The South Carolina Second Chance Expungement Gap

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Key Findings

People with criminal records: ~1.9M
People with convictions: ~1.2M
Share of people with convictions eligible to apply for expungement: ~25%
People with convictions eligible for expungement: ~300K
Share of people with *any* record eligible for relief : ~30%
People with *any* record eligible to apply for expungement : ~570K
*Does not include consideration of fines and fees

I.   Abstract

South Carolina Code Sections 17-22-910, 22-5-910 and 22-5-930 allow individuals whose criminal records meet certain conditions to expunge their records. Ascertaining, then applying the law to a sample of 3,578 criminal histories including 95% with convictions records, and then extrapolating to the estimated population of 1.9M individuals in the state with criminal records[2], we estimate the share and number of people who are eligible for relief but have not received it and therefore fall into the "second chance gap"−the difference between eligibility for and receipt of records relief.[3] (We did not model legal financial obligations or other out of record criteria).

Based on the method described above, we find that approximately 25% of individuals in our sample are eligible to clear their convictions, 1% of all convictions, and 30% of individuals with records are eligible to clear their records, 1% of all records. Extrapolating to the total number of people with records in South Carolina, this yields an estimated 300K people with convictions that are eligible for convictions relief, 570K with records that are eligible for *any* relief that haven't received it. 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 Expungement Statistics

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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, 2020: A Criminal Justice Information Policy Report*, SEARCH (2020) available at https://www.ncjrs.gov/pdffiles1/bjs/grants/255651.pdf, Table 1 and a growth rate of 3% derived based on 10-years of actuals.
[3] As defined in Chien (2020), *supra* note 1.

(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, South Carolina law allows people whose criminal records meet certain conditions to expunge their records.[4] However, the "second chance gap" in South Carolina "expungement" - the share of people eligible for relief who haven't expunged records because of hurdles in the petition process - we suspect is large. To estimate it, we used research, official guides to the law, and practice expertise to model the eligibility criteria for expungement set forth in the law and applied it to a sample of records covering a random sample of records from 2010-2018 sourced from the South Carolina Law Enforcement (SLED) 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.

III.   Key Findings:

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

- In the state of South Carolina, an estimated 1.9M people have a criminal record and 1.2M people have conviction records.
- Based on the assumption that our sample is representative of people with criminal records in South Carolina, we estimate that the current felony population in South Carolina is approximately 637K people.
- Of those with convictions, an estimated 25%, or about 301K people are eligible for expungement of their convictions, and an estimated 30% of all with a record are eligible for expungement of part or all of their record under the current law (not taking into account fines and fees and out of state charges). Approximately **1% of individuals with convictions could clear all convictions.**

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[4] Described in "Rules" Section of Appendix A.

IV.   Conclusion

Based on our analysis, South Carolina's expungement laws allow for approximately 30% of those who live burdened with records to get records relief, 25% of those with convictions can get relief from convictions. 1% of individuals with convictions could clear all convictions.

Appendix A: Methodology

To carry out our analysis, we implemented the approach developed in Colleen V. Chien, *The Second Chance Gap* (2020) as follows. 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 a sample of criminal histories from the state and collected information on the state's criminal population. When possible, we also obtained administrative data on the number of expungements granted historically. Next, we developed flow logic to model the existing laws. Next, we applied the flow logic to the criminal history 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, making adjustments derived from actuals, 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 pending 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 was representative of all with criminal records in the state. (See Chien 2020 for additional details). We use the term "expunge" loosely throughout this methodology to refer to the form of records relief available in the state pursuant to the statutes described in the RULES section of this report.

Ascertaining the Law and Developing Rules Logic

Based on the court guidelines, statutes, and guides from non-profits listed in the RULES section, 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. See "RULES" below. To the extent possible, we consulted with local attorneys to check our assumptions, and disclosed the eligibility conditions we weren't able to model due to data or other limitations.

From these rules, we created lists of eligible and ineligible offenses. To do so, 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. 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 a Data Sample of Criminal Histories and Ascertaining the State Population of Individuals with Criminal Records

We obtained a sample of criminal histories from the data source indicated below. Where the criminal histories of individuals were not already available based on a person ID, we used Name+DOB to create unique IDs and create state-specific criminal histories for each person. Descriptive statistics for our sample are provided in Appendix B. Whether supplied or generated, the person ID used has the risk of double counting individuals due to inconsistencies in name records, however, to minimize the bias introduced by this methodology, we relied on the sample primarily for eligibility ratios, rather than supply absolute numbers of people with criminal histories in the state.

To ascertain the state population, we collected information on the number of people with biometric criminal records in the state from SEARCH (2020), a consortium of repositories (adjusting for growth in the number of people with records and accounting for people with uncharged arrests as described in Chien (2020)). Because they are based on biometric data, repository data should contain fewer if any duplicates. However, because the SEARCH sources do not systematically purge people who have moved out of state or have died, they are somewhat inflated. If total criminal population information was available directly from the state through administrative records, we considered it as well, and relied upon the smaller number of the two sources..

To ascertain data on the number of expungements granted historically, we consulted administrative data sources and related public disclosures, with the results reported in Appendix D.

Applying the Law to the Sample Data to Obtain an Eligibility Share (Current Gap)

To ascertain shares of people with records eligible for but not receiving relief (current gap), 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 chargetypes below in Appendix B. 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 took the conservatie approach under the logic by assuming either that the charge or incident was ineligible for relief or removing it from the analysis. This step could introduce further errors into our analysis.

To approximate "sentence completion" we used recorded sentences where available, assuming that the sentence had been carried out, and taking an average period where a range of times was provided. Where usable sentence data was not available, we assumed that sentences were completed 2.5 years after the disposition date for misdemeanor charges, and 3.5 years after the disposition date for felony charges where sentence. Importantly, unless otherwise indicated, 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 below. If not available from our data source, we also did not account for pending charges which are disqualifying in some jurisdictions, however based on the literature we believe the share of people with records that have a currently pending charge is small, less than 5%.

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 researching these charges and ascertaining their eligibility 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, Uptake Gap

To develop a state eligibility estimate based on the shares derived in the previous step, 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 criminal records in the state to obtain an estimate for the number of people in the "second chance gap." If the state sample was "convictions only" data, we conservatively reduced the criminal population eligible for relief by a share based on a sample of state actuals as provided in Chien 2020 Appendix B-3.

To calculate the "uptake rate" the share and number of people with records eligible for relief that have received this relief, we combined our estimates of the number of people in the second chance gap and combined it with a conservative estimate of the number of expungements granted over 20 years. To generate this estimate, we used actuals, but when not available over the entire period, we extrapolated back based on the first year of available data.

South Carolina Expungement Rules

Primary Sources: [South Carolina Code 17-22-910. Applications for expungement; administration » LawServer](#) (2019) | [Section 22-5-910. Expungement of criminal records](#) (2019) | [Section 22-5-930. Expungement; first offense drug convictions](#) (2019)
Secondary Sources: Apple Tree [SC Expungement Reference Guide](#) (2020) | [CCRC South Carolina](#) (6/16/20) | [SLED FAQs](#)

CONVICTIONS: [South Carolina Code 17-22-910. Applications for expungement; administration » LawServer](#) (2019) / [Section 22-5-910. Expungement of criminal records](#) (2019) / [Section 22-5-930. Expungement; first offense drug convictions](#) (2019)

1. Misdemeanors:
    a. Expungement for **misdemeanors or summary offenses** ($1000 or 30-day sentence), after 3-year waiting-period from date of conviction if clean (no conviction), 5-year waiting-period from conviction if offense was domestic violence if clean. [S.C. Code Ann. § 22-5-910(A)](#).
    b. Expungement if first offense for **Simple Possession** of a Schedule I-V drug upon petition, after a 3-year waiting-period starting from completion of sentence, if clean. [Section 22-5-930(A)](#) (no conviction)
    c. Expungement if first offense for **Possession with Intent to Distribute** a drug, upon petition, after 20 year wait-period starting from completion of sentence, if clean of **drug or felony convictions**. [Section 22-5-930(B)](#).
1. Felonies:
    a. Expungement if first offense for **Simple Possession** of a Schedule I-V drug upon petition, after 3-year waiting-period starting from completion of sentence, if clean. [Section 22-5-930(A)](#).
    b. Expungement if first offense for **Possession with Intent to Distribute** a drug, upon petition, after 20-year waiting-period starting from completion of sentence, if clean of **drug or felony convictions**. [Section 22-5-930(B)](#).
    c. Youthful Offender Act convictions
2. Not Eligible: For misdemeanors involving a motor vehicle. [S.C. Code Ann. § 22-5-910(A)](#).
3. Lifetime and Other Limits: Lifetime limit on all forms of expungements, including 30-day offenses, possession charges, and intent to distribute charges, to one per lifetime. [22-5-910](#)(D). Remedies may also be available under AEP, PTI, and conditional discharge programs. (see [Diversion programs](#)).
4. Treatment of Multiple Convictions from the Same Incident: Multiple convictions may be treated as a single conviction for expungement purposes if they were sentenced in a

single sentencing hearing, were closely connected, and arose from the same incident. 22-5-910(E).
5. LFO Payment Required for Sentence Completion: No, or at least neither major code sections (17-22-910 and 22-5-910) impose this requirement.
6. Other Unmodeled Criteria or Details: Youthful Offender Act, diversion program completion, fraudulent check, blue light stop.

NON-CONVICTIONS:

1. Before 2009, Expungement if dismissed or acquitted if applied for after judgment. See S.C. Code Ann. § 17-22-950.
2. After 2009, Expungement and destruction of records if charges dismissed, discharged, or acquitted, automatically upon the date of adjudication. Statutes silent on lifetime limits. S.C. Code Ann. 17-1-40(B)(1) and SC Code § 17-22-950(A).

Appendix B: Data Sample Description

Our data comprised a sample of criminal histories covering a random sample of records from 2010-2018 sourced from the South Carolina Law Enforcement (SLED).

Data Statistics	
Number of People in the Sample	3,578
Share of People with Convictions	95%
Share of People with Felony Convictions	51%
Share of People with Misdemeanor Convictions in the Sample	84%
Share of People with Felony Charges in the Sample	52%
Share of Charges Missing Dispositions	7%
Share of Charges Missing Chargetypes	25%

Appendix C: Common Charges
    A. Top 10 Charges in our Dataset

Charges	Number of Charges	Percentage of Charges

burglary (non-violent) 2nd degree	9,903	9%
fraudulent check under $500 - 1st	8,386	8%
fraudulent check	3,420	3%
forgery	3,346	3%
driving under suspension	3,200	3%
burglary - first degree	1,977	2%
financial transaction card fraud	1,952	2%
poss of a weapon during violent crime	1,744	2%
public disorderly conduct	1,409	1%
poss 28g or less marij/10g or less hash 1st	1,332	1%
Total share and charges associated with top 10 charges	**36,669**	**34%**

B. Top 10 Expungeable Charges in our Dataset

Expungeable Charges	Number of Charges	Percentage of Expungeable Charges
fraudulent check under $500 - 1st	5,971	6%
public disorderly conduct	670	1%
poss 28g or less marij/10g or less hash 1st	555	1%
shoplifting <$2000	451	0%
drinking alcohol in public conveyance unlawful	336	0%

poss 28g or less marij or 10g or less hash 1st	293	0%
giving false information	265	0%
receiving stolen goods <$2,000	137	0%
public drunk	137	0%
assault and battery 3rd degree	110	0%
Total share and charges associated with top 10 expungeable charges	**8,925**	**8%**

Appendix D: Clearance Criteria Challenges and Legislative Drafting Alternatives[5]

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
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"

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[5] Adapted from Chien (2020).