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The New York Second Chance Sealing Gap

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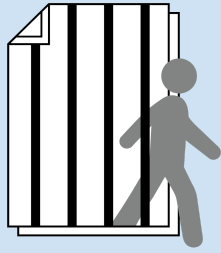
The New York Second Chance Sealing Gap

New York's Clean Slate Act (S211/AB1029 in the 2023 legislature), proposes to automate the sealing of criminal records that meet certain conditions. Applying the Act's provisions[1] to a sample of criminal histories of individuals applying for gig worker jobs, we estimate the share and number of New Yorkers with convictions who would be eligible for Clean Slate automated sealing.[2] In addition, we estimate the aggregate annual earnings loss attributable to the state's current, less accessible system based on statistical analyses of the earning loss from a conviction, of about $5,100 for a misdemeanor and $6,400 for a felony.[3]

To estimate the share and number of people with records that would be eligible for sealing under the proposed Clean Slate Act, we analyzed 1,787 conviction records obtained from a commercial background check company, representing a sample of 1,310 individuals with criminal histories in NY who applied for gig jobs in 2017 and 2018. We then developed algorithms to model the eligibility rules based on the pending Clean Slate Act, court eligibility guidelines, and consultations with practicing attorneys from Community Service Society of New York and Legal Action Center.

QUICK FACTS

- Estimated people in New York with conviction records: **2.3M**[4]
- Estimated population with convictions eligible for sealing relief under Clean Slate: **1.4 Million**
- **$7.1B** est Annual Lost Earnings due to loss of a driver's license and misdemeanor and felony convictions[5]
- Uptake of current relief under 160.59: **0.2%**[6]
- **1000+** Years to Clear the Backlog[7]

According to our analysis, approximately 60% of those who live burdened with criminal convictions would potentially receive relief under the Clean Slate Act immediately, with others besides those with sex offenses eventually becoming eligible with the passage of time. But fewer than 1% of those with convictions currently eligible for relief under petition-based sealing have actually received the remedy. Additionally, we estimate the aggregate earnings loss associated with the estimated 1.7M people with convictions who would be Clean Slate eligible, finding their lost wage and earnings opportunities to translate to a cumulative annual earnings loss of about $7.1 billion.

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Endnotes

1. We assume that a conviction was eligible for automated Clean Slate sealing pursuant to S211/AB1029 if: (1) It was not a sex offense under New York Penal Law §§130 or 263; (2) In the case of a misdemeanor conviction, the person remained conviction-free for a 3-year period following sentencing; (3) In the case of a felony conviction, the person remained conviction-free for a 7-year period following sentencing; and (4) The person did not have a pending charge.

We also modeled 160.59 CPL according to the assumptions included at https://paperprisons.org/states/NY.html.

In both of our analyses, we were unable to ascertain with certainty sentence completion date, so we estimated the completion based on the method described in Colleen V. Chien, "America's Paper Prisons: The Second Chance Gap," 119 Mich. Law. Rev.519 (2020)

2. We base on our analysis and approach on the concept and definition of the "second chance gap" described in Chien (2020) https://paperprisons.org/methodology.html/

3. We rely on the methodology and estimates provided in Colleen Chien, et al, Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver's License, 64 Ariz. L. Rev. 675 (2022), which estimates the national average earnings loss associated with a misdemeanor and felony conviction to be $5,100 and $6,400, respectively, and which separately calculate the amount associated with a lost drivers license, which is not used in the present analysis. As these numbers are averages, it is likely that in New York, the estimated annual earnings loss would be higher in light of the state's higher average income (https://worldpopulationreview.com/state-rankings/average-income-by-state) (listing New York's average income as $76K, the fifth highest in the nation).

4. The estimate of 2.3M New Yorkers with a conviction record is based on a estimate provided by the New York State Executive in late 2016 (archived website: https://web.archive.org/web/20170719064448/https://www.governor.ny.gov/news/governor-cuomo-announces-first-nation-regulation-prohibit-insurance-companies-denying-coverage) Cf. estimate of 4.8M New Yorkers with a criminal (arrest) record obtainable by calculating 24% of the 2020 total state population of 20.2M, reflecting the national average of the population with criminal records (out of ~329M Americans, ~80M have criminal records and 80/329 =

~24%); see also Becki R. Goggins et al., *Survey of State Criminal History Information Systems, 2020: A Criminal Justice Information Policy Report*, SEARCH (2020), available at https://www.ncjrs.gov/pdffiles1/bjs/grants/255651.pdf (1 listing the total number of records in the NY repository as of 12/2018 as 8,227,600))

5. Based on $5,100 per year lost earnings (per fn 3) x 1.4M New Yorkers eligible for convictions relief.

6. We calculated the uptake rate by combining actual data on who has received sealing with our estimate of the total number of people who could seal their records under CPL 160.59 to get an estimate of uptake.

7. Time estimate based on dividing estimate of number of who would get relief under Clean Slate by the annual number of people receiving petition based relief, which we obtain from official state records. (https://www.criminaljustice.ny.gov/crimnet/ojsa/Raise-the-Age-Provision-Sealing-Report.pdf, From October of 2017 through Oct 2021, 3,218 people have sealed their records pursuant; we used the year of the highest number of clearances (2019) in our analysis, due to the impacts of the pandemic.

APPENDIX: COUNTY-LEVEL ANALYSIS

The numbers below provide county-level estimates for the distribution of people living with convictions in New York (not taking into account migrations and death patterns) assuming a convicted population of approximately 2.3M New Yorkers and 1.4M that could get relief under the Clean Slate Initiative

Table 1. New York County Estimates of Convicted and Clean Slate Populations

County	Population of county (source: Census) (in millions)[a]	Estimated convicted population of county (in thousands)[b]	Estimated population of county eligible under Clean Slate initiative (in thousands)[c]	Estimated loss of earnings associated with Clean Slate population (in millions)[d]
Kings	2.64	270.7	137.7	$702.2
Queens	2.33	254.8	177.8	$906.8
New York County	1.58	296.1	126.0	$642.6
Suffolk	1.53	147.6	102.7	$523.9
Bronx	1.42	200.5	75.7	$386.0
Nassau	1.39	132.3	90.8	$463.1
Westchester	1.00	103.5	70.2	$357.9
Erie	0.95	127.4	86.7	$442.1
Monroe	0.76	96.4	64.3	$327.7
Richmond	0.49	57.3	9.4	$48.1
Onondaga	0.47	64.2	38.5	$196.2
Orange	0.40	61.6	39.4	$201.1
Rockland	0.34	18.6	11.9	$60.6
Albany	0.31	55.0	38.1	$194.5
Dutchess	0.30	34.5	18.4	$93.8
Saratoga	0.24	34.0	16.8	$85.7
Oneida	0.23	39.4	19.2	$97.7
Niagara	0.21	32.5	13.4	$68.3
Broome	0.20	31.5	22.5	$114.7
Ulster	0.18	31.8	23.8	$121.5
Rensselaer	0.16	22.1	10.6	$54.0
Schenectady	0.16	28.1	17.0	$86.8
Chautauqua	0.13	27.4	17.7	$90.3
Jefferson	0.12	18.7	9.6	$49.0
Ontario	0.11	15.7	11.9	$60.8
Tompkins	0.11	8.7	3.6	$18.4
Chemung	0.08	15.6	10.7	$54.4
Sullivan	0.08	13.6	10.4	$52.9
Madison	0.07	8.4	3.4	$17.5
Warren	0.07	14.8	2.4	$12.5
Washington	0.06	7.7	4.2	$21.6

Genesee	0.06	10.6	2.9	$14.8
Greene	0.05	10.3	5.7	$28.9
Chenango	0.05	6.3	1.7	$8.8
Wyoming	0.04	6.2	2.5	$13.0
Yates	0.02	2.2	1.2	$6.1
St Lawrence	0.11	13.1	5.4	$27.6

Methodology for Calculations:

In order to estimate the number of people eligible for relief in each county, we took the county-level eligibility share based on analysis reported above and multiplied by estimated convicted population in each county. The convicted population was based on convictions in the state and distributed based on actuals received from DCJS Dispositions of Adult Arrests 2014-2018. Where the data from the sample was too small for a reliable eligibility estimate, we omitted the county.

Methodology Details:

a. County population data obtained from the US Census:
https://www.newyork-demographics.com/counties_by_population

b. The estimated convicted population per county was calculated by taking the state-level estimate on the number of people with convicted records derived as described above and localizing it to the county level based on the distribution[1] of actuals received from the DCJS dispositions of Adult Arrests 2014-2018 for 2018.

c. The estimated population eligible under Clean Slate was calculated based on county level shares derived directly from analysis of our sample of background checks multiplied by the estimated convicted population of the county as calculated according to the methodology described in b., supra.

d. We rely on the methodology and estimates provided in Colleen Chien, et al, Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver's License, 64 Ariz. L. Rev. 675 (2022), which estimates the national average earnings loss associated with a misdemeanor and felony conviction to be $5,100 and $6,400, respectively. Conservatively, we used the $5,100 number. As these numbers are national averages, it is likely that in New York, the estimated annual earnings loss would be higher in light of the state's higher average income (see https://worldpopulationreview.com/state-rankings/average-income-by-state, listing New York's average income as $76K, the fifth highest in the nation).

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[1] This distribution was obtained by aggregating county-level data on felony and misdemeanor convictions based on the DJCS data.