The Oklahoma Second Chance Expungement Gap

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Key Findings

Population with criminal charges: ~1.2M
Population with conviction records: ~612K
People with convictions eligible for relief (share): ~28%
People with convictions eligible for relief (population): ~170K
People with *any* record eligible for relief (share): ~28%
People with *any* record eligible for relief (population): ~330K
Estimated aggregate annual earnings loss associated with people with clearable convictions: $867M
*Does not include consideration of fines and fees

I.   Abstract

22 O.S. §18 allows individuals whose criminal records meet certain conditions to expunge their records. Ascertaining, then applying the law to a sample of 2,427 criminal histories including 65% with convictions records, and then extrapolating to the estimated population of 612K individuals in the state with court 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). We also estimate the aggregate earnings loss associated with people in the second chance gap.[4]

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[2] Estimate of 2020 population of people with court records based on Becki Goggins et al; *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, SEARCH (2018) available at https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf, Table 2 (2016), 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 (Chien 2020).

[3] As defined id.

[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*, __ Ariz. Law Rev. Forthcoming 2022

Based on the method described above, we find that approximately 28% of individuals in our sample are eligible to clear their convictions, 10% of all convictions, and 28% of individuals with records are eligible to clear their records, 10% of all records. Extrapolating to the total number of people with records in Oklahoma, this yields an estimated 170K people with convictions that are eligible for convictions relief, 330K with records that are eligible for any relief that haven't received it. [5] This translates into approximately $867M in cumulative lost earnings per year associated with the second chance gap in Oklahoma of people with expungeable records. However, due to deficiencies in the data and ambiguities in the law uncovered during our analysis, including regarding disposition, chargetype, and sentence completion criteria, to provide relief through "Clean Slate" automated approaches would require significant data normalization and cleaning efforts. We include, in Appendix E, statute drafting alternatives to avoid some of these problems. Included in our report are our Methodology (Appendix A); Disposition Data Report (Appendix B); Appendix C (Common Charges); Detailed Expungement Statistics (Appendix D); Clearance Criteria Challenges and Legislative Drafting Alternatives (Appendix E).

II.   Summary

Every time a person is convicted of a crime, this event is memorialized in the person's criminal record in perpetuity, setting off thousands of potential collateral consequences, including being penalized in searches for employment, housing and volunteer opportunities.

To remove these harmful consequences, Oklahoma law allows people whose criminal records meet certain conditions to expunge their records.[6] However, the "second chance gap" in Oklahoma "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:

___(estimating, based on review of the literature, the national average earnings loss associated with misdemeanor and felony convictions to be $5,100 and $6,400, respectively, and that of a suspended license to be $12,700).
[5] As defined id.
[6] Described in "Rules" Section of Appendix A.

- In the state of Oklahoma, an estimated 1.2M out of approximately 4.0M state residents have felony or misdemeanor court conviction records.
- Of those, an estimated 28%, or about 70K people are eligible for expungement of their convictions, and an estimated 28% are eligible for expungement of all or part of their convictions under the current law (not taking into account fines and fees and out of state charges). Approximately **10% of individuals with records, we estimate, could clear their records entirely, 10% of individuals with convictions could clear all convictions.**
- Based on the assumption that our sample is representative of people with court records in Oklahoma, we estimate that the current felony population in Oklahoma is approximately 41K people. The share of people with felonies eligible for convictions relief is 28%.
- We estimate the aggregate earnings loss of the 170K people with convictions in the Oklahoma second chance gap translates to a cumulative annual earnings loss of about $867 million.

IV.   Conclusion

Based on our analysis, Oklahoma's Expungement laws allow for approximately 28% of those who live burdened with records to get records relief, 28% to get relief from convictions, and for 10% of individuals with records who could clear their records entirely, and 10% of individuals with convictions could clear all convictions. The second chance expungement gap translates to a cumulative annual earnings loss to the state of about $867 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 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

Oklahoma Expungement Rules
Source: | 22 O.S. § 18 (OSCN 2022) Oklahoma CCRC (May 28, 2021) oklaw.org (October 30, 2018)

CONVICTIONS:
1. Misdemeanors:
   a) Expungement of misdemeanor convictions if no charges are pending, no prior felony convictions, after 5 year waiting period from time of conviction. § 18(A)(11).
      i)   If sentence was for a fine of less than $501 with no prison sentence, and misdemeanant has no felony convictions or charges pending, then waiting period is waived. § 18(A)(10).
      ii) Expungement of convictions for misdemeanors formerly classified as felonies if restitution paid in full and any treatment program completed (30 day waiting period after completion of sentence). § 18(A)(15).
2. Felonies:

a) Expungement of one **non-violent felony conviction** 5 years after completion of sentence, no prior felony convictions, no prior misdemeanor convictions for 7 years, with no charges pending (§ 18(A)(12).

b) Expungement of not more than two felony offenses, neither of which is of **serious violence or requires registration as a sex offender**, 10 years clean after sentence completion. (§ 18(A)(13)

c) Expungement of any felony for which a pardon was issued. (§ 18(A)(4).

1. Not eligible: **Felonies** listed in § 57-571 and § 21-13.1.
2. Lifetime or other Limits: No more than 2 felony convictions (subject to above exceptions in § 57-571 and § 21-13.1) may be expunged. (§ 18(A)(13).
3. Treatment of Multiple Convictions from the Same Incident: "For purposes of seeking an expungement under the provisions of paragraph 10, 11, 12 or 13 of subsection A of this section, offenses arising out of the same transaction or occurrence shall be treated as one conviction and offense." § 18(C).
4. LFO payment required for sentence completion: Yes, all fines and fees must be paid § 18(A).
5. Other Unmodeled Criteria or details:
   a. Juvenile expungement. (§ 2-6-109).
   b. Expungement pertaining to human trafficking record relief laws. (§22-19c).
   c. Expungement of charges for victims of identity theft. (§22-19a).

NON-CONVICTIONS:
1. Expungement of nonconvictions if charges dropped, no prior felony convictions, no charges pending, and either statute of limitations expires **(assume 1 year)** or prosecuting agency indicates charges will not be refiled **(cannot model)** (does NOT apply to charges dismissed as part of deferred adjudication). § 18(A)(7).
2. Expungement of deferred adjudication for misdemeanor if probation successfully completed, no prior felony convictions, no charges pending, with 1 year waiting period from dismissal of charge. § 18(A)(8).
3. Expungement of deferred adjudication for felony if probation successfully completed, no prior felony convictions, no charges pending, with 5 year waiting period from dismissal of charge. § 18(A)(9).
4. Expungement of arrest records if no charges filed, acquittal or reversal of conviction, or if actual innocence established by DNA evidence or from the Governor's pardon. §§ 18(A)(1)-(5).

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 2018-2019 as described in Chien (2020).

Data Statistics	
Number of People in the Sample	2,427
Share of People with Convictions	65%
Share of People with Felony Convictions	4%
Share of People with Misdemeanor Convictions in the Sample	36%
Share of People with Felony Charges in the Sample	10%
Share of Charges Missing Dispositions	31%
Share of Charges Missing Chargetypes	0%

Appendix C: Common Charges

A. Top 10 Charges in our Dataset

Charges	Number of Charges	Percentage of Charges
SEAT BELT - DRIVER NOT WEARING SEAT BELT(SB3) (STATUTE: 47 O.S. 12-417(A))	202	4%
SEAT BELT VIOLATIONS(SB3) (STATUTE: 47 O.S. 12-417(A))	114	2%
SB3. SEAT BELT - DRIVER NOT WEARING SEAT BELT	83	1%
SPEEDING 1 - 10 MPH OVER(S51) (STATUTE: 47 O.S. 11-801(B)(C)(F))	79	1%
S51. SPEEDING 1 - 10 MPH OVER	71	1%
OPERATING MV W/O CURRENT LIC PLATE/TAXES DUE STATE/IMPROPER TAG(LP1) (STATUTE: 47 O.S. 1151(A)(5))	66	1%
SPEEDING 1 - 10 MPH OVER(S51) (STATUTE: 47 O.S. 11-801(B)(F), 11-801E)	61	1%

DRIVING UNDER SUSPENSION / DUS(DL2) (STATUTE: 47 O.S. 6-303(B))	61	1%
SPEEDING 1 - 10 MPH OVER(S51) (STATUTE: 47 O.S. 11-801A)	54	1%
SPEEDING 1 - 10 MPH OVER(S51) (STATUTE: 47 O.S. 11-801(A))	39	1%
Total share and charges associated with top 10 charges	**830**	**15%**

B. Top 10 Expungeable Charges in our Dataset

Expungeable Charges	Number of Charges	Percentage of Charges
SB3. SEAT BELT - DRIVER NOT WEARING SEAT BELT	58	7.8%
S51. SPEEDING 1 - 10 MPH OVER	28	3.8%
LP1. OPERATING MV W/O CURRENT LIC PLATE/TAXES DUE STATE/IMPROPER TAG	17	2.3%
SB4. SEAT BELT - PASSENGER NOT WEARING SEAT BELT	15	2.0%
FR5. FAILURE TO COMPLY WITH COMPULSORY INSURANCE LAW OR FAILURE TO PRODUCE SECURITY VERIFICATION FORM	14	1.9%
SEAT BELT - DRIVER NOT WEARING SEAT BELT	14	1.9%
FAILURE TO WEAR SEAT BELT PROPERLY	13	1.8%
FAILURE TO WEAR SEAT BELT	11	1.5%
NO SEAT BELT	9	1.2%
SPEEDING 1-10 MPH OVER	8	1.1%
Total share and charges associated with top 10 expungeable charges	187	25.2%

Appendix D: Detailed Expungement Statistics

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

Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives[7]

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"

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[7] Adapted from Chien (2020)