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The Washington State Second Chance Expungement Gap

By Colleen V. Chien, Zuyan Huang, Jacob Kuykendall, Katie Rabago¹

Abstract

Washington law allows people with criminal records that meet certain conditions to vacate their records, avoiding the harmful collateral consequences that accompany having a record. To estimate the size of the “second chance gap” - the share of individuals that could but haven’t yet “expunged” their records, we modeled the eligibility criteria for vacatur and applied it to a sample of records obtained from the Administrative Office of the Courts of Washington. Importantly, data limitations made it impossible for us to consider out of state charges, payment of fines and fees, and definitive sentence completion, so we did not model them. Based on our analysis, we found that 60% of those who live burdened with criminal conviction records, or as many as 1M+ Washingtonians, are potentially eligible to receive relief. But less than 3% of individuals eligible for relief, and less than 1% of the charges eligible for relief have received the remedy. At current rates of vacation, we estimate that it would take over 4,000 years to clear the backlog of charges alone, based on the gap and the actual number of charges that were vacated last year (1,973). Existing racial disparities in the Washington criminal justice system are significant: currently, African-Americans represent 4.2 % of individuals in Washington but within our sample, 11% of Washingtonians with a criminal record, 15% of Washingtonians with any felony record, and 22% of Washingtonians with a Class A felony record. We find that Clean Slate would reduce racial disparities among individuals in the general population while not necessarily worsening it among the population of people with records. Because of the large second chance gap, the filing of petitions by all those who are entitled to relief could result in a severe congestion at the courts. Washington can close the 97-99% second chance gap between eligibility and delivery of relief by automating relief, solving both problems, but only if it implements the law with some adjustments and compensates for missing and dirty data. Code for implementing the calculations presented in this article can be obtained by emailing the corresponding author for this piece.

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, Washington law allows people whose criminal records meet certain conditions to vacate their records.² However, the “second chance gap”³ in Washington “expungements” (technically called “vacatur”) - the share of people who aren’t

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² This allows an individual with a vacated conviction to state that they have never been convicted of the vacated charge, and it updates the Washington State Patrols publicly available background report (the “WATCH” report) to make the vacated conviction private and only available to law enforcement and court personnel.

³ As defined in Colleen V. Chien, “The Second Chance Gap,” __ Mich. Law. Rev. __ (forthcoming 2020), available at <https://papers.ssrn.com/abstract=3265335>

vacating their conviction records because of hurdles in the petition process - we suspect is large. To estimate it, we used research, official guides to the law, and practice expertise to model the eligibility criteria for vacation set forth in the law and applied it to a sample of records obtained through a records request from the Administrative Office of the Courts (AOC) of Washington.⁴ 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 potentially disqualifying out of state charges.

On the basis of our analysis we find that:

- 2.14M Washingtonians have felony or misdemeanor convictions records (with records that contain approximately 21M convictions) that span the last two decades.
- Of those, an estimated 60%, or 1.3M people (associated with 8.4M convicted charges) are eligible for vacation under the current law (not taking into account ineligibility due to fines and fees, out of state charges and sentence completion conditions not ascertainable with certainty). Approximately 25% of individuals eligible to clear a conviction, we estimate, could clear their records of all convictions.
- Over the last 20 years, based on records obtained through a records request from the Administrative Office of the Courts 36,499 charges associated with 35,392 people have received vacations. In 2019, 1,973 charges were vacated over a combined 300 district courts, or less than 7 vacations per court on average in all of 2019 (see appendix A for a complete list of courts and vacations by court in 2019).
- Based on these numbers, we estimate that less than 3% of individuals and less than 1% of charges eligible for vacatur have taken advantage of this relief.
- At current rates of vacatur, it would take over 4,000 years to clear the backlog of eligible charges using petition-based methods, based on our calculations regarding the number of charges that we estimate are eligible for vacation (8.4M), and the actual number of charges that were vacated in 2019 (1,973).
- Existing racial disparities in the Washington criminal justice system are significant: within our sample, African-Americans represent 4.2 % of individuals in Washington but

⁴ Our sample comprised the criminal histories of individuals charged during one month out of the year during odd years from 1999-2019 for all District Courts and Courts of Limited Jurisdiction in Washington (with the exception of some of the data of King County, as discussed in Appendix C below). In our sample were about 175K individuals, 148K of which had a misdemeanor or felony conviction. The AOC also informed us that there are 2.14M Washingtonians with a criminal (misdemeanor or felony) conviction record. (Cf: the 2016 SEARCH report sponsored by the Bureau of Justice Statistics estimates that in 2016, there were 1.8 M Washingtonians with a criminal record.(See 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).) We applied ratios derived from our sample to the entire population of people with records in order to estimate sub-population counts within the state.

11% of Washingtonians with a criminal record, 15% of Washingtonians with any felony record, and 22% of Washingtonians with a Class A felony record.

- Among the population of people with criminal records (2.1M adults), Clean Slate would not, on net, reduce but would not, on net, exacerbate racial disparities. Automatic vacation would benefit Washingtonians with records across racial groups in roughly equal proportions, with the impact on various subgroups (e.g. people with records, people with misdemeanor records, felony records) varying accordingly.
- Among the general population (of 5.9M adults), Clean Slate would reduce racial disparities. The differences in each of the share of African-Americans and American Indians with a record as compared to the share of whites with a record would go down.⁵
- 7 out of the top 10 clearable charges are license-related, comprising nearly 80% of the top 10 clearable charges, and 30-40% of all clearable charges. (Appendix D)

METHODS

To carry out our work we obtained a data sample covering approximately 4.2% of individuals charged in the last 20 years,⁶ as well as numbers of vacations implemented over the past two decades, from the Washington Administrative Office of the Courts (AOC). We then approximated the eligibility criteria in the law, using the approach laid out below, based on court guidelines, statute-based research and the practice of one of us as an attorney who manages a Legal Aid program in Washington State focused on post-conviction work.

Subject to some statutory exceptions and additional conditions, Washington's vacating statute generally permits the expungements of the following for individuals that have no pending criminal charges, open warrants, or active restraining orders against them:⁷

- Misdemeanors and gross misdemeanors, 3 years after completion of the sentence requirements except in the case of domestic violence convictions which have a 5 year waiting period; (RCW 9.96.060)
- Class C felonies, 5 years, and Class B felonies, 10 years after completion of sentence requirements. (RCW 9.94a.640)

⁵ We estimate that it would decline by around 15-25% of the original difference based on race-specific total numbers of the total criminal population when provided by the AOC.

⁶ As described above in note 4.

⁷ Since June of 2019, it is no longer a prerequisite to vacating a charge that there be no additional convictions during the years immediately preceding the vacation, as long as there have been no additional charges during the duration of the waiting period.

To implement these rules, we used court guidelines⁸ that included ineligible convictions and grades and classes of convictions⁹ to generate the “ineligible lists.” To assign each statute to its grade (e.g. felony A, B, or C or misdemeanor / gross misdemeanor), we analyzed each statute in Title 9 and Title 9A. Most statutes specifically stated the grade of felony, however, some statutes only mentioned the years of imprisonment and maximum fines for which we assumed the class according to grade criteria. Some statutes were conditional and classified in a main category, changeable if certain conditions were met. Since we were not able to check whether these conditions were met, we assumed that the charge fell into the main statutory grade. We then assumed that if the conviction was in an eligible class and wasn’t on the ineligible list, it met the charge eligibility criteria.

To compensate for missing information on completion of the obligations of the sentence, we did not account for outstanding fines, and made some assumptions about the completion of other obligations based on the passage of time derived from practice. Specifically, to account for conviction time, time served and waiting periods, we assumed that the waiting period for Class B and C felonies misdemeanors began to toll 3 years after the filing date and that the waiting misdemeanors began to toll 1 year after the filing date. We assumed that when a person had charges with no disposition ("charge_result_code") filed less than 18 months ago that the person had a disqualifying pending criminal charge. We also disqualified people with open warrants based on data provided by the courts but were unable to identify people with active restraining orders.

Though we assigned grades to felonies based on a review of the criminal laws of Washington as described above, when we analyzed the data sample, we looked at court type to determine the type (misdemeanor or felony) of conviction: many convictions have ambiguous classifications, so in order to classify those convictions we assumed that if a crime was prosecuted in superior court it was a felony, and if it was prosecuted in a municipal or district court it was a misdemeanor, gross misdemeanor, or not a criminal conviction. If the felony remain unclassified after our search, we conservatively assumed it was a “Class B felony.” We ignored infractions. The specific logic we implemented is in Appendix B.

Learnings and Recommendations

⁸ Principally, the WA courts’ publication, “Sealing and Destroying Court Records”, dated October 2019 and available at

<https://www.courts.wa.gov/content/publicUpload/Publications/SealingandDestroyingCourtRecords.pdf>

⁹ Specifically to violent felonies as defined in 9.94A.030 and crimes against persons as defined in RCW 43.43.830. We could not evaluate the eligibility criteria under 46.61.5055 due to a lack of arrest data and imprecision in how the law is drafted, and thus approximated it by using a regular expression search for "reckless driving." In addition, because many of the prohibited crimes were referred to by name and not number, we used regular expression searches for them as well. This method likely missed charges eligible for expungement that were spelled unconventionally or misspelled (e.g. “Fst Degree,” for “First Degree.”) We also did not implement the date limitations on marijuana charges or prostitution identified by the court guidelines due to the difficulty of ascertaining the criteria based on the data in the record and also based on the knowledge of one of us from practice.

Learnings

Carrying out this exercise, as well as observing other “Clean Slate” laws around the country highlighted to us that Washington faces many of the same challenges as other states in trying to automate its expungement laws¹⁰:

- Difficult or impossible to ascertain at scale eligibility conditions due to need for out of record or non-electronically captured information.

Detail: impossibility of verifying “sentence completion” for sentences that are old and from a court that did not maintain electronic records at the time; difficulty of confirming that an individual has no pending or past charges based on out of state or tribal records.

- Challenge of meeting fines/fees related sentence completion criteria.

Detail: This is the biggest barrier to people vacating convictions, and for some people they never will have the money to pay off their fines without the employment they are being denied. Many individuals otherwise eligible for vacation have not met this criteria, so upholding it would limit the number of charges eligible for vacation.

- Ambiguity in the application of the underlying statute.

Detail: under the law, ineligible are “prior offenses” under RCW 46.61.5055 where there is a subsequent alcohol or drug violation within ten years of the date of arrest for the “prior offense” to be vacated. However, the term “drug or alcohol” violation is a term of art that seemingly refers to the underlying facts of the charge, regardless of the conviction, which is unique to all other eligibility requirements in the vacating statutes. Compounding this issue, the term “violation” is used instead of “conviction” which makes eligibility in these situations increasingly ambiguous. An individual with a conviction for a “prior offense” cannot know whether or not they are eligible to vacate that conviction if, five years after their arrest, they were charged with theft of a six-pack of beer from a convenience store.

- Lack of grade information.

Detail: The length of the waiting period applicable for a charge depends on whether it is a misdemeanor (or gross misdemeanor), Class C felony, or Class B felony, however this information is not easily ascertainable in some cases. For example: 46.61.504 Physical control of vehicle under the influence can be prosecuted as a gross misdemeanor or a class C felony; likewise 9A.44.132 failure to register as sex offender or kidnapping offender can be elevated from a class C felony to a class B felony, and the information isn’t easily necessarily captured in the electronic record. Still other charges lack grades entirely, whether felony or misdemeanor, and, if felony, what kind.

¹⁰ For a more in-depth description of these challenges, refer to Chien, *supra* note 3, Appendix Part D.

- Protection orders overly limit individuals.

Detail: Individuals are barred from vacating any convictions while they are restrained by a protective order. For some people, they may be restrained, for example, by a protective order of unlimited duration, which renders them ineligible to vacate any convictions on their records, ever. For other people, they may be restrained by an anti harassment order by a past neighbor, and find themselves ineligible to vacate an unrelated conviction.

- Inconsistent versions of the records post-conviction.

Detail: while the State Patrol's WATCH report makes the vacated convictions private; the Washington court does not do so, but only includes the status of "vacated" next to a conviction, undermining the purpose of the vacation statute. This creates two, somewhat inconsistent versions of a person's record and provides avenues for background screening companies to find the vacated records elsewhere.

Recommendations

We find sound the approach of Washington's Clean Slate bill to have the Administrative Office of the Courts of Washington recommend ways to implement the bill in order to effect what we understand to be its intent: to effectively and efficiently deliver the relief provided under current expungement law and give individuals that have served their time a "clean slate." Automation can close the gap between the second chance expungement gap between eligibility and delivery of second chances, but should adhere to Clean Slate "best practices"¹¹ in order to limit the number of individuals and charges that fall into the "second second chance gap," of eligible yet unable to access Clean Slate / automated relief. Some best practice recommendations we make:

- Replace "sentence completion" requirement with filing date + extended waiting period.
- Define "pending charge" as a charge that has had activity within a certain period of time, say 18 months, otherwise consider the charge "inactive."
- Specify that background check providers, people finder sites, and others report WATCH data as the "single source" of authoritative data.
- Remove the eligibility requirement that an individual have completed paying off their legal financial obligations, as has been done in California's Clean Slate Act. Options for resolving the debt include, waiver and conversion of the judgment to a civil debt and letting individuals vacate convictions even with unpaid fines.
- Reduce the Court's discretion to deny a motion to vacate in the absence of an objection from the State.
- To compensate for a lack of class information about current or future crimes regarding whether the crime was a misdemeanor or felony, publish and update a list, or bless the

¹¹ As described in Chien, *supra* note 3 at Appendix Part D.

assumption that if a crime was prosecuted in superior court it was a felony, and if it was prosecuted in a municipal or district court it was a misdemeanor, gross misdemeanor, or not a criminal conviction.

- When a felony grade cannot be determined, in current or future law, a felony should be assumed to be grade B in the absence of the determination of the Administrative Office of the Court otherwise.

Conclusion

Based on our analysis, Washington’s vacation laws allow for approximately 60% of those who live burdened with criminal conviction records to potentially receive relief. But less than 5% of those eligible for relief, and less than 1% of the charges eligible for relief have received the remedy. The filing of petitions by all those who are entitled to could result in a severe congestion at the courts. Washington can close the 95-99% second chance gap between eligibility and delivery of relief by automating relief, solving both problems, but only if it implements the law with some adjustments and compensates for missing and dirty data.

Appendix A

From the Washington courts we also obtained the numbers of charges, records, and people that had had cases expunged as governed by the Revised Code of Washington 13.50.050(17) and General Rule 15, as shown below, in aggregate and at the county level.

AOC Vacations Data	Courts of Limited Jurisdiction - 2019	Courts of Limited Jurisdiction - 1999-2019	Superior Courts - 2019	Superior Courts - 1999-2019	Total 2019 (charges)	Total 1999-2019 (charges)	Total 1999-2019 people
Count of Charges Vacated	788	10,919 (10,640 people)	1,185	25,580 (24,752 people)	1,973	36,499	35,392

Superior Court Count of Charges Vacated by County 2019

Court	Charges
ADAMS COUNTY SUPERIOR COURT	4
ASOTIN COUNTY SUPERIOR COURT	9
BENTON COUNTY SUPERIOR COURT	56
CHELAN COUNTY SUPERIOR COURT	15
CLALLAM COUNTY SUPERIOR COURT	13
CLARK COUNTY SUPERIOR COURT	75
COLUMBIA COUNTY SUPERIOR COURT	4
COWLITZ COUNTY SUPERIOR COURT	32

DOUGLAS COUNTY SUPERIOR COURT	15
FERRY COUNTY SUPERIOR COURT	1
FRANKLIN COUNTY SUPERIOR COURT	27
GARFIELD COUNTY SUPERIOR COURT	
GRANT COUNTY SUPERIOR COURT	33
GRAYS HARBOR COUNTY SUPERIOR COURT	8
ISLAND COUNTY SUPERIOR COURT	16
JEFFERSON COUNTY SUPERIOR COURT	5
KING COUNTY SUPERIOR COURT	23
KITSAP COUNTY SUPERIOR COURT	151
KITTITAS COUNTY SUPERIOR COURT	12
KLICKITAT COUNTY SUPERIOR COURT	2
LEWIS COUNTY CLERK	31
LINCOLN COUNTY SUPERIOR COURT	5
MASON COUNTY SUPERIOR COURT	11
OKANOGAN COUNTY SUPERIOR COURT	5
PACIFIC COUNTY SUPERIOR COURT	
PEND OREILLE CO SUPERIOR COURT	2
PIERCE COUNTY SUPERIOR COURT	198
SAN JUAN COUNTY SUPERIOR COURT	8
SKAGIT COUNTY SUPERIOR COURT	27
SKAMANIA COUNTY SUPERIOR COURT	2
SNOHOMISH COUNTY SUPERIOR COURT	87
SPOKANE COUNTY SUPERIOR COURT	110
STEVENS COUNTY SUPERIOR COURT	7
THURSTON COUNTY SUPERIOR COURT	98
WAHIAKUM COUNTY SUPERIOR COURT	2
WALLA WALLA CO SUPERIOR COURT	12
WHATCOM COUNTY SUPERIOR COURT	43
WHITMAN COUNTY SUPERIOR COURT	19
YAKIMA COUNTY SUPERIOR COURT	17

Courts of Limited Jurisdiction Count of Charges Vacated by Court 2019

Court Charges

#1 GRAYS HARBOR DISTRICT COURT	3
#2 GRAYS HARBOR DISTRICT COURT	
ABERDEEN MUNICIPAL COURT	1
AIRWAY HEIGHTS MUNICIPAL	2
ANACORTES MUNICIPAL COURT	1
ASOTIN DISTRICT COURT	2
BAINBRIDGE ISLAND MUNICIPAL CRT	3

BATTLE GROUND MUNICIPAL COURT	4
BELLINGHAM MUNICIPAL COURT	20
BENTON COUNTY DISTRICT COURT	22
BLACK DIAMOND MUNICIPAL COURT	1
BLAINE MUNICIPAL COURT	1
BONNEY LAKE MUNICIPAL COURT	2
BOTHELL MUNICIPAL COURT	3
BREMERTON MUNICIPAL COURT	11
BRIDGEPORT DISTRICT COURT	
BUCKLEY MUNICIPAL COURT	
BURLINGTON MUNICIPAL COURT	2
CAMAS/WASHOUGAL MUNICIPAL COURT	1
CENTRALIA MUNICIPAL COURT	2
CHEHALIS MUNICIPAL COURT	2
CHELAN COUNTY DISTRICT COURT	16
CHELAN MUNICIPAL COURT	
CHENEY MUNICIPAL COURT	
CLALLAM COUNTY DISTRICT COURT #1	6
CLALLAM DISTRICT COURT #2	1
CLARK COUNTY DISTRICT COURT	64
COLFAX MUNICIPAL COURT	
COLLEGE PLACE MUNICIPAL COURT	3
COLUMBIA COUNTY DISTRICT COURT	1
CONCRETE MUNICIPAL COURT	
CONNELL MUNICIPAL COURT	
COSMOPOLIS MUNICIPAL COURT	
COWLITZ COUNTY DISTRICT COURT	13
DEER PARK MUNICIPAL COURT	
DES MOINES MUNICIPAL COURT	2
DOUGLAS DISTRICT COURT	1
DUPONT MUNICIPAL COURT	
E WENATCHEE MUNI CT(509)884-0680	1
E. KLICKITAT DISTRICT	
EDMONDS MUNICIPAL COURT	5
ELMA MUNICIPAL COURT	
ENUMCLAW MUNICIPAL COURT	2
EVERETT MUNICIPAL COURT	14
EVERSON-NOOKSACK MUNICIPAL COURT	
FEDERAL WAY MUNICIPAL COURT	6
FERNDALE MUNICIPAL COURT	2
FERRY COUNTY DISTRICT COURT	
FIFE MUNICIPAL COURT	8

FIRCREST MUNICIPAL COURT	1	
FRANKLIN DISTRICT COURT	2	
GARFIELD COUNTY DISTRICT COURT		
GIG HARBOR MUNICIPAL COURT		
GRANGER MUNICIPAL COURT		
GRANT COUNTY DISTRICT COURT	13	
HOQUIAM MUNICIPAL COURT	2	
ISLAND COUNTY DISTRICT COURT	5	
ISSAQUAH MUNICIPAL COURT	1	
JEFFERSON DISTRICT COURT	4	
KCDC AUBURN COURTHOUSE	8	
KCDC-EAST DIV (BEL)	9	
KCDC-EAST DIV (ISQ)	6	
KCDC-EAST DIV (NED)	3	
KCDC-EAST DIV (SHO)	8	
KCDC-SO DIV (AUK)	4	
KCDC-SO DIV (FWD)	5	
KCDC-SO DIV (RDC)	3	
KCDC-SO DIV (SWD)	6	
KCDC-WEST DIV (SDC)	9	
KENT MUNICIPAL COURT	11	
KING COUNTY DISTRICT COURT	69	
KIRKLAND MUNICIPAL COURT	13	
KITSAP DISTRICT COURT	28	
KITTITAS MUNICIPAL COURT		
LAKE FOREST PARK MUNICIPAL COURT	1	
LAKESIDE MUNICIPAL COURT	5	
LANGLEY MUNICIPAL COURT		
LEWIS COUNTY DISTRICT COURT		LAW AND JUSTICE CENTER 2
LINCOLN COUNTY DISTRICT COURT	1	
LOWER KITTITAS DISTRICT COURT	9	
LYNDEN MUNICIPAL COURT	1	
LYNNWOOD MUNICIPAL COURT	11	
MARYSVILLE MUNICIPAL COURT	10	
MASON COUNTY DISTRICT COURT	6	
MCCLEARY MUNICIPAL COURT		
MEDICAL LAKE MUNICIPAL COURT		
MERCER ISLAND MUNICIPAL COURT	3	
MILTON MUNICIPAL COURT	1	
MONTESANO MUNICIPAL COURT		
MOUNT VERNON MUNICIPAL COURT	3	
MUNICIPAL COURT OF SEATTLE	4	

NAPAVINE MUNICIPAL COURT
 NORTH BONNEVILLE MUNICIPAL COURT
 NORTH PACIFIC DISTRICT COURT PACIFIC COUNTY COURTHOUSE 2
 OCEAN SHORES MUNICIPAL COURT 1
 OKANOGAN COUNTY DISTRICT COURT 2
 OLYMPIA MUNICIPAL COURT 8
 ORTING MUNICIPAL COURT
 OTHELLO DISTRICT COURT 3
 PACIFIC MUNICIPAL COURT 1
 PASCO MUNICIPAL COURT 6
 PEND OREILLE DISTRICT COURT
 PIERCE CO DIST CT #3
 PIERCE CO DIST CT #4
 PIERCE COUNTY DISTRICT COURT 20
 PIERCE DISTRICT NO. TWO
 PORT ORCHARD MUNICIPAL COURT 1
 POULSBO MUNICIPAL COURT 2
 PUYALLUP MUNICIPAL COURT 7
 RAINIER MUNICIPAL COURT
 RAYMOND MUNICIPAL COURT
 RENTON MUNICIPAL COURT 20
 RITZVILLE DISTRICT COURT
 ROSLYN MUNICIPAL COURT
 ROY MUNICIPAL COURT 1
 SAN JUAN DISTRICT COURT 3
 SEATAC MUNICIPAL COURT
 SEDRO-WOOLLEY MUNICIPAL COURT
 SELAH MUNICIPAL COURT
 SHELTON MUNICIPAL COURT 1
 SKAGIT COUNTY DISTRICT COURT 6
 SKAMANIA COUNTY DISTRICT COURT 1
 SNO CO DIST CT CASCADE DIV 5
 SNO CO DIST CT EVERETT DIV 22
 SNO CO DIST CT EVERGREEN DIV 10
 SNO CO DIST CT SOUTH DIV 22
 SOUTH BEND MUNICIPAL COURT
 SOUTH PACIFIC DISTRICT COURT 1
 SPOKANE COUNTY DISTRICT COURT 22
 SPOKANE MUNICIPAL COURT 16
 STEILACOOM MUNICIPAL COURT
 STEVENS COUNTY DISTRICT COURT 3
 STEVENSON MUNICIPAL COURT

SUMAS MUNICIPAL COURT	
SUMNER MUNICIPAL COURT	1
SUNNYSIDE MUNICIPAL COURT	6
TACOMA MUNICIPAL COURT	26
TENINO MUNICIPAL COURT	
THURSTON COUNTY DISTRICT COURT	8
TOPPENISH MUNICIPAL COURT	
TUKWILA MUNICIPAL COURT	9
TUMWATER MUNICIPAL COURT	
UNION GAP MUNICIPAL COURT	2
UPPER KITTITAS DISTRICT COURT	2
W. KLICKITAT DISTRICT	1
WAHIAKUM DISTRICT COURT	1
WALLA WALLA DISTRICT COURT	7
WALLA WALLA MUNICIPAL	
WAPATO MUNICIPAL COURT	
WESTPORT MUNICIPAL COURT	
WHATCOM COUNTY DISTRICT COURT	24
WHITMAN COUNTY DISTRICT COURT	6
WINLOCK MUNICIPAL COURT	1
WOODLAND MUNICIPAL COURT	
YAKIMA CO DIST CT - GRM -	
YAKIMA CO DIST CT - SUD -	
YAKIMA CO DIST CT - TOM -	
YAKIMA CO DIST CT - YDC -	6
YAKIMA MUNICIPAL COURT	6
YELM MUNICIPAL COURT	1
ZILLAH MUNICIPAL COURT	
Grand Total	788

Appendix B

Methods

Determining the Baseline Snapshot

Step 1. To find the number of **People with Criminal Records in the Sample**, we simply counted the number of **unique name identifiers** in the sample that had at least one non-juvenile criminal charge, regardless of the type of crime or whether they were convicted or not. If the record exists, they were counted.

Step 2. To find the number of **People with Criminal Convictions**, the **charge code description** was looked at. If the charge code was “guilty” (or a variation of “guilty”), the charge was counted. Otherwise, it was not considered a conviction and ignored. This counted the number of people with “guilty” convictions, according to the definition above.

Step 3. To find the number of **People with Misdemeanor Convictions**, the **charge code description** was once again considered (if the charge was not designated as “guilty” by the court,¹² it was not considered potentially eligible). Then, the **court name** was looked at. If the charge was classified as being tried in a “Superior” court, it was considered a Felony. Infractions, identified through their classification by the court as of type “Criminal Traffic Infraction,” “Non-Traffic Infraction,” or “Traffic” types, were excluded from consideration. The remainder of charges were considered “Misdemeanors.”

Step 4. To find the number of **People with Felony Convictions**, the **charge code description** was once again considered (if the charge was not marked “guilty”, as in plead or found guilty, it was not counted). Then, the **court name** was looked at. If the charge was classified as being tried in a “Superior” court, it was considered a Felony. This counted the number of people with Felony convictions (regardless of class), according to the above definition.

Determining Eligibility

Eligibility of a charge for vacancy was determined via the following criteria:

- Disposition Criteria
 - Guilty - If a charge was not marked “guilty” (or a variation) under charge code description, it was not considered a conviction, and not counted.
- Charge Type and Grade (Eligibility and Waiting Time Criteria)
 - If the charge was tried in a Superior court (determined by **court name**), it was considered a Felony. Otherwise, it was considered a Misdemeanor. If the case type was labeled as an “Infraction” of any sort, such as “Infraction Traffic”, it was marked as an infraction and its eligibility for vacancy marked as N/A .
 - If the charge was a felony, it was graded by comparing it with a list of felonies developed based on a review of statutory codes that listed each felony as class A, B, or C. If the law number did not match anything in the list, it was considered class B, by default.
- Disqualified Charge Criteria
 - DUI - If the charge had “dui”, “driving under the influence”, “driving while intoxicated”, “driving under influence”, or “intoxicated” in the law description, it was considered ineligible.

¹² It bears reminding that a “guilty” charges does not indicate that the person charged was in fact guilty but that the charge was convicted.

- If the charge was one identified as ineligible based on the processes described above, such as “9A.44.093 Sexual Misconduct with a Minor in the First Degree,” it was also considered ineligible
- If the charge was a class A felony, then it was considered ineligible by default.
- **Waiting Period Criteria**
 - If the charge was a misdemeanor, then the **filing date** was compared with the date of the report (12-31-2019). If more than 4.5 years (assuming 0.5 year on average from filing to sentencing, a maximum sentence of 1 year, and 3 years of waiting period) (4.5 * 52 weeks) had passed between the filing date and the current date, it was considered to have met the required waiting period.
 - Except in cases of Domestic Violence charges, which have a 5 year waiting period. If the terms “domestic violence” or “dv” appeared in the charge’s **law description**, then there had to be 6.5 years between the filing date and the date of the report for it to be considered eligible.
 - If the charge was a class B felony, then the time between filing date and current date had to be more than 14 years (assuming 1 year on average from filing to sentencing, an average sentence of 3 years, and 10 years of waiting period) (or 52 weeks * 14 years).
 - If the charge is a class C felony, then the time between filing date and current date had to be more than 9 years (assuming 1 year on average from filing to sentencing, an average sentence of 3 years, and 5 years of waiting period) (52 weeks* 9 years) to be eligible.

Determining the Eligibility Snapshot

People with active warrant flags, a ‘Y’ under Active Warrant Flag, had all of their charges considered as ineligible.

People with charges with a blank **charge_result_code**, and a filing date less than 1.5 years (1.5 * 52 weeks) ago were assumed to have pending charges and all their charges were considered ineligible

People eligible to vacate any conviction - If a charge was determined to be an eligible Class B or C Felony, or Misdemeanor, and not barred in terms of eligibility it was considered eligible. This counted the number of people with at least one eligible charge.

People eligible to vacate misdemeanor convictions - If a charge was determined to be an eligible Misdemeanor, it was considered. This counted the number of people with at least one eligible misdemeanor conviction.

People eligible to vacate felony convictions - If a charge was determined to be an eligible class B or C felony, it was considered. This counted the number of people with at least one eligible felony conviction.

People eligible to vacate all convictions on record - If a person had a conviction charge that was marked “Not eligible”, they were disqualified. This counted the number of people that did not have any conviction charges marked “Not eligible”.

Determining the Vacancy Snapshot

Charges/People vacated - This counted the number of people who had at least one charge marked as “Vacated” under **charge code description** and the total number of charges vacated.

People who vacated a misdemeanor - This counted the number of people who had at least one charge marked as “Vacated” under **charge code description** and “Misdemeanor”, according to the eligibility criteria above and the total number of charges that met this criteria vacated.

People who vacated a felony - This counted the number of people who had at least one charge marked as “Vacated” under **charge code description** and “Felony”, according to the eligibility criteria above and the total number of charges that met this criteria vacated.

People who vacated a serious felony - This counted the number of people who had at least one charge marked as “Vacated” under **charge code description** and “Class A Felony”, according to the eligibility criteria above and the total number of charges that met this criteria vacated.

Appendix C

Data Caveats from the Washington Courts

Regarding the Vacation counts, counts from 1999 forward were provided as available; however, it should be noted that a new retention schedule was adopted in 2015 for courts of limited jurisdiction. Since that time criminal convictions are retained permanently, as are vacated findings. Many cases older than that will have been destroyed from the database.

KING COUNTY SUPERIOR COURT DISCLAIMER

King County Superior Court data was included in our analysis, however, may be incomplete. King County Superior Court implemented a new case management system on 7/15/2019, and new cases are not included in the statewide database. In addition, cases may have been removed from the statewide Judicial Information Systems (JIS) if they have been updated by King County since 7/15/2019. For more information, see <https://www.kingcounty.gov/courts/clerk/access-records/records-portal.aspx>

Appendix D

Top Charges Eligible for Expungement

Law Number	Law Description	share of top 10 clearable charges	share of all charges	license-related
46.20.342.1C	DWLS 3RD DEGREE	32%	14%	1
46.20.342.3	DWLS 3RD DEGREE	20%	9%	1
9A.56.050	THEFT 3			
46.20.021	NO VALID DRIVERS LICENSE	7%	3%	1
9A.36.041	ASSAULT 4TH DEGREE	6%	3%	
46.61.5249	NEGLIGENT DRIVING 1ST DEGREE	6%	3%	1
46.20.342.1.C	DRIVING WHILE SUSPENDED 3RD	5%	2%	1
46.20.342.1B	DWLS 2ND DEGREE	4%	2%	1
12A080600	THEFT			
46.20.005	NO VALID OPER LICENSE W/OUT IDENTIF	4%	2%	1
	License-related	84%	37%	7