's Office. Their expungement clerk received our request and forwarded it to correct department. They are preparing a report update. they sent me a letter that said they will not give us expungement statistics. Called Lisa Cox (Denton County) and left a message. Fort Bend called and said they passed the request to the County District Attorney.  
 628 Called Collin County District Clerk's Office. Submitted new request for Fort Bend County.  
 624 Received an email from Montgomery County. they do not have statistics. Talked to Lisa Cox (Denton County). process is complicated and we probably would not be able to get numbers for any other time period other than the present. Lisa said that the numbers she might be able to get us would be incorrect because all records of a case are destroyed following a thirty day sealing period when expungements are granted.  
 622 Called Lisa Cox. She said she thought a clerk had sent me that stats. so she is going to figure out what happened and call me back today.  
 619 Sent a follow up email to Montgomery County. Sent a follow up to Harris County asking about the status of our request.  
 617 Sent a reminder email to Lisa David about breaking down expungement numbers.  
 615/20 Sent follow up email to Lisa David asking to break down the number of expungements by year.  
 611/20 Called Williamson County and spoke to Lisa David. She is going to do some research for us and get back to us. I left her my phone number.  
 610/20 Submitted request to Harris County using online form.



From Code

To Code



```

attachEvent("onreadystatechange",H),e.attachE
noLearn Number String Function Array Date RegExp
=();function F(e){var t=[e]=();return b,e.a
t[1]==1&&&.stopOnFalse){r=1;new(n)=1,u&
o=u.length;r&&&(smt,c(r))return this},remove
n:Function(){return u=[],this},disable:Function()
re:Function(){return p.fireWith(this,argument
nding)},r={state:Function(){return n},always:
romise)?e.promise().done(n.resolve).fail(n.re
id(function(){n=s,t[1]*e[2].disable,t[2][2],
a0,n=h.call(arguments),r=n.length,i=1==r|e&
r,l=Array(r);r>t;t++n[t]&&&.isFunction(n[t
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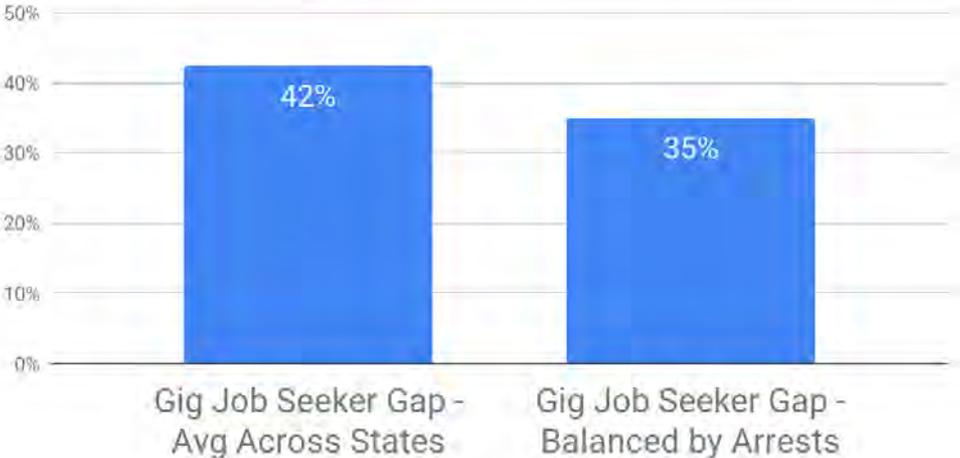
# Estimating the Non-Convictions **Current Gap**

**This paper estimates the current gap using records of gig jobseekers**

Analysis based on a random sample of ~60K background checks of people seeking primarily on-demand jobs (e.g., with Uber, Doordash, Instacart) from Jan 2017-Oct 2018.

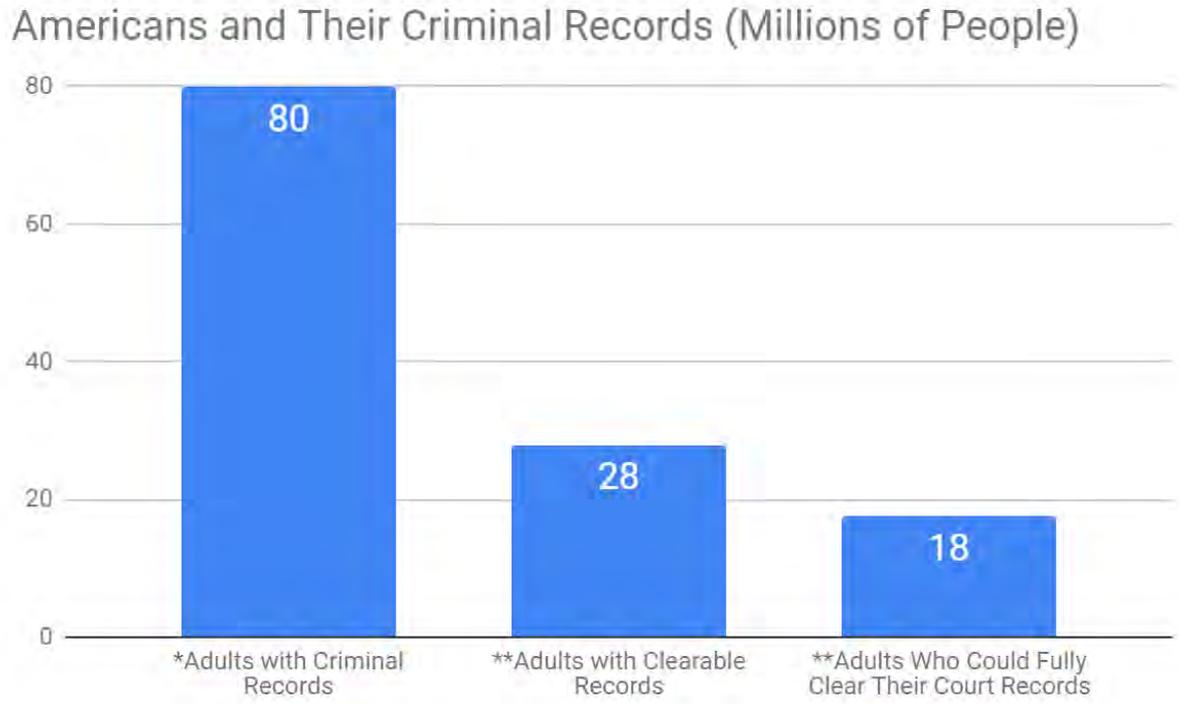
# An estimated 35-45%+ of Gig Jobseekers could clean their records

FIG. Estimates of the Current Records Clearance Second Chance Gap



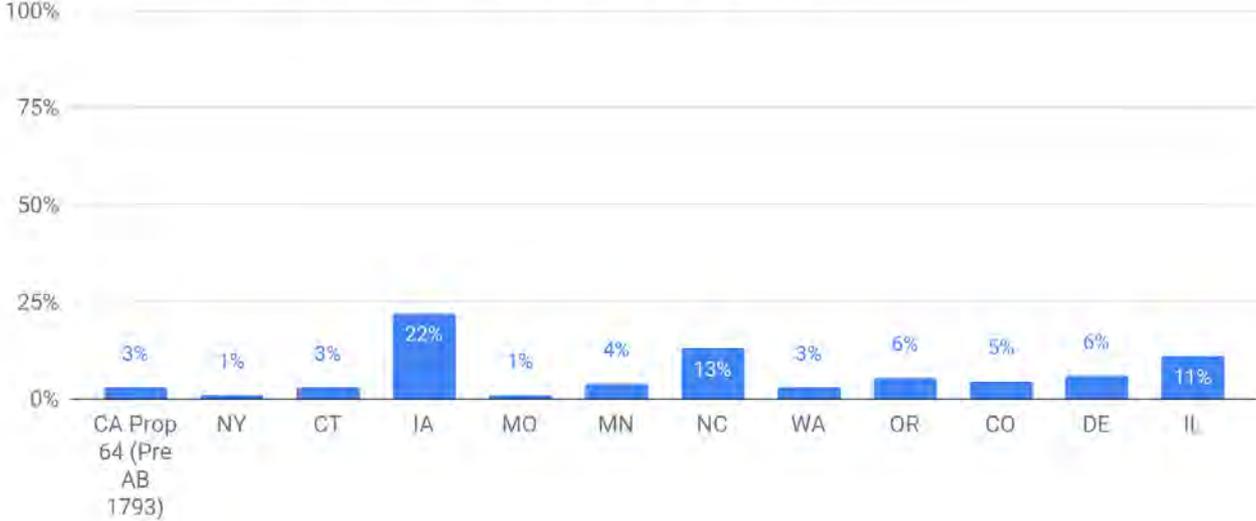
\*Based on analysis and application of clearances rules in 50 states to the criminal records to a population of ~60K actual background checks performed. The state-balanced gap accounts in part for differences in geography between gig jobseekers and the national population of people with arrest records, based on an analysis of all arrest records by state from 1995 to present

# An estimated 20-30M Americans could clear their criminal record partially or entirely (lower-bounds estimate)

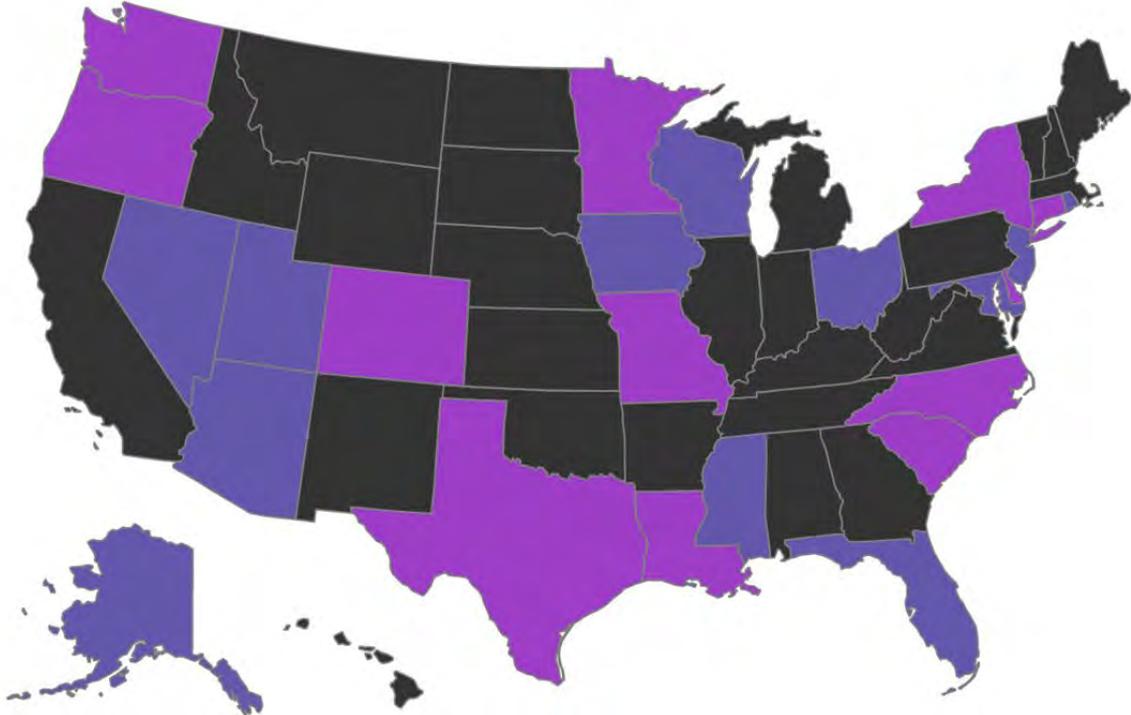


# Estimating the Convictions **Uptake Gap** - mostly ~ < 10% ([www.paperprisons.org/about](http://www.paperprisons.org/about))

Estimated Petitions-Based Conviction Expungement Uptake Rates



# What's the Gap / Opportunity in your state? (paperprisons.org)



Legend:

The Paper Prisons Initiative of Santa Clara University conducts empirical research to draw attention to the tens of millions of Americans stuck in paper prisons - unable to access employment, housing, voting, resentencing opportunities available under the law - due to their past contact with the criminal justice system. We document the "second chance gap" between eligibility for and delivery of relief from this contact. This website provides reports and information on each state's "second chance expungement gap" - the difference between eligibility and ability to access expungement - using the methodology described in [America's Paper Prisons: The Second Chance Gap](#) (Mich. Law. Rev. 2020)

# What's the Gap / opportunity in your state?



Home State Reports Methodology Team Hackathon

## The Connecticut Second Chance Pardon Gap

**Key Findings**

Population with convictions:	-487K
Population with felony convictions:	-157K
Share of adult Black men with a conviction:	-48%
Share of adult Black men with a felony conviction:	-27%
Share of people with convictions eligible to apply for pardons:	-89%
Share of population with convictions eligible for erasure under Clean Slate:	-47%
Population with convictions eligible to apply for pardon:	-360K
Uptake rate of pardons (relative convictions):	-3%
Pardons awarded per year (based on 2016-2019 actuals):	626
Years to clear the backlog based on current rates:	577

[View Full Report](#)

[View Report Outline](#)



## The Connecticut Second Chance Pardon Gap

By: Colleen Chien, Hithesh Bathala, Prajakta Pingale, Evan Hastings, Adam Osmond<sup>1</sup>

### Key Findings

- Population with convictions: ~407K people<sup>2</sup>
- Population with felony convictions: ~157K people<sup>3</sup>
- Share of adult Black men with a conviction: ~48% | ~27% with felonies
- Share of people with convictions eligible to apply for pardons: ~89%
- Share of people with convictions eligible for erasure under Clean Slate: ~68%
- Population with convictions eligible to apply for pardons: ~360K
- Uptake rate of relief : ~3%
- Pardons awarded per year: 626 (based on 2016-2019 actuals)
- Years to clear the backlog based on current rates: 577 years

Summary Statistics	Eligible to Apply for Pardons	Eligible for Erasure under "Clean Slate" <sup>4</sup>
People Eligible / (Share of People with convictions)	360K / (89%)	277K / (68%)
People Eligible to clear <i>all</i> convictions / (Share of People with convictions)	295K (73%)	190K (47%)
Uptake rate based on eligibility	~3%	~4%
Years it would take to clear the backlog at the current rate	577	443

# Back to the good news

## 3. Clean Slate provides a path forward\*

Table 6: Records Clearance Cost Estimates



### 3. Clean Slate provides a path forward\*

**but...**

- Many unknowns about the impact of automated records relief
  - Risk of statistical discrimination vis a vis Ban the Box
- For more significant, recent records, relief often unavailable;
- Lack of knowledge may lead to lack of benefit;
- Data deficiencies make automation incomplete, hard; fines and fees may still bar relief = second second chance gap
- Proliferation of dirty records (Lageson)

# II. Automating Clean Slate

Shayna Cummings, *Staff Solutions Engineer, Code for America*

# CODE *for* AMERICA



Non-profit using **technology** and human-centered design to show that government can and should work well for **everyone**.

# CLEAR *My* RECORD

## Our goal

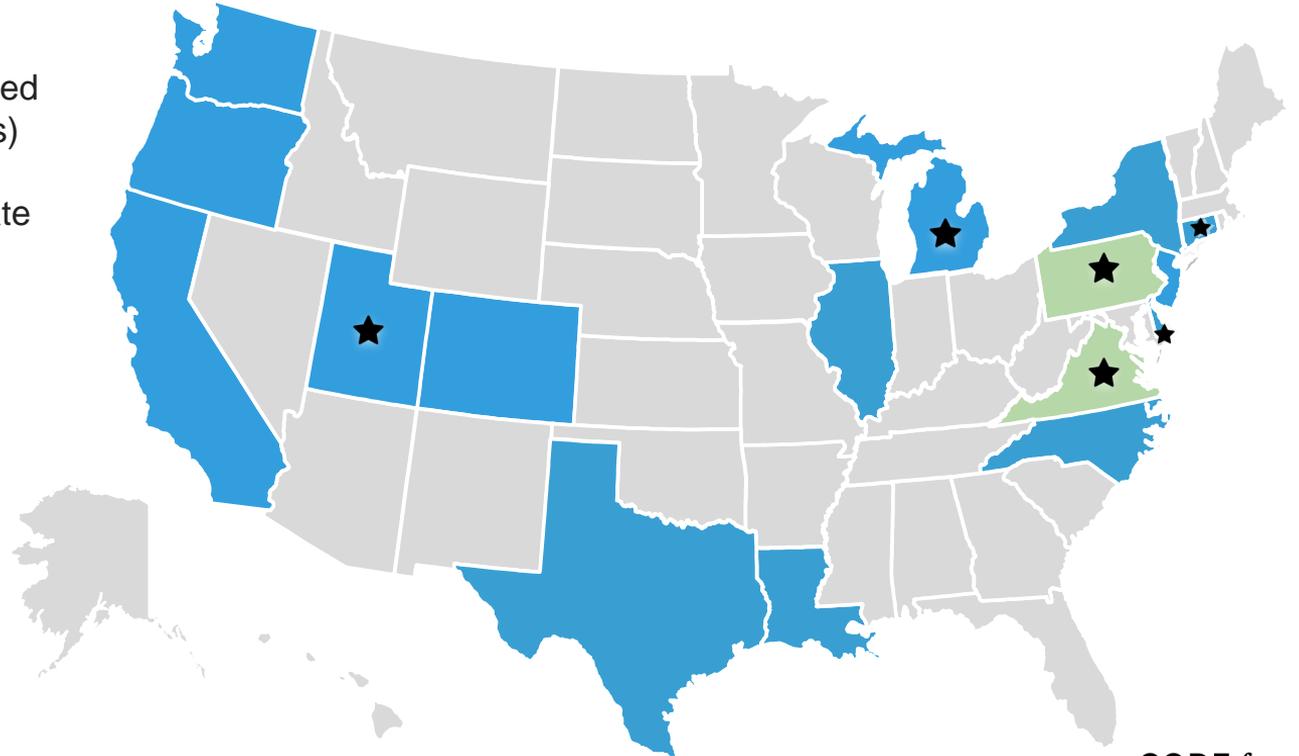
Help people impacted by a criminal record **pass background checks** so they can qualify for **jobs, housing** and **educational opportunities** and improve the well-being of all communities.

We bring technical perspective to ensure the **feasibility & impact** of automatic record clearance legislation.



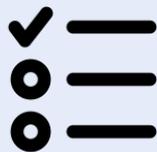
# Clean Slate landscape

-  States where CfA has worked (including active campaigns)
-  Other states with Clean Slate laws
-  Clean Slate bill passed



# Process for implementing automation

## Step 1



Determine eligibility

*Which records qualify for clearance?*

## Step 2



Update records

*Modify disposition, flag as expunged, or sequester*

**Understand the systems & data  
you already have to determine  
eligibility**

# Where to start the process

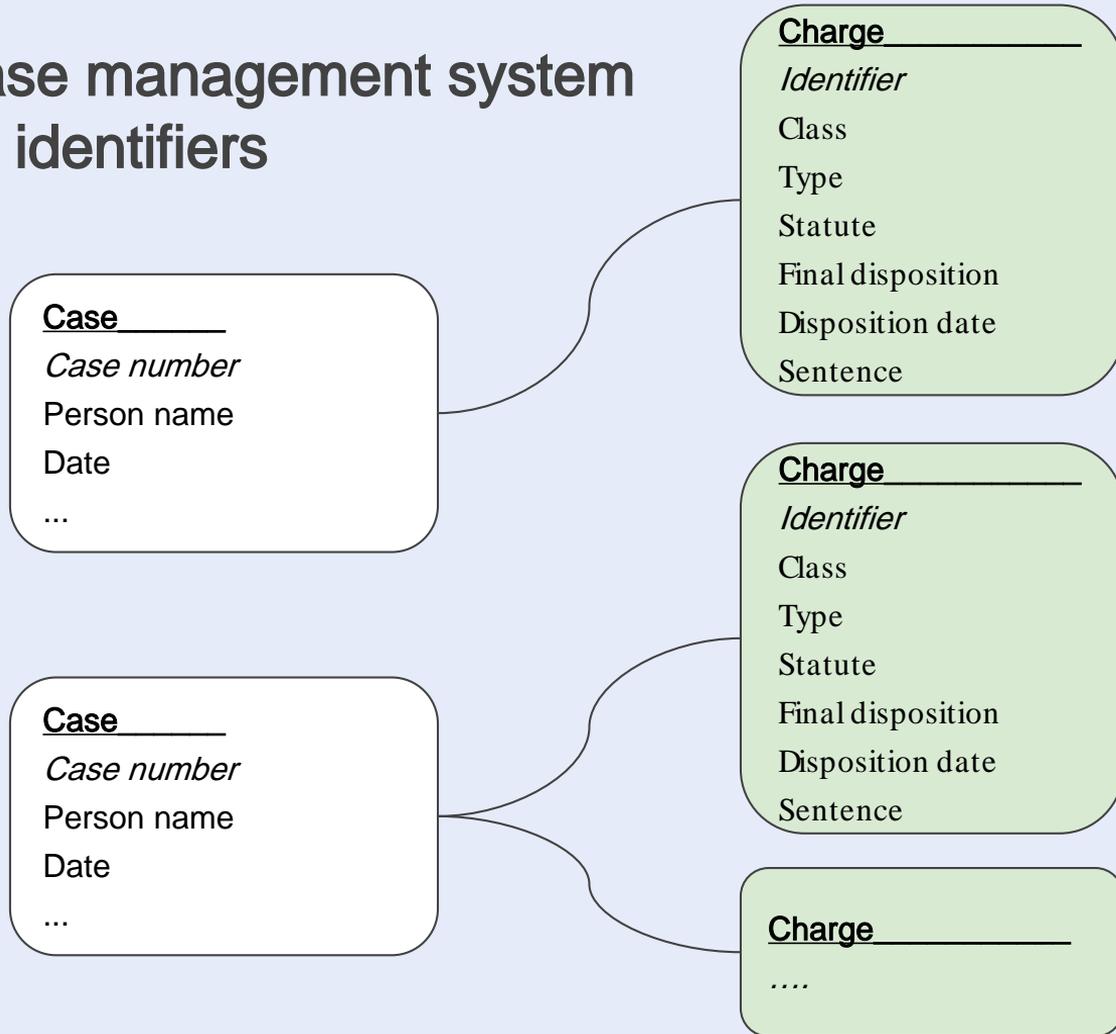


**Criminal History Repository**  
*State Police*

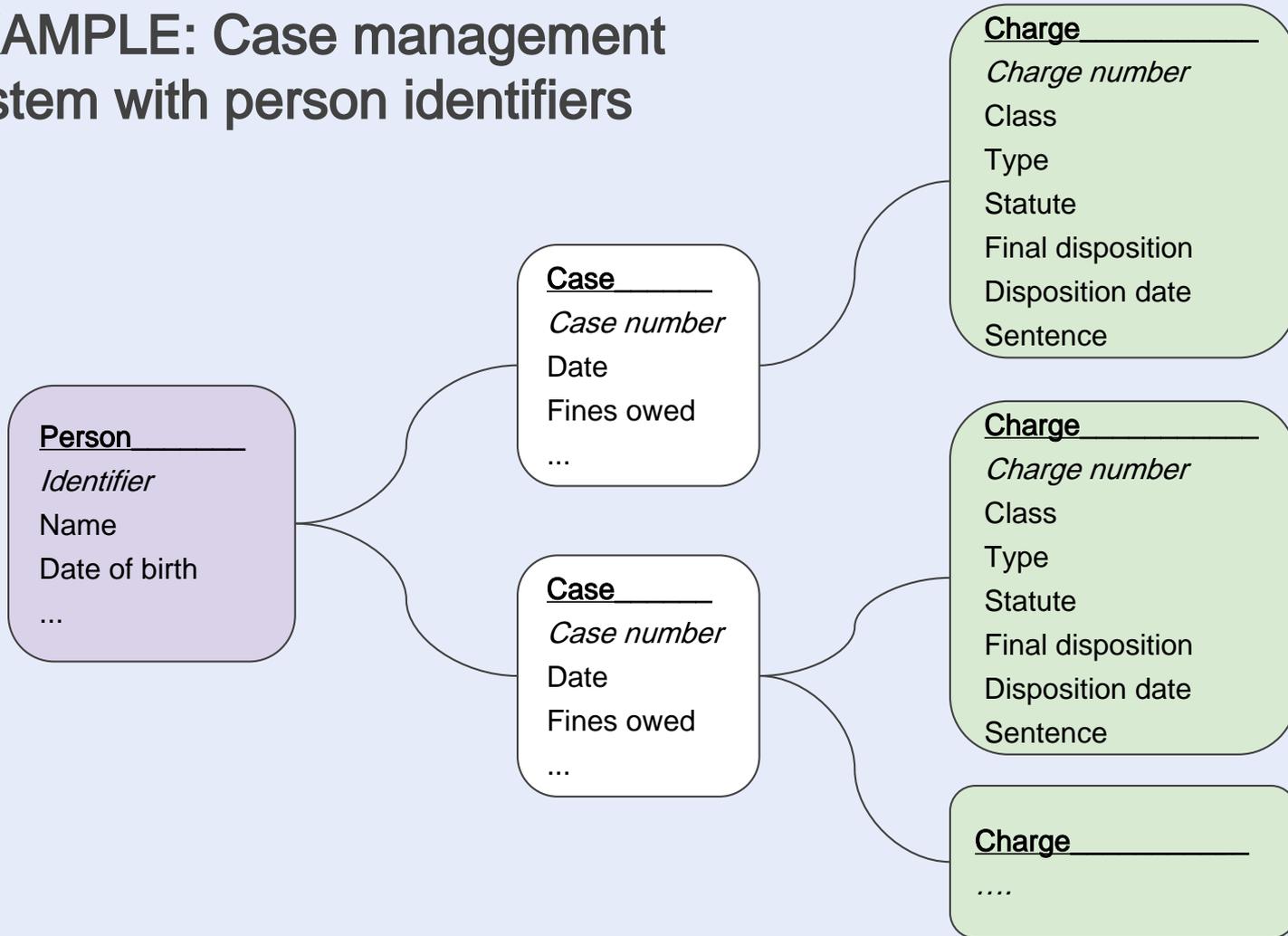


**Case Management System**  
*Courts*

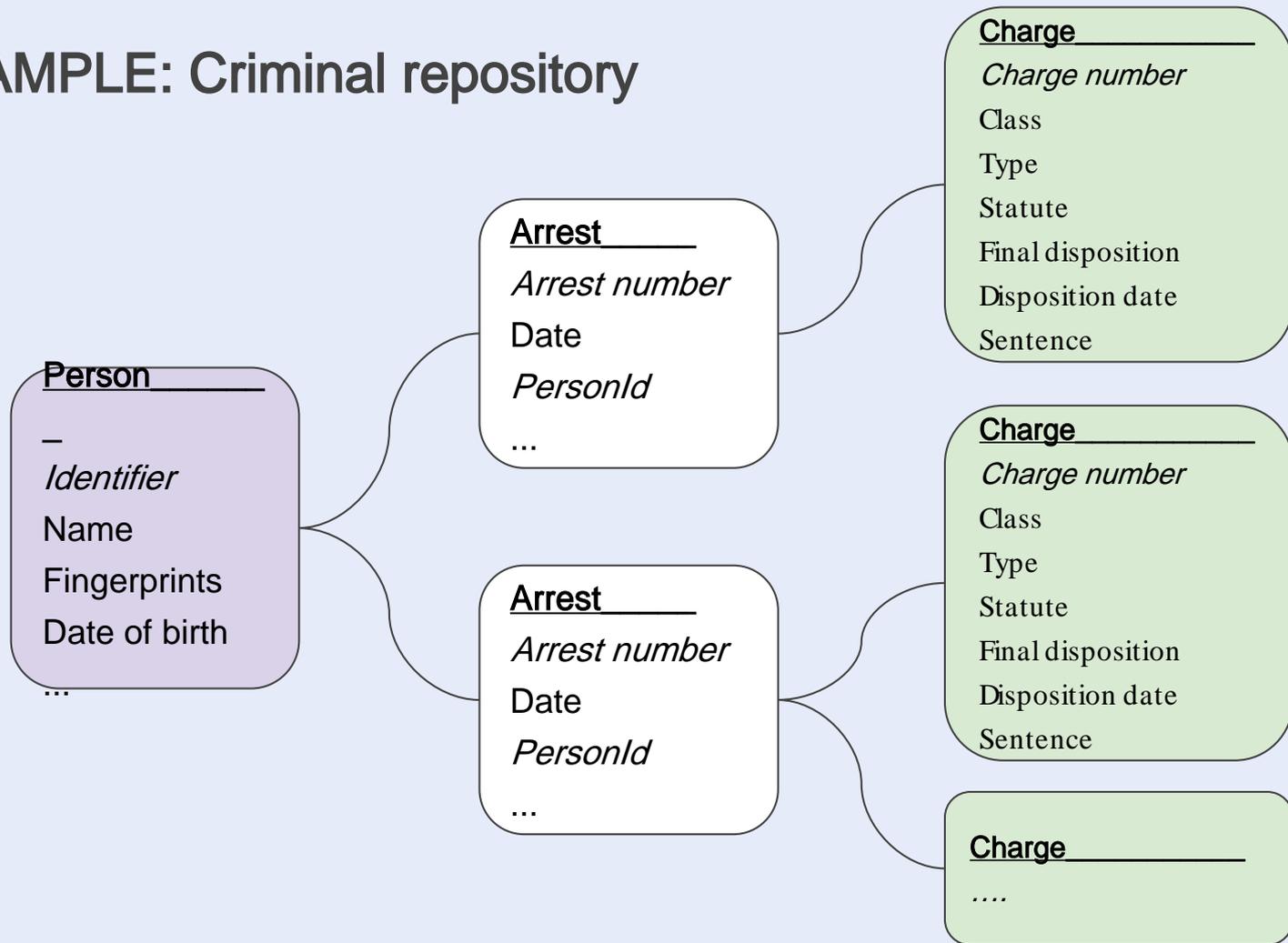
# EXAMPLE: Case management system without person identifiers



# EXAMPLE: Case management system with person identifiers



# EXAMPLE: Criminal repository



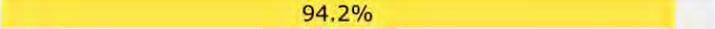
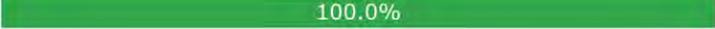
# Determining eligibility through data

Criteria from the policy	Where to find it
“Found not guilty”	Charge → Disposition
“Has no other pending charges”	Person → Charge → Disposition
“Class B, C, or D misdemeanor”	Charge → Class <i>and</i> Charge → Type
“Excludes [DUI statute]”	Charge → Statute
“X years since judgment”	Charge → Disposition date

# Designing policy for implementability

Instead of...	Suggestion:
“Has no pending charges in any state”	Limit to your state
“Has no pending charges in municipal/justice/family court”	Limit to charges that can be accessed in main system
“X years since release date”	Use X years + max sentence length
“Fines, fees and restitution paid”	Include only data that lives in main system

# Visualizing data quality

Data Point	Distinct	Total	
<b>Case number</b>	161,530	322,102	 COMPLETE
<b>Person identifier</b>	117,952	322,102	 COMPLETE
<b>Offense type</b>	6	303,316	 94.2%
<b>Offense class</b>	11	322,093	 100.0%
<b>Offending statute</b>	234	322,102	 COMPLETE
<b>Disposition</b>	14	282,038	 87.6%
<b>Adjudication date</b>	458	278,597	 86.5%

“Just go through and delete/hide/remove the records!”

The goal is to work **within** the limitations  
of the **existing system**

The petition-based process is not  
going away



# III. The Record Clearing Gap

Sharon Dietrich *Litigation Director, Community Legal Services of Philadelphia*

# Expungement/sealing don't lock down 100% of publicly available information about a case

- Policy: permitted limited use of “cleared” records
- Digital environment: impossibility; free speech issues

# So why does record clearing matter?

- Employers = Background checks
- Clients' reactions to the “imperfect” solution of record clearing

# Planned Limited Access

- Clients sometimes want access: immigration purposes; clearing up “ants under the refrigerator” issues
- Law enforcement uses
- Research/public policy data
- Safety valve: certain jobs

# Limiting Digital Access - Background

**EU:** Right to be forgotten (2014 court decision):  
Search engines are required to consider requests  
to remove links when harm shown

**US:** 1st Amendment

# US Media - Taking Voluntary Action

- Accepting petitions to remove old coverage
- Newspapers include: Boston Globe, Cleveland Plain Dealer; Atlanta Journal-Constitution
- Stopping publishing mugshots (front end)

# Published legal opinions in cleared cases

- PA Supreme Court challenge: State Constitution “Right to Reputation”
- Removal or redaction?
- Westlaw/Lexis

# Thank you!

Colleen Chien,  
Shayna Cummings *[scummings@codeforamerica.org](mailto:scummings@codeforamerica.org)*  
Sharon Dietrich,