The Second Chance Gap
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The “Second Chance Gap”

The difference between eligibility and delivery of second chances
How many second chances have become missed chances?
~7,881 Unreviewed Petitions

~3.4%-5.6% of prisoners eligible for commutation received it.
First Step Act Releases: “Every Minute, Hour, Day Counts...”

For Inmates Released Under New Criminal Justice Reforms, ‘Every Day Counts’

Thousands of people were released from federal custody as part of the First Step Act. A few told us their stories.

Robert Shipp, 46, who was released from home confinement on Friday more than two decades after receiving a life sentence. Whitson Sabatini for The New York Times
Recent Examples of the Second Chance Gap

A New Law Made Him a ‘Free Man on Paper,’ but He Died Behind Bars

Marie Dianne Cheatham was making arrangements for her husband’s release from prison when he died.

By Mitch Smith
Feb. 15, 2019

How many second chances have become missed chances?
Domains of study

Resentencing  Reinfranchisement  Records Clearance
Defining the “Second Chance Gap”

The difference between eligibility and delivery of second chances
Two types of Second Chance Gaps

- **Uptake Gap**: the share of those eligible for relief who have applied for or received it. Reflects the effectiveness of the administration of the law.

- **Current Gap**: the share of those currently with criminal records who could clean their record. A product of the generosity of law and other factors that impact the size of the population eligible to receive relief and the uptake gap.
Domains of study

Records
Clearance
The **Uptake** of petition-based records clearing appears relatively **low**

![Benefit Uptake Rates](chart)

Sources: Chien 2018, Starr Prescott 2019, Alba 2018
Petition-based records clearing is followed by a rise in wages and employment.

Prescott and Starr (2019): within one year, wages go up by 23% versus the pre-expungement trajectory, recidivism is lower than among the general population.
Petition-based records clearing is followed by a rise in wages and employment.

*Selbin and McCrary (2018): after three years, earnings up from 18-20K, employment up 5-10%*
How Many People Fall Into the Records Clearing **Current Gap**?

This paper estimates the current gap using records of gig jobseekers.

Analysis based on a sample of 60,269 background checks (chosen randomly within states) of people seeking primarily on-demand jobs (e.g., with Uber, Doordash, Instacart) from Jan 2017-Oct 2018.
How I determined the current non-convictions records clearing gap in each state:
- Focused on clearance of non-convictions only
- Consulted with statute and local experts, through the Council for State Governments, re: whether the state fell into a lenient (partial nonconvictions clearable), strict, or superstrict jurisdiction
- Applied laws to available records
- Limitations
  - Doesn’t include arrests that were never charged
  - Doesn’t include clearable convictions (v. difficult to model)
This analysis can provide a lower-bound estimate

- Gig jobseekers are less likely to fall into the current gap than the general population
An estimated 30-~45%+ of Gig Jobseekers could clean their records

*Based on analysis and application of clearances rules in 45 states to the criminal records to a population of ~15K actual background checks performed. The state-balanced gap accounts in part for differences in geography between gig jobseekers and the national population of people with arrest records, based on an analysis of all arrest records by state from 1995 to present.*
An estimated 20-30M Americans could clear their criminal record partially or entirely (lower-bounds estimate)

![Bar chart showing the number of Americans with criminal records, clearable records, and fully cleared court records.]

*Based on FBI September 2018 Next Generation Identification System Fact Sheet identifying 75.6M unique Americans with a criminal record **Based on analysis and application of clearances rules in 45 states to the criminal records to a population of ~60K actual background checks performed on gig jobseekers, balanced for extrapolation to a national sample.
Observations
- **The Long Shadow:** For every person behind bars, there are 30 American adults with a criminal record, a number that will continue to grow even as the US decarcerates.
- **First Chance Gap?** The charge-level convictions rate, based on available records, varies widely by jurisdiction, creating collateral consequences where records are widely available.

For Discussion
- **Clean Slate’s Dirty Data:** Many existing policy provisions are hard to automate given the poor state of data.
- **Law v. Records policy:** Law defines what employers and others should see, but records policy dictates what they *can* see.
- **Criminalizing Innocence? Rethinking Non-Convictions Records Policy:** Being accused is often enough to set off civil punishments. Should this data be released?
# Clean Slate’s Dirty Data

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Administrability Challenge</th>
<th>Example</th>
<th>Drafting Alternative?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentence completion</td>
<td>Not tracked and hard to infer as clean sentencing data is often not available; often unclear whether or not outstanding fines are fees must be paid, or whether they are.</td>
<td>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)(l), (1)(e)(l).</td>
<td>Disposition Date (+ X Years)</td>
</tr>
<tr>
<td>First conviction; qualifying conditions</td>
<td>Lack of unique identifier across precludes determination</td>
<td></td>
<td>Bless commercial identification approximation technique</td>
</tr>
</tbody>
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<tr>
<td>Class or grade condition</td>
<td>Missing class, grade or category information</td>
<td>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.</td>
<td>Explicitly specify the qualifying crimes</td>
</tr>
<tr>
<td>Court-ordered conditions</td>
<td>Require individual review /check for any “court-ordered” conditions and compliance re: same</td>
<td></td>
<td>Do not include court-ordered conditions</td>
</tr>
</tbody>
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<tr>
<td>Personal demographic trait such as age, military status, or other condition</td>
<td>Information may not be easily ascertainable / available on the record or charge category condition</td>
<td>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. &amp; Inst. Code §781(d). Cal. Welf. &amp; Inst. Code § 781(d).</td>
<td>Specify an identification strategy that can be implemented at scale or do not include demographic traits</td>
</tr>
</tbody>
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<th>Drafting Alternative?</th>
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<tr>
<td>Laundry list disposition criteria</td>
<td>Vulnerable to changes to definitions, requires detailed clean data</td>
<td>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).</td>
<td>Simple description e.g. “All records that do not end in a conviction”</td>
</tr>
</tbody>
</table>
Law v. Records Policy:

Which type of policy - state legislature, local records policies - matter?

Which ones matter more?
Law v. Records Policy:

**Alaska Law:** The Alaska Court System may not publish a court record of a criminal case on a publicly available website if 60 days have elapsed from the date of acquittal or dismissal and [the defendant was acquitted or dismissed]. Alaska Stat. § 22.35.030

**Vermont Law (pre-11/2018):** The criminal history record of a case ending without conviction can be sealed or expunged by the court at any time. 13 V.S.A. § 7603(g)

**Question:** Which law provides a tighter seal around nonconviction records employers can see?
Law v. Records Policy

**Alaska Court Rule 37.8(b)(2):** Bulk distribution of case information is permitted, unless the information is not publicly available in electronic form under subsection (a) of this rule [PII restriction]

**Vermont Criminal Information Center (VCIC) Policy:** If an employer runs a check on a person against whom charges were filed and subsequently dismissed...VCIC staff will inform the employer that there is “no record.”

*Question:* Which court rule/policy provides a tighter seal around nonconviction records employers can see?
Law v. Records Policy

The second chance gap is much smaller in Vermont than in Alaska because the records are simply not made available to employers.
Law v. Records Policy

Law \=/= Records Policy

CA, NY Fair Chance laws prohibit employers and others from considering non-conviction records

Observation: Law defines what employers and others should see, but records policy dictates what they can see
Criminalizing Innocence? Rethinking Non-Conviction Records Policy

In my review of 60K gigworker applicant background report data...

1. ~60% of charge dispositions used “plain English” terms: (“guilty,” “convict,” “admit,” “not guilty,” “dismiss,” “acquit”), 25% of charges lacked dispositions
2. ~42% of charges had conviction disposals (58% of discernably disposed charges)
3. ~60% of incidents had conviction disposals (70% of discernably disposed incidents)
4. ~40% of individuals with clearable records had clearable felonies, ~13% had fully clearable records
Methodology

To generate the statistics reported, I analyzed the background report data of 60,269 people seeking primarily on-demand jobs carried out between January 2017 and October 2018. The data was provided to me through a partnership with background check company Checkr, which services over 10,000 customers per month and powers the gig economy; Checkr, in turn sourced the data directly from court sources. Each set of “checks” (from around 1,000 to 3,000 per state) was randomly selected at the state level. The 60,269 checks were associated with 577K charges. From the charge-level data, I grouped each charge involving the same person, on the same day, in the same jurisdiction, into an incident, identifying 265K incidents. I then reviewed the disposition information and based on a taxonomy developed in consultation with expert attorneys, further classified each reported disposition into one of several categories: not guilty/dismissed, pending, guilty, unknown, transferred/not decided (details on the next page). Doing so necessarily introduced imprecision as states may vary how they view, treat, and characterize certain dispositions, making this exercise at best an approximation. To these records, I applied the approximate non-convictions clearance criteria of each state in order to get a rough estimate of the number of individuals fall into the “second chance gap,” and are eligible for relief but have not taken advantage of it, based on the information available within court records. As described in detail in the paper, this required roughly grouping each state’s rules for clearance of non-convictions criteria into one of three categories, a methodology that currently does not accommodate nuances relating to waiting times that some states like Maryland impose prior to clearance and the presence of different clearance rules for different types of nonconvictions (for example in Louisiana and Georgia). When in doubt, I default to the more conservative version of the rule (superstrict over strict over lenient). To discern the state level rule, in turn, I consulted with the statute, expert summaries provided by the CCRC and CSG, and state attorneys, however ambiguity remained and as such, the resulting approximation remains that, an approximation.
## Methodology

<table>
<thead>
<tr>
<th>Not Guilty/Dismissed</th>
<th>Pending</th>
<th>Guilty</th>
<th>Unknown</th>
<th>Transferred/ Not Decided</th>
</tr>
</thead>
</table>
Criminalizing Innocence? Rethinking Non-Conviction Records Policy

Non-Conviction Consequence Types
1. Employment
2. Deportation - ICE targeting
3. Housing denial
4. Custody decision
5. Education
6. Healthcare
7. Civic participation
8. Stigma

Sources: Jain, Lageson, Chien
Make a Clean Break, not just a Clean Slate?
Regulating at the single source, not just multiple endpoints:

1. Default to non-release of non-convictions
2. Clearly identify non-convictions
3. Provide a single clean source of information
4. Make law and records release policies consistent
5. To mitigate the risk of incomplete/stale data, regulate entities not under FCRA jurisdiction
Backup Slides
The Cost of Closing the Gap varies widely by implementation

<table>
<thead>
<tr>
<th>Implementation</th>
<th>Source of Estimate</th>
<th>Cost</th>
<th>Components</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal-Clinic-Assisted Petition-Based Clearance</td>
<td>Chapin, et. al.\textsuperscript{155}</td>
<td>$3,757 per person</td>
<td>$59 (probation office costs), $242 (court costs), $3,412 (legal assistance provided by the Records Clearance Project), $44 (legal fees of the offender)</td>
</tr>
<tr>
<td>Automated Identification + Petition Based Clearance</td>
<td>California Senate Appropriations Committee\textsuperscript{160}</td>
<td>$36-$164 per charge</td>
<td>$5-$26M (court costs), $2.9M (DOJ identification costs) (does not include prosecution/PD costs)</td>
</tr>
<tr>
<td>Clean Slate</td>
<td>Pennsylvania Senate Appropriations Committee\textsuperscript{157}</td>
<td>~$0.041 per case ($245K to support an initial tranche of ~6.0M cases eligible for relief)</td>
<td>195K (for changes to police computerized criminal history systems) and 50K (for implementation by the Administrative Office of PA Courts)</td>
</tr>
</tbody>
</table>
Clean Slate is the Most Cost-Effective Way of Clearing Criminal Records

Estimated Unit Costs of Records Clearance

- Petition-Based Clearing (per person): $3,757.00
- Petition-Based Clearing + Automated Identification (per charge): $100.00
- Clean Slate (per case): $0.04
The Long Shadow


- Solid line: State Arrests
- Dotted line: Subjects in the State Criminal History File (starting from 1998)
- Dashed line: State Prisoners
What contributes to the gap in a state?

Model 1: Gap size = Auto-Clearance + Generosity + ConvictionRate
Model 2: Gap size = Auto-Clearance + Generosity + ConvictionRate + Age + Lnpopulation + Rural-Urban Code

Model 1: $r^2 = 0.753$, all $p$s $< 0.001$. Each successive variable explained additional variance (all $F$s $> 4.2$, all $p$s $< 0.01$).
Model 2: $r^2 = 0.757$, all $p$s except $\ln($population$) < 0.001$
Table E: Multiple Linear Regression Results

<table>
<thead>
<tr>
<th>Step</th>
<th>Variables</th>
<th>Model 1</th>
<th>Model 2</th>
<th>R2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1</td>
<td>Automatic_Clearance</td>
<td>-0.294**</td>
<td>-0.041**</td>
<td>0.12</td>
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<tr>
<td>Step 2</td>
<td>Generosity</td>
<td>0.181**</td>
<td>0.112**</td>
<td>0.20</td>
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<tr>
<td>Step 3</td>
<td>Conviction_Rate</td>
<td>-1.02**</td>
<td>-1.022**</td>
<td>0.75</td>
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<tr>
<td>Step 4</td>
<td>RUCC_2013 [T.2.0]</td>
<td>0.015</td>
<td></td>
<td>0.76</td>
</tr>
<tr>
<td></td>
<td>RUCC_2013 [T.3.0]</td>
<td>0.018</td>
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<tr>
<td></td>
<td>RUCC_2013 [T.4.0]</td>
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<tr>
<td></td>
<td>RUCC_2013 [T.5.0]</td>
<td>0.021</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>RUCC_2013 [T.6.0]</td>
<td>0.058**</td>
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<td></td>
<td>RUCC_2013 [T.7.0]</td>
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<td>RUCC_2013 [T.8.0]</td>
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<tr>
<td></td>
<td>RUCC_2013 [T.9.0]</td>
<td>0.051*</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>average_age</td>
<td>-0.002**</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>ln.population</td>
<td>0.017*</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

N = 2253, ** = p < .001, * = p < .01