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## The Washington State Second Chance Expungement Gap

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## The Washington State Second Chance Expungement Gap

By Colleen V. Chien, Zuyan Huang, Jacob Kuykendall, Katie Rabago<sup>1</sup>

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.<sup>2</sup> However, the Second Chance Gap<sup>3</sup> in Washington "expungements" - the share of people who aren't accessing the vacation remedy because of hurdles in the petition process - we suspect is large. To estimate it, we used research and practice expertise to approximately 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 of Washington.<sup>4</sup> Importantly, to compensate for missing information relevant to eligibility, we did not account for outstanding fines or potentially disqualifying out of state charges, ascertained charge eligibility based on reading the code and using court guides and practice, 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.<sup>5</sup>

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<sup>2</sup> This allows an individual with a vacated conviction to state that they have never been conviction 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.

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

<sup>4</sup> Our sample comprised the criminal histories of individuals charged during one month out of the year during odd years from 1999-2019, or an approximately 4.2% sample of the people that had a record from the past two decades, 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 that sample were about 175K individuals with a 10% trimmed average (trimmed due to the skew in the data, though this approach was likely to overestimate the number of incidents per person) of 11.9 incidents per person. We were also told by the Administrative Office of the Courts that the courts have data on 14.8M incidents. We used the trimmed average and the number of total incidents to infer, conservatively that 1.5M Washingtonians had a court criminal (misdemeanor or felony) record. The 2016 SEARCH report sponsored by the Bureau of Justice Statistics estimates that in that year, 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)) however we believe this number includes people with uncharged arrests.

<sup>5</sup> In addition, we requested fees and additional data which would allow us to identify Hispanic individuals from the courts and will use that to update our findings once we have them.

On the basis of our analysis we estimate, conservatively that:

- Approximately 1.23M Washingtonians, if not more, have criminal conviction records (with records that contain approximately 12M convictions) that span the last two decades.
- Of those, an estimated 60%, or 760K people (associated with 4.7M convicted charges) are eligible for vacation under the current law (not taking into account ineligibility due to fines and fees). Approximately 40% 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 5% of individuals eligible for vacation relief and less than 1% of charges eligible for vacating have taken advantage of this remedy.
- At current rates of vacation, it would take over 2,400 years to clear the backlog of eligible charges using current, petition-based methods, based on our calculations regarding the number of charges that we estimate are eligible for vacation (4.7M), and the actual number of charges that were vacated last year (1,973).
- Existing racial disparities, which are significant in the Washington criminal justice system. would not be exacerbated but also, would not improve. Currently, African-Americans represent 4.2 % of individuals in Washington but 11% of Washingtonians with a criminal record, 15% of Washingtonians with any felony record, and 22% of Washingtonians with a Class A felony record. Automatic vacation would benefit Washingtonians across racial groups in roughly equal proportions, not widening disparities but also not narrowing them.

## **METHODS**

To carry out our work we obtained a data sample covering approximately 4.2% of individuals charged in the last 20 years,<sup>6</sup> 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 focused on post-conviction work.

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<sup>6</sup> As described above in note 4.

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:<sup>7</sup>

- 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 after completion of sentence requirements; and
- Class B felonies, 10 years of the sentence requirements. (RCW 9.94a.640)

To implement these rules, we used court guidelines<sup>8</sup> that included ineligible convictions and grades and classes of convictions<sup>9</sup> 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

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<sup>7</sup> 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.

<sup>8</sup> 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>

<sup>9</sup> 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.

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**

### *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 laws<sup>10</sup>:

- 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

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

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.

- 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 therefore find sound the approach of Washington's Clean Slate bill to have the Administrative 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."<sup>11</sup> Some best practice recommendations we make:

- Replace "sentence completion" requirement with filing date + extended waiting period.

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<sup>11</sup> As described in Chien, supra note 3 at Appendix Part D.

- 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 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 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<br>(10,640 people) | 1,185 | 25,580<br>(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      |
| WAHKIAKUM 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  
 LAKEWOOD 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. KLINKITAT DISTRICT          | 1   |    |
| WAHKIAKUM 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,<sup>12</sup> 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

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

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.
  - 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>