

# The Estimated Size and Lost Earnings of New York's Second Chance Sealing Gap

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## Key Findings

Estimated number of people in New York with conviction records: 2.3M

Share of people with convictions eligible for Clean Slate relief: ~61%

People in NY with convictions eligible for Clean Slate relief: 1.7M

Uptake of petitions-based relief based on C.P.L. 160.59: <1%

Records sealed per year under existing application-based sealing provision (C.P.L. 160.59): 1,175 (2019)

Years to clear the backlog created by Clean Slate eligibility based on current rates of petitions-based sealing: ~1000+ Years

Estimated aggregate annual earnings loss associated with people with convictions that could be cleared under Clean Slate: \$7.1B

## Abstract

New York's Clean Slate Act, pending in 2023 in the New York legislature as S211/AB1029, proposes to automate the sealing of criminal records that meet certain conditions. Applying the Act's provisions to a sample of criminal histories of individuals applying for gig worker jobs,<sup>2</sup> we estimate the share and number of New Yorkers with convictions who would be eligible for Clean Slate automated sealing. In addition, we estimate the aggregate annual earnings loss to the state associated with this "Clean-Slate eligible" population<sup>3</sup> and how long it would take for this

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<sup>2</sup> See description of sample in id.

<sup>3</sup> 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) (estimating, based on a review of the literature including an quasi-experimental evaluation of deferred adjudication outcomes, 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. These numbers are averages, and are based on analysis of people with records on average (i.e. including people with or without previous convictions, and who were and were not working, at the time of the conviction). It is likely that in New York, 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 New York's average income as \$76K, the fifth highest in the nation)

population to get relief under current, petitions-based methods. We also estimate the uptake rate of petition-based sealing under New York’s current sealing statute, C.P.L. 160.59.

We find that approximately 61% of the people in our sample would be eligible for Clean Slate automated sealing and that, over time, the vast majority would become available, with about 2% of our sample disqualified due to sex offenses. Extrapolating this share to the estimated number of people with convictions in the state of New York (2.3M), we estimate that approximately 1.4M people would be eligible for automatic records sealing pursuant to the Clean Slate Act at the time it went into effect. The estimated annual earnings loss to the state associated with this population is \$7.1B dollars. According to official state records, from October of 2017 through Oct 2021, 3,218 people have sealed their records; we used the year of the most clearances (2019) in our analysis, due to the impacts of the pandemic.<sup>4</sup> 1,175 people did so in 2019.<sup>5</sup> Based on our calculations, this represents an uptake rate of <1% of currently available petition-based sealing under C.P.L. 160.59 and a rate of sealing that would require ~1000+ years to clear by petition the records that would be eligible for Clean Slate automated sealing.

## Approach

We assume that a conviction was eligible for automated Clean Slate sealing pursuant to S211/A1029 if:

- It was not a sex offense under New York Penal Law §§130 or 263;
- In the case of a misdemeanor conviction, the person remained conviction-free for a 3-year period following sentencing;
- In the case of a felony conviction, the person remained conviction-free for a 7-year period following sentencing;
- The person did not have a pending charge.

We assumed that, under C.P.L. 160.59, commission of any one of the following offenses rendered a person ineligible for record sealing:

- Sex offenses under New York Penal Law §§130 and 263
- Felony offenses under New York Penal Law §125
- Violent felonies and Class A Felonies under New York Penal Law §70.02
- Any Class A felonies under New York Penal Law
- Conspiracy to commit felony offenses under New York Penal Law §105 where the underlying offense is not an eligible offense.
- Attempts to commit an offense that is not an eligible offense if the attempt is a felony

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<sup>4</sup> NY Division of Criminal Justice Services publication, “Raise the Age Sealing Provision Report,” dated October 2021 and available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/Raise-the-Age-Provision-Sealing-Report.pdf>. We use 2019 numbers, rather than 2020 or 2021 due to the impacts of the pandemic.

<sup>5</sup> Id.

- Offenses for which registration as a sex offender is required pursuant to New York Consolidated Laws, Correction Law Article 6-C

Furthermore, to be eligible for C.P.L. 160.59 sealing, individuals must not have more than a total of two convictions (only one of which may be a felony) on their criminal record.

We were unable to ascertain with certainty out-of-record conditions such as sentence completion date, so we estimated completion according to the method disclosed in Chien (2020).<sup>6</sup>

### ***Finding the current gap share within a sample***

To find the current gap, or the share of people with records that would be eligible for sealing under the Clean Slate Act, we started with the anonymous criminal histories in NY of around 1,100 people obtained who applied for gig jobs in 2017 and 2018 from a commercial background check company.<sup>7</sup> We then developed algorithms to model the eligibility rules based on the statute codes identified in the now-pending Clean Slate Act, court eligibility guidelines, and consultations with practicing attorneys from Community Service Society of New York and Legal Action Center. We compensated for dirty data using the approaches described below in the “assumptions” section. We separately assessed eligibility in our sample based on C.P.L. 160.59 in order to estimate the uptake rate of current, petition-based clearance eligibility. To get the uptake rate, we combined actual data on who has received sealing with our estimate of the total number of people who could seal their records to get an estimate of uptake.

### ***Estimating the total number of people in the current gap based on the sample***

We estimated the total number of people in the current gap by applying the share derived from the sample to the estimated total number of people with conviction records. Since the sample’s population’s age skews younger than the population of individuals with conviction histories at large, and since eligibility depends on the passage of time since sentence completion, *ceteris paribus*, the population in our sample plausibly could be less eligible for sealing their records than people in the population at large. This inference could be wrong, however. In the absence of better data, though, we believe our assumption is reasonable for developing an approximate total number of people eligible for relief. We found:

- Within our sample, around ~61% of people with convictions would be eligible for Clean Slate relief under the proposed law; of the remaining share, the vast majority would become eligible over time, with 2% of the sample ineligible for relief due to sex offenses.
- We use , the New York’s governor’s office estimate that 2.3M<sup>8</sup> people have a criminal conviction. However, this is likely an underestimate. In a report prepared pursuant to a

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<sup>6</sup> Described in 1.

<sup>7</sup> For a description of the sample see Chien (2020), id.

<sup>8</sup> As previously reported by the New York State Executive in late 2016 (archived website: <https://web.archive.org/web/20170719064448/https://www.governor.ny.gov/news/governor-cuomo-announces-first-nation-regulation-prohibit-insurance-companies-denying-coverage>).

grant by the Bureau of Justice Statistics by the consortium SEARCH,<sup>9</sup> 8.7M New Yorkers were estimated to have a criminal record, 80% of them with a criminal charge based on the analysis by Robert Apel of NLSY data reported in Chien (2020). (8.3M \* 80% = 6.6M) About 24% of Americans have a criminal record (~80M out of 330M), applying that share to New York would imply that around 4.8M New Yorkers have a criminal record, which we adopt as our assumption.

- Extrapolating eligibility from the sample to the estimated number of people currently with records of ~2.3M yields an estimate of about ~1.4M people in New York who stand to have their records sealed immediately upon passage of Clean Slate, with the vast majority of people with criminal records becoming eligible over time.
- In 2019, 1,175 took advantage of sealing.<sup>10</sup> Assuming sealing at this rate, it would take over 1000 years to clear the backlog of people currently eligible to seal under C.P.L. 160.59 or the Clean Slate Act.

***Key Assumptions:***

- Normalization of the charge and disposition of each record was based on the methodology described in Chien (2020).
- The sample of gig workers considered were as likely or less likely to be eligible for relief than New Yorkers with criminal histories as a whole.
- Records with insufficient information on charge type and/or sentences were removed and the most conservative assumptions were used.

## **Conclusion**

Based on our analysis, New York’s proposed Clean Slate law allows for approximately 60% of those who live burdened with criminal conviction records to potentially receive relief. Less than 1% of those with convictions currently eligible for relief under petition-based sealing have actually received the remedy, so the Clean Slate Act would dramatically increase records clearance in New York State. Additionally, we estimate the aggregate earnings loss associated with the estimated 1.4M 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 \$7.1 billion.

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<sup>9</sup> 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 NY repository as of 12/2018 as 8,227,600) We then applied a 3% annual growth rate calculated based on 10-years of actuals from SEARCH.

<sup>10</sup> NY Division of Criminal Justice Services publication, “Raise the Age Sealing Provision Report”, dated March 20, 2020 and available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/Raise-the-Age-Provision-Sealing-Report.pdf>