Cutting Edge Issues in Record Clearance

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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)
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

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

From Code => To Code
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

*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)
What’s the Gap / Opportunity in your state? (paperprisons.org)

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?

The Connecticut Second Chance Pardon Gap

By: Colleen Chien, Hithesh Bathala, Prajakta Pingale, Evan Hastings, Adam Osmond

Key Findings

- Population with convictions: ~407K people
- Population with felony convictions: ~157K people
- 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

<table>
<thead>
<tr>
<th>Summary Statistics</th>
<th>Eligible to Apply for Pardons</th>
<th>Eligible for Erasure under “Clean Slate”</th>
</tr>
</thead>
<tbody>
<tr>
<td>People Eligible / (Share of People with convictions)</td>
<td>360K (89%)</td>
<td>277K (68%)</td>
</tr>
<tr>
<td>People Eligible to clear all convictions / (Share of People with convictions)</td>
<td>295K (73%)</td>
<td>190K (47%)</td>
</tr>
<tr>
<td>Uptake rate based on eligibility</td>
<td>~3%</td>
<td>~4%</td>
</tr>
<tr>
<td>Years it would take to clear the backlog at the current rate</td>
<td>577</td>
<td>443</td>
</tr>
</tbody>
</table>
Back to the good news

3. Clean Slate provides a path forward*

Table 6: Records Clearance Cost Estimates

<table>
<thead>
<tr>
<th>Method</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal-Clinic Assisted Petition-Based Clearance</td>
<td>$3,757</td>
</tr>
<tr>
<td>Automated Identification + Petition Based Clearance</td>
<td>$128</td>
</tr>
<tr>
<td>Clean Slate Total Automation</td>
<td>$3</td>
</tr>
</tbody>
</table>
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
Non-profit using technology and human-centered design to show that government can and should work well for everyone.
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

<table>
<thead>
<tr>
<th>Person</th>
<th>Identifier</th>
<th>Name</th>
<th>Date of birth</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Case</th>
<th>Case number</th>
<th>Date</th>
<th>Fines owed</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Charge</th>
<th>Charge number</th>
<th>Class</th>
<th>Type</th>
<th>Statute</th>
<th>Final disposition</th>
<th>Disposition date</th>
<th>Sentence</th>
</tr>
</thead>
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<th>Charge</th>
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<th>Disposition date</th>
<th>Sentence</th>
</tr>
</thead>
</table>

EXAMPLE: Case management system with person identifiers
EXAMPLE: Criminal repository

Person
- Identifier
  Name
  Fingerprint
  Date of birth

Arrest
  Arrest number
  Date
  PersonId

Charge
  Charge number
  Class
  Type
  Statute
  Final disposition
  Disposition date
  Sentence

Arrest
  Arrest number
  Date
  PersonId

Charge
  Charge number
  Class
  Type
  Statute
  Final disposition
  Disposition date
  Sentence
## Determining eligibility through data

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

<table>
<thead>
<tr>
<th>Instead of…</th>
<th>Suggestion:</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Has no pending charges in any state”</td>
<td>Limit to your state</td>
</tr>
<tr>
<td>“Has no pending charges in municipal/justice/family court”</td>
<td>Limit to charges that can be accessed in main system</td>
</tr>
<tr>
<td>“X years since release date”</td>
<td>Use X years + max sentence length</td>
</tr>
<tr>
<td>“Fines, fees and restitution paid”</td>
<td>Include only data that lives in main system</td>
</tr>
</tbody>
</table>
# Visualizing data quality

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

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Shayna Cummings@codeforamerica.org
Sharon Dietrich,