The Massachusetts Second Chance Sealing Gap

PAPER PRISONS

Massachusetts is considering proposals S.979 and H.1598 to automate the sealing of criminal conviction records that otherwise would be eligible for petition-based expungement. Applying provisions outlined in Massachusetts General Laws Chapter 276 §100A[1] to a sample of criminal histories, we estimate the share and number of citizens of Massachusetts with convictions who would be eligible for sealing.[2] (We do not model expungements) In addition, we estimate the aggregate annual earnings loss attributable to the state's current, less accessible system based on statistical analyses of the earning loss from a conviction, of about $5,100 for a misdemeanor and $6,400 for a felony.[3]

To estimate the share and number of people with records that would be eligible for sealing under the proposed Clean Slate Act, we analyzed 3,971 conviction records obtained from a commercial background check company, representing a random sample of 1,296 individuals with criminal histories in MA from 1992-2018. We then developed algorithms to model the eligibility rules based on the pending Clean Slate Act, court eligibility guidelines, and consultations with advocates from Greater Boston Legal Services.

https://paperprisons.org/states/MA.html

QUICK FACTS

- Estimated people in Massachusetts with criminal records: **1.7M**[4]
- Estimated population with convictions eligible for sealing relief under Clean Slate: **178,000**
- **$900M** est Annual Lost Earnings due to loss of a driver's license and misdemeanor and felony convictions[5]
- Uptake of current relief under c.276 §100A: **17%**[6]
- **96** Years to Clear the Backlog[7]

According to our analysis, approximately 42% of those who live burdened with criminal convictions would potentially receive relief under the proposed legislation immediately, with others, besides those with ineligible offenses, eventually becoming eligible with the passage of time. But fewer than 17% of those with convictions currently eligible for relief under petition-based sealing have actually received the remedy. Additionally, we estimate the aggregate earnings loss associated with the estimated 178,000 people with convictions who would be Clean Slate eligible, finding their lost wage and earnings opportunities to translate to a cumulative annual earnings loss of about $900 million.

For more information please visit us at www.paperprisons.org or email paperprisons@gmail.com.

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Endnotes

1. We assume that a conviction was eligible for automated Clean Slate sealing pursuant to S.979 and H.1598 if: (1) Offenses resulting in death or serious bodily injury, intent to cause death or serious bodily injury, armed with a dangerous weapon (2) Offenses against the elderly or disabled (3) Sex offenses against minors or adults defined in c.6 §178C and c.123A §1 (4) DUIs c.90 §24 (5) Felonies under c.265, crimes against a person (6) Possession of dangerous weapons, high capacity guns, and other prohibited weapons under c.269 §10(a-d), c.140 §121-131Q (7) Domestic violence under c.209 §32 and violating related protective orders benefitting adults and minors under c.208 §18, c.208 §34B, c.209A and c.209C (8) Violating orders relating to harassment under c.258 (9) When sealing only, crimes against public justice c.268 and conduct of public officials and employees (c.276 §100A, c.268A).
In both of our analyses, we were unable to ascertain with certainty sentence completion date, so we estimated the completion based on the method described in Colleen V. Chien, "America's Paper Prisons: The Second Chance Gap," 119 Mich. Law. Rev.519 (2020)

2. We based on our analysis and approach on the concept and definition of the "second chance gap" described in Chien (2020) https://paperprisons.org/methodology.html/

3. 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, 64 Ariz. L. Rev. 675 (2022), which estimates the national average earnings loss associated with a misdemeanor and felony conviction to be $5,100 and $6,400, respectively, and which separately calculate the amount associated with a lost drivers license, which is not used in the present analysis. As these numbers are averages, it is likely that in Massachusetts, the estimated annual earnings loss would be higher in light of the state's higher average income (https://worldpopulationreview.com/state-rankings/average-income-by-state) (listing Massachusetts' average income as $85K, the third highest in the nation).

4. The estimate of 1.7M Massachusetts citizens with a conviction record is based on an estimate provided by SEARCH in 2018 and then we added a 1.03% kicker to estimate the number of people with records in 2020. Cf. estimate of 1.7M Massachusetts citizens with a criminal (arrest) record obtainable by calculating 24%

of the 2022 total state population of 7M, reflecting the national average of the population with criminal records (out of ~329M Americans, ~80M have criminal records and 80/329 = ~24%); see also Becki R. 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 (1 listing the total number of records in the MA repository as of 12/2018 as 1,462,000))

5. Based on $5,100 per year lost earnings (per fn 3) x 1.35M Massachusetts citizens eligible for convictions relief.

6. We calculated the uptake rate by combining actual data on who has received sealing with our estimate of the total number of people who could seal their records under c.276 §100A to get an estimate of uptake.

7. Time estimate based on dividing estimate of number of who would get relief under Clean Slate by the annual number of people receiving petition based relief, which we obtained from official state records provided to us by Massachusetts Parole Services. From January 2022 through Dec 2022, 6, 107 petitions were processed.

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