

# The Missouri Second Chance Expungement Gap

By: Colleen Chien, Moumi Kumar, Chhavi Garg and Navid Shaghghi<sup>1</sup>

## Key Findings

People with criminal records: ~1.8M

People with convictions: ~1.1M

Share of people with convictions eligible for relief : ~ 49%

People with convictions eligible for expungement: ~518K

Records expunged per year: ~ 896 (2021)

Uptake rate of expungement relief: <~1%

Years to clear the backlog at current rates: ~1,000+

Estimated aggregate annual earnings loss associated with clearable convictions: ~\$2.6 Billion

Estimated reduction of the White-Black gap in people with conviction records: 50.9%

Estimated reduction of the White-Black gap in people with felony conviction records: 50.5%

\*Does not include consideration of fines and fees

## I. Abstract

Mo. Rev. Stat. §§ 610.140.4 and 610.105 allows individuals whose criminal records meet certain conditions to expunge their records. Ascertaining, then applying the law to a sample of 50K criminal histories including 73% with convictions records, and then extrapolating to the estimated population of 1.8M individuals in the state with criminal records<sup>2</sup>, 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.<sup>3</sup> We also estimate the aggregate earnings loss associated with people eligible for relief from convictions that have not yet received it.<sup>4</sup> We did not model legal financial obligations or other out-of-record criteria. Racial disparities are significant in the Missouri population of people with

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<sup>1</sup> Colleen Chien is a Professor at Santa Clara University School of Law, and founder of the Paper Prisons Initiative ([paperprisons.org](http://paperprisons.org)); and Moumi Kumar and Chhavi Garg are master's students in Information Systems at Santa Clara University; Navid Shaghghi is a professor in the department of Mathematics and Computer Science (MCS) of the College of Arts and Sciences as well as in the department of Computer Science and Engineering (CSEN) of the School of Engineering at Santa Clara University. This report is based on the concept and definition of the “second chance gap” described in Colleen V. Chien, “America’s Paper Prisons: The Second Chance Gap,” 119 Mich. Law. Rev. 519 (2020) Contact: [colleenchien@gmail.com](mailto:colleenchien@gmail.com) | [www.paperprisons.org](http://www.paperprisons.org)

<sup>2</sup> 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 an annual growth rate of 3% derived based on 10-years of actuals.

<sup>3</sup> As defined in Chien, *supra* note 1.

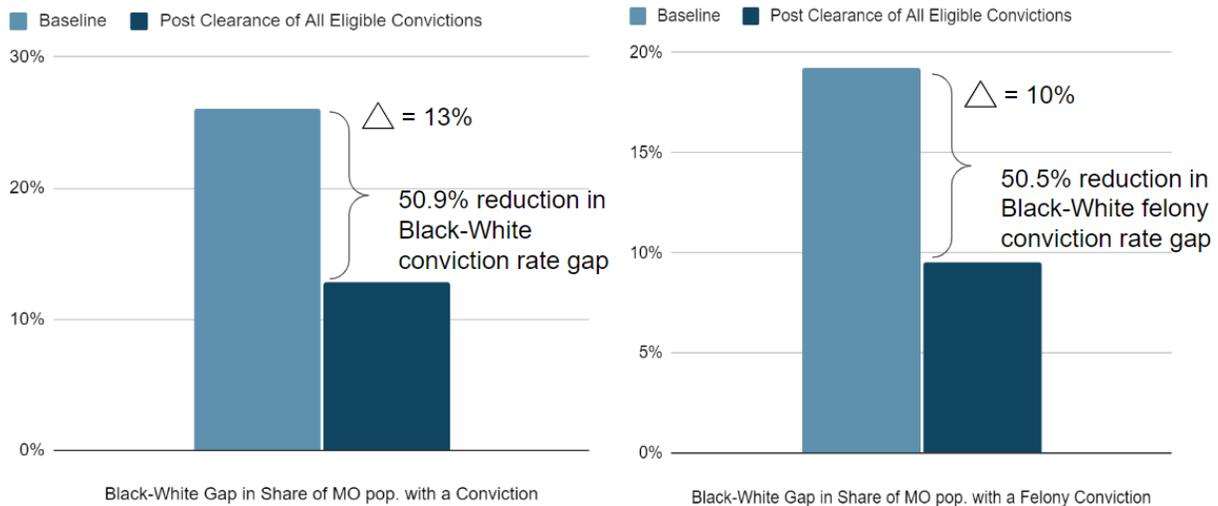
<sup>4</sup> We rely on the methodology and estimates provided in Colleen Chien, et al., Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver’s License, 64 Ariz. Law Rev. 675 (2022) (estimating, based on review of the literature, the national average earnings losses associated with a misdemeanor and felony conviction to be \$5,100 and \$6,400, respectively. As averages, these numbers reflect the loss experienced by individuals with a range of criminal records, employment history, and employability). (paper available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4065920](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4065920))

a criminal record, with an estimated 12.2% of White Missourians but 38.3% of Black Missourians having a conviction record based on state criminal history data and Census data (2021).

*Table 1: Estimated Share of Missouri Population with Convictions - Pre and Post- expungement of All Eligible Records - Race Analyses<sup>5</sup>*

Metric	Conviction		Felony Conviction	
Race	Baseline	Post Clearance of All Eligible	Baseline - Any Felony	Post Clearance of All Eligible - Any Felony
Black	38.3%	20.2%	26.3%	14.1%
White	12.2%	7.4%	7.1%	4.6%
All	15.0%	8.7%	9.2%	5.6%
Black -White Gap	26.1%	12.8% (reduction of 50.9%)	19.2%	9.5% (reduction of 50.5%)

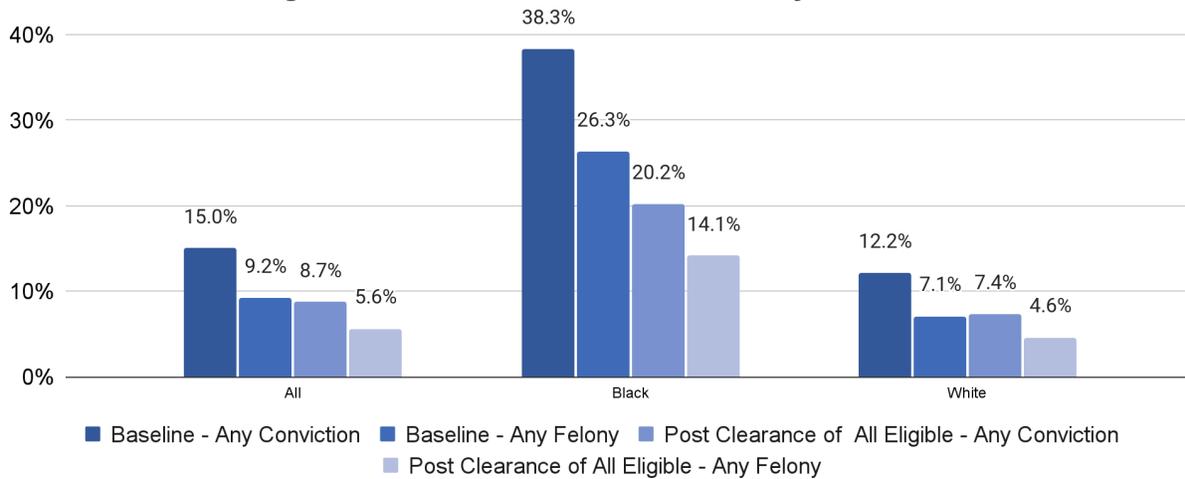
*Figure 1: Share of Missouri Population with Convictions - Pre and Post- expungement of All Eligible Records - Racial Gap Analysis<sup>6</sup>*



<sup>5</sup> All race analyses shown/done based in the Data Sample described in Appendix B and the racial distribution of people in the Missouri population as reported by the Census (2021) (<https://www.census.gov/quickfacts/MO>). Due to deficiencies in the data (including coverage of expunged cases, deaths, and departures), the racial composition of people with records before and after “Clean Slate” clearance of everyone in the second chance gap cannot be estimated with complete certainty. As such the disparities shown should be regarded as ballpark figures.

<sup>6</sup> See above.

## Likelihood of having a Conviction Record in Missouri by race



Based on the method described above and detailed in Appendix A, we find that approximately 49% of individuals in our sample are eligible to clear their convictions, 42% of all convictions, and 64% of individuals with records are eligible to clear their records, 43% of all records. Extrapolating to the total number of people with records in Missouri, this yields an estimated 518K people with convictions that are eligible for convictions relief, 1.2M with records that are eligible for any relief that haven't received it.

Combining historical statistics with our eligibility calculations, we estimate that <1% of people with conviction records eligible for sealing have received it, leaving 99% of people with conviction records in the Missouri "second chance gap." To ascertain the approximate annual earnings loss associated with Missouri second chance convictions gap, we multiply the number of people in the convictions gap (518K) by \$5,100, a conservative estimate for the average loss in earnings yearly due to the second chance gap.<sup>7</sup> We estimate that \$2.6 Billion in cumulative earnings are lost every year in Missouri due to convictions that could be, but have not been cleared.

## Racial gap analysis

### *Impact on people with convictions*

Currently, although 12.2% of White people have a conviction, the figure is more than triple for Black people, 38.3%. However, if all eligible convictions were cleared, the White-Black gap in conviction rates would shrink from 26.1% (38.3%-12.2%) to 12.8% (20.2%-7.4%), representing a 50.9% reduction in the White-Black conviction rate gap.

<sup>7</sup> \$5,100 is a national average that is associated with misdemeanors (*see id.*), but the second chance gap in Missouri includes individuals with both misdemeanor and felony convictions, making the number a conservative estimate, however this is counterbalanced by the state's average annual income being a little lower than the national average. (<https://worldpopulationreview.com/state-rankings/average-income-by-state>)

### *Impact on people with felony convictions*

Among people with felony convictions, the gap is even greater: 7.1% of White people have a felony while almost four times that share, 26.3% of Black people live with a felony conviction, contributing to a 19.2% gap (26.3-7.1%) in White-Black felony conviction rates. However, if all eligible convictions were cleared, the White-Black gap in conviction rates would shrink to 9.5% (14.1%-4.6%), representing a 50.5% reduction in the White-Black felony conviction rate gap.

Based on reported records, the State expunged 896 cases in the last year of available data (2021). At this rate, it would take approximately 1,000+ years to clear the existing second chance expungement gap to clear all convictions in the backlog alone. However, due to deficiencies in the data and ambiguities in the law uncovered during our analysis, including regarding disposition, chargetype, 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 Expungement 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, Missouri law allows people whose criminal records meet certain conditions to expunge their records.<sup>8</sup> However, the “second chance gap” in Missouri “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 1937-2020 sourced from the Missouri State Highway Patrol. 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.

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<sup>8</sup> Described in “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 Missouri, an estimated 1.8M out of approximately 6.2M state residents have criminal records; 1.1M have convictions.
- Of those with convictions, an estimated 49%, or about 518K people are eligible for expungement of their convictions, and an estimated 64%, or about 1.2M people 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 43%, or 616K of individuals with records, we estimate, could clear their records entirely, 42%, or 445K individuals with convictions could clear all convictions.
- Based on the assumption that our sample is representative of people with criminal records in Missouri, we estimate that the current felony population in Missouri is approximately 650K people. The share of people with felonies eligible for convictions relief is 39%, or 253K people.
- At current rates of expungement, it would take around 1,000+ years to clear the existing backlog of eligible charges.
- If all eligible convictions were cleared, the White-Black gap in conviction rates in the population would be reduced by 50.9%, and the White-Black gap in felony convictions would be reduced by 50.5%.
- We estimate the aggregate earnings loss of the approximately 518K people with convictions in the Missouri second chance gap is about \$ 2.6B.

### **IV. Conclusion**

Based on our analysis, Missouri's expungement laws allow for approximately 64% of those who live burdened with records to get records relief, 49% to get relief from convictions, 43% of individuals with records could clear their records entirely, and 42% of individuals with convictions could clear all convictions. But to date we estimate that only 1% of eligible individuals have received relief, leaving 99% of people in the expungement uptake gap. The conviction second chance gap translates into a cumulative annual earnings loss to the state of about \$2.6 Billion. If all eligible convictions were cleared, the White-Black gap in conviction rates in the population would be reduced by 50.9%, and the White-Black gap in felony convictions would be reduced by 50.5%.

### **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 conservative

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 address 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.

## **RULES**

## Missouri Expungement Rules

Primary Sources: [Mo. Rev. Stat. § 610.140.4](#) (2019) | [Mo. Rev. Stat. § 610.105](#)

Secondary Sources: Carver Cantin guide [Missouri Expungement: Everything you need to know](#) (7/12/19) | [Missouri CCRC Profile](#) (1/29/2022) | [Missouri Bar \(2022 update\)](#)

CONVICTIONS: ([Mo. Rev. Stat. § 610.140.4](#) (2019) modified by [Missouri CCRC Profile](#) ([Link to gov hosted version](#), 2019)

1. Misdemeanors:
  - a) Expungement if **misdemeanor (defined [here](#))**, upon petition, if clean after 1 year waiting-period starting from sentence completion subject to exceptions below ([§ 610.140.4](#). at (5)(1))
  - b) Expungement for **1st-time DWI offense**, upon petition, if clean after 3 year waiting-period starting from sentence completion, else alcohol offenses not eligible per below ([§ 610.130\(1\)](#)) (DWI = “**intoxication related traffic offense**”)
2. Felonies: Expungement if **felony** if 3 years clean after sentence completion ([§ 610.140.4](#). at (5)(1))
3. Not eligible: all crimes listed in [§ 610.140](#) at (2) including **class A felony (high-level definition)** (at 1) **dangerous felonies** (at 2)(defined in sec. 19 of [statute](#)), **sex offenses** (at 3), **death offenses** (at 4), crimes listed at (5), (6), (7), (11) **intoxication-related traffic** (8) [do not model: (9)-(11)]
4. \*Lifetime limits: Up to 1 felony and 2 misdemeanors per lifetime, as evaluated by the highest level offense. ([§ 610.140.4](#) at (12))
5. Treatment of multiple convictions from the same incident: Treat as a single conviction (highest one) in the same petition. ([§ 610.140.4](#) at (10))
6. LFO payment required for sentence completion: yes. ([§ 610.140 5\(3\)](#))
7. Other Unmodeled Criteria or details: None.

NON-CONVICTIONS: ([Mo. Rev. Stat. § 610.105](#))

1. Closure of records, automatically, if nolle pros, dismissal, acquittal upon disposition with no waiting-period.
2. Expungement by petition, after 3 years subject to ineligibility limits applicable to convictions.
  - a. Not Eligible: Designated child endangerment, child sex offenses
3. Noted but did not model: expungement for arrests (610.140(6)), (610.122)

## Appendix B: Data Sample Description

Our data comprised a sample of criminal histories covering a random sample of records from 1937-2020 sourced from the Missouri State Highway Patrol.

<b>Number of People in the Sample</b>	50,000
<b>Share of People with Convictions</b>	73%
<b>Share of People with Felony Convictions</b>	45%
<b>Share of People with Misdemeanor Convictions in the Sample</b>	44%
<b>Share of People with Felony Charges in the Sample</b>	55%
<b>Share of Charges Missing Dispositions</b>	1%
<b>Share of Charges Missing Chargetypes</b>	0%

## Appendix C: Common Charges

### A. Top 10 Charges in our Dataset

<u>Charges</u>	<u>Number of Charges</u>	<u>Percentage of Expungeable Charges</u>
possession of controlled substance except 35 grams or less of marijuana	57,704	10%
forgery	35,697	6%
burglary 2nd degree	28,101	5%
theft/stealing (value of property or services is \$500 or more but less than \$25,000)	23,720	4%
distribute/deliver/manufacture/produce or attempt to or possess with intent to distribute/deliver/manufacture/produce a controlled substance	20,446	3%
passing bad check (value \$500 or more) no account/insufficient funds	19,646	3%
dwi - alcohol	14,319	2%
theft/stealing (value of property or services is less than \$500) - 1st offense	13,843	2%
unlawful use of drug paraphernalia	13,137	2%
nonsupport in each of 6 individual months within any 12-month period (amount owed is in excess of \$5,000)	11,210	2%
<b>Total share and charges associated with top 10 charges</b>	<b>237,823</b>	<b>40%</b>

## B. Top 10 Expungeable Charges in our Dataset

<u>Expungeable Charges</u>	<u>Number of Charges</u>	<u>Percentage of Charges</u>
possession of controlled substance except 35 grams or less of marijuana	13,909	13%
burglary 2nd degree	5,859	5%
unlawful use of drug paraphernalia	5,039	5%
forgery	4,680	4%
distribute/deliver/manufacture/produce or attempt to or possess with intent to distribute/deliver/manufacture/produce a controlled substance	4,133	4%
theft/stealing (value of property or services is \$500 or more but less than \$25,000)	3,925	4%
theft/stealing (value of property or services is less than \$500) - 1st offense	3,643	3%
possession of up to 35 grams of marijuana	2,929	3%
unlawful possession of a firearm	2,837	3%
passing bad check (value \$500 or more) no account/insufficient funds	2,281	2%
<b>Total share and charges associated with top 10 expungeable charges</b>	<b>49,235</b>	<b>44%</b>

## Appendix D: Detailed Expungement Statistics

We obtained expungement statistics from Table 17 of the Missouri Administrative Office of the Courts' Annual Statistical Report - Supplement for 2020 and 2021<sup>9</sup>, at their website and for previous years, through a data request. The Missouri Administrative Office of the Courts reports that 3,381 expungement cases were disposed from 2018-2021.

## Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives<sup>10</sup>

Criteria	Administrability Challenge	Example	Drafting Alternative

<sup>9</sup>See <https://www.courts.mo.gov/page.jsp?id=296>, <https://www.courts.mo.gov/page.jsp?id=185613>.

<sup>10</sup> Adapted from Chien (2020)

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”