

The Louisiana Second Chance Expungement Gap

Colleen Chien, Heta Joshi, Kritin Dhoka, Hithesh Bathala, and Obie Reynolds¹

Key Findings

Est. Population with criminal records: ~1.1M

Population with conviction records: ~838K

Share of people with convictions eligible for relief: ~73%

Population with convictions eligible for relief: ~600K

Share of people with *any* record eligible for relief: ~79%

Population with *any* record eligible for relief: ~878K

Share of people with felony convictions eligible for relief: ~75%

Population with felony convictions eligible for relief: ~265K

I. Abstract

Louisiana CCRP 976, CCRP 977, and CCRP 978 allow individuals whose criminal records meet certain conditions to expunge their records. Ascertaining, then applying the law to a sample of 1,341 criminal histories² including 75% with convictions records, and then extrapolating to the estimated population of 1.1M individuals in the state with court records³ 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.⁴ (We did not model legal financial obligations or other out of record criteria).

Based on the method described above, we find that approximately 73% of individuals with convictions in our sample are eligible to clear their convictions, 50% of all convictions, and 79% of individuals with records are eligible to clear their records, 49% of all records. Extrapolating to the total number of people with records in Louisiana, this yields an estimated 600K people with

¹ Colleen Chien is a Professor at Santa Clara University School of Law, and founder of the Paper Prisons Initiative (paperprisons.org). Heta Joshi and Kritin Dhoka are undergraduate students at Santa Clara University Department of Mathematics and Computer Science. Hithesh Bathala is a masters graduate of Information Systems. Obie Reynolds is a rising 2L at Santa Clara University School of Law with a background in chemical engineering and green technologies. 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*, 119Mich. Law. Rev.519(2020), available at <https://papers.ssrn.com/abstract=3265335> (Chien 2020).

² Sample provided by a background check company as described in Chien (2020), id.

³ Rough estimate based on 24% of the 2019 population of 4.6M, reflecting national averages. Cf. Becki Goggins et al; Survey of State Criminal History Information Systems, 2020: A Criminal Justice Information Policy Report, SEARCH (2020) available at <https://www.ojp.gov/pdffiles1/bjs/grants/255651.pdf>, Table 1 (listing the total number of criminal records in the LA state repository as of Dec 2018 as 1.7M, a number that does not take into account people that have left the state or passed).

⁴ As defined id.

convictions that are eligible for convictions relief, 878K with records that are eligible for any relief that haven't received it. 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); Detailed Expungement Statistics (Appendix C); Clearance Criteria Challenges and Legislative Drafting Alternatives (Appendix D).

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, Louisiana law allows people whose criminal records meet certain conditions to expunge their records.⁵ However, the "second chance gap" in Louisiana "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 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 Louisiana, at least 1.1M out of approximately 4.6M state residents have criminal records and 840K have conviction records.
- Of those with convictions, an estimated 73%, or conservatively, about 600K people are eligible for expungement of their convictions, and an estimated 79% 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 49% of individuals with records, or 435K Louisiana residents, we estimate, could clear their records entirely, 50% of individuals with convictions, or 420K Louisiana residents, could clear all convictions.**

⁵ Described in "Rules" Section of Appendix A.

- Based on the assumption that our sample is representative of people with court records in Louisiana, we estimate that the current felony population in Louisiana is at least 35-K people. (In 2010 it was estimated by Shannon, Uggem 2016 to be approximately 379K). We estimate the share of people with felonies eligible for convictions relief to be 73%.

IV. Conclusion

Based on our analysis, Louisiana's expungement laws allow for approximately 79% of those who live burdened with records to get records relief, 73% to get relief from convictions, and for 49% of individuals with records who could clear their records entirely, and 50% of individuals with convictions could clear all convictions.

Appendix A: Methodology

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

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

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

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

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

numbers do not account for deported or deceased people. As described in the report, where possible we made adjustments to take into account these factors, but it should be reiterated that from these reasons, the population number 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 expungements granted historically. When public reports were not available, we filed records requests or consulted other sources of information. We used this data to calculate the “uptake rate” and 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 expungement actuals mentioned above, the “uptake gap” (share of people eligible for expungement over time that have not received them).

RULES

Louisiana Expungement Rules

Sources: Louisiana [CCRP 976](#), [CCRP 977](#), [CCRP 978](#) | [Louisiana State Legislature \(2020\)](#) | [Cornell: Louisiana](#) | [CCRC: Louisiana](#)

CONVICTIONS: Louisiana [CCRP 976](#), [CCRP 977](#), [CCRP 978](#)

1. **Misdemeanor:** Expungement of any **non-domestic abuse battery, or non-stalking** misdemeanor conviction if there is no underlying felony sex offense arrest if no convictions of any felony offense and no felony charge pending during a five-year (5) waiting period since the person completed any sentence, deferred adjudication, or period of probation or parole. [CCRP 977](#).
 - a. Because we lack arrest data, we considered underlying felony sex offense charges as disqualifying to satisfy the lack of an underlying felony sex offense arrest.
 - b. Not Modeled
 - i. Petition for expungement must include certification obtained from the district attorney which verifies that the applicant has no felony convictions during the 5-year period and no pending felony charges.
 - ii. This waiting period is not required if the individual received a deferred sentence of probation and had the conviction set aside after satisfactorily completing probation. CCRP 977(A)(1), see 894(B).
2. **Felony:** Expungement for felony convictions if no convictions of any criminal offense and no criminal charge pending during a ten-year (10) waiting period since the person completed any sentence.
 - a. Not Modeled
 - i. Deferred adjudication, or period of probation or parole. [CCRP 978](#).
 - ii. No waiting period when:

1. First **offender pardon** for offenses pursuant to [Article IV, Section 5\(E\)\(1\)](#) of the Louisiana Constitution, provided that the offense is not a crime of violence ([R.S. 14:2\(B\)](#)) or a sex offense ([R.S. 15:541](#)).
- iii. The individual received a deferred sentence of probation, or meets other criteria for eligibility under CCRP 893, and had the conviction set aside after satisfactorily completing probation. CCRP 978(A)(1).
- iv. Ordered **expungement** after a contradictory hearing ([CCRP 980](#)) regarding the arrest and conviction of a person pertaining to the crimes listed in [CCRP 978\(E\)\(1\)](#) if all the following conditions are met:
 1. more than 10 years have passed since any completed sentence, deferred adjudication, or period of probation or parole based on the felony conviction;
 2. the person has not been convicted of any other criminal offense during the 10-year period; AND
 3. the person has no criminal charges pending against them.
 4. Petition for felony conviction expungement must have certification obtained from the district attorney which verifies that the applicant has no convictions during the 10-year period and no pending charges.
3. **Not Eligible: Felonies** listed in [CCRP 978\(B\)](#), for a commission or attempted commission. **Misdemeanors** listed in [CCRP 977\(C\)](#).
4. **Lifetime or Other Limits:** [Cornell: Louisiana](#)
 - a. Not Modeled
 - i. For **misdemeanor convictions**, one 894(B) set aside every 5 years and one 894(B) set aside for a DUI every 10 years.
 - ii. For **felony convictions**, a person is eligible for 2 893(E) set asides in their lifetime.
 - iii. You may file for expungement immediately if you were arrested but not prosecuted (case dismissed, quashed, or acquittal).
 - iv. If the prosecutor did not act, the time limit to bring prosecution must run out before filing for expungement:
 1. For misdemeanors punishable by fine or imprisonment: 2 years
 2. For misdemeanors punishable only by fines (such as traffic infractions): 6 months
 3. For felonies punishable by imprisonment “at hard labor”: 6 years
 4. For all other felonies: 4 years
 5. For any sentence with death or life imprisonment or a true bill filed, there is no prescriptive period

6. For certain sex offenses involving a minor prescription is 30 years after the individual reaches 18 years old
5. Treatment of multiple convictions for the same incident: [n/a]
6. Legal Financial Obligation (LFO) payment requirement for sentence completion: See [CCRP 983](#) and [984](#) for expungement costs.
7. Other Unmodeled Criteria or Details: None

NON-CONVICTIONS: Louisiana [CCRP 976](#)

1. Expungement of non-conviction (no prosecution and prosecution barred or declines to prosecute, dismissal, successful completion of pretrial diversion program, acquittal, dismissal) upon petition. (no waiting period)
2. Not Modeled
 - a. Limitations on institution of prosecution have elapsed.
 - b. If non-conviction was the result of judicially-determined factual innocence and that individual is entitled to compensation for wrongful convictions ([R.S. 15:572.8](#)), they may have the arrest and conviction expunged without limitations or time delays normally imposed upon the expungement process. 976(A)(4).

Other Unmodeled Criteria or Details: For individuals placed in a **pretrial diversion** program related to operating a vehicle while intoxicated ([R.S. 14:98](#)), or a similar parish or municipal ordinance that prohibits operating a vehicle while intoxicated, impaired, or while under the influence of alcohol, drugs, or controlled dangerous substances, expungement **will only be available after five years** have elapsed since the arrest of that person. [CCRP 976\(B\)](#).

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 2017-2018 as described in Chien (2020).

<u>Data Statistics</u>	
Number of People in the Sample	1,341
Share of People with Convictions	75%
Share of People with Felony Convictions	32%
Share of People with Misdemeanor Convictions in the Sample	55%
Share of People with Felony Charges in the Sample	44%
Share of Charges Missing Dispositions	2%
Share of Charges Missing Chargetypes	10%

Appendix C: Detailed Expungement Statistics

We have been unsuccessful in our attempt to acquire expungement statistics for the state of Louisiana.

Appendix D: Clearance Criteria Challenges and Legislative Drafting Alternatives⁶

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”

⁶ Adapted from Chien (2020)