The Colorado Second Chance Sealing Gap

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Key Findings

Population with criminal charges: ~2.0M
Population with conviction records: ~1.3M
People with convictions eligible for relief (share): ~68%
People with convictions eligible for relief (population): ~873K
People with *any* record eligible for relief (share): ~70%
People with *any* record eligible for relief (population): ~1.4M
Uptake rate of *any* records relief: ~5.5%
Estimated number of sealings in last year of data (2019): 21,472
Years to clear the backlog: ~66
Est. aggregate annual earnings lost associated with people with clearable convictions: $ 4.45B*
*Does not include consideration of fines and fees

I. Abstract

CRS §§ 24-72-705 and 24-72-706 allows individuals whose criminal records meet certain conditions to seal their records using petition-based methods. Ascertaining, applying the law to a sample of 2,673 criminal histories including 79% with convictions records, then extrapolating our results to the estimated population of individuals in the state with court records[2] we estimate the share and number of people who are eligible for relief but have not sealed records. These individuals fall into the "second chance gap," the difference between eligibility for and receipt of records relief[3] (note, we did not model legal financial obligations or other out of record criteria). We also estimate the aggregate earnings loss associated with people in the second chance gap.[4]

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[2] Estimate of 2020 population of people with court records based on Becki Goggins et al; *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, SEARCH (2018) available at https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf, Table 2 (2016), a growth rate of 3% derived based on 10-years of actuals, and a multiplier of 80% to account for the share of individuals that are arrests but never charged, as described in Chien 2020.

[3] As defined in *id.*

[4] We rely on the methodology and estimates provided in Colleen Chien, et al, *Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver's License*, __ Texas A.M Law Rev. Forthcoming ___(estimating, based on review of the literature, the national average earnings loss associated with misdemeanor and felony convictions to be $5,100 and $6,400, respectively, and that of a suspended license to be $12,700)

Based on the methods described above, we find that approximately 68% of individuals in our sample are eligible to clear at least one of their convictions and 35% are eligible to clear all of their convictions. 70% of individuals with any records are eligible to clear at least one of their records and 27% are eligible to clear all of their records. Extrapolating to the total number of people with records in Colorado, this yields an estimate of 873K people with convictions that are eligible for convictions relief and ~1.4M people with any records that are eligible for relief but haven't received it. This translates into approximately $ 4.45B in cumulative lost earnings per year associated with the second chance gap in Colorado, of people with sealable records.

Combining historical sealing statistics with our eligibility calculations, an estimated 5.5% of people with records eligible for relief have received it, with the remaining 94.5% of people remaining in Colorado's second chance sealing gap. Based on reported records, the State sealed around 21,472 cases in the last year of available data (2019). At this rate, it would take approximately 66 years to clear the existing second chance sealing gap. However, due to deficiencies in the data and ambiguities in the law uncovered during our analysis, including regarding disposition, charge type, and sentence completion criteria, to provide relief through "Clean Slate" automated approaches would require significant data normalization and cleaning efforts. We include, in Appendix E, statute drafting alternatives to avoid some of these problems. Included in our report are our Methodology (Appendix A); Disposition Data Report (Appendix B); Appendix C (Common Charges); Detailed Sealing Statistics (Appendix D); Clearance Criteria Challenges and Legislative Drafting Alternatives (Appendix E).

II. Summary

Every time a person is convicted of a crime, this event is memorialized in the person's criminal record in perpetuity, setting off thousands of potential collateral consequences, including being penalized in searches for employment, housing, and volunteer opportunities.

To remove these harmful consequences, Colorado law allows people whose criminal records meet certain conditions to seal their records.[5] However, the "second chance gap" in Colorado "sealings" - the share of people eligible for relief who haven't sealed records because of hurdles in the petition process - we suspect is large. To carry out our analysis, we ascertained charge eligibility based on reading the code, inferred whether a person had a charge pending, and made assumptions about the estimated date of completion of the sentence based on the passage of time derived from practice. Importantly, we did not account for outstanding fines or out-of-state charges which could potentially disqualify some individuals for relief, nor did we model criteria from whom eligibility was unascertainable from the available record.

[5] Described in "Colorado Sealing Rules" Section of Appendix A.

III. Key Findings

Using the approach described briefly above and in detail in Appendix A we find that:

- In the state of Colorado, an estimated 2.0M out of approximately 5.8M state residents have criminal records; ~1.3M people have convictions.
- Of those, an estimated 68%, or about 873K people are eligible for sealing of at least one of their convictions, and an estimated 70%, or about 1.4M people are eligible for sealing of at least one of their records under the current law (not taking into account fines and fees and out of state charges). Approximately **27% of individuals with records, or 435K people, we estimate, could clear their records entirely and 35% of individuals with convictions, or 453K people could clear all convictions.**
- Based on the assumption that our sample is representative of people with court records in Colorado, we estimate the current felony population in Colorado as approximately 171K people and the share of people with felonies eligible for convictions relief as 7%.
- Based on records obtained from the sources disclosed in Appendix D, and methods disclosed in Appendix A, we estimate, conservatively, that the state-issued no more than 83K sealings over the last 20 years. Based on these numbers and the calculations above, we estimate that 5.5% of people eligible to clear any record have done so, leaving 94.5% of people in the sealing uptake gap.
- At current rates of sealing, it would take around 66 years to clear the existing backlog of eligible records using current methods.
- We estimate the aggregate earnings loss of 873K people with convictions in the Colorado second chance gap translates to a cumulative annual earnings loss of about $ 4.45B.

IV. Conclusion

Based on our analysis, we estimate Colorado's sealing law allows for approximately 70% of those who live with records to get records relief and 68% to get relief from convictions. Without taking into consideration fines and fees, approximately 27% of individuals with records could clear their records entirely, and 35% of individuals with convictions could clear all convictions. But to date we estimate that 5.5% of those eligible for convictions relief have actually received the remedy, leaving about 872K people with convictions, 1.43M people with any record, and close to 94.5% of people in the sealing second chance gap. The second chance convictions sealing gap translates into a cumulative annual earnings loss to the state of about $ 4.45 billion.

Appendix A: Methodology

To estimate the number and share of people eligible for but not receiving relief in each state, we proceeded as follows, implementing the approach developed in Colleen V. Chien, *America's Paper Prisons: The Second Chance Gap* (2020) ((Chien (2020)).

First, we ascertained the relevant records relief laws and developed rules logic, using legal research to develop lists of ineligible and eligible charges. Next, we obtained and cleaned the data sample and collected information on the state's criminal population. Where possible, we also obtained administrative data on the number of expungements granted historically. Next, we developed flow logic to model the laws. Next we applied the flow logic to the data sample to estimate eligibility shares in the sample. Finally we extrapolated from the population in the sample to the total criminal population in the state overall to calculate number and share of individuals in the "current gap" (people with currently records eligible for relief) as well as the "uptake gap" (share of people eligible for expungement over time that have not received them). The descriptions below disclose several shortcomings in our approach, including our inability to account for outstanding fines or out of state charges which could potentially disqualify some individuals for relief, failure to model criteria from whom eligibility was unascertainable from the available record, the existence of missing data for which we assumed a lack of eligibility, and our inability to be sure that our sample is representative of all with criminal records in the state.

Ascertaining the Law and Developing Rules Logic

Based on court guidelines, statutes, and guides from non-profits listed below we discerned the law and determined its internal logic, with respect to the charge grade (e.g. misdemeanor or felony), offense type (e.g non-violent or domestic violence charge), time (e.g 3-year waiting period), disposition type (e.g. nolo contendere) and person conditions (e.g. a lifetime limit of 2 convictions) that define eligibility. These are disclosed in the RULES section below.

From these rules, we created lists of eligible and ineligible offenses. In some cases, we leveraged classes or grade information provided to use in the record. In other cases, we reviewed the relief rules for disqualified classes of charges and then searched the criminal code for the corresponding statute name or number corresponding with each class of charges. As required, we then used these statutes to identify the characteristics of each potentially eligible offense: their charge type (e.g. felony, misdemeanor), degree, and the maximum possible duration of incarceration/amount to be fine for each offense. Once we had assembled the characteristics of each potentially ineligible offense, we cross-referenced each offense and its characteristics against the eligibility statute. If a specific statute section was outside the prescribed characteristics of any category of eligibility (e.g., class of offense, degree, maximum duration of

incarceration/amount to be fined, etc.), the offense was deemed ineligible for expungement. The offenses that were within each of the eligibility requirements after this process were deemed eligible for expungement. We did not consider the eligibility of offenses that fulfilled the unmodeled criteria referenced above, making our estimate under-inclusive and over-inclusive.

Obtaining the Data Sample and Collecting Data on the State Population of Individuals with Criminal Records and the Number of Expungements Granted

From a data vendor, we obtained court records from the data source indicated below. Where not already available, we used Name+DOB to create unique person IDs and created state-specific criminal histories for each person. Profile information on the analyzed population is provided below in every report in Appendix B.

We approximated the number of people with criminal charges using a few methods. If state criminal population information was available directly from the state, we relied on it. When it wasn't available, we considered two sources. First, we consulted public records provided by SEARCH (2018), a listing of criminal subject counts provided by the repositories of each state. We then adjusted for growth in the number of people with records using a 3% CAGR average based on 10 years of historical data. As a sanity check, we compared this number with the estimated number of people with criminal records derived based on taking the population of people in the state from the Census and then multiplying the "national average" share of ~25% of Americans having a criminal record (derived from 331M individuals and 80M people with criminal records). When the difference was large (i.e. more than ~25%), we used the population-derived number. The raw numbers derived from SEARCH records and from the state include multi-state offenders, people who did not live in the state at the time of the crime, and also, people that may have since their disposition left the state. Regardless of the source, the raw numbers do not account for deported or deceased people. As described in the report, where possible we made adjustments to take into account these factors, but it should be reiterated that from these reasons, the population numbers provided are estimates.

We further accounted for people with uncharged arrests as described in Chien (2020) based on an analysis prepared by Professor Robert Apel of Rutgers University based on the NLSY97, an ongoing U.S. Bureau of Labor Statistics survey tracking 7,335 randomly selected people starting in their 20's by removing them from our eligibility analysis, which is based on court records.

In addition to researching the number of individuals with criminal histories, we sought from state sources administrative data on expungements granted historically. When public reports were not available, we filed records requests or consulted other sources of information. We used this data to calculate the "uptake rate" and the number of years it would take to clear the backlog.

Applying the Law to the Sample Data to Obtain an Eligibility Share

To apply the law to data, we used the methods described in Chien (2020) to first prepare the data by cleaning and labeling dispositions and charges data. We report the share of charges missing dispositions or charge types in Appendix B of each report. We then applied the logic to the sample to obtain a share of people eligible for records relief in the sample. When relevant data was missing, we assumed, conservatively, that the charge or incident was ineligible for relief.

To approximate "sentence completion" we used recorded sentences where available, assuming that the sentence had been carried out, and where not available, an assumption that the sentence was completed 2.5 years after the disposition date for misdemeanor charges, and 3.5 years after the disposition date for felony charges where sentence completion was not readily available. Importantly, we did not account for outstanding fines or out-of-state charges which could potentially disqualify some individuals for relief per the summary of the rules.

When the eligibility of frequently occurring charges wasn't addressed directly by the "top down" methodology, described above, of researching eligibility or ineligibility based on the rules, we used a "bottom up" approach of ascertaining the eligibility of these charges one by one.

Applying the Eligibility Share to the Criminal Population and State History of Relief to Estimate the Number of People in the Second Chance Gap

To develop a total state eligibility estimate based on the shares derived in the steps above we assumed that the sample was representative enough of the criminal population that we could use its eligibility shares as the basis for a state estimate. We then applied these shares to the estimated number of people with court criminal records in the state, developed using the approach described above. This yielded our estimation of the number and share of individuals in the "current gap" (people with currently records eligible for relief) as well as, in combination with the expungement actuals mentioned above, the "uptake gap" (share of people eligible for expungement over time that has not received them).

Colorado Sealing Rules

Primary Sources: State guide
Secondary Sources: Colorado CCRC | CO Public Defender's guide 2019 edition (p. 5-9) | A. Moffitt Law Resource (2021)

SEALING CONVICTIONS THROUGH PETITIONS: CRS § 24-72-706

1. Misdemeanors and Petty offenses:
    a. Sealing if the conviction is a petty offense or drug petty offense, upon a 1-year waiting-period after the date of final disposition or release from supervision, whichever is later. Examples of drug petty offenses are:
        i. Possession of drug paraphernalia (§ 18-18-428).
        ii. Unauthorized possession of prescribed controlled substance (§ 18-18-413).
        iii. Possession of 12 marijuana plants or more as a first offense; public consumption or display of marijuana up to 2 ounces; transferring or dispensing up to 2 ounces without consideration (§ 18-18-406).
    b. Sealing if the conviction is class 2 or 3 misdemeanors or a drug misdemeanor, upon a 2-year waiting-period after the date of final disposition or release from supervision, whichever is later.
2. Felonies:
    a. Sealing if the conviction is a class 4, 5, or 6 felony, a level 3 or 4 drug felony, or a class 1 misdemeanor, upon a 3-year waiting-period after the date of final disposition or release from supervision, whichever is later.
    b. Sealing if any other eligible offense upon a 5-year waiting period after the date of final disposition or release from supervision, whichever is later.
3. Subsequent Convictions: A person with a subsequent conviction may seal a conviction only under the following circumstances (CRS § 24-72-709 (effective as of Sept 2021)):
    a. If the highest offense is an eligible petty offense or petty drug offense, upon 2 years from the most recent conviction IF the defendant has no more than 5 convictions in separate cases.
    b. If the highest offense is an eligible misdemeanor, misdemeanor drug offense, or a level 4 drug felony, upon 5 years after the latest conviction IF the defendant has no more than 4 convictions in separate cases.
    c. If the highest offense is an eligible felony or drug felony, upon 10 years after the most recent conviction IF the defendant has no more than 3 previous convictions in separate cases.
4. Not eligible (CRS § 24-72-706(2) [*see* also Colorado Defenders]:
    a. Crimes not eligible are class 1 or 2 misdemeanor traffic offenses
    b. Class A or B traffic infraction
    c. DUIs and DWAIs
    d. Domestic violence
    e. Cruelty to animals
    f. Child abuse

g. A crime listed under the Victim Rights Act (*see* § 24-4.1-302(1)), except that VRA misdemeanors can be sealed in judge's discretion through hearing.
h. Level 1, 2, and 3 felonies and level 1 drug felony (except class 3 felonies in § 18-18-106(8)(a)(II)(B) before July 1, 1992, § 18-18-406(8)(a)(II)(B) before August 11, 2010, and § 18-18-406(6)(a)(II)(B) before October 1, 2013)
i. Sexual offenses
j. Identity theft
k. Pandering
l. Crimes of violence, special offenders, extraordinary risk and aggravating circumstances crimes, crimes against pregnant victims, or at-risk victims (youth and elderly). (CRS § 24-72-706(2)) (*see* list by A. Moffitt Law)

5. Lifetime or other Limits
6. Treatment of Multiple Convictions from the Same Incident: If it is a single incident with multiple convictions, our model look to the highest degree conviction to determine whether the case is eligible for sealing.
7. Outstanding payments: Conviction records may not be sealed if the defendant owes fines and court fees unless vacated by the court (CRS § 24-72-706(1)(e)).
8. Other Unmodeled Criteria or details:
    a. Disqualification of a felony while out on bond, bail, parole, or incarcerated, if the sentence exceeds our assumption of 3.5 years; disposition for sentence completion.

SEALING NON-CONVICTIONS THROUGH PETITIONS: CRS § 24-72-705

9. Sealing for dismissals, acquittals, deferred judgment, and diversion upon the date of judgment.
10. Sealing for deferred judgment and sentence completion if the conduct does not involve unlawful sexual behavior

Appendix B: Data Sample Description

Our data comprised a sample of criminal histories chosen at random from a background check company based on checks conducted from 2018-2021 similar to the sample described in Chien (2020).

Data Statistics	
Number of People in the Sample	2,673
Share of People with Convictions	79%
Share of People with Felony Convictions	11%

Share of People with Misdemeanor Convictions in the Sample	28%
Share of People with Felony Charges in the Sample	22%
Share of Charges Missing Dispositions	11%
Share of Charges Missing Chargetypes	10%

Appendix C: None

Appendix D: Detailed Sealing Statistics

We obtained expungement statistics from the Colorado Judicial Branch, which reports that 59,664 felony, delinquency, misdemeanor, and traffic records were sealed between 2010 - October 4, 2019.[6] The Colorado Judicial Branch reports that 16,104 sealings were granted between January 1, 2019 and October 4, 2019, from which we extrapolated that a total 21,472 sealings were granted from January 1, 2019 to December 31, 2019.[7] Based on the data from the Colorado Judicial Branch, we also extrapolate that 82,632 sealings have been granted between January 1, 1999 and December 31, 2019.

Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives[8]

Criteria	Administrability Challenge	Example	Drafting Alternative
Sentence completion	Not tracked in court data and hard to infer as clean sentencing data is often not available; it also is often unclear whether or not outstanding fines and fees must be paid, and whether have been.	Records relating to a first conviction ...voided upon the petitioner's successful completion of the sentence will be sealed by the court. KRS §§ 218A.276(1), (8), (9). Record...can be sealed by the court one year after sentence completion if the petitioner has no subsequent charges or convictions. Colo. Rev. Stat. § 24-72-705(1)(c)(I), (1)(e)(I).	Disposition Date (+ X Years)
First conviction; qualifying conditions	Lack of unique identifier across precludes determination		Bless commercial identification approximation technique

[6] There number of petitions filed in civil court to seal criminal records and convictions is listed in the Colorado Judicial Branch Annual Statistical Reports, available at https://www.courts.state.co.us/Administration/Unit.cfm?Unit=annrep. (see, e.g. in 2019 Annual Report, Table 18)
[7] 16,104 * (12/9) = 21,472
[8] Adapted from Chien (2020)

Personal demographic trait such as age, military status, or other condition	Information may not be easily ascertainable / available on the record or charge category condition	Records relating to an offense committed by current and former military personnel „,can be dismissed Cal. Pen. Code § 1170.; A record relating to a matter sealed pursuant to section 781 is destroyed ...when the person reaches 38 years of age. Cal. Welf. & Inst. Code §781(d). Cal. Welf. & Inst. Code § 781(d).	Specify an identification strategy that can be implemented at scale or do not include demographic traits
Class or grade condition	Missing class, grade or category information	Records relating to a charge or conviction for a petty offense, municipal ordinance violation, or a Class 2 misdemeanor as the highest charge can be removed from the public record after 10 years, if all court-ordered conditions are satisfied. S.D. Codified Laws § 23A-3-34.	Explicitly specify the qualifying crimes
Court-ordered conditions	Require individual review /check for any “court-ordered” conditions and compliance re: same		Do not include court-ordered conditions
Laundry list disposition criteria	Vulnerable to changes to definitions, requires detailed clean data	Records of arrest are destroyed within 60 days after detention without arrest, acquittal, dismissal, no true bill, no information, or other exoneration. R.I. Gen. Laws § 12-1-12(a), (b).	Simple description e.g. “All records that do not end in a conviction”