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Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver's License

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Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver's License

As states pass reforms to reduce the size of their prison populations, the number of Americans physically incarcerated has declined. However, the number of people whose employment and related opportunities are limited due to their criminal records continues to grow. Another sanction is the loss of one's driver's licenses for reasons unrelated to driving. While many states have laws on the books to redress these harms, a growing body of research has documented large "second chance gaps" between eligibility and delivery of expungement and restored license relief due to their poor administration. This paper is a first attempt to measure the cost of these "paper prisons" of limited economic opportunity, in terms of annual lost earnings. Analyzing the literature, we estimate the annual 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.

We use Texas as a case study for comparing the cost of "paper prisons" with the cost of physical prisons. In Texas, individuals with criminal convictions may seal their records after a waiting period and people that have lost driver's licenses may get restored occupational driver's licenses to drive to work or school. Analyzing administrative data, this paper finds that approximately 5% of people eligible for relief have had their records sealed. The 670K people in the second chance sealing gap translates to an annual earnings loss of about \$3.5 billion annually. Using a similar approach, we find that about 20% of the people that appear eligible for occupational drivers' licenses (ODLs) in Texas have received them, leaving about 430,000 people who could have them without licenses; an earnings loss of about \$5.5 billion. Based on these figures, we find the cumulative annual earnings loss associated with Texas's "paper prisons" to be comparable with, and likely more than, the yearly cost to Texas of managing its physical prisons, of around \$3.6 billion.

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INTRODUCTION

In 2002, Christian Watts was charged with felony drug possession after purchasing MDMA (ecstasy) from a friend.¹ Watts pleaded guilty to a lower misdemeanor charge, and the judge sentenced him to three months of house arrest and 36 months of probation.² At an average cost of \$9.17 per day, Watts's supervision cost federal taxpayers \$9,904.³ But the consequences of his conviction did not end there. Since Watts completed his sentence, he has been denied civilian and military employment opportunities due to his record.⁴ Despite earning Associates and Bachelors degrees, and the praise of a judge for his self-rehabilitation efforts,⁵ Watts has been able to find work only as a dog walker and cross-fit trainer, jobs with average annual incomes of around \$35,000.⁶ Commenting that "my life is stuck in a standstill,"⁷ Watts has abandoned plans to become a lawyer, a profession with an average annual income of about \$90,000.⁸ These figures imply a potential earnings gap of \$55,000 per year, and associated with it, a gap in productivity, skills, and tax revenue.

In 2002, Demetrice Moore, a Certified Nursing Assistant, was convicted of grand larceny and sentenced to jail and costs, including the cost of the lawyer appointed to represent her because she was indigent.⁹ Moore served her time, but could not repay the costs.¹⁰ As a result,

¹ Maya Rhodan, *Misdemeanor Conviction Is Not a Big Deal, Right? Think Again*, TIME, (April 24, 2014), <https://time.com/76356/a-misdemeanor-conviction-is-not-a-big-deal-right-think-again/>.

² *Id.* and United States of America v. Watts. Case no: 2:04-0146-PMP-RJJ. Motion to Terminate Supervised Release. June 3, 2009.

³ \$9.17 per day x 30 days per month x 36 months = \$9,903.60. For per day probation supervision costs, see *Supervision Costs Significantly Less than Incarceration in Federal System*, UNITED STATES COURTS, (July 18, 2013), <https://www.uscourts.gov/news/2013/07/18/supervision-costs-significantly-less-incarceration-federal-system>.

⁴ *U.S. v. Watts*, 2:04-CR-00146-PMP-RJJ (D. Nev. Apr. 25, 2011).

⁵ *Id.* and RHODAN, *supra* note 1 (At Watts' hearing, the judge said, "I wish I had far more people before me who show the kind of self rehabilitation and effort that you've demonstrated" and even shook Watts' hand.)

⁶ *Professional Dog Walker Salary in Las Vegas, NV*, ZIPRECRUITER, (last visited November 5, 2021), <https://www.ziprecruiter.com/Salaries/Professional-Dog-Walker-Salary-in-Las-Vegas,NV> and *Fitness Trainer Salary in Las Vegas, NV*, ZIPRECRUITER, (last visited November 5, 2021), <https://www.ziprecruiter.com/Salaries/Fitness-Trainer-Salary-in-Las-Vegas,NV> (listing average salaries at \$30,830 and \$37,602, respectively).

⁷ RHODAN, *supra* note 1.

⁸ *Prosecutor Salary in Las Vegas, NV*, ZIPRECRUITER, (last visited November 5, 2021), <https://www.ziprecruiter.com/Salaries/Prosecutor-Salary-in-Las-Vegas,NV>. See also *U.S. v. WATTS*, *supra* note 4 (Watts explaining that "I want to continue to further my education and have an active application into Boyd school of law for this fall semester. I'm hoping to pursue a career as a prosecutor. Law school is costly and at 37 years old loans of that magnitude can be daunting. I did not want this to deter me from accomplishing my goal. I came to discover if I served my country in the military, not only can I satisfy my sense of duty, contribute to the greater good, but the government will help me with the cost of my education. I want very much to enlist as an officer and serve, possibly in the National Guard. However, no branch of the military will accept me with my current federal drug conviction").

⁹ Mario Salas & Angela Ciolfi, *Driven by Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debts*, LEGAL AID JUSTICE CENTER, 3, (Fall 2017), <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>.

¹⁰ *Id.*

her driver’s license was automatically suspended.¹¹ This interfered with her work because “[a]s a CNA, she had to drive extensively to care for elderly and disabled patients in their homes.”¹² Despite this, Moore attempted to keep working and was consequently convicted several times and jailed for driving on a suspended license.¹³ In the end, Moore had to “stop working as a CNA because of the required driving.”¹⁴ An average-to-experienced CNA makes around \$33,000 to \$40,000 annually.¹⁵

Many have commented on the massive size of the American criminal justice system and celebrated reforms to reduce it.¹⁶ But while the number of people put behind bars declines,¹⁷ those who have old convictions and criminal records¹⁸ continue to encounter structural barriers to work or the deprivation of a driver’s license.¹⁹ Among the freedoms curtailed by such actions, economic liberty stands out. As the Supreme Court commented about suspended licenses in the case of *Bell v. Burson*: “Once licenses are issued. . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees.”²⁰

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Nurse Journal Staff, *Certified Nursing Assistant Salary Guide*, NURSEJOURNAL, (January 20, 2022), <https://nursejournal.org/cna/salary/>.

¹⁶ See *Overcrowding and Overuse of Imprisonment in the United States*, AMERICAN CIVIL LIBERTIES UNION, (May 2015), <https://www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/ACLU.pdf> (discussing the causes of the growth in the U.S.’s incarcerated population).

¹⁷ John Gramlich, *America’s incarceration rate falls to lowest level since 1995*, PEW RESEARCH CENTER, (August 16, 2021), <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995/> (noting that “[a]t the end of 2019, there were just under 2.1 million people behind bars in the U.S., including 1.43 million under the jurisdiction of federal and state prisons and roughly 735,000 in the custody of locally run jails”)

¹⁸ Becki Goggins, *New Blog Series Takes Closer Look at Findings of SEARCH/BJS Survey of State Criminal History Information Systems, 2016*, SEARCH, (March 29, 2018), <https://www.search.org/new-blog-series-takes-closer-look-at-findings-of-search-bjs-survey-of-state-criminal-history-information-systems-2016/> (showing the growth in the number of subjects in state criminal history files, from ~81M in 2006 to ~110M in 2016. These numbers, which represent biometric (fingerprint) data, contain duplicates).

¹⁹ See *Kansas v. Glover*, 589 U.S. ____ (2020) (in her concurring opinion, Justice Kagan notes that “several studies have found that most license suspensions do not relate to driving at all; what they most relate to is being poor.” See also Suspended/Revoked Working Group, *Best Practices to Reducing Suspended Drivers*, AMERICAN ASSOCIATION OF MOTOR VEHICLES, 34-37, (February 2013),

<https://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/> (building off of the Department of Transportation’s H.S. 811 092, “Reasons for Drivers License Suspension, Recidivism and Crash Involvement among Suspended/Revoked Drivers,” this study estimates that, based on a sample of drivers from six states in the U.S., the number of people who had licenses suspended for reasons unrelated to driving increased from 21% to 29% between 2002 and 2006). Some states have reported declines, however; see, e.g. Nina R. Joyce et al., *Individual and Geographic Variation in Driver’s License Suspensions: Evidence of Disparities by Race, Ethnicity, and Income*, 19 JOURNAL OF TRANSPORT AND HEALTH 1, 4-5, 2020 (finding that, based on a random sample of about 7.6M drivers in New Jersey, the prevalence of people with non-driving related suspensions between 2004 and 2018 decreased from 7.9% to 5%).

²⁰ 402 U.S. 535, 539, 1971.

To remove these barriers, nearly every state has laws on the books that allow old, generally minor, convictions to be expunged.²¹ In many states, lost licenses can be restored in order to support going to work or school.²² But as an emerging literature has documented, the poor administration of “second chance” policies means that many of the people, and often, the majority, that stand to benefit from, e.g., expunged records or restored licenses, are not receiving the benefits of these laws. One of us has defined this difference as the “second chance gap,” and estimated its size across a number of realms, including expungement, restoration of the right to vote, and resentencing.²³ An associated project, the Paper Prisons Initiative, has documented uptake rates of records-expungement across over a dozen states, finding rates of less than 10% — implying that over 90% of eligible people are not taking advantage of the law — to be common.²⁴

The economic impacts of paper prisons are more difficult to quantify than the out-of-pocket costs of physical prisons, but they are still consequential. Though the total unemployment rate in January 2022 was less than 4%, the last estimate of unemployment of formerly incarcerated people living in the United States, published in 2018, reported an unemployment rate of “over 27% — higher than the total U.S. unemployment rate during any historical period, including the Great Depression,”²⁵ which figure was also close to triple the national unemployment rate at the time.²⁶

But the fact that the cost of paper prisons is largely unquantified and unknown makes it difficult to know how much to prioritize closing the gap. It also obscures the cost of the poor

²¹ In this article we use the word “expunged” to refer generally to the shielding of records from public view through records remediations strategies such as sealing, orders of non-disclosure expungement, and expunction.

²² See *What is a hardship license vs. restricted license comparison*, INTOXALOCK, (June 30, 2021), <https://www.intoxalock.com/blog/post/difference-between-hardship-and-restricted-license/> (describing that states including Florida, Indiana, Wisconsin, Arkansas, and Kentucky all have “hardship licenses” that allow certain individuals to have licenses for going to work, and California, Texas, Washington, Virginia, and Iowa have “restricted licenses” that serve a similar purpose). Such licenses are also available to drivers in Pennsylvania (*Occupational Limited Licenses*, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION & VEHICLE SERVICES, <https://www.dmv.pa.gov/Information-Centers/Suspensions/Pages/Occupational-Limited-Licenses.aspx>).

²³ See Colleen Chien, *America’s Paper Prisons: The Second Chance Gaps*, 119 MICH. L. REV. 519, 519 (2020) (analyzing a variety of second chance programs in the U.S. including clemency, compassionate release, resentencing, and nonconvictions expungement, finding that in many cases “only a small fraction (less than 10 percent) of those eligible for relief actually received it”).

²⁴ *Id.* (noting that across a variety of second chance programs in the U.S., “only a small fraction (less than 10 percent) of those eligible for relief actually received it”); See also J.J. Prescott and Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2461 (2020) (finding that in Michigan “among those legally eligible for expungement, just 6.5% obtain it within five years of eligibility”); PAPER PRISONS INITIATIVE, (last visited September 19, 2021), <https://www.paperprisons.org/> (documenting the “uptake rate” of expungement relief in states across the U.S.).

²⁵ Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POLICY INITIATIVE, (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html>. (describing the findings based on the National Former Prisoner Survey, conducted in 2008.)

²⁶ Kimberly Amadeo, *Unemployment Rate by Year Since 1929 Compared to Inflation and GDP*, THE BALANCE, (last updated January 28, 2022), <https://www.thebalance.com/unemployment-rate-by-year-3305506> (reporting a national unemployment rate of 10% in 2009)

drafting of second chance laws, which, in many cases, are extremely complicated and become applicable only after numerous conditions have been satisfied.²⁷ Efforts to pass “Clean Slate” bills that would help narrow the second chance gap have stalled across the country due to the cost of updating records.²⁸ As the problem of paper prisons persists unabated, it is important to quantify the economic costs of second chance gaps. This article does so by estimating the earnings and employment consequences of old expungable convictions and lost driver’s licenses that are available for restoration under existing law.

Part I of the article provides an overview of two of Texas’s second chance laws, governing the grant of orders of non-disclosure (ONDs) and restoration of occupational driver’s licenses (ODLs). It details the processes required to obtain each form of second chance relief and explores how various administrative factors may contribute to gaps in their uptake. Part II then describes the populations of people eligible for convictions and driver’s license relief, and our methodology for estimating each second chance gap, measured by the number of individuals with records who qualify for relief (“the current gap”), the share of people eligible for a given second chance that have obtained it (“the uptake gap”), and the number of years it would take to clear each second chance backlog based on the current pace of relief. Part III presents estimates of the lost earnings and employment consequences associated with a criminal record and a lost driver’s license. We then use these estimates and the findings from Part II to calculate the earnings loss associated with Texas’s paper prisons.

We find that approximately 5% of people eligible for sealing relief have accessed it, leaving a gap of about 670,000 people (with people in the gap having a last conviction, on average, of 17 years ago). We estimate the earnings loss associated with this gap to be approximately \$3.5 billion annually. Using a similar approach, we find that about 20% of people eligible for occupational drivers licenses (ODLs) in Texas have accessed them, leaving a gap of 430,000 people eligible for ODLs who have not gotten one, which translates into an earnings loss of about \$5.5 billion. Based on these figures, we find the cumulative annual earnings loss associated with Texas’s “paper prisons” to exceed the yearly cost of funding physical prisons in Texas, which is around \$3.6 billion.

PART I: OVERVIEW OF TEXAS’ RECORD SEALING AND LICENSE REINSTATEMENT LAWS

For our exploration of the economic impacts of the second chance gap, we used Texas as a case study for a few reasons. First, Texas has the 9th largest economy in the world by GDP, and

²⁷ See Appendix A for a description of Texas's sealing law.

²⁸ See, e.g. Washington state, which in 2020 passed a “Clean Slate” bill that would have narrowed but which the Governor vetoed due to cost, in part exacerbated by the anticipated cost of COVID expenditures. Rachel M. Cohen, *Washington Governor Vetoes Bill that Would Have Automatically Cleared Criminal Records*, THE APPEAL, (May 19, 2020), <https://theappeal.org/politicalreport/washington-governor-vetoes-clean-slate-bill/>.

prides itself on being business-friendly and a reliable source of skilled workers.²⁹ Secondly, like many states, Texas has been under fiscal pressure to reform and reduce the costs of its criminal justice system and has led the country in many respects in doing so.³⁰ As part of this reform, policymakers and politicians have widely celebrated the cost savings associated with closing Texas’s physical prisons.³¹ However, while the number of Texans who were incarcerated in state prisons and jails decreased by 27% between fiscal years 2005 and 2020,³² individuals with criminal history in the state doubled over the same period, according to repository consortium SEARCH.³³ There are 5 million people in Texas’s database of people with convictions, and, before the law was reformed in 2020, 1.4 million Texans, or 5% of the population, had suspended licenses.³⁴ As such, the extent to which people with records and suspended licenses are integrated — or not — into the workforce has significant consequences for the Texas economy.

²⁹ <https://businessintexas.com/news/texas-enters-2021-as-worlds-9th-largest-economy-by-gdp/> (describing the benefits of Texas for businesses as including “highly competitive tax climate, world-class infrastructure, a skilled workforce of 14 million people, business-friendly economic policies and abundant quality of life,”

³⁰ Michael Haugen, *Ten Years of Criminal Justice Reform in Texas*, RIGHT ON CRIME, (August 1, 2017), <https://rightoncrime.com/2017/08/ten-years-of-criminal-justice-reform-in-texas/> (describing states adopting justice reinvestment packages similar to the ones in Texas).

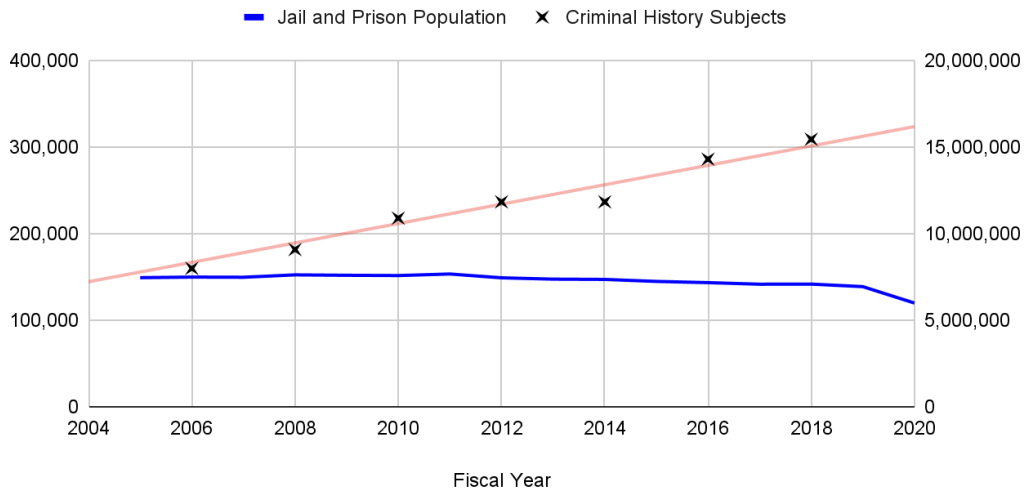
³¹ In 2020, for example, the Texas Department of Criminal Justice projected that closing two Texas prisons would “free up about \$20 million in its budget.” Julie McCulloch, *As the Texas prison population shrinks, the state is closing two more lockups*, THE TEXAS TRIBUNE, (February 20, 2020), <https://www.houstonpublicmedia.org/articles/news/2020/02/21/361405/as-the-texas-prison-population-shrinks-the-state-is-closing-two-more-lockups/>. This followed a 2017 estimate that Texas could “eliminate more than 2,000 beds...[and] save the state some \$49.5 million” from closing four prisons. Brandi Grissom, *With crime, incarceration, rates falling, Texas closes record number of prisons*, THE DALLAS MORNING NEWS, (July 5, 2017), <https://www.dallasnews.com/news/politics/2017/07/05/with-crime-incarceration-rates-falling-texas-closes-record-number-of-prisons/>.

³² From 152,213 people to 142,169 people. This excludes participants in the Substance Abuse Felony Program. See *Statistical Reports*, TEXAS DEPARTMENT OF CRIMINAL JUSTICE (2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007, 2006, 2005) at 8 (all reports as of January 21, 2022 available at https://www.tdcj.texas.gov/publications/statistical_reports.html).

³³ Data from bi-annual *Survey of State Criminal History Information Systems*, SEARCH (2020, 2008, 2009, 2011, 2014, 2015, 2018, 2020) at Table 1. (2020 report available e.g. at <https://www.ncjrs.gov/pdffiles1/bjs/grants/255651.pdf>). In 2006, the repository had 7,986,000 records (Bureau of Justice Statistics, *Survey of State Criminal History Information, 2003*, U.S. DEPARTMENT OF JUSTICE, (February 2006), <https://bjs.ojp.gov/content/pub/pdf/sschis03.pdf>), in 2018 that number was 15,437,000 (Becki R. Goggins & Dennis A. DeBacco, *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, SEARCH, (February 2018), <https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf>).

³⁴ At least 400,000 licenses remain suspended though the elimination of a controversial program restored 1.4M licenses. Letter from Department of Public Safety to Karly Jo Dixon from the Texas Fair Defense Project. Letter on file with authors. For more on the significance of the repeal of the controversial program, see Emily Gerrick & Mary Mergler, *Commentary: Lawmakers Need to fix another problem that buries Texas drivers in fines*, STATESMAN, (last updated July 5, 2020), <https://www.austintexas.gov/edims/document.cfm?id=340640> (noting that “[we] cannot overstate how significant the repeal of this program is. When the law goes into effect in September, 1.4 million license suspensions will be lifted, and nearly \$2.5 billion of surcharge debt will be wiped clean. Huge numbers of people will escape the cycle of suspensions and get back on the road driving legally. This repeal will help vulnerable Texans achieve financial stability, save taxpayer dollars and boost the Texas economy.”)

Fig. 1: Texas Jail and Prison Population and Criminal History Subjects



Sources: Texas Department of Criminal Justice's Annual Statistical Reports for fiscal years 2005 through 2020 (for jail and prison population data)³⁵; SEARCH (for criminal subjects data).³⁶

Third, over the past several decades, Texas has introduced laws that advance both criminal justice and workforce-related objectives, allowing individuals with old convictions to get them sealed and individuals that have lost their licenses a chance to regain their right to drive to work or school. The scale of Texas’s criminal justice system and its adoption of many second chance reforms, as well as the lack of attention paid to their implementation, make the state a good subject for study and analysis.

This section provides an overview of Texas’s second chance laws, describing their legislative history and the processes set forth by the law for obtaining relief. These laws share the goals of advancing economic interests and removing barriers to work, as well as preserving public safety.

A. Record Relief: Order of Non-Disclosure

³⁵ Data about the size of the on hand state jail and prison population obtained from *Annual Statistical Reports*, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, 8 (2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010, 2009, 2009, 2007, 2006, 2005) (reports last available on January 23, 2022, https://www.tdcj.texas.gov/publications/statistical_reports.html). Even though the TDCJ places people in jail, prison, and Substance Abuse Felony Punishment Facility (SAFP) Program in the same “on hand” category in its annual reports, we exclude the number of people in the SAFP Program from our estimate of the size of the state's prison and jail population.

³⁶ Based on data obtained from Becki Goggins et al; *Survey of State Criminal History Information Systems, 2020: A Criminal Justice Information Policy Report*, available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/255651.pdf>, Table 1 (listing the total number of records in the state repository as of Dec 2018) (2020) and previous versions of the report, at Table 1.

In Texas, every time a person is convicted of a crime, this event is memorialized in the person's criminal record, which sets off various "collateral consequences," or civil punishments that follow a person long after time has been served. The National Inventory of Collateral Consequences of Conviction has cataloged over 1,600 civil sanctions in Texas alone for people with criminal records spanning child support, employment, volunteering, civic participation, real estate, visitation and parental rights, and housing residency.³⁷ People with certain criminal records are disqualified from numerous top jobs for people without college degrees. "Private security" on the Texas Labor Analysis' list of the top 25 projected occupations for individuals with a maximum education of postsecondary non-degree,³⁸ with wages from ~\$21,000 to ~\$37,000,³⁹ is one of them.⁴⁰

In an effort to give people a second chance and allow them to more easily find employment, the Texas Legislature passed Texas Gov. Code Chap. 411, creating two pathways for individuals to remove their past criminal records from public access. The first pathway provides relief via an expunction, which occurs when all "information about an arrest, charge, or conviction [is removed] from [one's] permanent records."⁴¹ Expunction is only available for felony and Class A, B, and C misdemeanor nonconvictions.⁴² In contrast, the second pathway, an "Order of Nondisclosure" (OND), seals records from the general public, while allowing certain employers and government agencies to "see through" the OND.⁴³ Sealing via OND is available to people convicted of first-time low-level misdemeanor convictions as well as to those who completed deferred adjudication community supervision ("deferred adjudication") for low-level offenses. This article focuses only on sealing of convictions because the earnings impact of a conviction is recognized to be much more significant than a non-conviction.⁴⁴ As such, we will use "sealing" throughout the remainder of the article to refer exclusively to record relief granted

³⁷ *Collateral Consequences Inventory*, NATIONAL INVENTORY OF COLLATERAL CONSEQUENCES, (last visited November 5, 2021), <https://niccc.nationalreentryresourcecenter.org/consequences> (select "Texas").

³⁸ *Top Statistics - Texas - Projections - No Education Requirement, High School Diploma, or Postsecondary Non-Degree*, TEXAS LABOR ANALYSIS, Report generated August 27, 2021.

³⁹ *Demand Analysis - Occupational Detail - Texas - Security Guards (SOC 33-9032)*, TEXAS LABOR ANALYSIS, Report generated August 27, 2021.

⁴⁰ *Collateral Consequences Inventory*, NATIONAL INVENTORY OF COLLATERAL CONSEQUENCES, *supra* note ____ (specify "private security, investigations, and locksmiths" as a keyword.)

⁴¹ Texas Code of Criminal Procedure Art. 55.01 (2005). For more on the legislature's intent for expunction to redress the harm associated with criminal justice involvement, see also *State v. T.S.N.*, 547 S.W.3d 617 (Tex. 2018) (noting that the state's expunction statute allows for expunction "in limited, specific circumstances...[with the] intent to, under certain circumstances, free persons from the permanent shadow and burden of an arrest record, even while requiring arrest records to be maintained for use in subsequent punishment proceedings and to document and deter recidivism."

⁴² *Id.*

⁴³ *Expunctions in Texas*, TEXAS YOUNG LAWYERS ASSOCIATION & THE STATE BAR OF TEXAS, 5, (2010 and 2019), https://www.texasbar.com/AM/Template.cfm?Section=Our_Legal_System1&Template=/CM/ContentDisplay.cfm&ContentID=23459 and Tex. Gov. Code Sec. 411.0765. Thank you to Derek Cohen of the Texas Policy Lab for raising this to us in a comment on a previous draft.

⁴⁴ See Chien, *supra* note ____ at _____. (providing an overview of this impact literature) [pin/add'l parenthetical needed]

using the OND pathway.

In 2003, S.B. 1477 put the OND pathway on the books in Texas,⁴⁵ in an effort to remove impositions on a “person's ability to obtain a desired job or position for many years after the offense.”⁴⁶ In 2015, the 84th Texas Legislature passed S.B. 1902 to “[give] reformed offenders a second chance, creating a safer Texas, and increasing the workforce with individuals who are no longer limited by their minor criminal histories” by making sealing of deferred adjudication dismissals “automatic.”⁴⁷ This was followed two years later by H.B. 3016 to further expand eligibility.⁴⁸

Despite these revisions, the scope of Texas’s record sealing law remains narrow. Offenses that are given deferred adjudication up to a maximum duration⁴⁹ are eligible for relief following successful completion of community supervision and dismissal.⁵⁰ First offense misdemeanor convictions, after a two-year waiting period following sentence completion, are also generally eligible as long as there have been no prior convictions or deferred adjudications.⁵¹ First-time driving while intoxicated (DWI) offenses are eligible after a two-to-five year waiting period.⁵² Offenses involving violence besides simple assault, sex crimes, or a handful of other crimes,⁵³ or that are committed by individuals who have been convicted of certain crimes, are disqualified or have longer waiting periods.⁵⁴

There are two processes people can use to apply for record sealing. The first process, the petition route, is used for convictions, most misdemeanors and felonies given deferred adjudication.⁵⁵ The petition process starts with an individual submitting a petition and a fee to the

⁴⁵ Id.

⁴⁶ Royce West, *C.S.S.B. 1477 Bill Analysis*, SENATE RESEARCH CENTER, 1, (May 8, 2003), <https://capitol.texas.gov/tlodocs/78R/analysis/pdf/SB01477S.pdf#navpanes=0>.

⁴⁷ Charles Perry, *S.B. 1902 Bill Analysis*, SENATE RESEARCH CENTER, 1, (April 17, 2015), <https://capitol.texas.gov/tlodocs/84R/analysis/pdf/SB01902I.pdf#navpanes=0>.

⁴⁸ Senfronia Thompson et al., *C.S.H.B. 3016 Bill Analysis*, SENATE RESEARCH CENTER, (May 18, 2017), <https://capitol.texas.gov/tlodocs/85R/analysis/pdf/HB03016S.pdf#navpanes=0>.

⁴⁹ A maximum of 2 years of community supervision following misdemeanors and 10 years of community supervision for a felony. Art. 42A.103

⁵⁰ Texas Government Code §42A.102, Texas Government Code §411.0725.

⁵¹ Tex. Gov’t Code §§ 411.073, 411.0735. Some convictions have a shorter waiting period, but for simplicity and to be conservative, we do not model these shorter periods, as described in the Appendix.

⁵² Tex. Gov’t Code §411.0736 (2017).

⁵³ Including Boating while intoxicated (Penal Code §49.06), Flying while intoxicated (Penal Code §49.05), Assembling or operating an amusement ride while intoxicated (Penal Code §49.065), or Organized Crime (Penal Code Chapter 71)

⁵⁴ Tex. Gov. Code §411.0735(c-1) (2015). People are ineligible to have their records sealed if they have ever been convicted of or received deferred adjudication for offenses including homicide, human trafficking, aggravated kidnapping, child or elder abuse, stalking, and offenses that require registration as a sex offender. Texas Government Code §411.074(b) (2015). Payment of legal financial obligations, if required for sentence completion, is also required. Texas Government Code §411.0735(b) (2015); Texas Government Code §411.0736(b) (2017).

⁵⁵ Tex. Gov’t Code §§411.0735 and 411.0725. See also *Nondisclosure - Procedure for Deferred Adjudication - for Felonies and Certain Misdemeanors - Under Section 411.0725*, TEXAS LAW HELP, (last updated January 22, 2022), <https://texaslawhelp.org/article/nondisclosure-procedure-for-deferred-adjudication-for-felonies-and-certain-misdemeanors-under>; *Nondisclosure - Procedure for Conviction for Certain Misdemeanors - Under Section 411.0735*, TEXAS

“clerk of the court. . . that sentenced [them] or placed [them] on community supervision. . . or deferred adjudication. . . .”⁵⁶ Although the filing fee can vary by county,⁵⁷ “the petition must be accompanied by payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition.”⁵⁸ After submitting a petition, the court holds a trial to determine whether the petitioner is eligible for sealing and whether sealing the petitioner’s record “is in the best interests of justice.”⁵⁹ If the court answers both questions affirmatively, the relief is granted and the record is sealed.⁶⁰

The second process of sealing one’s record, the submission route, is used only for nonviolent first-time misdemeanor offenses that received a deferred adjudication community supervision sentence that was completed and dismissed on or after September 1, 2017.⁶¹ The submission route does not require a petition.⁶² ⁶³ Instead, to initiate the process, the applicant must “[p]resent evidence necessary to establish that [they] are eligible to receive an order under Section 411.072,” which typically involves filing a Letter Requesting an Order of Nondisclosure Under Section 411.072.⁶⁴ When submitting the Letter to the clerk, the applicant must also pay a \$28 fee or request a fee waiver.⁶⁵ A judge will then review the evidence and seal the record if the applicant meets the eligibility criteria.⁶⁶ Despite the procedural differences between the two record sealing processes, both involve legal fees, court fees, and a petition initiated by the applicant, which requires awareness of both eligibility and the possibility of sealing.

B. Driver’s License Restoration: Occupational Driver’s License

LAW HELP, (January 21, 2022),
<https://d9.texaslawhelp.org/article/nondisclosure-procedure-for-conviction-for-certain-misdemeanors-under-section-4110735>.

⁵⁶ *An Overview of Orders of Nondisclosure*, TEXAS OFFICE OF COURT ADMINISTRATION, 2, (last updated January 2020),
<https://www.txcourts.gov/media/1445464/overview-of-orders-of-nondisclosure-2020.pdf>.

⁵⁷ *Orders of Nondisclosure Overview*, TEXAS OFFICE OF COURT ADMINISTRATION, 5, (last updated April 2017),
<https://www.txcourts.gov/media/821650/order-of-nondisclosure-overview.pdf>.

⁵⁸ Texas Administrative Code §411.0745(b) (2015).

⁵⁹ Collateral Consequences Resource Center, *Texas: Restoration of Rights & Record Relief*, RESTORATION OF RIGHTS PROJECT, (last updated May 20, 2021),
<https://ccresourcecenter.org/state-restoration-profiles/texas-restoration-of-rights-pardon-expungement-sealing/>.

⁶⁰ *Id.*

⁶¹ Nondisclosure - Deferred Adjudication Community Supervision for Certain Nonviolent Misdemeanors - Under Section 411.072, TEXAS LAW HELP, (last updated January 21, 2022),
<https://texaslawhelp.org/article/nondisclosure-deferred-adjudication-community-supervision-for-certain-nonviolent-misdemeanors-under>.

⁶² *Id.*

⁶³ *Texas Criminal Law: Orders of Nondisclosure*, SAPUTO LAW, (last visited September 18, 2021),
<https://saputo.law/criminal-law/record-clearing/orders-of-nondisclosure/> (also explaining that although some call this type of OND “automated,” this is misleading because an individual must still initiate the process).

⁶⁴ *Id.*, 11.

⁶⁵ *Id.*, 11-12.

⁶⁶ *Id.*, 11.

In Texas, individuals can lose their licenses for a variety of reasons ranging from minor driving-related offenses (e.g., not having insurance, outdated registration, or not signaling⁶⁷), to serious driving offenses (e.g., “a habitually reckless or negligent operator of a motor vehicle”⁶⁸). Individuals can also lose their driver’s license for non-driving related offenses, such as “fail[ing] to appear for a citation (FTA) or fail[ing] to satisfy a judgment ordering the payment of a fine” or fee.⁶⁹ Once an individual loses their driver’s license, that person is faced with a difficult choice: find alternatives for basic tasks like driving to work or school, or risking further criminalization if they are caught driving without a license.⁷⁰

To redress the productivity-related harms associated with not having a driver’s license,⁷¹ Texas Transportation Code Section 521 Subchapter L allows certain individuals to apply for an Occupational Driver’s License (ODL) to regain their rights to drive to work and school. The legislative history suggests that the goal of providing ODLs was to support employment. For instance, in 1969 Senator William T. Moore noted that “[t]he law relating to driver’s licenses is now discriminatory in that it deprives many persons of the privilege of following their occupations and earning a living.”⁷² S.B. 743, which “provide[d] for the issuance of an occupational license to certain people who have had their license suspended” followed.⁷³ In 2015 the 84th Legislature passed H.B. 2246 to both balance the need for public safety, vis-a-vis individuals with licenses suspended due to past intoxication, with the desire to help such individuals “continue to support themselves and their families.”⁷⁴ To effect this goal, ODLs were made available following the installation of an ignition interlock device.⁷⁵

A more recent, related development to restore driver’s licenses was the 2019 repeal of the Driver’s Responsibility Program (DRP), which controversially imposed large fines for often minor traffic offenses (e.g., speeding or driving without insurance) for the funding of trauma centers in rural areas.⁷⁶ The program’s end resulted in the restoration of thousands of licenses.

⁶⁷ Chris Abel, *Failure to Appear and Traffic Violations*, ABEL LAW FIRM, (last visited September 20, 2021), <https://www.flowermoundcriminaldefense.com/failure-appear-and-traffic-violations>.

⁶⁸ Texas Government Code §521.292(a)(2) (1999). *See also Driver’s License Enforcement Actions*, TEXAS DEPARTMENT OF PUBLIC SAFETY, (last visited September 20, 2021), <https://www.dps.texas.gov/internetforms/Forms/DL-176.pdf> (listing the reasons individuals can have their licenses revoked, suspended, and/or disqualified).

⁶⁹ *Failure to Appear/Failure to Pay Program*, TEXAS DEPARTMENT OF PUBLIC SAFETY, (last visited September 20, 2021), <https://www.dps.texas.gov/section/driver-license/failure-appearfailure-pay-program>.

⁷⁰ *Driven By Debt*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, (December 13, 2018), <https://report.texasappleseed.org/driven-by-debt/>.

⁷¹ As recognized by the U.S. Supreme Court, see *Bell v. Burson* (1971), *supra* note ____.

⁷² William T. Moore, *S.B. 753 Bill Analysis*, SENATE RESEARCH CENTER, 8, (May 7, 1969), https://lrl.texas.gov/LASDOCS/61R/SB743/SB743_61R.pdf#page=8.

⁷³ *Id.*

⁷⁴ Jason Villalba et al., *H.B. 2246 Bill Analysis*, SENATE RESEARCH CENTER, (May 18, 2015), <https://capitol.texas.gov/tlodocs/84R/analysis/pdf/HB02246E.pdf#navpanes=0>.

⁷⁵ Texas Transportation Code §521.244(e). (creating OND eligibility based on evidence of financial responsibility and proof of the installation of an ignition interlock device on each motor vehicle operated by the individual.)

⁷⁶ Described by Morgan Smith, *To pay for trauma centers, state program sinks thousands of Texas drivers into deep debt*, THE TEXAS TRIBUNE, (August 27, 2018),

However, “an estimated 500,000 individuals’ licenses remained suspended after their DRP surcharges were eliminated,”⁷⁷ a figure consistent with the data reported in this study.

To obtain an ODL under Texas Transportation Code Section 521 Subchapter L, one must demonstrate “an essential need” for the ODL, for example as evidenced by the need to drive to work or to school, and a lack of an alternative transportation option.⁷⁸ However, individuals are ineligible for ODLs if they have “lost [their] driving privileges because of a mental or physical disability,” have “lost [their] driving privileges for failure to pay child support,” have “received two ODLs in the past 10 years after a conviction,” or “have a ‘hard suspension’ waiting period due to a prior DWI arrest or conviction.”⁷⁹ ODLs are also unavailable to individuals who need a license to drive a commercial motor vehicle.⁸⁰

To obtain an ODL, an eligible individual must complete a petition, in accordance with local court requirements.⁸¹ Next, the applicant must file the petition and submit a filing fee.⁸² If their license was “automatically suspended or canceled following a conviction, [the applicant should] file the Petition in the same court that convicted [them].”⁸³ If not, they can choose to file the petition “in the county where [they] live or where the offense occurred.”⁸⁴ Following filing, there is a hearing where a judge reviews the petition and other paperwork of the petitioner, including a Certified Abstract of the petitioner’s full driving record, an SR-22 Proof of Insurance from the petitioner’s insurance company, and evidence that the petitioner needs the license to go to work, attend school, etc.⁸⁵ The judge will then decide whether to grant an ODL.⁸⁶

C. Barriers to Relief Under Texas’s Second Chance Laws

As discussed above, Texas enacted its record sealing and driver’s relicensing laws with the goals of reducing the size of the criminal justice system and increasing accessibility to second chances and workforce opportunities. However, three administrative burdens placed on

<https://www.texastribune.org/2018/08/27/pay-trauma-centers-texas-sinks-thousands-drivers-deep-debt/> (describing how the program, originally intended to “hold bad drivers responsible for the damage they caused, with the license suspensions having the added benefit of keeping them off the roads” was eventually seen as a “massive failure”).

See also Matthew Menendez et al., *Fees and Fines: A Fiscal Analysis of Three States and Ten Counties*, BRENNAN CENTER FOR JUSTICE, 26, (November 21, 2019),

<https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

⁷⁷ TEXAS LAW HELP, *supra* note 72.

⁷⁸ *Texas Occupational Driver’s License*, 1, (last visited January 20, 2022),

<https://www.co.chambers.tx.us/upload/page/0100/docs/Occupational%20DL/BrochureODL.pdf>.

⁷⁹ *Id.* For more on hard suspension waiting periods, see *Occupational Driver’s License*, TEXAS LAW HELP, (last updated June 2, 2021), <https://texaslawhelp.org/guide/occupational-drivers-license/?tab=0>.

⁸⁰ *Id.*

⁸¹ *Id.*, 2.

⁸² *Supra* note 75, 3.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

applicants by the second chance laws limit the legislature’s success in meeting these goals.⁸⁷ First, the petition process in both cases requires an individual not only to prove they deserve a second chance, but also to ascertain the law and fill out potentially confusing paperwork. Second, the requirement that individuals seeking a second chance attend a hearing similarly burdens people with challenges ranging from getting a hearing on the calendar (which requires successfully submitting a petition) to attending a hearing (which can involve taking time off of work, traveling, etc.). Third, complex criteria that frequently evolve make it difficult for individuals to keep up with the law and determine their eligibility. These administrative barriers to petitioners not only contrast with the automatic removal of rights and collateral consequences after a misdemeanor conviction, incarceration, or the suspension of a driver’s license, but also contribute to the gap in delivery of record cleaning and license restoration, as quantified in the next part.

PART II: ESTIMATING THE SIZE OF TEXAS’S SEALING AND DRIVER’S LICENSE RESTORATION SECOND CHANCE GAPS⁸⁸

While Texas legislatures have passed second chance laws to advance a variety of goals, the benefits of second chance relief depend on its delivery. In this part, we start by profiling the people in each target population. Analyzing criminal convictions data from the state, we find individuals with convictions on average to be of working age (mid-40s) and on average, have a last conviction from over a decade ago. The available evidence suggests that people with suspended licenses appear to be a bit younger (30-40), and have their licenses suspended on average for five years and seven months.

To ascertain the number of people eligible to have their convictions sealed,⁸⁹ we applied a simplified version of the sealing law to criminal convictions records to estimate the size of Texas’s “second chance sealing gap” and “second chance driver restoration gap.” Based on our analysis, we estimate that about 670,000 people are able to have their records cleared, 59,000

⁸⁷ *A related area of literature about administrative burdens is growing quickly. For instance, see Julian Christensen et al., Human Capital and Administrative Burden: The Role of Cognitive Resources in Citizen-State Interactions*, 80 PUBLIC ADMINISTRATION REVIEW 127, (January/February 2020) (describing the ways in which “citizens with lower levels of human capital” experience greater administrative burdens, which contributes to reinforcing inequality); PAMELA HERD & DONALD P. MOYINHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS (2018) (arguing that administrative burdens are conscious policy choices); Elizabeth Linos et al., *Nudging Early Reduces Administrative Burden: Three Field Experiments to Improve Code Enforcement*, 39 JOURNAL OF POLICY ANALYSIS AND MANAGEMENT 243, (Winter 2020) (uses a field experiment to demonstrate that learning costs, compliance costs, and psychological costs help to explain why residents do not always take up programs for which they are eligible”); Cass R. Sunstein, *Sludge and Ordeals*, 68 DUKE L. J. 1843, (2019) (argues that deregulation driven by data and behavioral information should be undertaken due to the 9.78 billion hours of “sludge” paperwork Americans completed in 2018 for the government, but notes that such deregulation will be filled with numerous tradeoffs).

⁸⁸ Language modified and adapted from Colleen Chien et al., *The Texas Second Chance Non-Disclosure/Sealing Gap*, PAPER PRISONS INITIATIVE, (last visited January 21, 2022), <https://www.paperprisons.org/states/TX.html>.

⁸⁹ CHIEN, *supra* note 20.

people completely, to achieve a “clean slate” under existing law (Table 1). For this eligible population, the average number of years since the last conviction is about 17 (median = 15 years). Furthermore, 430,000 people appear eligible to apply for an ODL to drive to work or school. These numbers translate into a 5% and 17% uptake rate of sealing and driver’s license reinstatements, respectively. (Table 1)

A. *The Texas Criminal Population That Could Benefit from Sealing Relief*

Before estimating the size of the population entitled to second chance relief, it is worth considering the current size and characteristics of the existing Texas criminal population, as reflected in the dataset upon which we rely for our records sealing analysis: the Texas Computerized Criminal History System (CCH). Maintained by the Texas Department of Public Safety, the CCH is a database containing all publicly available convictions for adults from 1976 to the date of extraction.⁹⁰ This database is quite large, containing over 5.2 million Texans who have publicly available convictions records. However, the true size of Texas's conviction population is smaller because the CCH data likely includes individuals who are deceased. To account for this, we removed all individuals over the age of 80 years old from the dataset on the basis that the average life expectancy for Americans in 2019 was 78.8 years.⁹¹ After doing so, we estimate that approximately 4.8 million Texans (~16.4% of the state’s adult population in 2020) have publicly available convictions records.⁹² This estimate is at best an approximation because it fails to account for the thousands of people who move in and out of the Lone Star State each year. This database also does not include people with non-conviction and deferred adjudication-only records, who are also eligible for records relief under the law.⁹³

Analyzing a random sample selected from the database of 150,000 people, we find that about 80% have felony convictions and 62% have misdemeanor convictions. The most common charges include drug possession, driving while intoxicated, and felony burglary as well as misdemeanor assault causing bodily injury to a family member (Appendix Table 1). Consistent with general trends, the population is overwhelmingly male. But while the average

⁹⁰ *About CCH*, TEXAS DEPARTMENT OF PUBLIC SAFETY, (last visited August 20, 2021), <https://publicsite.dps.texas.gov/DpsWebsite/CriminalHistory/AboutCch.aspx> (also see this source for more about the CCH). Per the Department of Public Safety, “Computerized Criminal History (CCH) was created in 1976 and we began sending the conviction database in 1998. A person’s criminal history is retained for 125 years from their date of birth.” See email from Texas Department of Public Safety, on file with editors. < for editors: <https://app.sparkmailapp.com/web-share/sW1CF6EOzhRBYaJTOh-6TdDpbW6qQLxd8W2CwfVq> >

⁹¹ National Center for Health Statistics, *Life Expectancy*, CENTERS FOR DISEASE CONTROL AND PREVENTION, (January 8, 2022), <https://www.cdc.gov/nchs/fastats/life-expectancy.htm>.

⁹² America Counts Staff, *Texas Added Almost 4 Million People Last Decade*, UNITED STATES CENSUS BUREAU, (August 25, 2021), <https://www.census.gov/library/stories/state-by-state/texas-population-change-between-census-decade.html>. ~16.4% = 4.8M divided by Texas's adult population in 2020, which we calculated by multiplying the size of Texas's Population in 2020 (29,145,055 people) by the percentage of the population over the age of 18 (75%).

⁹³ See Appendix __ for details.

Table 1: The Population of People in Texas with Convictions

Estimated Number of People with Convictions	4.8M
% Male	85%
Top Convictions - Felonies	poss cs pg 1 <1g (11.4%), DWI 3rd or more (4.2%), burglary (3.7%)
Top Convictions - Misdemeanors	poss marij <2oz (8.3%), DWI (5.6%), assault (3.7%)
Avg Years since last Conviction	12.6 (median = 11)
Average Age at First Conviction	28 (median =27)
Average Current Age of People with Convictions	45
White and Latinx % (share in pop = 82%)	69%
Black % (share in pop = 13%)	31%
Asian % (share in pop = 5%)	1%

Source: Authors' analysis based on the Texas CCH database.

age at first conviction is 28, the average current age of people in the sample is 45. On average, the last conviction of each person was 12.6 years ago. From an earnings perspective this implies that the average age of people who live with convictions in Texas overlaps with the years in which workers typically hit their peak earnings.⁹⁴

Previous research finds that the racial disparities in Texas's criminal justice system are significant. For example, although Black people account for 13% of the state population,⁹⁵ they make up 33% of the Texas prison population.⁹⁶ In contrast, white people make up 44% of the state population but account for just 33% of the prison population.⁹⁷ Thus, as of 2020, Black

⁹⁴ Julia Carpenter, *Millennials' High-Earning Years Are Here, but It Doesn't Feel That Way*, THE WALL STREET JOURNAL, (August 12, 2021), <https://www.wsj.com/articles/millennials-high-earning-years-are-here-but-it-doesnt-feel-that-way-11628769603> (indicating, based on figures from the Bureau of Labor Statistics, that workers typically experience peak earnings “between the ages of 35 and 54”).

⁹⁵ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparities in State Prisons*, THE SENTENCING PROJECT. (October 13, 2021), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/> at 7.

⁹⁶ *Incarceration Trends in Texas*, VERA INSTITUTE OF JUSTICE, (December 2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-texas.pdf>.

⁹⁷ *Id.*

people are 3.4 times more likely to be in prison than white people in Texas.⁹⁸ In contrast, Latinx and Asian people are underrepresented in the prison population relative to their representation in the population in general.⁹⁹

The data we analyzed, from the Texas Department of Public Safety, suggests similar disparities in the breakdown of felony and misdemeanor convictions by race. For instance, even though Black people make up just 13% of Texas's population, we find that Black people make up 30% of people with misdemeanor convictions and 31% of people with felony convictions in our database. Whites and Asians appear to be underrepresented in felony and misdemeanor convictions relative to their representation in the population in general. (Table 1)

B. The Texas Population That Could Benefit from License Restoration Relief

In contrast to the population of people with criminal records, less is known about the demographic characteristics of people with suspended licenses. The populations are distinct, however, as driver's license suspensions are administrative penalties that, in Texas, generally follow non-compliance with court-ordered fines and fees or requests to appear.¹⁰⁰ This means that license suspensions often impact people who haven't committed serious crimes,¹⁰¹ or even been accused of them.

Other studies have considered license suspension programs in Texas, North Carolina, and New Jersey. Though the details of each suspension program are unique, the available evidence suggests that individuals with suspended licenses tend to draw disproportionately from low-income, urban communities and particularly harm the Black community.

Carnegie et al.'s study of New Jersey drivers from 2007 reports that "only 16.5 percent of New Jersey licensed drivers reside in lower income zip codes, while 43 percent of all suspended drivers live there."¹⁰² A later study by Joyce et al.¹⁰³ of all suspended licenses in New Jersey from 2004 to 2018 found that the median household income for people with non-driving related

⁹⁸ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparities in State Prisons*, THE SENTENCING PROJECT, 21 (October 13, 2021),

<https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁹⁹ See Table 1 for a snapshot of the Texas criminal population, by race.

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¹⁰¹ Justin Wm. Moyer, *More than 7 million people may have lost driver's licenses because of traffic debt*, WASHINGTON POST (May 19, 2018),

https://www.washingtonpost.com/local/public-safety/more-than-7-million-people-may-have-lost-drivers-licenses-be-cause-of-traffic-debt/2018/05/19/97678c08-5785-11e8-b656-a5f8c2a9295d_story.html (noting that "[d]river's license suspensions were criticized by anti-poverty advocates after a 2015 federal investigation, focused on Ferguson, Mo., revealed that law enforcement used fines to raise revenue for state and local governments").

¹⁰² Jon A. Carnegie et al., *Driver's License Suspensions, Impacts and Fairness Study*, NEW JERSEY DEPARTMENT OF TRANSPORTATION, 66 (August 2007).

¹⁰³ Nina R. Joyce et al., *Individual and Geographic Variation in Driver's License Suspensions: Evidence of Disparities by Race, Ethnicity, and Income*, 19 JOURNAL OF TRANSPORT AND HEALTH 1, 6 (2020).

suspensions was about \$78,000,¹⁰⁴ which is about \$14,000 lower than the median household income of \$82,000 in 2019.¹⁰⁵ In contrast, the median household income for people who did not have suspensions was nearly \$105,000, about \$23,000 above New Jersey’s median household income.¹⁰⁶ Although estimates about the average or median income of people with suspended licenses is unavailable for Texas, researchers for the Texas Fair Defense Project and Texas Appleseed found a negative correlation between the number of license suspensions and the household income in both Houston¹⁰⁷ and Dallas: “as zip code income increased, the number of holds decreased.”¹⁰⁸

Both studies from New Jersey find people with suspended licenses are disproportionately from urban areas. Carnegie et al. note that “[a]lthough only 43 percent of New Jersey licensed drivers reside in urban areas, 63 percent of suspended drivers live there.”¹⁰⁹ More recent research similarly reports that 4% of people who had any non-driving related suspensions lived in rural areas, compared to 5.7% of people with no suspension.¹¹⁰

Racial disparities among drivers with suspended licenses are significant. The Texas studies referred to earlier, for example, find that in Dallas, Black people account for only 11% of the driving population and yet account for 28.6% of people who cannot get their licenses renewed due to OmniBase holds.¹¹¹ A similar trend is present in Houston, where Black people make up only 22% of the city population, but comprise 40% of the people with OmniBase

¹⁰⁴ *Quick Facts: New Jersey*, UNITED STATES CENSUS BUREAU, (last visited January 23, 2022), <https://www.census.gov/quickfacts/fact/table/NJ/SBO001212>.

¹⁰⁵ Jon A. Carnegie et al., *Driver’s License Suspensions, Impacts and Fairness Study*, NEW JERSEY DEPARTMENT OF TRANSPORTATION, 66 (August 2007).

¹⁰⁶ Nina R. Joyce et al., *Individual and Geographic Variation in Driver’s License Suspensions: Evidence of Disparities by Race, Ethnicity, and Income*, 19 JOURNAL OF TRANSPORT AND HEALTH 1, 6 (2020).

¹⁰⁷ For more specific data on Houston, see *Driven by Debt Houston*, TEXAS FAIR DEFENSE PROJECT AND TEXAS APPLESEED, 5 (July 2020), <https://www.texasappleseed.org/sites/default/files/DrivenByDebt-Houston-July2020.pdf> (“The zip code with the most holds per resident is 77026, an area in Northeast Houston covering the Kashmere Gardens neighborhood, with 344 holds per every 1,000 residents. This zip code has more than one third of its residents living below the poverty level and a majority of its residents (52%) are black. The median income is over \$20,000 less than the citywide median income. Profiles of other heavily affected zip codes are similar. The ten zip codes with the highest rates of holds all have people living in poverty at higher rates than the city’s overall poverty rate and most have median incomes below the city’s median income. Six of these ten zip codes have a population that is more than 50% people of color).

¹⁰⁸ *Driven by Debt Dallas*, TEXAS FAIR DEFENSE PROJECT AND TEXAS APPLESEED, 5 (November 2019), <https://www.texasappleseed.org/sites/default/files/Driven%20By%20Debt%20Dallas.pdf> and *Driven by Debt Houston*, TEXAS FAIR DEFENSE PROJECT AND TEXAS APPLESEED, 4 (July 2020), <https://www.texasappleseed.org/sites/default/files/DrivenByDebt-Houston-July2020.pdf>.

¹⁰⁹ Jon A. Carnegie et al., *Driver’s License Suspensions, Impacts and Fairness Study*, NEW JERSEY DEPARTMENT OF TRANSPORTATION, 66 (August 2007).

¹¹⁰ Nina R. Joyce et al., *Individual and Geographic Variation in Driver’s License Suspensions: Evidence of Disparities by Race, Ethnicity, and Income*, 19 JOURNAL OF TRANSPORT AND HEALTH 1, 6 (2020). (also finding that 6.7% of people with driving-related suspensions lived in rural areas)

¹¹¹ *Driven by Debt Dallas*, TEXAS FAIR DEFENSE PROJECT AND TEXAS APPLESEED, 6 (November 2019), <https://www.texasappleseed.org/sites/default/files/Driven%20By%20Debt%20Dallas.pdf>.

license holds from the Houston Municipal Court.¹¹² Couzier and Garrett’s study of suspensions in North Carolina finds that Black people make up 21% of drivers and account for 50.5% of license suspensions, whereas white people account for 65% of drivers and 36.3% of license suspensions.

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Insofar as lost earnings due to suspended licenses is concerned, it is also worthwhile considering the age of people with a suspended license and the average number of years their license was suspended. Crozier and Garrett’s North Carolina study finds that the average age of people at the time of license suspension was 28 years to 29 years, and the average length of hold ranges from five to ten years.¹¹⁴ Joyce et al.’s study of all New Jersey drivers with a suspended license from 2004 to 2018 documented an average driver age of 39.4. Most relevant for our purposes, the reports by the Texas Fair Defense Project and Texas Appleseed report an average hold length of five years and seven months based on 2018 data acquired from the Department of Public Safety. A summary of this information is available in Table A.

Table A: Demographic Information About Population With Suspended Driver’s Licenses

Study	Jurisdiction	Age	Average Length of Hold	Source of Estimates
Texas Fair Defense Project and Texas Appleseed (2019 and 2020)	Dallas and Houston	--	5 years and 7 months (statewide estimate from 2018 DPS data)	Pages 5-6
Joyce et al. (2020)	New Jersey	39.4 (mean age of people with any non-driving related suspension)	--	Table 1
Crouzier and Garrett (2020)	North Carolina	28.67 (median age at time of offense)	10.1 years (median)	Table 2

¹¹² *Driven by Debt Houston*, TEXAS FAIR DEFENSE PROJECT AND TEXAS APPLESEED, 5 (July 2020), <https://www.texasappleseed.org/sites/default/files/DrivenByDebt-Houston-July2020.pdf>.

¹¹³ William E. Couzier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver’s License Suspension in North Carolina*, 69 DUKE L.J. 1585, 1607-1608 (2020).

¹¹⁴ *Driven by Debt Dallas*, TEXAS FAIR DEFENSE PROJECT AND TEXAS APPLESEED, 5-6 (November 2019), <https://www.texasappleseed.org/sites/default/files/Driven%20By%20Debt%20Dallas.pdf>; *Driven by Debt Houston*, TEXAS FAIR DEFENSE PROJECT AND TEXAS APPLESEED, 4-5 (July 2020), <https://www.texasappleseed.org/sites/default/files/DrivenByDebt-Houston-July2020.pdf>; William E. Couzier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver’s License Suspension in North Carolina*, 69 DUKE L.J. 1585, 1607 (2020); Nina R. Joyce et al., *Individual and Geographic Variation in Driver’s License Suspensions: Evidence of Disparities by Race, Ethnicity, and Income*, 19 JOURNAL OF TRANSPORT AND HEALTH 1, 6 (2020).

C. Sizing Texas's Second Chance Sealing Gap

Having provided an overview of Texas's criminal population, we begin by calculating the second chance sealing gap — the difference between eligibility and delivery of sealing relief to people with criminal convictions. We use the gap-sizing methodology described in Chien, *America's Paper Prisons: The Second Chance Gap*, Michigan Law Review (2020) to determine several numbers: (1) the current gap — the number and share of individuals with records that could qualify for relief, (2) the uptake gap — the share of people eligible for a given second chance that have obtained it,¹¹⁵ and (3) based on the same data used to calculate the current and uptake gaps, how many years, at current rates, it would take to clear the existing backlog.

First, we ascertained and modeled Texas's OND law. Next, we applied the model of the laws to a sample of criminal histories obtained from the state to identify the number of individuals eligible for a given second chance. Once we had estimated the number of people eligible for a given second chance, we calculated the “current gap,” the uptake rate, and the pace of record relief using the following steps. To estimate the current gap, we divided the number of people eligible for a given second chance by the number of people in our sample. To estimate the population eligible for relief, we multiplied the current gap by the total population, which was estimated using state data. Next, using historical data obtained from the state, we calculated the estimated relief granted over the past five to ten years by adding the number of second chances granted to the product of (i) the number of second chances granted in the earliest year of data and (ii) the number of years left to reach five or ten years of data (whichever was closest to the actual number of years of data the state provided). Then, to calculate the uptake rate, we divided the estimated historical relief rate by the number of people eligible for relief plus the estimated historical relief rate. After calculating the current gap and the uptake gap, we estimated the number of years it would take to clear the backlog by dividing the population eligible for relief by the number of people who were granted a second chance in the most recent full year of data.

There are several weaknesses with our methodology. First, we do not account for eligibility requirements related to fines and fees due to a lack of data, making our eligibility estimates generous. In the other direction, we also do not include eligibility for expungements of non-convictions, which depress, potentially dramatically, our estimates of who falls into the records relief gap. Second, the underlying criminal history provided by the state at times was missing sentence expiration dates. When that data was missing, we inferred expiration dates based on data where expiration dates were present.¹¹⁶ Finally, as detailed in the appendix, certain eligibility provisions contained ambiguities that we were unable to resolve despite multiple

¹¹⁵ Colleen Chien, *America's Paper Prisons: The Second Chance Gaps*, 119 MICH. L. REV. 519 (2020) at 542-543.

¹¹⁶ Based on our analysis, we assumed $\text{expiration_date} = \text{sentence_start_date} + 2.9$ years for misdemeanors and 3.2 years for felonies. Additional details are available in the Appendix.

consultations with local criminal law experts. These challenges introduce inaccuracies that cause our estimates to be both over- and under-inclusive.

Table 2: Estimated Eligibility and Uptake of Texas Record Sealing and Drivers Restoration

	Order of Non-Disclosure (Sealing)	Occupational Driver’s License (Restoration)
Total Population (Eligible + Ineligible)	4,826,860	N/A
Population Eligible for Relief	676,845	438,000
Population Eligible for a Clean Record (no Conviction)	58,501	N/A
Relief Granted in Last Available Year	2,650 (2019)	16,350 (2019)
Estimated Relief Granted	36,409 (10 years)	87,027 (5 years)
Uptake Rate (estimated share of people eligible for a given second chance that have obtained it)	~5%	~17%
Years It Would Take to Clear the Backlog	255	27
Current Gap (estimated share of all people with records that are eligible for relief)	14%	N/A

Based on taking the steps described above,¹¹⁷ we estimate that around 677,000 people with misdemeanor convictions or deferred adjudications are eligible for sealing relief under Texas Gov. Code Chapter 411, and 59,000 for a clean record. We further find that 18,593 people had their records sealed between fiscal years 2014 and 2019. Based on this, we project that, at most, 36,000 people sealed their records over the past ten years. Combining these historical figures with our eligibility calculations, we estimate that ~5% of people eligible for relief have received it, leaving 95% of people in the “Texas Second Chance Sealing Gap.” Based on administrative data, 2,650 people sealed their records in the last year of available data (2019).¹¹⁸ At this rate, it would take 255 years to clear the sealing backlog. The profile of individuals that could get a “cleaner” or “completely cleaned” record is similar to that of the average profile of a person with a conviction, except that the average years since the last conviction is 17 and 19 years, respectively.¹¹⁹

D. Sizing Texas’s Second Chance Driver’s License Restoration Gap

¹¹⁷ Further details are provided in the Appendix.

¹¹⁸ Data was acquired from the Texas Department of Public Safety. See Appendix E for a breakdown of sealings by year for every year of data the Department of Public Safety gave us.

¹¹⁹ See Appendix

We applied a similar “second chance gap” approach to quantifying the number of people in Texas who appear eligible for but have not received an occupational driver’s license “restoration” based on Texas Transportation Code Section 521 Subchapter L. Doing so requires an understanding of how driver’s licenses are suspended in Texas in the first place. Practitioners have generally described two main, non-driving-related causes of a license suspension: (i) failure to pay criminal court-related fines, fees, and surcharges; and (ii) failure to appear (FTA).¹²⁰ FTAs in Texas result, in turn, when a person is summoned to court for a range of offenses, ranging from traffic citations to felonies, but does not appear for their trial or hearing.¹²¹ The consequences can be severe. For instance, failure to appear can result in the issuance of an arrest warrant.¹²² Individuals can also lose their driver’s license under Texas Transportation Code 706, which allows the state to “deny renewal of the driver's license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and cost. . . in a matter involving any [criminal] offense.”¹²³

Using this as a foundation, we focus on people who lost their licenses under the OmniBase Program, which suspends licenses for failure to pay court-related expenses or failure to appear.¹²⁴ We acquired data provided by the Texas Department of Public Safety to ascertain the number of people that presumably met the “FTA” criteria for ODL relief by virtue of having a FTA on their driver’s license, which was 438,000 individuals.¹²⁵ To complement our analysis, we relied on statistics from the Department of Public Safety on the number of people who

¹²⁰ See *Driven By Debt*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, (December 13, 2018), <https://report.texasappleseed.org/driven-by-debt/>; *Driven by Debt: The Failure of the Omnibase Program*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, 3, (August 2021), <https://www.texasappleseed.org/sites/default/files/OmnibaseRevenueReport-Aug11-Final.pdf> (explaining that “Holds on license renewals are triggered when license holders either fail to pay fines and costs or fail to appear in court, usually for traffic offenses. However, eventually all OmniBase Holds are incurred due to an inability to pay, because the only way to lift a hold is to completely pay off all underlying debt”); *Driven by Debt: Dallas*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, 1, (November 2019), <https://www.texasappleseed.org/sites/default/files/Driven%20By%20Debt%20Dallas.pdf> (explaining that “[t]he vast majority of criminal cases in Texas are fine-only misdemeanors, which are the lowest level of criminal offenses in Texas and intended to be punished by fines alone and no jail time. Fine-only misdemeanors include most traffic offenses, city ordinance violations and other Class C misdemeanors such as public intoxication”).

¹²¹ Notably, “[m]ost often, people are charged with a fine-only offense when they receive a ticket written by a law enforcement officer. The ticket instructs them to pay the fine and court costs, or alternatively, to appear in court on or by a certain date. Only people who cannot pay immediately or want to contest the ticket must show up in court.” Deborah Fowler et al., *Pay Or Stay: The High Cost of Jailing Texans for Fines & Fees*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, 7, (February 2017), https://www.texasappleseed.org/sites/default/files/PayorStay_Report_final_Feb2017.pdf.

¹²² *Id.*, 7-8.

¹²³ Texas Transportation Code, Chapter 706.

¹²⁴ Failure to Appear/Failure to Pay Program, TEXAS DEPARTMENT OF PUBLIC SAFETY, (last viewed January 22, 2022), <https://www.dps.texas.gov/section/driver-license/failure-appearfailure-pay-program>. See also Texas Transportation Code, Chapter 706.

¹²⁵ Email from Texas Department of Public Safety to Texas Fair Defense Project. Email is on file with authors. [for editors: <https://cloudhq.net/s/e398c60edff3f1>]

received an ODL under the OmniBase Program, which reports that 47,449 ODLs were granted between September 2017 and December 2020.¹²⁶

There are a few limitations to our approach. First, we were unable to obtain data by which we could determine the bases for license suspension and so therefore could not model the “inability to pay” criteria. We excluded people qualifying for occupational licenses based on this criteria from our estimate, depressing it. That being said, we note that there is likely substantial overlap between the universe of individuals who qualify under each criteria, particularly because a major cause of a FTA is lack of transportation to attend one’s hearing.¹²⁷ Second, we do not model the requirement for receiving an ODL of having driver’s insurance as required in the court. In operation, this requirement is likely to act as a significant hurdle to ODL restoration by the subset of people with FTAs whose FTAs are based on poverty.¹²⁸ Additionally, although individuals with FTAs are unlikely to have the traits in general which would disqualify them for ODL relief,¹²⁹ it remains the case that “a small percentage [of the people who have an FTA] may have other suspensions that make them ineligible for an ODL, such as [that their license was] also revoked for a medical reason, a hard suspension/waiting period because of an alcohol or drug offense, or their driver license is revoked because of non-payment of child support.”¹³⁰ Once again, these methodological weaknesses cause us to both underestimate and overestimate the second chance gap.

Based on the methods, data sources, and caveats described above and further elaborated in the Appendix, we estimate that around 438,000 people with suspended licenses due to FTA are eligible for an ODL under Texas Transportation Code Section 521 Subchapter L. Using the data

¹²⁶ See *Driver License Division High Value Set*, DEPARTMENT OF PUBLIC SAFETY (February 2020, January 2020, December 2019, November 2019, October 2019, September 2019, August 2019, July 2019, June 2019, May 2019, April 2019, March 2019, February 2019, January 2019, December 2018, November 2018, October 2018, September 2018, August 2018, July 2018, June 2018, May 2018, April 2018, March 2018, February 2018, January 2018, December 2017, November 2017, October 2017, September 2017) (all reports as of January 21, 2022 available at <https://www.dps.texas.gov/section/driver-license/driver-license-division-high-value-data-sets>).

¹²⁷ Deborah Fowler et al., *Pay Or Stay: The High Cost of Jailing Texans for Fines & Fees*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, 7, (February 2017), https://www.texasappleseed.org/sites/default/files/PayorStay_Report_final_Feb2017.pdf. See also *Driven by Debt: The Failure of the Omnibase Program*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, 3, (August 2021), <https://www.texasappleseed.org/sites/default/files/OmnibaseRevenueReport-Aug11-Final.pdf> (explaining that “Holds on license renewals are triggered when license holders either fail to pay fines and costs or fail to appear in court, usually for traffic offenses. However, eventually all OmniBase Holds are incurred due to an inability to pay, because the only way to lift a hold is to completely pay off all underlying debt”).

¹²⁸ Deborah Fowler et al., *Pay Or Stay: The High Cost of Jailing Texans for Fines & Fees*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, 17-18, (February 2017), https://www.texasappleseed.org/sites/default/files/PayorStay_Report_final_Feb2017.pdf.

¹²⁹ For example, on the basis of hard suspension waiting periods due to DWIs, which are Class B misdemeanors or more serious offenses. See *Know Your Rights: Traffic Tickets and Other Class C Misdemeanors*, ACLU TEXAS, (last visited August 26, 2021), <https://www.aclutx.org/en/know-your-rights/know-your-rights-traffic-tickets-and-other-class-c-misdemeanors> and Tex. Penal Code §49.06.

¹³⁰ Email with contact at Texas Fair Defense Project. Email is on file with authors.

sources described above, we project that the Texas Department of Public Safety granted 87,027 ODLs over the past five years. Combining these historical ODL figures with our eligibility calculations, we estimate that 16.58% of people eligible for relief have received it, leaving 83.2% of people in the “Texas Second Chance Driving Relicensing Gap.” Based on reported records, the State granted 16,350 ODLs in the last year of fully available data (2019). At this rate, it would take nearly three decades (27 years) to clear the ODL backlog.

PART III: ESTIMATING THE ANNUAL EARNINGS IMPACTS OF A CRIMINAL CONVICTION AND LOST DRIVER’S LICENSE AND THE EARNING IMPACTS OF TEXAS’ SECOND CHANCE GAPS 25

A. Summary of Results

Employment and earning opportunities are limited for persons who have criminal records or who lack driver’s licenses, compared to those without such restrictions. Though second chance laws make it possible to remove these barriers to work through records sealing or license restoration, our analysis of Texas’s criminal justice system in the previous part finds that only a fraction of those apparently eligible for relief are accessing it, with over a million people falling into either the second chance sealing or occupational driver’s license gap. While second chance reforms are often generally motivated by a desire to expand economic opportunity, no study of which we are aware has yet attempted to specify the cost to society, in aggregate earnings and employment losses, associated with the “second chance gap.” The following paragraphs detail our attempts to do so, with the results of our analysis shown in Table 2, below.

Table 3: The Size and Annual Earnings Losses Associated with Texas’s Second Chance Sealing and Driver’s License Gaps

Orders of Non-Disclosure		Drivers License Restoration	
National Estimate of Annual Wage Loss	\$5,100	National Estimate of Annual Wage Loss (lower bounds estimate)	\$12,696
People estimated in the second chance ODL gap (total clearance)	676,845	Estimate of Annual Wage Loss (upper bounds estimate)	\$23,552
		People estimated in the second chance ODL gap (total clearance)	438,000
Estimate of Annual Earnings Loss	\$3,451,909,500	Estimate of Annual Earnings Loss (lower bounds)	\$5,560,848,000
		Estimate of Annual Earnings Loss (upper bounds)	\$10,315,776,000

B. *Estimating The Earnings Effect of Incarceration and Conviction*

A great deal of empirical work on the impact of contact with the criminal legal system on employment and earnings is limited to incarceration, although a growing body of studies is beginning to push the point of contact up to conviction and even arrest.¹³¹ There are challenges with these kinds of studies, namely, adjusting for the distinct possibility that individuals who have contact with the criminal legal system would experience employment problems or wage erosion even in the absence of that contact. This is known as the selection problem, and it is exemplified by socioeconomic profiles indicating that individuals who have contact with the criminal legal system tend to be drawn from lower rungs of the socio-economic ladder. For example, Harlow reports that just 32% of state prison inmates have a high school diploma, compared to 82% of the general population.¹³² It is for this reason that Wakefield and Uggen characterize the criminal legal system partly as a social filter that absorbs marginal and marginalized populations.¹³³ Furthermore, individuals who experience more punitive forms of contact with the criminal legal system (e.g., conviction with incarceration as opposed to conviction with probation) tend to have even more disadvantaged profiles.¹³⁴ This would seem to call into question whether employment difficulty could be interpreted as the causal effect of contact with the criminal legal system experience, or else a spurious artifact. Despite that challenge, many studies have taken great care to deal with the selection problem using several kinds of quasi-experimental designs. There are many such studies that currently exist, but we focus our attention on the few that are directly relevant for our purpose.

Studies of large national surveys in the U.S. consistently indicate incarceration, even a very short spell of confinement, is highly disruptive for an individual's employment prospects. Apel and Ramakers review many of them and conclude that formerly incarcerated individuals have a 10-20% lower likelihood of employment than their non-incarcerated peers.¹³⁵ This means that if the baseline employment-to-population ratio is 60%, individuals who have been

¹³¹ For instance, see Robert Apel & Kathleen Powell, *Level of Criminal Justice Contact and Early Adult Wage Inequality*, 5 RUSSELL SAGE FOUNDATION JOURNAL OF THE SOCIAL SCIENCES 198, 199-200 (January 2019) (presenting a literature review about key studies related to lost earnings and criminal justice contact, and noting “[t]his rich research tradition is mixed with respect to legal jurisdictions, types of contact, age and representativeness of the samples, measurement sources, research designs, and methodological rigor”).

¹³² Caroline Wolf Harlow, *Education and Correctional Populations* (NCJ 195670), BUREAU OF JUSTICE STATISTICS (January 2003), <https://bjs.ojp.gov/content/pub/pdf/ecp.pdf>.

¹³³ Sara Wakefield & Christopher Uggen, 36 *Incarceration and Stratification*, ANNUAL REVIEW OF SOCIOLOGY 387 (2010).

¹³⁴ *Id.*, 389-393. See also *Reducing Racial Disparity in the Criminal Justice System: A Manual for Policymakers and Practitioners*, THE SENTENCING PROJECT (2008) (discussing causes of racial disparity in the criminal justice system, how these disparities manifest, and what practitioners and policymakers can do to address these disparities).

¹³⁵ Robert Apel & Anke Ramakers, *Impact of incarceration on employment prospects*, 85-104, in HANDBOOK ON THE CONSEQUENCES OF SENTENCING AND PUNISHMENT DECISIONS (Beth M. Huebner & Natasha A. Frost, eds., 2019).

incarcerated have a comparable ratio of 48-54%.¹³⁶ Among individuals who are employed, moreover, the wage gap tends to be on the order of 5-30%, meaning when judged against a baseline wage of \$10 per hour, otherwise similar but formerly incarcerated individuals who find employment earn \$7 - \$9.50 per hour.¹³⁷ Assuming a 40-hour work week, this would amount to a penalty of \$1,040 to \$6,240 per year, compared to an annual baseline of \$20,800.¹³⁸

The “disruption” effect of incarceration is distinct from, but in many cases, further compounded by, the “marking” effect of having a criminal record, and, in particular, a conviction, on earnings and employment. Craigie and her coauthors provide the most recent estimates of the impact of misdemeanor and felony conviction and incarceration on earnings, which we use as a starting point.¹³⁹ They rely on self-reported criminal justice contact in a large, representative, and longitudinal sample of individuals who were in their 30s the last time they were interviewed.¹⁴⁰ Their design entails matching individuals who experienced criminal justice contact to their peers who share the same demographic profile and regional economic characteristics, but who did not experience criminal justice contact.¹⁴¹ They estimate lost annual earnings due to misdemeanor convictions to be \$5,100, which is a 16% difference relative to baseline annual earnings of \$32,000, and lost earnings from a felony conviction to be \$6,400 (a 22% decline relative to baseline of \$29,400).¹⁴² These represent the effects of misdemeanor and felony conviction relative to no conviction, the latter mostly reflecting no criminal justice contact, although it could include some number of individuals who experienced forms of criminal justice processing that did not culminate in a conviction (e.g., arrest, booking). Slightly larger are the lost earnings from incarceration, which the authors estimate to be \$7,100 per year (a 52% decline relative to baseline of \$13,800).¹⁴³ This estimate compares individuals who experienced any post-conviction sentence of incarceration to individuals who did not experience criminal justice contact as well as individuals who might have experienced other forms of criminal justice processing (possibly even those held in jail awaiting processing) but were not sentenced to incarceration.¹⁴⁴

The evidence that is most relevant for our purpose comes from Harris County, Texas. Mueller-Smith takes advantage of the fact that misdemeanor and felony defendants are randomly assigned to a courtroom, which determines both the judge that presides over their case as well as

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Terry-Anne Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, BRENNAN CENTER FOR JUSTICE, (September 15, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involve-ment-criminal>.

¹⁴⁰ *Id.*, 31-32.

¹⁴¹ *Id.*, 31-33.

¹⁴² *Id.*, 15.

¹⁴³ *Id.*, 17.

¹⁴⁴ *Id.*, 17-19.

the prosecution team.¹⁴⁵ Because randomization ensures there is no systematic tendency for defendants with certain characteristics to be assigned to a particular courtroom, variation in incarceration arises solely from the assigned courtroom. In that sense, variation in punishment due to the preferential leanings of individual judges can be thought of as being as good as randomly assigned. The analysis merges administrative data from law enforcement, the court, the correctional system, and the labor department to pool together individuals who are incarcerated for the first time with individuals who have prior incarceration spells, and to compare them to those who could have been incarcerated but were not because they were randomly assigned to a less punitive courtroom.¹⁴⁶ Mueller-Smith estimates that, during incarceration, individuals sentenced for misdemeanors and felonies are less likely to be employed by more than 30 percentage points.¹⁴⁷ Following incarceration, their quarterly employment probability remains lower by 4-5 percentage points, and their quarterly earnings are lower by 30-40% relative to their peers who were not incarcerated.¹⁴⁸ In terms of lost earnings, he estimates the annual earnings gap to be \$1,864 due to incarceration for a misdemeanor and \$4,706 due to a two-year incarceration spell for a felony.¹⁴⁹ As a further sign of their difficulty in attaining financial self-sufficiency following incarceration, formerly incarcerated individuals rely more heavily on government programs (e.g., food stamps, cash welfare, etc.) after their release.¹⁵⁰

A more recent study by Mueller-Smith and Schnepel focuses on two policy changes in Harris County related to court use of diversion for certain groups of criminal defendants — one in 1994 that reduced the use of diversion (for certain property and drug defendants) and another in 2007 that expanded the use of diversion (for certain low-risk defendants).¹⁵¹ In this study, diversion refers to deferred adjudication of guilt, whereby defendants evade a felony conviction by completing a period of community supervision.¹⁵² This type of sanction is akin to probation, but whereas probation is an alternative to prison that follows a formal conviction for low-level offenses, deferred adjudication avoids a conviction outright. The study speaks directly to the impact on employment of a felony conviction record, since the marginal defendant is one who is most likely to be sentenced to community supervision, meaning the only difference is whether they acquire a felony conviction in the process.¹⁵³ Their analysis takes advantage of the fact that these two deferred adjudication policies were implemented abruptly—abrupt changes like this are frequently referred to as natural experiments, because they allow comparison of individuals

¹⁴⁵ Michael Mueller-Smith, *The Criminal and Labor Market Impacts of Incarceration*, Unpublished manuscript, University of Michigan, Ann Arbor (2015).

¹⁴⁶ *Id.*, 17-19.

¹⁴⁷ *Id.*, 28.

¹⁴⁸ *Id.*, 28-31.

¹⁴⁹ *Id.*, 47 at Table 7.

¹⁵⁰ *Id.*, 30, 32.

¹⁵¹ Michael Mueller-Smith & Kevin T. Schnepel, *Diversion in the Criminal Justice System*, 88 JOURNAL OF ECONOMIC STUDIES 883, 884-886 (2021).

¹⁵² *Id.*, 883.

¹⁵³ *Id.*, 884-885.

who would have received the same sanction but for the policy change, and who instead receive different sanctions that are arguably as good as being randomly assigned.¹⁵⁴ The authors estimate that individuals who benefit from deferred adjudication have a higher quarterly employment likelihood by at least 15 percentage points (an almost 50% increase over baseline in both years).¹⁵⁵ They also have substantially higher total earnings — the authors estimate the average annual earnings loss from a felony conviction to be as high as \$8,500 (1994) and at least \$4,100 (2007).¹⁵⁶ These employment and earnings effects are long lasting, as they persist for 10 years after deferred adjudication and, after the 1994 change, for an astonishing 20 years.¹⁵⁷

In light of their careful design, these two Harris County studies provide credible estimates of the causal impact of incarceration and conviction, respectively, on employment and earnings. What is notable about both studies is that, not only do conviction and incarceration worsen short- and long-term employment and earnings prospects, but they also increase the likelihood of further entanglement with the criminal legal system. This seems to be especially likely among individuals with no prior felony convictions, for whom the impacts of a felony conviction on recidivism and employment are largest.¹⁵⁸ This implies the state of Texas pays not only in terms of lost wage-related revenue but also in the cost of additional crime and legal processing as well as the cost of government programs from which justice-impacted individuals seek relief.

Table B provided a summary of the estimates of different forms of criminal justice sanctions on annual earnings, obtained from the studies described above. The estimates are comparable even though they derive from different samples and different quasi-experimental designs. Our particular interest is in lost earnings from conviction, estimates of which are broken down by misdemeanor and felony conviction.

Table B. Estimates of Lost Annual Earnings from Conviction and Incarceration

Study	Jurisdiction	Impact of Conviction	Impact of Incarceration	Source of Estimate
Craigie et al. (2020)	National	Misdemeanor: \$5,100 Felony: \$6,400	\$7,100	Table 3
Mueller-Smith (2015)	Harris County, TX	---	Misdemeanor: \$1,864 Felony: \$4,786	Table 7
Mueller-Smith and Schnepel (2021)	Harris County, TX	Felony (1994): \$8,536 Felony (2007): \$4,144		Table 4

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*, 900.

¹⁵⁶ *Id.*, Table 4 at 901.

¹⁵⁷ *Id.*, 883, 902.

¹⁵⁸ *Id.*, 902 and 911

Note: The felony incarceration estimate in Mueller-Smith (2015) assumes a two-year sentence of incarceration, as he allows the impact to differ by duration of sentence. The estimates from Mueller-Smith and Schnepel (2021) relate to deferred adjudication policy reforms, through which individuals are able to avoid a conviction record by completing community supervision.

C. *Estimating the Earnings Impact of the Texas Second Chance Expungement (Sealing) Gap*

We specifically use the estimates from Craigie et al., since this is the only study to estimate the impact of both misdemeanor and felony conviction, and since its estimate of earnings loss from a felony conviction is the midpoint of the two estimates provided by Mueller-Smith and Schnepel. This leads us to conclude the national average impact of a misdemeanor conviction on earnings is about \$5,100 per year, and the impact of a felony conviction is about \$6,400 per year. Although the Mueller-Smith study relies on a control group that includes not only first-time but also additional convictions, because studies indicate that the binary step, of going from having to not having a conviction record, or vice versa, is most significant, we conservatively include in our calculation only people who would be able to seal their records entirely of convictions, a smaller number than who could receive *any* relief under sealing law. It is important to note that these studies, and our figures, are drawn from national calculations that may not accurately predict the outcomes of Texans with convictions.¹⁵⁹ Thus, though we use the estimates above to carry out our exercise, we heavily caveat its precise total for at least this reason.

Multiplying the number of individuals that could entirely clear their records, 58,501, by \$5,100 yields a conservative estimate of approximately \$300 million annually in lost earnings. If we change our estimate to include all in our sample who could get sealing relief (676,845), an approach that is consistent with the Mueller-Smith and Schnepel research design of comparing people with various records who received deferred adjudications with those who did not, the cumulative annual earnings loss balloons to approximately \$3.5 billion. These figures represent forgone earnings due to having one additional criminal conviction relative to no criminal conviction — in economic parlance, it represents lost earnings on the extensive margin.

One might wonder whether these wages are permanently lost, in light of evidence that a criminal record stigmatizes individuals in the labor market, and sustained time out of the labor market erodes human capital even further. This suggests that initial demand-side barriers to work have the capacity to become self-sustaining as they crystallize into experience gaps that make it even more difficult to secure gainful employment. With respect to the latter possibility, surveys of employers indicate they are less likely to want to hire individuals with a “spotty work record” as opposed to individuals with only a GED, and even compared to individuals who have been unemployed for a year or more.¹⁶⁰ Although employers are least likely to want to hire someone

¹⁵⁹ Thank you to Craigie et al. for raising this point with us.

¹⁶⁰ Harry J. Holzer et al., *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 J.L. & ECON. 451 (2006).

with a criminal record, then, criminal record expungement might not suffice to fully recover lost earnings, since experience gaps that accumulate over time because of the criminal record cannot be fully remedied.

Even if some employment erosion is permanent, there are compelling reasons to believe that expungement policy can lead to the recovery of some fraction of lost earnings. This is especially likely to be the case for lost earnings that are due to, for example, restrictions on occupational licensing for individuals with a conviction record, employer refusals to interview or hire individuals who have a conviction record (either by requiring it on a job application or via background check), or employer channeling of individuals with conviction records into lower-paying positions. One relevant finding from the Mueller-Smith and Schnepel study is that individuals who benefitted from deferred adjudication were more likely to find work in industries that were otherwise closed off to individuals with conviction records (e.g., retail trade, health care, educational services).¹⁶¹ Additional evidence comes from the immediate employment and wage gains that accrue to individuals with a criminal record who obtain expungement.¹⁶² These findings suggest some amount of lost earnings because of employer stigma and legal barriers are indeed recoverable.

D. The Earnings Effect of a Suspended Driver's License

The research base on the economic impact of driver's license suspension is less well developed, but we wish to draw attention to this work despite its provisional status. A study of driver history records in New Jersey found, remarkably, just 10% of license suspension orders were for driving-related behavior that could be construed as a road safety concern (e.g., driving under the influence, points accumulation from moving violations, uninsured driving, reckless driving, etc.).¹⁶³ The lion's share of suspensions was either for financial reasons (40%, e.g., failure to pay motor vehicle authority surcharge, comply with a court-ordered installment plan, or pay child support) or for non-appearance in court to satisfy a summons (32%).¹⁶⁴ In the same study, a survey of drivers with suspended licenses sought to understand the collateral effects of license suspension. Among more than 300 respondents, 40% reported they were unable to keep their job after their suspension, with low-income individuals far more likely to suffer job loss (64% of those with income under \$30,000).¹⁶⁵ Almost one-fifth (17%) of the sample reported not only losing their job but also being unable to find a new one (or 32% of low-income

¹⁶¹ Michael Mueller-Smith & Kevin T. Schnepel, *Diversion in the Criminal Justice System*, 88 JOURNAL OF ECONOMIC STUDIES 883, 900 (2021).

¹⁶² J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460 (2020); Jeffrey Selbin et al., *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. CRIM. L. & CRIMINOLOGY 1 (2018).

¹⁶³ Jon A. Carnegie et al., *Driver's License Suspensions, Impacts and Fairness Study*, NEW JERSEY DEPARTMENT OF TRANSPORTATION, 33 (August 2007).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*, 55-57.

respondents).¹⁶⁶ Among those who were able to find another job, almost all reported negative effects on their income, but regrettably, the estimated amount of lost income was not included in the survey.¹⁶⁷ In a separate study, Pawasara and Quinn assessed the impact of having a valid driver's license among welfare recipients as part of the administration of a training program carried out in Milwaukee.¹⁶⁸ They report that among program participants with less than 12 years of education, individuals with a valid driver's license were “four times more likely to show earnings above the poverty level, compared to those without a current license.”¹⁶⁹

The single study we found that attempted to specifically quantify the impact on earnings of lacking a license was of the city of Phoenix's “Compliance Assistance Program (CAP),” which for a period of time reinstated driving privileges of individuals with civil traffic violations and unpaid fines and fees.¹⁷⁰ The program restored licenses along with waiving some fees in exchange for enrolling in a payment plan. From in-person and mail surveys of 75 program enrollees, 31% of those who were employed reported losing their job as a direct consequence of their suspended license, and 57% reported working fewer hours. Across the sample, the median income loss was estimated at \$36,800 (with a range of \$1,200 to \$300,000).¹⁷¹

The estimates provided here should be regarded as descriptive and therefore highly provisional. We rely on the Phoenix study to estimate the impact of license suspension on income, and although some of the needed information is not provided in the study, it is the only study to date that attempts to quantify income loss. Because the sample comprises individuals who enrolled in the CAP program, they might have been especially motivated to do so because of job difficulty.¹⁷² Acknowledging these and other limitations, we take at face value the estimate of lost annual income for the typical (median) person with a suspended license to be \$36,800, but scale this downward to account for individuals who were not working or whose work was not disrupted by suspension. We note that 36% of the sample was not working at the time of license suspension, and among the workers, we estimate that 72% experienced disruption (either because of job loss [31%] or reduction in hours [57%], with 72% representing our effort to adjust for double counting).¹⁷³ Using this information, we conservatively estimate that license suspension

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*, 56.

¹⁶⁸ John Pawasrat & Lois M. Quinn, *The EARN (Early Assessment and Retention Network) Model for Effectively Targeting WIA and TANF Resources to Participants*, 60 ETI PUBLICATIONS 1 (2007).

¹⁶⁹ John Pawasrat & Lois M. Quinn, *Research Brief on ETI Driver's License Studies*, 186 ETI PUBLICATIONS 1, 4 (2017).

¹⁷⁰ *Compliance Assistance Program (CAP)*, CITY OF PHOENIX, (last viewed January 22, 2022), <https://www.phoenix.gov/court/cap>.

¹⁷¹ *The City of Phoenix Municipal Court's Compliance Assistance Program, 2016: An Economic Assessment*, L. WILLIAM SEIDMAN RESEARCH INSTITUTE, 22 (June 2, 2017), <https://finesandfeesjusticecenter.org/content/uploads/2018/11/Phoenix-license-restoration-pilot-THE-CITY-OF-PHOENIX-MUNICIPAL-COURT%E2%80%99S-COMPLIANCE-ASSISTANCE-PROGRAM.pdf>.

¹⁷² Indeed, the authors shy away from using the analysis “for statistical analysis or inferences.” *Id.*, at 11.

¹⁷³ *Id.*

results in about \$12,700 in lost annual earnings.¹⁷⁴ Multiplying this by the number of people eligible for an occupational driver’s license (438,000), yields an estimate of around \$5.5 billion in lost earnings yearly due to not having a driver’s license.¹⁷⁵

While further research is certainly needed, recent qualitative studies and accounts of “unlicensing” support an impact on earnings that is at least as large, if not larger, than the estimate we report above. Job loss and job disqualification, and lower-wage job options, appear to be the main mechanisms. For example, through semi-structured phone interviews conducted in 2020 and 2021, Sartin and her co-authors found suspended license “employment challenges” to present in several ways: directly, by preventing subjects from applying for the numerous jobs that mandated licenses, on or off-the job, and indirectly, in terms of the type of work and level of pay available to persons without licenses.¹⁷⁶ Dindial and her co-authors, also interviewing subjects across states, concluded that suspended licenses “creat[ed] obstacles to finding or keeping paid work.”¹⁷⁷ Jobs unavailable to people without licenses include driving for Uber/Lyft and delivery and driving-related jobs, automobile sales and services, home healthcare aides, and the construction trade.¹⁷⁸ Positions including retail security officer (pay: \$10.55 an hour), a caregiver for the disabled (\$10 an hour), an eye-care associate, an administrative assistant, and a deli clerk have also been reported to require a license.¹⁷⁹ Studies show that employers also use licenses as screens¹⁸⁰ or positive signal: “positions use a driver’s license as a proxy for whether you’re employable.”¹⁸¹

In Texas, 20.8% of civilian jobs in 2016 required driving a passenger vehicle.¹⁸² The state’s size and infrastructure have meant that 80% (+/- 0.2) of workers in Texas at least 16 years

¹⁷⁴ We attempt to be conservative in our use of the information reported in the Phoenix CAP study. Our estimate assumes 36% of the sample was not working and lost \$0; 18% of the sample was working but did not experience disruption and lost \$0; 23% of the sample was working and lost \$18,400 (the midpoint of \$0 and the median \$36,800); and 23% of the sample was working and lost \$36,800. Using the percentages as weights for lost income, the mean is \$12,696.

¹⁷⁵ If we instead use \$23.5K as our estimate of in lost earnings annually, based on assuming that all 64% of people working at the time of the suspension had income around the median ($\$23.5K = \$36,800 * .64$), our estimate of lost earnings balloons to \$10B.

¹⁷⁶ Emma B. Sartin et al., *Impacts of Non-Driving Related License Suspensions on Quality of Life: A Qualitative Study*, *APPLIED RESEARCH IN QUALITY OF LIFE* 1, 11-12 (2022).

¹⁷⁷ *Reckless Lawmaking: How Debt-Based Driver’s License Suspension Laws Impose Harm and Waste Resources*, ACLU, 26 (2021),

https://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf.

¹⁷⁸ Jon A. Carnegie et al., *Driver’s License Suspensions, Impacts and Fairness Study*, NEW JERSEY DEPARTMENT OF TRANSPORTATION, 3 (August 2007).

¹⁷⁹ Joseph Shapiro, *How Driver’s License Suspensions Unfairly Target the Poor*, NPR, (January 5, 2015), <https://www.npr.org/2015/01/05/372691918/how-drivers-license-suspensions-unfairly-target-the-poor>.

¹⁸⁰ Jon A. Carnegie et al., *Driver’s License Suspensions, Impacts and Fairness Study*, NEW JERSEY DEPARTMENT OF TRANSPORTATION, 3, 66 (August 2007).

¹⁸¹ Alana Semuels, *No Driver’s License, No Job*, THE ATLANTIC, (June 15, 2016), <https://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/>.

¹⁸² Bureau of Labor Statistics, U.S. Department of Labor, *30 percent of civilian jobs require some driving in 2016*, THE ECONOMICS DAILY, (June 27, 2017), <https://www.bls.gov/opub/ted/2017/30-percent-of-civilian-jobs-require-some-driving-in-2016.htm>.

old drove alone (i.e., did not carpool or rideshare) to work in 2016.¹⁸³ When a license is reinstated, it can quickly translate into an earnings opportunity as the experience of 47-year old John Blackwell illustrates.¹⁸⁴ Once Blackwell got his license back, Blackwell, who works as a carpenter foreman, “c[ould] make an additional \$2 an hour [with the ability to]. . . drive a company truck.”¹⁸⁵ Assuming that Blackwell works 40 hours per week, the extra \$2 per hour adds up to an extra \$4,480 in wages per year.¹⁸⁶

E. Comparing the Cumulative Earnings Effect of Texas’s Paper Prisons with the Out-of-Pocket Cost of Texas’s Physical Prisons

Aggregating the most conservative estimates of lost earnings associated with the second chance sealing and second chance relicensing gaps described above yields a total that ranges from \$5.6 billion (assuming complete overlap) to \$6 billion (assuming no overlap). By way of comparison the entire 2022 operating budget for the Texas Department of Criminal Justice was \$3.7 billion.¹⁸⁷

Taken at face value, these calculations would suggest that the cost of Texas’s “paper prisons,” in terms of lost earnings, is as large as if not larger than the out-of-pocket cost of its physical prisons. Provided for purposes of illustration, they suggest that, although often motivated by considerations of fairness, second chance rules have significant and overlooked earnings and employment consequences.

PART IV: AUTOMATION AND POLICY PILOTS

The previous part considered the order of magnitude effects, in terms of lost earnings, associated with the failed delivery of second chances in Texas. What this exercise underscores is not only the large number of people for whom second chances appear to have largely been missed chances, but also, the large economic and earnings impact associated with the second chance gap, and potential to reverse, at least partially, these economic losses with policies that close the gaps. Ways to both narrow the second chance gap and the gap in understanding its economic impact, are discussed in this part. We start by considering the drivers of Texas’s second chance gaps, then the reforms that could narrow them. We recommend the use of policy pilots to

¹⁸³ United States Census Bureau, *Percent Of Workers 16 Years And Over Who Traveled To Work By Car, Truck, Or Van--Drove Alone*, AMERICAN COMMUNITY SURVEY, (last visited August 2, 2021), <https://www.census.gov/acs/www/data/data-tables-and-tools/geographic-comparison-tables/>.

¹⁸⁴ Angie Jackson, *Penalized for being poor: Michigan drivers could get break on license suspensions*, DETROIT FREE PRESS, (updated August 1, 2020), <https://www.freep.com/story/news/local/michigan/2020/08/01/michigan-drivers-license-suspensions/4819150002/>.

¹⁸⁵ *Id.*

¹⁸⁶ \$2/hour x 40 hours per week x 52 weeks per year = \$4,480

¹⁸⁷ *Operating Budget for Fiscal Year 2022*, TEXAS BOARD OF CRIMINAL JUSTICE, 2, (December 1, 2021), https://www.tdcj.texas.gov/documents/bfd/FY2022_Operating_Budget_LBB.pdf

both introduce policy interventions and provide the research infrastructure for observing their outcomes.

A. Drivers of Texas's Second Chance Gaps

Why don't more people seek to clear their criminal convictions or reinstate their lost driver's licenses, given their negative impact on earnings and employment? The processes of obtaining relief presented in Section I confirm a number of the same barriers to relief documented by others, including lack of awareness, unclear criteria, burdensome application processes, and fines and fees¹⁸⁸ to impede uptake of the relief offered in Texas.

Texas law puts the impetus on the individual to initiate the process or relief-seeking through a petition. But in many cases, there is a *lack* of awareness about the second chances to which one may be entitled. The awareness gap is particularly acute when a second chance opportunity is first introduced, or changes are made to its eligibility. There is typically no specific advertising or communications budget allocated for alerting eligible citizens that they can apply for relief — indeed, to specify such a budget would likely reduce the chances of enactment in a climate of fiscal austerity. This is a problem particularly in the case of records relief provisions, which are often updated frequently. Since record sealing was introduced in 2003, legislative acts in 2015 and 2017 have changed who is eligible, making it difficult for even the diligent to know when and if the law may apply to them. Similarly, very few people are aware that ODLs are an option that would allow them to drive to work or take care of other essential tasks.¹⁸⁹ As one report stated, “most people with. . . [driver's license] holds do not know that ODLs are an option and do not apply for them.”¹⁹⁰ Even for those that are aware, the process of applying for an ODL has been described as “labyrinthine. . . just determining which court to file in can be impossible for many people to figure out on their own.”¹⁹¹ Insufficient information about how to reinstate licenses has also been cited as a barrier to application in a number of states with programs similar to Texas.¹⁹²

Ambiguous or undefined criteria¹⁹³ and discretion-based processes also contribute to the

¹⁸⁸ Colleen Chien, *America's Paper Prisons: The Second Chance Gaps*, 119 MICH. L. REV. 519 (2020)

¹⁸⁹ *Driven By Debt*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, (December 13, 2018), <https://report.texasappleseed.org/driven-by-debt/>.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Reckless Lawmaking: How Debt-Based Driver's License Suspension Laws Impose Harm and Waste Resources*, ACLU, 20 (2021),

https://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf (“Some felt the steps and procedures were unclear, while others had to do their own research to figure out what to do, contacting several different agencies and even going back and forth to several locations while legally prevented from driving”).

¹⁹³ For example, people convicted of first-time misdemeanors punishable by fine only and misdemeanors carrying a sentence of incarceration are ineligible to have their records sealed if the misdemeanor in question was a violent crime and/or a crime of a sexual nature, with the exception of offenses under §22.01, Penal Code (Tex. Admin. Code §411.0735). But Code of Criminal Procedure §59.01(3) defines a crime of violence as “...(A) any criminal offense

gap. They discourage uptake because they make the payoff from the application process uncertain. This is particularly a problem because of the costly, burdensome, and informationally intensive processes described in Part I. As one of us has previously written, “[i]n the same way that the accused remain innocent until proven guilty in the U.S. criminal justice system, many second chance programs require defendants to ‘prove’ that they deserve second chances before awarding them. As such, getting one’s second chance through petition-based processes may include enduring a bureaucratic and expensive process, amassing information through a variety of sources, and being evaluated by an adjudicative or administrative body.”¹⁹⁴

Petition filing fees¹⁹⁵ as well as the requirement to satisfy unpaid fines, fees, and surcharges also present substantial barriers. Indeed, the requirement that fines and fees be paid off may be the most important barrier to relief to restored driver’s licenses. One prime example of this is the OmniBase Program, which has no fee-waiving mechanism.¹⁹⁶ “OmniBase holds aren’t lifted even when somebody appears in court and gets on a payment plan or begins

defined in the Penal Code or in a federal criminal law that results in a personal injury to a victim... [or] (B) an act that is not an offense under the Penal Code involving the operation of a []vehicle [] that results in injury or death...,” facts that are impossible to be evaluated without delving into the court record. Additionally, although some offenses like rape are obviously of a sexual nature, we could not find any clear definition of a crime of a sexual nature in the penal code. As a result, determining whether an offense is of a violent or sexual nature is not straightforward. The phrase the “same criminal episode” has also raised statutory interpretation challenges: “A court may not order the expunction of records and files relating to an arrest for an offense for which a person is subsequently acquitted, whether by the trial court, a court of appeals, or the court of criminal appeals, if the offense for which the person was acquitted arose out of a criminal episode, as defined by Section 3.01, Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode” (Tex. Code of Criminal Procedure Art. 55.01(c) (1977)). Oddly, two offenses can be considered to have occurred under the same criminal episode regardless of how many years apart the offenses occurred (*HB 2684 (Canales): Clean Slate Eligibility*, CLEAN SLATE TEXAS, (last visited August 24, 2021), https://de203503-6f74-4104-bc1d-dc9fde7da5dd.filesusr.com/ugd/413c6c_54294486d6644a2194cd9577f4799d35.pdf). In cases such as *In re Expunction of M.T.R.* (2020), Texas courts have recently interpreted this to mean that “if a person is convicted of one offense, then later is acquitted of a ‘same or similar offense,’ the acquitted case is ineligible for expunction,” an outcome that advocates have described as leading to “absurd results” (Clean Slate Texas, *HB 2684 (Canales): Clean Slate Eligibility*, (last visited August 24, 2021), https://de203503-6f74-4104-bc1d-dc9fde7da5dd.filesusr.com/ugd/413c6c_54294486d6644a2194cd9577f4799d35.pdf). Determining whether an offense is the same or similar insofar as expunction eligibility is concerned makes the process of determining whether someone should get a second chance more involved and costly.

¹⁹⁴ Colleen Chien, *America’s Paper Prisons: The Second Chance Gaps*, 119 MICH. L. REV. 519 (2020) at 540-541.

¹⁹⁵ For example, the cost of expungement \$750 to \$2,500, not including the cost of traveling to the hearing as well as filing fees, which, if not waived, can add an additional \$200 and \$400 *Fees and Costs*, DALLAS EXPUNCTION ATTORNEYS, (last viewed October 14, 2021), <https://www.dallas-expunction-attorney.com/fees-and-costs/>. Based on other research, getting an expunction could be slightly less expensive than sealing one’s record. See Ruthie Goldstein, *Moving Forward: Proposals for Expanding and Simplifying Expungements in Texas*, 98 T. LAW REV. 144 (2020) (noting that “Because expunctions can only be granted after filing a petition with the court and because drafting the petition typically requires the assistance of an attorney, the cost of an expunction can total between \$500 and \$2,500, not including filing fees. Filing fees typically total between \$200 and \$400, but can be waived for indigency.”)

¹⁹⁶ Emily Gerrick & Mary Mergler, *Commentary: Lawmakers need to fix another program that buries Texas drivers in fines*, STATESMAN, (updated July 5, 2019), <https://www.statesman.com/opinion/20190705/commentary-lawmakers-need-to-fix-another-program-that-buries-texas-drivers-in-fines>.

assigned community service. The only way to lift a hold is to satisfy the fines and costs in full.”¹⁹⁷ This lack of fee-waiving mechanism is critical because “[m]ore than one in four OmniBase holds between 2013 and 2017 were a result of poverty-related offenses such as driving without insurance, displaying expired license plates, driving with an invalid license, or no driver’s license at all.”¹⁹⁸

B. *Narrowing Texas’s Second Chance Gaps*

The most impactful way to improve the administration of second chances would be to eliminate fines and fees requirements, as other states have done,¹⁹⁹ and to streamline delivery through automation. Due to different administrative aspects of the laws, automation would look slightly different for each type of second chance. For instance, automatically sealing records would ideally follow the Clean Slate model, which uses computer queries to identify eligible individuals and then automatically seals those people’s records. A similar program could automatically look at whether individuals meet the ODL eligibility criteria and invite eligible individuals to apply.

Automation makes the application process less burdensome in four ways. First, automation would reduce the awareness gap for individuals seeking second chances because it would not only identify eligible individuals, but also either (i) invite individuals eligible for relief to apply, or (ii) provide relief to eligible individuals. Second, automation makes it so that people seeking to seal their records do not need to complete a petition, thereby “streamlin[ing] petition-based record clearing— a costly and time-intensive process that prevents the vast majority of eligible people from ever obtaining needed relief.”²⁰⁰ Third, automation could reduce

¹⁹⁷ Emily Gerrick & Mary Mergler, *Commentary: Lawmakers need to fix another program that buries Texas drivers in fines*, STATESMAN, (updated July 5, 2019), <https://www.statesman.com/opinion/20190705/commentary-lawmakers-need-to-fix-another-program-that-buries-texas-drivers-in-fines>.

¹⁹⁸ *Driven By Debt: How Driver’s Licenses Suspensions for Unpaid Fines and Fees Hurt Texas Families*, TEXAS FAIR DEFENSE PROJECT AND TEXAS APPLESEED, (March 2, 2019), <https://finesandfeesjusticecenter.org/articles/license-suspensions-hurt-texas-families/>. For full report, see *Driven By Debt*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT, (December 13, 2018), <https://report.texasappleseed.org/driven-by-debt/>.

¹⁹⁹ See PA HB440, which in 2020, eliminated the requirement in Pennsylvania that fines and fees be paid off prior to receiving “Clean Slate” relief. Described at Aaron Moselle, *Pa. residents with court debts could have their records automatically sealed under new bill*, WHYY (October 22, 2020), <https://whyy.org/articles/pa-residents-with-court-debt-could-have-their-records-automatically-sealed-under-new-bill/>

²⁰⁰ *Clean Slate Toolkit: Frequently Asked Questions*, CENTER FOR AMERICAN PROGRESS, (November 15, 2018), <https://www.americanprogress.org/issues/poverty/reports/2018/11/15/460907/clean-slate-toolkit/>. Several states have implemented clean slate policies with great success. For example, Pennsylvania’s 2018 clean slate bill sealed over 47 million offenses and helped an estimated 1.1 million people within one year of its launch. Laurie Mason Schroder, *In one year, Pa.’s Clean Slate law has erased 35 million crimes. What’s next?*, THE MORNING CALL, (June 30, 2020), <https://www.mcall.com/news/breaking/mc-nws-pennsylvania-clean-slate-law-one-year-20200630-ges77qb3ffahhizn-bjzjtelq7q-story.html>.

the number of individuals who need an attorney to help them navigate complicated application processes. Fourth, automation, coupled with the elimination of fines and fees, would remove the financial obstacles to getting a second chance. Notably, however, the reduction of fines and fees would apply only to record sealing, at least based on the policy changes this article proposes. As such, the driver's relicensing gap might remain large until policymakers find a way to either (i) make fee waivers more accessible, or (ii) eliminate filing fees.

There are at least three types of concerns that relate to automating second chances. One is that developing the systems needed to identify and notify eligible individuals requires time, money, and oversight.²⁰¹ Although it is true that Texas will need to invest in technology to automate second chances, it is worth remembering that we roughly estimate that Texans lose up to \$3.5 billion annually in lost earnings, and associated tax revenue, just from the second chance sealing gap. This may be why a financial report for H.B. 3601, a proposed clean slate bill from the 87th Legislature, reported that “[n]o significant fiscal implication to the State is anticipated.”²⁰² Indeed, the tax revenue associated with higher earnings would be expected to save the state money in the long run.

The second concern about automating second chances is that automating the current law cannot actually be done effectively due to the unclear criteria and data deficiencies highlighted earlier in this article. For instance, some scholars express concern that automating expunctions might not be realistic in Texas, “where expunctions cannot be granted until the statute of limitations has passed. Statutes of limitation vary by crime and class of crime, and keeping track of their expiration would put a significant burden on counties, which would most likely be responsible for processing the automatic expunctions. Additionally, assuming an ‘automatic expunction’ [or automatic sealing] bill is retroactive, it would be extremely time-consuming for counties to look back into their old records, determine what can be expunged, and go through the expunction process.”²⁰³ So concerns are likely true for record sealing and ODLs. However, we note that although automating second chances “would require significant data normalization and cleaning efforts,”²⁰⁴ reforming the law to make it implementable at scale can provide a path forward. To illustrate, we discuss clearance criteria challenges and legislative drafting alternatives to overcome these challenges in Appendix F. This could serve as a foundation for starting to adjust Texas' laws to the reality of Texas' data.

The third concern is more general, about the effectiveness of records relief as a way to

²⁰¹ See Ruthie Goldstein, *Moving Forward: Proposals for Expanding and Simplifying Expungements in Texas*, 98 T. LAW REV. 144 (2020) (explaining that “[u]ltimately, in a state as large as Texas, it might not be financially feasible to require that expunctions become automatic.” However, recognizing that fees pose a barrier to people seeking expunction, Goldstein proposes waiving filing fees as an alternative to automation).

²⁰² *87th Regular Legislative Session*, LEGISLATIVE BUDGET BOARD, (April 10, 2021), <https://capitol.texas.gov/tlodocs/87R/fiscalnotes/pdf/HB036011.pdf#navpanes=0>.

²⁰³ Ruthie Goldstein, *Moving Forward: Proposals for Expanding and Simplifying Expungements in Texas*, 98 T. LAW REV. 144 (2020).

²⁰⁴ Colleen Chien et al., *The Texas Second Chance Non-Disclosure/Sealing Gap*, PAPER PRISONS INITIATIVE, (last visited September 19, 2021), <https://www.paperprisons.org/states/TX.html> at 2.

achieve the policy aims of public safety, job growth, and equity. The potential harms of statistical discrimination replacing records-based exclusion, a lack of knowledge of sealed records rendering the policy impactless, and the risk of automating relatively minor crimes intensifying the earnings penalty for people with more significant records have all been previously raised.²⁰⁵

C. Narrowing Knowledge Gaps about the Earnings Impact of Sealing and Driver's License Restoration

The introduction of an intervention to narrow the second chance gap at the county or state level presents a chance not only to narrow the second chance gap, but also to narrow the knowledge gap about the associated earnings impact. Policy pilots, which temporarily change a law or policy so lawmakers and scholars can learn from it,²⁰⁶ can provide an excellent way to overcome “the knowledge gap and risk aversion in policy development.”²⁰⁷

There are at least two ways that policy pilots could improve the delivery of second chances. First, carrying out an automation trial could help lawmakers identify ambiguity in the existing statute and pinpoint how it needs to be adjusted to support records clearance at scale. Second, policy pilots could be used to study the impact on earnings of newly available second chance relief, for example, in order to carry out the cost-benefit to the state of such a policy. Such policy pilots would not only provide valuable information about the true cost of Texas's second chance gaps, but would also provide lawmakers with additional information to ensure that they pursue cost-effective policy solutions.

The best prospect would be for a study conducted at the individual level, involving matching of administrative records from multiple agencies. This might include the state law enforcement agency that maintains a criminal history repository with arrests and charges and local and county courts that retain data on convictions and sentences along with non-penal sanctions such as fines and fees. Other relevant agencies include the state motor vehicle authority with data on license suspensions and traffic violations and state labor and welfare agencies that collect data on earnings and transfer payments. To ensure that the impact of closing a second chance gap can be discerned using experimental or quasi-experimental methods, local policy labs such as the Texas Policy Lab at Rice University or the Texas Public Policy Foundation think tank could be appointed to consult on the policy's roll-out.²⁰⁸ Upstream attention to implementation will support downstream learning about interventions to boost the workforce.

²⁰⁵ Chien, *supra* note ____ at ____.

²⁰⁶ Colleen V. Chien, *Rigorous Policy Pilots: Experimentation in the Administration of Law*, 104 IOWA L. REV. 2313 (2019) at 2316.

²⁰⁷ *Id.*

²⁰⁸ Colleen V. Chien, *Rigorous Policy Pilots: Experimentation in the Administration of Law*, 104 IOWA L. REV. 2313 (2019).

CONCLUSION

This article provides an estimate of the annual earnings loss associated with a conviction, finding it to be on the order of \$5,100 to \$6,400 per year, as well as a provisional estimate of the annual earnings loss associated with a suspended driver's license, conservatively estimating it to be approximately \$12,700. Using Texas as a case study, it quantifies the size of the state's second chance sealing and occupational driver's license gaps, estimating that around 670,000 Texans could seal their misdemeanor convictions and about 438,000 Texans are eligible for ODLs. Mechanically aggregating these figures results in a earning loss estimate of \$3.5 billion in connection with the second chance sealing gap and \$5.5 billion from the second chance ODL gap in Texas, in comparison with the operating budget of Texas's correctional system of \$3.6 billion. This suggests not only that the costs of paper prisons could exceed the cost of physical prisons, but also that closing paper prisons, through automation, can have fiscal benefits that resemble or far exceed closing physical prisons, although rigorous evaluation and research are needed to see whether this is the case.

APPENDIX

APPENDIX A: RULES

To estimate the number and share of people eligible for but not receiving sealing, compassionate release, and driver's license restoration in Texas, we used the Methodology established in Section II. For more information about our approach, please see Colleen V. Chien, *America's Paper Prisons: The Second Chance Gap*, Michigan Law Review (2020).

1. *Sizing the Texas Sealing Second Chance Gap*

To estimate the number of Texans eligible for records sealing, we focused narrowly on the subset of people that could, if eligibility criteria were automatically applied to them, transition from having a misdemeanor conviction or deferred adjudication to not having a conviction or deferred adjudication under Texas Gov. Code Chap. 411. To conduct our analysis, we acquired the CCH from the Texas Department of Public Safety.²⁰⁹ To support our analysis of the uptake rate of sealing, the DPS also sent us administrative data containing historical information about the number of people who had their records sealed annually.

We imported and then inner joined the data to create unique person IDs for each person. Once we had created unique IDs, we randomly selected 153,674 individuals for our sample. To make sure our data was consistent, we removed about forty individuals whose sentence expiration dates were earlier than their sentence start dates, leaving us with a random sample of 153,632 individuals. We then turned to cleaning the data, focusing first on categorizing disposition data.²¹⁰ Likewise, we categorized the following dispositions as non-convictions: not guilty, dismissed, mistrial, abandoned charges, waived, acquitted, community supervision expired, deferred, unadjudicated with, dead, pending, dismissed, dismissed – mentally incompetent, and pending – mental incompetence. After categorizing the dispositions, we turned to cleaning the sentencing data. Though 2,041,483 records in our sample had sentence completion data, for 554,444 records, the data was missing. Rather than exclude these records from our analysis, we instead calculated, from the cases where the data was present, the average lag between sentencing and sentence completion and added these numbers (2.9 years after the date of sentencing and 3.2 years for misdemeanors and felonies, respectively), and used this to roughly estimate sentence completion dates.

²⁰⁹ The Criminalized Computer History (CCH) *More information about the CCH is available at Texas Department of Public Safety, About CCH*, (last visited August 20, 2021), <https://publicsite.dps.texas.gov/DpsWebsite/CriminalHistory/AboutCch.aspx>.

²¹⁰ Based on consultation with criminal law experts, we categorized the following dispositions as convictions: convicted, multiple charges, commuted, amend probation, convicted – appeal pending, pardoned, probation discharge, probation revocation, sentence modified, convicted - lesser charge, and mistrial.

To be conservative in our estimates about the number of individuals eligible for record sealing, we made a number of assumptions when conducting our analysis. First, since we could not easily determine whether offenses were of a violent or sexual nature, we manually determine whether fourteen offenses would be ineligible due to being offenses of a violent or sexual nature.²¹¹ When in doubt after reading the statutes associated with these fourteen offenses, we assumed that they were ineligible to be conservative in our estimates.²¹² Second, we assume that offenses that appeared in the data as misdemeanors but had a statute indicating an enhancement to a state jail felony or a felony were ineligible.²¹³ Third, if someone has ever been convicted of an offense listed in Tex. Gov. Code 411.074(b), that person cannot have any of the offenses on their record sealed. Most of those offenses were easy to model, but some depended on facts of the case that we did not have access to. In these cases, we assumed that anyone convicted of these offenses were ineligible.²¹⁴ Finally, we assumed that someone was incarcerated if the number of days between the disposition date and the sentence expiration date was greater than two years.²¹⁵ When the data contains both sentence expiration date and a parole date for the same person and offense, we assume that any sentence expiration date that is greater than the parole until date indicates time in prison.

Despite our efforts to be conservative, there is a further noteworthy limitation to our analysis. While we only model sealing for adults, the sealing data that we acquired from the Department of Public Safety includes the aggregate number of sealings for juveniles and adults. As such, it is likely that we overestimate the pace of relief provided under the current, application-based method, and overestimate the uptake rate and underestimate the current gap.

RULES^{216*}

Orders of Non-Disclosure and Expunction

Primary Sources: [Texas Gov. Code Chap. 411](#) (2017) | [Sec. 411.072](#) | [411.0725](#) | [411.073](#) | [411.0731](#) | [411.0735](#) | [411.074](#) (all 2017) | [Art. 55.01](#)(2019)

²¹¹ Although we did our best with the data cleaning, it is always worth noting that the dirty nature of the data could have impacted our findings and is thus a weakness. Also, *when identifying whether convictions were of a violent or sexual nature, we relied on the following resource*: Texas Office of Court Administration, *What is an Order of Nondisclosure and How Do I Get One?*, Texas Law Help, (Last updated June 28, 2021), <https://texaslawhelp.org/article/what-is-a-nondisclosure-order-and-how-do-i-get-one>.

²¹² For instance, we assumed that 51.031 (child labor law) and 22.02(a)(2) (aggravated assault with a deadly weapon) were ineligible.

²¹³ Examples of such offenses in our dataset include 49.045(b), 49.09(b-4), and 49.07(c).

²¹⁴ For instance, an individual convicted of Section 30.02 (Burglary), Penal Code, is ineligible if “the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C).” We do not have access to this data, so we assume that all individuals convicted of burglaries are ineligible.

²¹⁵ *Statutory Wrongdoing and its Consequences*, THE TEXAS POLITICS PROJECT, (January 8, 2022), https://texaspolitics.utexas.edu/archive/html/just/features/0201_01/crimeandp.html.

²¹⁶ Reprinted with permission. *Thank you to Hithesh Sekhar Bathala, Obie Reynolds, and Ahmanda Lee for contributing the concise statement as well as the shorter version of this article, published at paperprisons.org

A. CONVICTIONS

1. Any first time misdemeanor conviction if it is the person's only conviction or deferred adjudication after a two-year waiting period (in which the person cannot get an add'l convictions or deferred adjudication) following sentence completion ([Sec. 411.0735](#)).²¹⁷
 - a. In addition to universal disqualifiers, ineligible offenses under this section include misdemeanor offenses that are:
 - i. Violent or sexual in nature (with the exception of §22.01, Penal Code)
 - ii. Convictions under §106.41 Alcoholic Beverage Code
 - iii. Driving While Intoxicated (Penal Code §49.04)
 - iv. Boating while Intoxicated (Penal Code §49.06)
 - v. Assembling or operating an amusement ride while intoxicated (Alcoholic Beverage Code §49.065)
 - vi. Organized crime (Chapter 71, Penal Code)
2. Any DWI conviction under Section 49.04, Penal Code, if it is the person's only offense (conviction or deferred adjudication) after a two to five year waiting period (in which the person cannot get additional convictions deferred adjudications) ([Sec. 411.0736](#)).²¹⁸ (In our model, we default to five years in order to be conservative in our estimates.)
 - a. In addition to universal disqualifiers, ineligible offenses include 49.04(d), Penal Code (driving while intoxicated with a BAC greater than 0.15).

B. DEFERRED ADJUDICATIONS

1. Any felony that is sentenced to deferred adjudication community supervision after a five year waiting period starting from community supervision completion and offense dismissal (in which the person cannot get additional convictions deferred adjudications) ([Sec 411.0725](#)).
 - a. In addition to universal disqualifiers, ineligible offenses include:
 - i. Driving While Intoxicated (Penal Code §49.04)
2. Any misdemeanor that is sentenced to deferred adjudication community supervision after up to a two year waiting period starting from community supervision completion and offense dismissal (in which the person cannot get additional convictions deferred adjudications) ([Sec 411.0725](#)) including offenses under 49.04 and 49.06 (411.0726).

²¹⁷ Please note that all offenses have a two year waiting period except for those punishable by fine-only, which do not have a waiting period. We do not model this nuance because we use the longest waiting period to be conservative in our estimates.

²¹⁸ Some offenses have a two year waiting period rather than a five year waiting period. However, we default to five years in order to be conservative in our estimates.

C. UNIVERSAL DISQUALIFIERS

1. Ineligible per [411.074\(b\)](#) if individual has any convicted or deferred adjudication offense:
 - a. Requiring registration as a sex offender (Section [62.001\(5\)](#))
 - b. Involving aggravated kidnapping (Section [20.04](#))
 - c. Involving homicide (Sections [19.02](#), [19.03](#))
 - d. Involving human trafficking (Sections [20A.02](#), [20A.03](#))
 - e. Involving child/elder abuse (Sections [22.04](#), [22.041](#))
 - f. Involving family violence (Sections [25.07](#), [25.072](#), [71.004](#))
 - g. Involving stalking ([Section 42.072](#))
 - h. Flying while Intoxicated (Penal Code §49.05)

D. UNMODELED CRITERIA

1. Did not model expunctions eligibility for non-convictions. ([Art. 55.01\(a\)](#))
2. Did not model shorter waiting period for certain deferred adjudication community supervision under 411.072 (first time non-violent misdemeanor offenses) or [411.0726](#) (deferred adjudication for DWI)
3. Did not include sealing eligibility for individuals that successfully complete veteran's treatment court ([Sec. 411.0727](#))
4. Did not include sealing eligibility by individuals that are victims of trafficking ([Sec. 411.0728](#))
5. Did not model expunction eligibility for Class C Misdemeanors sentenced to community supervision ([Article 55.01\(a\)\(2\)](#)).
6. Did not model whether LFOs were repaid
7. Did not model whether certain deferred adjudication offenses eligible for OND/sealing had "affirmative finding under Article 42A.105(f), Code of Criminal Procedure...filed in the papers of the case" ([411.072\(a\)\(1\)\(b\)](#), [411.0726\(a\)\(2\)](#))
8. Did not model whether certain deferred adjudication offenses otherwise eligible for OND/sealing had findings under "former Section 5(k), Article 42.12, Code of Criminal Procedure...filed in the papers of the case" ([411.072\(a\)\(1\)\(b\)](#)).
9. Did not model [certain offenses requiring registration as a sex offender](#) (62.05(D), 62.05(E), 62.05(G), 62.05(H), 62.05(I)), that would be universally ineligible.

Appendix Table 1: Detailed View of The Texas Second Chance Gap

Population	People in the Criminal Population	People Eligible for Any Records Relief	People Eligible for Sealing of All Convictions
Estimated Number of People with Convictions	4.8M	675,305	59663
% Male	85%	87%	85%
Top Felony Deferred Adjudication Community Supervision	poss cs pg 1 <1g (11.4%), DWI 3rd or more (4.2%), burglary (3.7%)	poss cs pg 1 <1g, driving while intoxicated 3rd or more iat	
Top Convictions - Misdemeanors	poss marij <2oz (8.3%), DWI (5.6%), assault (3.7%)	driving while intoxicated, poss marij <2oz, driving while intoxicated 2nd	driving while intoxicated, poss marij <2oz, assault causes bodily injury family member
Avg Years since last Conviction	12.6	17	19
Share of People whose Last Conviction was 10+ Years Ago	2,407,274(~49.87%)	446,535	49,537
Average Age at First Conviction	28	28.26	27.86
Average Current Age of People with Convictions	45	47	46
Median Years since last Conviction	11	15	20
White and Latinx % (share in pop = 82%)	0.69	0.73	0.69
Black % (share in pop = 13%)	0.31	0.26	0.3
Asian % (share in pop = 5%)	0.01	0.01	0.01

APPENDIX B: DATA SAMPLE DESCRIPTION²¹⁹

<u>Data Statistics</u>	
Number of People in Dataset	4,826,860
Sample Size	153,674
<u>OND Sample Data Statistics</u>	
Number of People with Misdemeanor Convictions in Sample	94,403 (61.45%)
Estimated Number of People with Misdemeanor Convictions in Population	2,966,662
Number of People with Felony Convictions in Sample	122,611 (79.81%)
Estimated Number of People with Felony Convictions in Population	3,853,113
Average Age of Misdemeanor Convictions	46 years old

APPENDIX C: COMMON CHARGES²²⁰

- A. Top 10 Charges in our Dataset
- B. Top 10 Misdemeanor Convictions in Sample
- C. Top 10 Felony Convictions in Sample
- D. Top 10 Charges Eligible for OND in our Dataset

Table A. Top 10 Charges in Sample

<u>Charges</u>	<u>Number of Records</u>	<u>Percentage of Charges</u>	<u>Number of People with Charges</u>
poss cs pg 1 <1g	335,265	12.97%	36,232
poss marij <2oz	238,491	9.22%	34,202
driving while intoxicated	147,550	5.71%	27,365
burglary of habitation	116,005	4.49%	13,836
driving while intoxicated 3rd or more iat	111,187	4.3%	12,627
assault causes bodily injury family member	103,171	3.99%	17,562

²¹⁹ A shorter version of this article is available at paperprisons.org

²²⁰ A shorter version of this article is available at paperprisons.org

poss cs pg 1 >=1g<4g	95,857	3.71%	12,585
assault causes bodily inj	75,109	2.9%	12,107
burglary of building	72,598	2.81%	8,004
unauth use of vehicle	67,916	2.63%	8,311

Table B. Top 10 Misdemeanor Convictions in Sample

<u>Charges</u>	<u>Number of Records</u>	<u>Percentage of Charges</u>	<u>Number of People with Charges</u>
poss marij <2oz	215379	8.33%	34166
driving while intoxicated	145373	5.62%	27335
assault causes bodily injury family member	95485	3.69%	17521
assault causes bodily inj	69788	2.7%	12079
driving while intoxicated 2nd	55722	2.15%	10659
fail to id fugitive intent give false info	53855	2.08%	8688
resist arrest search or transport	53052	2.05%	8812
driving w/lic inv w/prev conv/susp/w/o fin res	39245	1.52%	6796
poss cs pg 3 < 28g	27195	1.05%	5233
evading arrest detention	26269	1.02%	5500

Table C. Top 10 Felony Convictions in Sample

<u>Charges</u>	<u>Number of Records</u>	<u>Percentage of Charges</u>	<u>Number of People with Charges</u>
poss cs pg 1 <1g	295925	11.44%	35970
driving while intoxicated 3rd or more iat	108898	4.21%	12573
burglary of habitation	95745	3.7%	13789
poss cs pg 1 >=1g<4g	81261	3.14%	12557
burglary of building	64327	2.49%	7864
unauth use of vehicle	61414	2.37%	8236
man del cs pg 1 <1g	54832	2.12%	5957

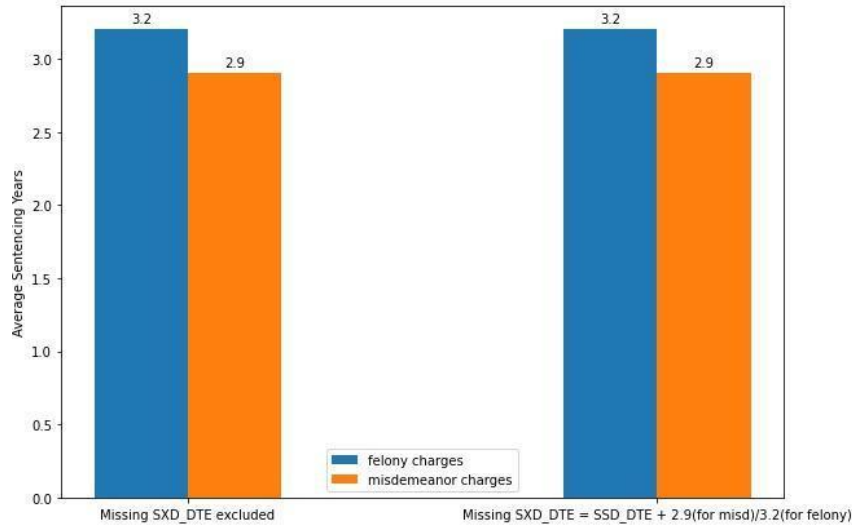
forgery financial instrument	54563	2.11%	7046
man del cs pg 1 >=4g<200g	50568	1.96%	8240
poss cs pg 1 >=4g<200g	41772	1.62%	6936

Table D. Top 10 Misdemeanor Conviction Charges Eligible for OND in our Dataset

<u>Charges Eligible for OND</u>	<u>Number of Records</u>	<u>Percentage of Charges</u>	<u>Number of People with Charges</u>
poss marij <2oz	10,315	0.4%	10,315
assault causes bodily injury family member ²²¹	4,648	0.18%	4,648
assault causes bodily inj	3,651	0.14%	3,651
driving while intoxicated 2nd	3,169	0.12%	3,169
fail to id fugitive intent give false info	2,372	0.09%	2,372
resist arrest search or transport	2,217	0.09%	2,217
poss cs pg 3 < 28g	1,041	0.04%	1,041
evading arrest detention	1,027	0.04%	1,027
theft prop >=\$100<\$750	579	0.02%	579
poss dangerous drug	444	0.02%	444

APPENDIX D: ROBUSTNESS TEST AND HISTOGRAM FOR SENTENCE EXPIRATION DATE ASSUMPTIONS

²²¹ In Texas, assault is not considered a violent felony as listed in 411.0735(c-1): <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.411.htm>



The two bars on the left show the average number of years in jail when records with missing sentence expiration date are excluded. The blue bar shows the average number of years for felony charges and the orange bar shows the average number of years of misdemeanor charges.

The two bars on the right show the average number of years in jail when records with missing sentence expiration date are assumed to be sentence start date + 2.9 years for misdemeanor convictions and + 3.2 years for felony convictions.

APPENDIX E: DETAILED RECORD RELIEF STATISTICS²²²

We obtained OND statistics from the Texas Department of Public Safety, which reports that 18,593 ONDs were processed between fiscal years 2014 and 2019. In addition, we obtained the number of ODLs granted from the Texas Department of Public Safety, which reports that 44,812 ODLs were granted between September 2017 and February 2020.²²³ A breakdown of each type of relief granted by year is available in Table H below.

Table H. Breakdown of Relief Granted Each Year in Texas

Year	ONDs Processed in Fiscal Year	ODLs Granted in Calendar Year
2020	N/A	2,637*
2019	2,650	16,350

²²² A shorter version of this information is available at paperprisons.org

²²³ *Driver License Division High Value Set*, DEPARTMENT OF PUBLIC SAFETY, (February 2020, January 2020, December 2019, November 2019, October 2019, September 2019, August 2019, July 2019, June 2019, May 2019, April 2019, March 2019, February 2019, January 2019, December 2018, November 2018, October 2018, September 2018, August 2018, July 2018, June 2018, May 2018, April 2018, March 2018, February 2018, January 2018, December 2017, November 2018, October 2017, September 2017) (data last available January 23, 2022 at <https://www.dps.texas.gov/section/driver-license/driver-license-division-high-value-data-sets>).

2018	2,558	15,831
2017	2,313	12,637 ⁺
2016	2,360	N/A
2015	4,258	N/A
2014	4,454	N/A

*ODLs granted for 2017 are from September 2017 - December 2017

+ODLs granted for 2020 are from January 2020 - February 2020

APPENDIX F: CLEARANCE CRITERIA CHALLENGES AND LEGISLATIVE DRAFTING ALTERNATIVES²²⁴

Criteria	Administrative Challenge	Example	Drafting Alternative
Sentence Completion (OND)	Not tracked in court data and hard to infer as clean sentencing data is often not available; it also is often unclear whether or not outstanding fines and fees must be paid, and whether they have been.	“Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who completes the person's sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, may petition the court that imposed the sentence for an order of nondisclosure of criminal history record information under this section...” (Tex. Gov. Code 411.0735(b))	Disposition Date (+ X Years)
First conviction; qualifying conditions (OND)	Lack of unique identifier across precludes determination		Bless commercial identification approximation technique
Personal demographic trait such as age, military status, or other	Information may not be easily ascertainable / available on the record or charge	“(a) This section applies only to a person who successfully completes a veterans treatment court program under Chapter 124 or former law. (b) Notwithstanding any other provision	Specify an identification strategy that can be implemented

²²⁴ Adapted from Colleen Chien et al., *The Texas Second Chance Non-Disclosure/Sealing Gap*, PAPER PRISONS INITIATIVE, (last visited September 19, 2021), <https://www.paperprisons.org/states/TX.html> and Colleen Chien, *America's Paper Prisons: The Second Chance Gaps*, 119 MICH. L. REV. 519 (2020).

condition (OND)	category condition	of this subchapter or Subchapter F, a person described by Subsection (a) is entitled to file with the court that placed the person in the veterans treatment court program a petition for an order of nondisclosure of criminal history record information under this section...” (Tex. Gov. Code 411.0727)	at scale or do not include demographic traits
Class or grade condition (OND)	Missing class, grade or category information	“A person may petition the court that imposed the sentence for an order of nondisclosure of criminal history record information under this section only on or after: (1) the date of completion of the person's sentence, if the offense of which the person was convicted was a misdemeanor punishable by fine only; or (2) the second anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a misdemeanor other than a misdemeanor described by Subdivision (1).” (Tex. Gov. Code 411.0735(d))	Explicitly specify the qualifying crimes
Court-ordered conditions (OND and ODL)	Require individual review /check for any “court-ordered” conditions and compliance re: same	“All reinstatement fees must be paid prior to applying for, renewing, or upgrading a driver license. This includes applying for an occupational or interlock driver license.” (Texas Department of Public Safety, Driver’s License, Section 7: Reinstatement Fees)	Do not include court-ordered conditions, waive fees repayment or allow for garnishing of wages
Laundry list disposition criteria (OND)	Vulnerable to changes to definitions, requires detailed clean data	“A person may not be granted an order of nondisclosure of criminal history record information under this subchapter...if: (1) the person requests the order of nondisclosure for, or the person has been previously convicted of or placed on deferred adjudication community supervision for: (A) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; (B) an offense under Section 20.04, Penal Code, regardless of whether the	Simple description e.g. “All records that do not end in a conviction”

		offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure; (C) an offense under Section 19.02, 19.03, 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or (D) any other offense involving family violence, as defined by Section 71.004, Family Code; or (2) the court makes an affirmative finding that the offense for which the order of nondisclosure is requested involved family violence, as defined by Section 71.004, Family Code.” (Tex. Gov’t Code Section 411.074(b))	
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