

The Texas Second Chance Non-Disclosure/Sealing Gap

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Key Findings

Population with criminal records: ~7M

Population with conviction records: ~4.4M

Share of people with convictions eligible for relief: ~82%

Population with convictions eligible for relief: ~3.6M

Share of people with *any* record eligible for relief: ~77%

Population with *any* record eligible for relief: ~5.4M

Uptake rate of convictions relief: ~1.0%

Uptake rate of *any* records relief: ~ 2.2%

Expunctions | Orders of Non-Disclosure in last full year of data (2019): 24,375 | 2,650

Years to clear the convictions (OND) backlog based on current rates: 1000+

I. Abstract

Texas Gov. Code Chap. 411 allows individuals whose criminal records meet certain conditions to non-disclose or seal their records. Ascertaining, then applying the law to a sample of 2,362 criminal histories² including 64% with convictions records, and then extrapolating to the estimated population of 4.4M individuals in the state with criminal 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 82% of individuals in our sample are eligible to clear their convictions, 59% of all convictions, and of individuals with

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² Sample provided by a background check company as described *id.*, analysis to be replicated/verified based on data provided by the Texas DPS in the coming weeks.

³ Rough estimate based on 24% of the 2019 population of 29M, 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.ncjrs.gov/pdffiles1/bjs/grants/255651.pdf>, Table 1 (listing the total number of criminal records in the TX state repository as of Dec 2018 as 12.7M (roughly double our estimate), a number that does not take into account people that have left the state or passed.

⁴ As defined in Chien (2020).

records that are eligible to clear their records, 41% are eligible to clear all records. Extrapolating to the total number of people with records in Texas, this translates into an estimated 3.6M people with convictions that are eligible for convictions relief and 5.4M with records that are eligible for any relief that haven't received it. Combining historical non-disclosure/sealing statistics with our eligibility calculations, we estimate that ~1% of people with conviction records eligible for relief have received it, leaving 99% of people with records in the "Texas Second Chance Gap."⁵ Based on reported records, the State non-disclosed or sealed 27,025 cases in the last year of available data (2019) and 2,650 convictions in the last year of available data (2019). At this rate, it would take approximately 1372 years 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, charge type, 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 Non-Disclosure/Sealing 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, Texas law allows people whose criminal records meet certain conditions to Non-Disclose/Seal their records.⁶ However, the "second chance gap" in Texas "non-disclosure/sealing" - 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:

⁵ As defined id.

⁶ Described in "Rules" Section of Appendix A.

- In the state of Texas, an estimated 4.4M out of approximately 29.0M state residents have felony or misdemeanor court conviction records and at least 7.0M people have criminal records.
- Of those, an estimated 82%, or about 3.6M people are eligible for expungement of their convictions. Approximately **41% of individuals with records, we estimate, could clear their records entirely, 59% of individuals with convictions could clear all convictions.**
- Based on the assumption that our sample is representative of people with court records in Texas, we estimate that the current felony population in Texas is approximately 1.2M people. (In 2010 it was estimated by Shannon, Uggen 2016 to be approximately 1,383,649)
- 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 2,650 non-disclosures, and 24,375 sealings over the last 10 years. Based on these numbers and the calculations above, we estimate that ~1.0% of people eligible to clear their convictions have taken advantage of this remedy and that ~2.2% of people eligible to clear any record have done so, leaving ~99% and ~98% of people in the non-disclosure/sealing uptake gap, respectively.
- At current rates of expungement, it would take more than 1,000+ years to clear the existing backlog of eligible convictions using current methods.

IV. Conclusion

Based on our analysis, Texas's non-disclosure/sealing laws allow for approximately of those who live burdened with records to get records relief, 82% to get relief from convictions, and for 41% of individuals with records who could clear their records entirely, and 59% of individuals with convictions could clear all convictions. But to date we estimate that 1% of those eligible for convictions relief have actually received the remedy, leaving 99% of people in the non-disclosure uptake gap.

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

Texas Non-Disclosure/Sealing Rules

Primary Sources: [Texas Gov. Code Chap. 411](#) (2017) | [Sec. 411.072](#) | [411.0725](#) | [411.073](#) | [411.0731](#) | [411.0735](#) | [411.074](#) (all 2017) | [Art. 55.01](#)(2019)

Secondary Sources: [University of Texas Guide](#)(2019) | [Texas CCRC](#) (7/4/2020) | [App](#)

CONVICTIONS:

1. Misdemeanors:
 - a. Order of Non-Disclosure(OND)/Sealing available for first time **misdemeanor punishable by fine only** and **misdemeanor carrying a sentence of**

incarceration, if clean after date of sentencing, with no waiting-period for fine-only offenses, and for incarceration-offenses after 2-year waiting-period starting from completion of sentence (Sec. [411.0735](#)).

- b. OND/Sealing available for **first-time DUI offense**, if clean after imposition of original sentence after 3-5⁷ year waiting-period from completion of sentence ([Sec. 411.0736](#)).
2. **Felonies**: None that we are modeling (see section 6 “Unmodeled” for technically-eligible categories).
3. **Not Eligible**: Ineligible if: court determines that the offense that was violent or sexual in nature ([411.0735\(c-1\)](#)), DUI (Sections [49.04](#), [49.05](#), [49.06](#), [49.065](#)), requiring registration as a sex offender (Section [62.001\(5\)](#)), aggravated kidnapping (section [20.04](#)), homicide (sections [19.02](#), [19.03](#)), human trafficking (Section [20A.02](#), [20A.03](#)), child/elder abuse (Sections [22.04](#), [22.041](#)), family violence (sections [25.07](#), [25.072](#), [71.004](#)), or stalking ([Section 42.072](#)).
4. **Lifetime or Other Limits**: Sealing not available for a person previously convicted/placed on deferred adjudication for a different offense. (411.073(b)(2); 411.0731(b)(2); 411.0735(b)(2); 411.0736(b)(2)).
5. **LFO Payment Required for Sentence Completion**: Yes, for misdemeanor convictions (411.0735(b)) and DUI convictions (411.0736(b)).
6. **Other Unmodeled Criteria or Details**:
 - a. OND/Sealing for Misdemeanors sentenced to deferred adjudication community supervision ([Sec 411.072\(1\)\(d\)](#)), first-time misdemeanor sentenced to community supervision, ([Sec. 411.073](#)/Listed chapters under 411.073(d)(2)), certain felonies given deferred adjudication community supervision ([Sec 411.0725](#)), and Expunction for Class C Misdemeanors sentenced to community supervision ([Article 55.01\(a\)\(2\)](#)).

NON-CONVICTIONS:

1. Expunction if arrested and charges dropped, acquitted, or pardoned after waiting-period (all from date of arrest) of 180 days for Class C misdemeanor if no additional felony charge brought/rose from same transaction, 1 year for Class B or A misdemeanor if no felony charge brought/rose from same transaction, or 3 years if charge was a felony or if felony charge brought/rose from same transaction. ([Art. 55.01\(a\)](#)).

Appendix B: Data Sample Description

⁷ 5 years, if had ignition device for not less than 6-months, and 5 years if no interlock.

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).

Data Statistics	
Number of People in the Sample	2,362
Share of People with Convictions	64%
Share of People with Felony Convictions	17%
Share of People with Misdemeanor Convictions in the Sample	57%
Share of People with Felony Charges in the Sample	35%
Share of Charges Missing Dispositions	16%
Share of Charges Missing Chargetypes	1%

Appendix C: Common Charges⁸

- A. Top 10 Charges in our Dataset
- B. Top 10 Expungeable Charges in our Dataset

Charges	Number of Charges	Percentage of Charges
Driving While Intoxicated	494	4%
Possession of Marijuana (Less than 2oz)	386	3%
Failure to Maintain Financial Responsibility (Liability Insurance)	189	2%
Assault of a Family Member	178	2%
Failure to Appear	105	1%
Theft (Under \$500)	82	1%
Possession of Controlled Substance PG1 Less than 1g	61	1%
Theft by Check (Under \$500)	53	0%
Occupational Driver's License	49	0%
Possession of Marijuana	43	0%
Total share and charges associated with top 10 charges	1640	14%

⁸ These shares of charges are likely low due to lack of name normalization.

<u>Expungeable Charges</u>	<u>Number of Charges</u>	<u>Percentage of Charges</u>
Driving While Intoxicated	366	5.3%
Possession of Marijuana (Less than 2oz)	306	4.4%
Failure to Maintain Financial Responsibility (Liability Insurance)	189	2.7%
Theft by Check (Under \$500)	120	1.7%
Failure to Appear	88	1.3%
Theft (Under \$500)	52	0.8%
Possession of Marijuana	42	0.6%
Expired Registration	39	0.6%
No Driver's License	38	0.6%
Parent Contributing to Non-Attendance	37	0.5%
Total share and charges associated with top 10 expungeable charges	1277	18.5%

Appendix D: Detailed Non-Disclosure/Sealing Statistics

We obtained statistics from the Texas Department of Public Safety, which reports that 9,942 orders of non-disclosure were processed between fiscal years 2014 and 2019 and that 108,147 expunctions and sealings were processed between October 2013 and 2020. Importantly, the number of expunctions and sealings processed contains juvenile as well as adult data, making them an overestimate of adult relief provided.

We also obtained county-level data from Tarrant County, Fannin County, and Travis County. Fannin County reports that it granted 21 expunctions in fiscal year 2011 and fiscal years 2014-2019. Tarrant County reports that 8,393 petitions for expunctions were filed between fiscal year 2010 and fiscal year 2019. Travis County reports that 10,684 petitions for expunction were filed between 2010 and March 2020.

Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives⁹

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”

⁹ Adapted from Chien (2020)