The Colorado Second Chance Sealing Gap

By: Colleen Chien, Evan Hastings, and Prajakta Pingale[1]

Key Findings

People with criminal records: ~2.0M
People with convictions: ~1.7M
Share of people with convictions eligible for sealing : ~34%
People with convictions eligible for relief: ~571K
Uptake rate of *any* records relief: ~5%
Records expunged per year: ~16,104 (2018)
Years to clear the backlog based on current rates: ~106
*Does not include consideration of fines and fees

I.   Abstract

CRS Section 24-72-705 and CRS Section 24-72-706 allows individuals whose criminal records meet certain conditions to seal their records. Ascertaining, then applying the law to a sample of 1,854 criminal histories including 82% with convictions records, and then extrapolating to the estimated population of 2.0M 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 34% of individuals in our sample are eligible to clear their convictions, 7% of all convictions, and 85% of individuals with records are eligible to clear their records, 21% of all records. Extrapolating to the total number of people with records in Colorado, this yields an estimated 571K people with convictions that are eligible for convictions relief, 1.3M with records that are eligible for any relief that haven't received it. Combining historical seal statistics with our eligibility calculations, an estimated 5% of people with records eligible for relief have received it, leaving behind 95% of people with records in the "Colorado Second Chance Gap."[4] Based on reported records, the State sealed 16,104 cases in the last year of available data (2018). At this rate, it would take approximately 106 years to clear the existing second chance seal 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 Seal 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 expunged 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 Colorado, an estimated 2M out of approximately 5.8M state residents have criminal records, ~1.7M people have convictions.
- Of people with convictions, an estimated 34%, or about ~570K people are eligible for expungement of their convictions, and an estimated 85% of people, or 1.7M with records are eligible for expungement of all or part of their records under the current law (not taking into account fines and fees and out of state charges). Approximately **21% of individuals with records (or 340K), we estimate, could clear their records entirely, 7% of individuals with convictions (or 119K) could clear all convictions.**
- Based on the assumption that our sample is representative of people with criminal records in Colorado, we estimate that the current felony population in Colorado is approximately ~397K people. The share of people with felonies eligible for convictions relief is 47% .

---

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

- Based on records obtained from the sources disclosed in Appendix D, and methods disclosed in Appendix A, we estimate, conservatively, that the state issued approximately 80K sealings over the last 20-years. Based on these numbers and the calculations above, we estimate that 5% of people eligible to clear any record have done so, leaving 95% of people in the seal uptake gap, respectively.
- At current rates of expungement, it would take around 106 years to clear the existing backlog of eligible charges using current methods.

IV.   Conclusion

Based on our analysis, Colorado's sealing laws allow for approximately 85% of those who live burdened with records to get records relief, 34% to get relief from convictions, and for 21% of individuals with records who could clear their records entirely. 7% of individuals with convictions could clear all convictions. To date, we estimate that 5% of those eligible for convictions relief have actually received the remedy, leaving 95% of people in the sealing uptake gap.

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 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

Colorado Sealing Rules

Primary Sources: State guide
Secondary Sources: Colorado CCRC | CO Public Defender's guide 2019 edition (pg. 5-9)
CONVICTIONS: CRS Section 24-72-706

1. Misdemeanors and Petty offenses:
   a. Sealing if petty offense upon 1 year waiting-period after date of final disposition or release from supervision (whichever is later)
   b. Sealing if class 2 or 3 misdemeanors or drug misdemeanor upon 2 year waiting-period after date of final disposition or release from supervision (whichever is later)
2. Felonies:
   a. Sealing if Class 4, 5, 6, felony or a level 3 or 4 drug felony or class 1 misdemeanor upon 3 year waiting-period after date of final disposition or release from supervision (whichever is later)
   b. Sealing if felony upon 5 year waiting-period after date of final disposition or release from supervision (whichever is later)
3. Not eligible: Crimes not eligible are class 1, 2, and 3 felonies, sexual offenses, and those involving dangerous conduct. (CRS Section 24-72-706(2))
4. Lifetime or other Limits:

5. <u>Treatment of Multiple Convictions from the Same Incident:</u>
6. <u>LFO payment required for sentence completion</u>: Required payment of fines and fees [Colo. Rev. Stat. § 24-72-706(1)(e)](#).
7. <u>Other Unmodeled Criteria or details</u>:
    a. Traffic offenses and infractions

NON-CONVICTIONS: [CRS § 24-72-705](#)

1. Sealing for dismissals, acquittals, and diversion upon the date of judgement.
2. Sealing for deferred judgement and sentence completion if 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 1998-2019 as described in Chien (2020).

Data Statistics	
Number of People in the Sample	1,854
Share of People with Convictions	82%
Share of People with Felony Convictions	20%
Share of People with Misdemeanor Convictions in the Sample	57%
Share of People with Felony Charges in the Sample	30%
Share of Charges Missing Dispositions	0.97%
Share of Charges Missing Chargetypes	0.23%

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

Charges	**Number of Charges**	**Percentage of Charges**
driving restraint (statute: 42 2 138(1)(a))	1072	6.99%
failure display proof insurance (statute: 42 4 1409(3))	317	2.07%
driver's license driving w/out (statute: 42 2 101(1))	213	1.39%
driving ability impaired (statute: 42 4 1301(1)(b))	332	2.16%
insurance owner (statute: 42 4 1409(1))	165	1.08%

driving influence (statute: 42 4 1301(1)(a))	158	1.03%
license plates expired (statute: 42 3 114)	151	0.98%
harassment strike/shove/kick (statute: 18 9 111(1)(a))	136	0.89%
speeding 10 19 limit (statute: 42 4 1101(1))	132	0.86%
careless driving (statute: 42 4 1402)	130	0.85%
Total share and charges associated with top 10 charges	**2806**	**18.29%**

B. Top 10 Expungeable Charges in our Dataset

Expungeable Charges	**Number of Charges**	**Percentage of Expungeable Charges**
driving restraint (statute: 42 2 138(1)(a))	825	8.23%
failure display proof insurance (statute: 42 4 1409(3))	252	2.51%
driver's license driving w/out (statute: 42 2 101(1))	143	1.43%
insurance owner (statute: 42 4 1409(1))	140	1.40%
harassment strike/shove/kick (statute: 18 9 111(1)(a))	131	1.31%
driving w/o proof insurance (statute: 42 4 1409)	120	1.20%
drug paraphernalia possess (statute: 18 18 428(1))	118	1.18%
insurance driver (statute: 42 4 1409(2))	96	0.96%
speeding 10 19 limit (statute: 42 4 1101(1))	88	0.88%
careless driving (statute: 42 4 1402)	87	0.87%
Total share and charges associated with top 10 expungeable charges	**2000**	**19.95%**

Appendix D: Detailed Seal 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.

Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives[6]

---

[6] Adapted from Chien (2020)

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).	Disposition Date (+ X Years)
First conviction; qualifying conditions	Lack of unique identifier across precludes determination	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).	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"