

The Massachusetts Second Chance Sealing Gap

Colleen Chien, Alyssa Aguilar, Sima Kassianik, Navid Shaghaghi, Rutuja Pathade,
Shaunak Chaudhary, Shubham Sinde¹

Key Findings

Est Massachusetts Population with criminal records: 1.7M
Est Massachusetts Population with conviction records: 425K
Est People with convictions eligible for relief (share): 42%
Est People with convictions eligible for relief (population): 178K
Est Population with criminal records eligible for record relief (share): 33%
Est Population with criminal records eligible for record relief (population): 560K
Est Uptake rate of convictions relief: 14%
Est Uptake rate of *any* records relief: 17%
Sealing petitions processed in last year of data (2022): 6,107 (including convictions and non-convictions and youth and adult petitions)
Years to clear the backlog (convictions): 123
Years to clear the backlog: 96
Estimated aggregate annual earnings loss associated with clearable convictions: \$900M
*Does not include consideration of fines and fees

I. Abstract

Mass. General Laws c.276 §§ 100A-100C allow individuals whose criminal records meet certain conditions to seal their records. Ascertaining, then applying the law to a sample of 1,296 criminal histories, including 25% with convictions records, and then extrapolating the results to the estimated population of 1.7M individuals in the state with criminal records reflecting charges in court², we estimate the share and number of people who are eligible for relief but have not

¹ Colleen Chien is a Professor at UC Berkeley School of Law, co-director of the Berkeley Center for Law and Technology, and founder of the Paper Prisons Initiative (paperprisons.org); Alyssa Aguilar is a post-grad fellow of the Initiative and Santa Clara Law alumna; Sima Kassianik is an undergraduate student in Computer Science at UC Berkeley; and Navid Shaghaghi is a professor in the departments of Mathematics and Computer Science, and Computer Science and Engineering, Rutuja Pathade is a masters graduate student of CS and Engineering, Shaunak Chaudhary is a masters student of CS and Engineering, Shubham Sinde is a masters graduate student of CS and Engineering, all from Santa Clara University. We thank Pauline Quirion of Greater Boston Legal Services for her help with interpreting the Massachusetts expungement and sealing laws. 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: cchien@berkeley.edu. | www.paperprisons.org

² Estimate of 2023 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 (listing the total number of subjects with criminal records in the MA state repository as of Dec. 2018 as 1.46M, to which we applied 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 *id.*; the number derived through this method is very close to the estimate obtained by multiplying 24% times the Massachusetts 2021 state population of 7M (1.68M), reflecting the national average of the population with criminal records (out of ~329M Americans, ~80M have criminal records and 80/329 = ~24%)

received it and therefore fall into the “second chance gap,” the difference between eligibility for and receipt of records relief.³ We also estimate the aggregate earnings loss associated with people eligible for relief from convictions that have not yet received it.⁴ We did not model legal financial obligations or other out-of-record criteria.

Based on the method described above, we find that approximately 42% of individuals in our sample are eligible to clear their convictions, 25% of all convictions, and 33% of individuals with records are eligible to clear their records, 13% of all records. Extrapolating to the total number of people with records in Massachusetts, this yields an estimated 178K people with convictions that are eligible for sealing relief. Combining historical sealing statistics with our eligibility calculations, we estimate that 14% of people with conviction records eligible for sealing relief have received it, leaving 86% of people with conviction records in the Massachusetts “second chance sealing gap.”⁵ To ascertain the approximate annual earnings loss associated with this gap, we multiply the number of people in the convictions gap (~178K) by \$5,100, a conservative estimate for the average loss in earnings yearly due to living with a conviction record.⁶ We estimate that \$900M in cumulative earnings are lost every year in Massachusetts due to convictions that could be, but have not been cleared.

Based on reported records, the State processed 6,107 petitions in the last year of available data (2022). At this rate, it would take approximately 96 years to clear the existing second chance convictions sealing gap 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 Sealing Statistics (Appendix D); Clearance Criteria Challenges and Legislative Drafting Alternatives (Appendix E).

³ As defined in Chien 2020, *supra* note 1.

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, 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)

⁵ As defined *id.*

⁶ \$5,100 is a national average that is associated with misdemeanors (see *Id.*), but the second chance gap in Massachusetts includes individuals with both misdemeanor and felony convictions, and the state’s average annual income is the third among all states at 85K (<https://worldpopulationreview.com/state-rankings/average-income-by-state>), both of which make the number a conservative estimate.

II. Summary

Every time a person is convicted of an offense, 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, Massachusetts law allows people whose criminal records meet certain conditions to seal their records.⁷ However, the “second chance gap” in Massachusetts “sealing” - 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.

III. Key Findings:

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

- In the state of Massachusetts, an estimated 425K out of approximately 7M state residents have felony or misdemeanor court conviction records and an estimated 1.7M people have criminal records.
- Of those with conviction records, an estimated 42%, or about 178K people are eligible for sealing of their convictions, and an estimated 25% are eligible for sealing all their convictions under the current law (not taking into account fines and fees and out of state charges). Approximately 13% of individuals with records could clear all records.
- Based on the assumption that our sample is roughly representative of people with court records in Massachusetts,⁸ we estimate that the current felony population in Massachusetts is approximately 200K people and that 12%, or 25K people could get relief.
- Based on records obtained from the sources disclosed in Appendix D, and methods disclosed in Appendix A, we estimate, conservatively, that the state granted approximately 120K sealing petitions, a quarter of which, we estimate, were convictions based sealing petitions. Based on these numbers and the calculations above, we estimate that 14% of people eligible to clear their convictions have taken advantage of this remedy.
- At current rates of sealing, it would take around 123 years to clear the existing backlog of conviction charges eligible for sealing.

⁷ Described in “Rules” Section of Appendix A.

⁸ More details for why we believe this to be a sound approach are provided in Appendix B.

- We estimate the aggregate earnings loss of the approximately 178K people with convictions in the Massachusetts second chance gap is about \$900M.

IV. Conclusion

Based on our analysis, Massachusetts’s sealing laws allow for approximately 33% of those who live burdened with records to get records relief, 42% to get relief from convictions, and for 13% of individuals with records who could clear their records entirely, and 25% of individuals with convictions could clear all convictions. But to date we estimate that 17% and 14% of those eligible for any relief or convictions relief, respectively, have actually received the remedy, leaving 83% and 86% of people in the sealing uptake gap, respectively. The conviction second chance gap, which leaves about 178K Massachusetts residents behind, translates into a cumulative annual earnings loss to the state of about \$900 Million.

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 sealings 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 sealing 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 was representative of all with criminal records in the state.

Ascertaining the Law and Developing Rules Logic

Based on the court guidelines, statutes, and guides from non-profits listed above 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. dismissal or in jurisdictions that have it, nolo contendere) and person conditions (e.g. a lifetime limit of 2 convictions) that define eligibility. These are disclosed in every report in the RULES section.

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 sealing. The offenses that were within each of the eligibility requirements after this process were deemed eligible for sealing. 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 Sealings 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 (2020), 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 ~24% 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 the number of sealings 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 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 chargetypes 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 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

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 sealing actuals mentioned above, the “uptake gap” (share of people eligible for sealing over time that have not received them).

RULES

Massachusetts Sealing Rules

Primary Sources: [Massachusetts Gov Site](#) | [Mass. General Laws c.276 §§ 100A-100C](#) (December 31, 2020)

Secondary Sources: [Massachusetts CCRC](#) (December 13, 2022) || [Mass. Legal Help Know Your CORI Rights Handbook](#) (2023 Update)

[Massachusetts Institute for a New Commonwealth](#) (nonprofit source of 2023 pending legislation)

*Pending legislation from 2023: [S.988](#); [H.1819](#)

CONVICTIONS:

1. Misdemeanors:
 - a. Sealing or expungement available for misdemeanor convictions upon petition after a 3-year waiting-period starting from completion of sentence, if clean (no conviction or pending charges). ([c.276 §100A](#))
2. Felonies:
 - a. Sealing or expungement available for felony convictions upon petition after a 7-year waiting-period starting from completion of sentence, if clean (no conviction or pending charges). ([c.276 §100A](#)) When sealing only, crimes against public justice [c.268](#) and conduct of public officials and employees ([c.276 §100A](#), [c.268A](#))
3. Lifetime or other Limits: N/A
4. Other Unmodeled Criteria or details:
 - a. Sealing available for sexual offenses upon petition after a 15-year waiting period after all supervision has ended if registered as Level 1 offender. Sealing unavailable to anyone still under registration obligation or ever required to register as Level 2 or 3 offender. [Levels of Sex Offenders](#) ([c.276 §100A](#)) (Cannot

- model because lack offender Level data; SJC Coe case may allow for some limited sealing upon a successful applied constitutional challenge in court)
- b. Sealing automatic for pardoned felonies, no waiting period. ([c.127 §152](#))
- c. If crime was a felony at time and now misdemeanor, treated as misdemeanor. If uncertain if it was a felony at the time, treat as misdemeanor.
- d. Youthful offender-definition here ([c.199 §52](#)) - (same disqualifications apply); not modeled due to lack of data on juvenile offenses
- e. Sealing available for misdemeanor adjudications upon petition after a 3-year waiting-period starting from completion of sentence, if clean (no conviction or adjudications during waiting-period, no pending charges). ([c.276 §100G](#)), ([c.276 §100H](#)), ([c.276 §100I](#)), and ([c.276 §100A](#))

ADULT NON-CONVICTIONS

1. Sealing of certain non-convictions when the case ends favorably (not guilty, no bill returned by the grand jury, no probable cause), without petition, no waiting period, upon disposition. ([c.276 §100C](#)) [J.F. case decided in May 2023 requires sealing of offenses that ended in a not guilty disposition]
2. Sealing of other non-convictions with the same waiting period as for convictions, 7 years for felonies and 3 years for misdemeanors. ([c.276 §100A](#))
3. [Not modeled] Immediate sealing of dismissal of charges, deferred dispositions, and nolle prosequi with petition, no waiting period, upon disposition only if “it appears to the court that substantial justice would best be served.” ([c.276 §100C](#))
 - a. A judge can order sealing without the waiting periods.

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 1992-2018. This dataset has been benchmarked against state datasets for five states, in four out of five of them, the eligibility estimates were more conservative when based on background check data as compared to the state datasets.

Data Statistics	
Number of People in the Sample	1,296
Share of People with Convictions	25%
Share of People with Felony Convictions	12.27%
Share of People with Misdemeanor Convictions in the Sample	19%
Share of People with Felony Charges in the Sample	40%
Share of Charges Missing Dispositions	2.64%
Share of Charges Missing Chargetypes	0.05%

Appendix C: Common Charges

A. Top 10 Charges in our Dataset

<u>Charges</u>	<u>Number of Charges</u>	<u>Percentage of Charges</u>
assault battery	262	7%
larceny \$250	162	4%
operating motor vehicle license suspended	132	3%
disorderly conduct	111	3%
assault battery dangerous weapon	99	2%
juror fail attend	91	2%
trespass	67	2%
credit card fraud \$250	64	2%
operate motor vehicle license suspended	57	1%
threat commit crime	56	1%
Total share and charges associated with top 10 charges	1,101	28%

Appendix D: Detailed Sealing Statistics

We received combined conviction and non-conviction, juvenile and adult sealing statistics from the Massachusetts Parole Services via a public records request.⁹ Unfortunately, the statistics we received did not break out how the statistics were to be allocated among the different subpopulations. According to the data we received, in 2022, 6,107 sealing petitions were processed. For 2023, we estimated the final annual number of petitions processed by taking the monthly average from January-August within the data received, and then using that average over the remaining months. For 2019-2021, the State did not make available to us the number of

⁹ Using the form indicated here,
<https://www.sec.state.ma.us/divisions/public-records/public-records-law/public-records-request.htm>

petitions processed, so we estimated the petition rate based on the complete data received for 2022-2023.

To get an estimate of how many adults were awarded convictions relief over 20 years of sealings, we made several conservative assumptions.¹⁰ First, we assumed that the annual rate of sealings for the years prior to 2019 was equivalent to the average rate of sealings in the 2019-2023 period. Second, we assumed that each petitions order corresponded to relief for one person, which is a conservative assumption given that multiple orders can be filed for a single person, for example if they have charges in multiple jurisdictions or had multiple sealings petitions filed over multiple years. We also assumed that 25% of the sealings orders covered convictions, as compared to non-convictions, which again, given the relative generosity of available non-convictions relief compared to convictions relief, and our own analysis of actuals in a number of states, may overestimate the number of convictions sealings granted on a yearly basis. Finally, we reduced the number of convictions by 5% to account for youth sealings, based on an analysis of criminal case volume in the Maryland reports developed based on court annual reports available at <https://www.mass.gov/lists/court-reports#annual-reports->.

Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives¹¹

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.	Specify an identification strategy that can be implemented at scale or do not include

¹⁰ We have filed a public records request seeking actual data on this matter and will update this report when that data is received.

¹¹ Adapted from Chien (2020)

		Cal. Welf. & Inst. Code §781(d). Cal. Welf. & Inst. Code § 781(d).	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”