

# The North Carolina Second Chance Expunction Gap

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## Key Findings

North Carolina People with criminal records: ~2.0 M

North Carolina People with convictions: ~1.2 M

Share of people with convictions eligible for expunction: ~23%

People with convictions eligible for expunction: ~271K

Share of people with *any* record eligible for expunction: ~60%

Uptake rate of convictions relief: ~4%

Expunctions in last year of data (convictions): ~3,260 (2019)

Years to clear the backlog based on current rates (convictions): ~80

\*Does not include consideration of fines and fees

## I. Abstract

GS15A-145 and 15A-146 allow individuals whose criminal records meet certain conditions to file for expunction their records. Ascertaining, then applying the law to a sample of 2,492 criminal histories, and then extrapolating to the estimated population of 2.0M 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 did not model legal financial obligations or other out of record criteria).

Based on the method described above, we find that approximately 23% of individuals in our sample are eligible to clear their convictions, 9% of all convictions, and 60% of individuals with records are eligible to clear their records, 21% of all records. Extrapolating to the total number of people with records in North Carolina, this yields an estimated 271K people with convictions that are eligible for convictions relief, 1.1M people with records that are eligible for any relief that haven’t received it. Combining historical expunction statistics with our eligibility calculations, we estimate that 4% of people with conviction records eligible for relief have

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<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 (listing the total number of records in the state repository as of Dec 2018) an annual growth rate of 3% derived based on 10-years of actuals.

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

received it, leaving 96% of people with records in the “North Carolina second chance expunction gap.”<sup>4</sup> Based on reported records, the State expunged 15,545 cases in the last year of available data (2019) and 3,260 convictions in the last year of available data (2019). At this rate, it would take approximately 80 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 Expunction 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, North Carolina law allows people whose criminal records meet certain conditions to expunge their records.<sup>5</sup> However, the “second chance gap” in North Carolina “expunction” - 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 chosen at random from a background check company based on checks conducted from 2017-2018 as described in Chien (2020). 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 North Carolina, an estimated 2.0 M out of approximately 10.5M state residents have criminal records, about 1.2M have convictions.

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<sup>4</sup> As defined id.

<sup>5</sup> Described in “Rules” Section of Appendix A.

- Of people with convictions, an estimated 23%, or about 271K people are eligible for expungement of their convictions, and an estimated 60% 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 **21% of individuals with records (or 338K), we estimate, could clear their records entirely, 9% of individuals with convictions (or 104K) could clear all convictions.**
- Based on the assumption that our sample is representative of people with criminal records in North Carolina, we estimate that the current felony population in North Carolina is approximately 170K people. The share of people with felonies eligible for convictions relief is 7%.
- 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 230K expunctions, and 10K convictions expunctions over the last 20-years. Based on these numbers and the calculations above, we estimate that 4% of people eligible to clear their convictions have taken advantage of this remedy and that 16% of people eligible to clear any record have done so, leaving 96% and 84% of people in the expunction uptake gap, respectively.
- At current rates of expungement, it would take around 80 years to clear the existing backlog of eligible convictions.

#### IV. Conclusion

Based on our analysis, North Carolina's expunction laws allow for approximately 60% of those who live burdened with records to get records relief, 23% to get relief from convictions, and for 21% of individuals with records to could clear their records entirely, and 9% of individuals with convictions could clear all convictions. But to date we estimate that 4% of those eligible for convictions relief have actually received the remedy, leaving 96% of people in the expunction 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 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 introduce further errors into our analysis.

To approximate “sentence completion” we used recorded sentences where available, assuming that the sentence had been carried out, and taking an average period where a range of times was provided. Where usable sentence data was not available, we assumed that sentences were completed 2.5 years after the disposition date for misdemeanor charges, and 3.5 years after the disposition date for felony charges where sentence. Importantly, unless otherwise indicated, we

did not account for outstanding fines or out of state charges which could potentially disqualify some individuals for relief per the summary of the rules below. If not available from our data source, we also did not account for pending charges which are disqualifying in some jurisdictions, however based on the literature we believe the share of people with records that have a currently pending charge is small, less than 5%.

When the eligibility of frequently occurring charges wasn't addressed directly by the "top down" methodology described above, of researching eligibility or ineligibility based on the rules, we used a "bottom up" approach of researching these charges and ascertaining their eligibility one by one.

### ***Applying the Eligibility Share to the Criminal Population and State History of Relief to Estimate the Number of People in the Second Chance Gap, Uptake Gap***

To develop a state eligibility estimate based on the shares derived in the previous step, we assumed that the sample was representative enough of the criminal population that we could use its eligibility shares as the basis for a state estimate. We then applied these shares to the estimated number of people with criminal records in the state to obtain an estimate for the number of people in the "second chance gap." If the state sample was "convictions only" data, we conservatively reduced the criminal population eligible for relief by a share based on a sample of state actuals as provided in Chien 2020 Appendix B-3.

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

### **North Carolina Expunction Rules**

Primary Sources: [GS15A-145. Expunction of certain misdemeanors and felonies](#) (2018) | [N.C. Gen. Stat. 15A-146](#) (2018)

Secondary Sources: [Relief for Criminal Convictions in North Carolina](#) (Apr/Jun 2018) | [CCRC North Carolina](#) (5/9/2020) | [NC Justice Guide](#) (Feb 2019)

#### **CONVICTIONS:**

1. Misdemeanors: Expunction if **nonviolent misdemeanors** ([15A-145.5\(a\)](#)) upon petition after 5 years wait-period starting at completion of sentence if clean (no conviction) ([15A-145.5\(c\)](#)).

2. Felonies: Expunction if **nonviolent felonies** ([15A-145.5\(a\)](#)) upon petition after 10 year wait-period starting at completion of sentence if clean ([15A-145.5\(c\)](#)).
3. Not Eligible: **Class A-G Felonies** ([15A-145.5\(a\)\(1\)](#)), **Class A-1 misdemeanors** (at (1)), **DWI** (at (8a)), offenses requiring **Sex Offender Registration** (at 3 and 4), and many **drug offenses** (at (5)), any offenses where **assault is an essential element** (at 2) ([15A-145.5\(a\)](#)).
4. Lifetime and Other Limits: Only one expunction per lifetime [15A-145.5\(c\)](#) [cannot be modeled]
5. Treatment of Multiple Convictions from the Same Incident: Treat as a single conviction for the purposes of expunction, need to file in a single petition. [15A-145.5\(b\)](#)
6. LFO Payment Required for Sentence Completion: Yes, Payment Required [15A-145.5\(c\)](#)
7. Other Unmodeled Criteria or Details: n/a.
  - a. Juvenile Offenses: Expunction for first offenders who committed certain specified nonviolent felonies when under 18, upon petition, after four year waiting-period from completion of sentence. ([N.C. Gen. Stat. § 15A-145.4](#) (2018)).
  - b. Expunction for misdemeanors committed under age 18 (except for traffic violations) and first offender alcohol-possession misdemeanors committed under age 21 are eligible for expunction, upon petition, two years after the date of conviction completion of sentence, whichever is later. ([N.C. Gen. Stat. § 15A-145\(a\)](#) (2017)).

#### NON-CONVICTIONS:

1. Misdemeanors/Felonies: Expunction available for misdemeanors and felonies if charges dismissed or found not guilty, upon petition with no wait time. [NC. Gen. Stat. § 15A-146\(a\)](#) (2017).
2. Lifetime and Other Limits: Expunction available for multiple non-convictions, with no stated limit on number or lifetime limit on petitions. [NC. Gen. Stat. § 15A-146\(a\)\(a1\)](#) (2017).
3. Not Eligible: Expunction not available for non-conviction if prior felony conviction. [NC. Gen. Stat. § 15A-146\(a\)](#) (2017).

## 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).

<b>Data Statistics</b>	
<b>Number of People in the Sample</b>	2,492
<b>Share of People with Convictions</b>	74%
<b>Share of People with Felony Convictions</b>	11%

<b>Share of People with Misdemeanor Convictions in the Sample</b>	46%
<b>Share of People with Felony Charges in the Sample</b>	22%
<b>Share of Charges Missing Dispositions</b>	10%
<b>Share of Charges Missing Chargetypes</b>	10%

## Appendix C: Common Charges

### A. Top 10 Charges in our Dataset

<u>Charges</u>	<u>Number of Charges</u>	<u>Percentage of Charges</u>
unavailable	3,268	12%
expired registration card/tag (statute: 20-111(2))	1,438	12%
dwlr (statute: 20-28(a))	1,107	12%
no operators license (statute: 20-7(a))	1,021	12%
speeding (statute: 20-141(b))	906	12%
simple worthless check (statute: 14-107(d)(1))	722	12%
expired/no inspection (statute: 20-183.8(a)(1))	704	12%
operate veh no ins (statute: 20-313(a))	692	12%
improper equip - speedometer (statute: 20-123.2)	644	12%
speeding (statute: 20-141(j1))	609	12%
<b>Total share and charges associated with top 10 charges</b>	<b>11,111</b>	<b>12%</b>

### B. Top 10 Expungeable Charges in our Dataset

<u>Expungeable Charges</u>	<u>Number of Charges</u>	<u>Percentage of Expungeable Charges</u>
simple worthless check (statute: 14-107(d)(1))	92	12%
misdemeanor larceny (statute: 14-72(a))	71	12%



possess drug paraphernalia (statute: 90-113.22(a))	37	12%
resisting public officer (statute: 14-223)	29	12%
no operators license	20	12%
second degree trespass (statute: 14-159.13)	18	12%
simple assault (statute: 14-33(a))	16	12%
shoplifting concealment goods (statute: 14-72.1(a))	16	12%
simple worthless check (statute: 14-107(d)(1))	16	12%
expired registration card/tag	15	12%
<b>Total share and charges associated with top 10 expungeable charges</b>	<b>330</b>	<b>12%</b>

## Appendix D: Detailed Expunction Statistics

We obtained expungement statistics from the North Carolina Judicial Branch, which reports that 116,407 expunction orders were issued from fiscal year 2010 to fiscal year 2019. 11,798 expunction orders for convictions were issued from fiscal year 2010 to fiscal year 2019. To get an estimate of 20 years of expunctions, we extrapolated back in years based on the first year of expunction data.

## Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives<sup>6</sup>

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”

<sup>6</sup> Adapted from Chien (2020)