



A Tool for Narrowing the Second Chance Gap

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Abstract. The United States has the largest prison population in the world with more than 650,000 ex-offenders released from prison every year, according to the United States Department of Justice. But even after time has been served, criminal records persist, limiting their bearer’s ability to qualify for job, rental, loan, volunteering, and other opportunities available to citizens. It is thus not surprising that the US Department of Justice also reports that approximately two-thirds of those released are rearrested within three years of release. In recent years, many laws have been passed to shield past criminal records from future background checks. The Second Chance Gap Initiative at the Santa Clara University’s Law School (paperprisons.org) uses empirical research and analysis to draw attention to the millions of Americans that remain stuck in “the second chance gap” of being eligible for but not receiving their second chance in the realms of expungement, reinfranchisement, and resentencing. In the case of criminal records, it finds that tens of millions of people that have completed their formal sentences are stuck in a “paper prison,” held back, not by steel bars but bureaucratic and related hurdles that prevent them from assessing a cleaned record. In support of this initiative, the SCU Ethical, Pragmatic, and Intelligent Computing (EPIC) laboratory has developed a flexible tool for ascertaining expungement eligibility. The project hopes to assist those seeking to determine if they qualify via a user-friendly web application containing a rule engine for expungement qualification determination.

Keywords: Criminal records expungement · Digital humanity · Justice · Legal technology · Paper prisons · Petitioning · Rule engine · Second chance gap

1 Introduction

The United States has the largest prison population in the world [35]. The single greatest force behind the growth of the US prison population is the 1971 national

“War on Drugs” [1]. Which as of the year 2020 has resulted in 49% of the prison population to be due to drug offences [19].

According to the United States Department of Justice, more than 650,000 ex-offenders are released from prison every year [34]. But people released from prison can find themselves not only stripped of their ability to provide for themselves and their loved ones, but also with a criminal record that ensures employers, landlords, bankers, and others can disqualify them from receiving any opportunities due to a mistake they made possibly decades ago and have already served their time or paid other penalties for. These rehabilitated members of our society are thus only released from their physical confinements yet still trapped in a “paper prisons” in which their criminal records precede them in job, rental, and loan applications [6]. It is thus not surprising that the US Department of Justice also reports that approximately two-thirds of those released are rearrested within three years of release [34].

“Over the last decade, dozens of states have enacted ‘second chance’ reforms that increase the eligibility of individuals charged or convicted of crimes to, upon application, shorten their sentences, clean their criminal records, and/or regain the right to vote” [6]. On average, ex-offenders that clear their records experience a 12% net gain in employment by the end of their first year with a clean record [30]. But “while much fanfare has accompanied the increasing availability of ‘second chances,’ little attention has been paid to their delivery” [6]. Chien 2020 [7] defines the concept of a “Second Chance Gap” as the difference between eligibility and delivery of one’s second chance, and measures the “second chance gap” across a number of regimes including resentencing, reinfranchisement, and expungement. After analyzing the laws of the 50-states and applying it to data provided by a background check provider, it estimates that tens of millions of people are eligible under the new laws but have not had their records expunged [7].

Building on Chien 2020 and the Paper Prisons Project (paperprisons.org), this paper reports on the uses of technology to help narrow the second chance gap. The prototype helps individuals with criminal histories in the states of Washington (WA) and New York (NY) to determine their possible eligibility through a series of questions, and points them to the resources that are available for them to utilize, if they wish to pursue expunging their record.

2 Terminology

This section contains legal terminology used throughout this paper, and is largely adapted from [6].

- *Charge*: In a criminal case, the specific statement of what crime the party is accused of committing (charged with) which is contained in the indictment or criminal complaint [21].
- *Conviction*: A legal finding by a court that the defendant is guilty of the crime with which he or she was charged, either through an adjudication, default judgement, or plea.

- *Eligible*: A legal determination that, based on application of the law to the ascertainable record, a record is eligible for expungement, sealing or related remedy.
- *Expungement*: The removal, sealing (defined below), or other state process for rehabilitating one’s criminal record.
- *Second Chance Expungement Gap*: The number of people who are eligible for record expungement/sealing but that have not yet taken advantage of the enacted laws.
- *Gap Sizing*: The process of computing/estimating the number of people in the expungement gap.
- *Sealing*: A weaker form of clearing the criminal record history in comparison to expungement where instead of the records being permanently deleted, they are removed from background checks though are still available to those connected with law enforcement. This is the usual practice for the criminal records of under-age offenders which cannot be examined without a special court order [32]. And can sometimes be stipulated as part of a settlement in order to keep the terms of the settlement from public scrutiny [32].

3 Gap Sizing Methodology

Chien 2020 defines a process of “gap sizing” in order to estimate the size - in terms of criminal histories (people), charges, and incidents - of a given second chance gap. That process of gap sizing is summarized below in order to help describe how it is leveraged in building the automated Tool.

Although Chien 2020 focused primarily on developing a national estimate of the number of people eligible for relief from non-convictions, because the consequences of convictions are more severe than non-convictions, a series of related reports have applied the gap sizing approach described above to size the second chance convictions gap in a number of states. At the time of this writing, reports for the 10 states of Connecticut [14], Iowa [9], Minnesota [11], Missouri [12], North Carolina [13], New York [15], Oregon [16], Rhode Island [10], South Carolina [8], and Washington [17] are available. Each report follows a similar approach as is detailed in the methodology page of the paperprisons.org [29].

Each state has its own set of laws dictating what charges are eligible for clearance. The set of laws are first summarized into concise statements by staff lawyers and law students of the Paper Prisons project. Concise statements of the law are then organized into if/then logic rules, translated into Python code, and run on the data to generate an eligibility determination for each charge in the dataset. Lastly, using the known count of the people in the state’s criminal history database, the eligibility size is estimated. The details of this work can be found in [6, 7], and the Methodology page of the Paper Prisons website [29].

4 Motivation for Automation of Expungement Eligibility Determination

The clearing of criminal records exhibits significant beneficial effects on society. Expungement is shown to “increase wages by 25%” [2]. From a broader perspective, employment penalties for people with a criminal charge can cost the country’s GDP up to \$87 billion [3]. Similar benefits were apparent through Detroit’s *Project Clean Slate*, which conducts a variety of initiatives to increase expungement participation. The project found that for every \$1 spent on the project, there was a potential \$3.70 return in the form of potential annualized wage gains which translate to local, state, and federal employment tax revenue. Furthermore, the financial returns on expungement programs outpaced job training by 3.8 to 1 [22]. In an ideal world, those who are eligible to have their records expunged should be able to do so, and their record should reflect as such. However, this is not always the case.

In many jurisdictions, the records are *sealed*, rather than wholly expunged, and retained for law enforcement purposes [24]. In this case, the records should not be available to third parties, such as employers, but will still be retained by the government entities involved. Furthermore, the internet presents a significant hindrance to an offender’s ability to remove their information from the public eye altogether. In 2009, journalist Paul Silva said, “getting out of Google’s grip is harder than clearing the legal record – newspapers cannot be in the business of erasing the past.” [4].

One of the key findings from Gap Sizing the 10 states aforementioned is the sheer size of the gap in each state. A significantly large proportion of the people with charges in each state are eligible to have their charges cleared. However, only a small subset of people take any action to have them cleared every year. One possible explanation for this discrepancy is the lack of awareness of this opportunity or their eligibility as they may not have kept track of the passage of new laws or be aware of the eligibility criteria for the state they have a record in. Many of them may also not know that they can consult or do not have access to advocates which can help them determine their eligibility. Given that, most do not have the resources to consult or hire a lawyer for that purpose either. Therefore, an automated tool that helps individuals determine their eligibility for expungement and connects them with resources to do so, is crucial.

5 Related Work

Over the recent years several expungement eligibility web tools have been developed by advocacy groups in several states such as California, Maryland, Montana, and Texas.

California: “Clear My Record” is a free service by Code for America for helping people with a criminal record in certain counties in California which is accessible at clearmyrecord.org [18]. This tool is different from all the other tools delineated below in that it is not an anonymous tool meant to allow users to determine if

they are eligible and then connect them with resources. Instead, it starts with a comprehensive form asking the users for their name, phone number, address, email, etc. and then a series of questions regarding their criminal history. The idea seems to be to immediately get the users into their database and thus be able to guide and track their progress throughout the process. This is truly helpful for making sure that individuals do not get lost in the system and have an advocate to help them throughout the process. However, it may pose as a barrier for entry. It may make individuals stop once they see the form asking for all of their personal information as they may just want to test the tool and see if they may be eligible but not necessarily commit to doing anything. This will potentially pose a problem for many individuals who are in the gray area with regard to expungement as they would not feel comfortable providing all of their personal and criminal history information out of the fear that they may just get a non-eligibility result in the end yet create another database record of their unexpungeable criminal history in the process.

Maryland: At the time of this writing the authors have been able to find two separate web applications for expungement eligibility determination for the state of Maryland:

1. The Warnock Foundation has produced an expungement eligibility determination web tool accessible at expungemaryland.org/b0 that asks yes/no questions one at a time in order to determine whether the user is eligible to expunge a criminal record in Maryland [33].
2. Maryland Legal Apps, LLC has created a web application accessible at MDExpungement.com that takes a completely different approach: The web tool asks users to enter their case number in order to get started and then looks up their charge in a state database and determines its eligibility. This may at first seem as an obstacle since many may not remember their case numbers especially if a long time has passed since their incident; but Maryland's judiciary provides a Public Case Search tool [26] through the state government's website which users are directed to use to retrieve their case numbers for use in the expungement tool should they not remember their case numbers. Furthermore, MDExpungement.com not only determines eligibility but also helps users update any outdated information and then print, sign, and file their application to the courthouse [28]. But that is not all, The web tool goes one step further in allowing bulk expungements [27] meant for use by advocates or lawyers who are trying to help groups of people clear their records at once.

Montana: Judnich law Office in Montana which according to their website specializes in personal injury representation, DUI defense, private criminal defense representation, and family law matters, has produced an expungement eligibility web tool for records in Montana which is available at judnichlaw.com/montana-expungement-eligibility [23]. The tool works by asking yes/no questions one at a time to determine whether the user is eligible for expungement.

Texas: “Texas Law Help” is a free and anonymous web application developed by students of Georgetown University’s Law Center, that helps determine if users are eligible for expungement in Texas. The web tool is accessible at Texas-LawHelp.org [20] and works by asking yes/no questions to determine whether the user is eligible for expungement. But the app is built as a no-code system through the Neota Logic platform. Which means that the software is created and configured through a Graphical User Interfaces (GUI) instead of being programmed. Therefore, as all no-code systems, it has less flexibility for undergoing major changes easily but has the advantage that it is maintainable by non-developers.

To the best knowledge of the authors, no national level tool has been developed nor attempted due to the vast complexity of the expungement law/logic which is unique for each state. Hence, the development of a national expungement eligibility tool is a huge undertaking yet grossly overdue.

6 Paper Prison Expungement Tool

There is a necessity to research and create unique logic flows for each eligible state in order to cater to their distinct laws. The flow logic is implemented in Javascript and the UI is purely built by HTML and CSS. The application accepts a JavaScript Object Notation (JSON) file for each state that is manually assembled from the specific state laws and is used to extract the question flow for that state. The JSON file is built as a decision tree in memory where each tree node contains a question and each response to the question is modeled on an edge that leads to the next node (and hence next question) until an eligible or not eligible leaf node is reached.

For ease of development, the Expungement application is hosted on the Heroku platform which is a platform-as-a-service (PaaS) that enables seamless cloud based build and deployment. Currently, the tool is only functional for New York and Washington State, but eventually the web application will be expanded to all 50 States. The system allows for an easy translation of law based decision trees to a web application which follows the answers given to questions in order to find whether the person is eligible for expungement of changes. There are multiple challenges associated with carrying out this work. First, each state has different laws regarding records relief and these laws are frequently changing.

7 Methodology

The PaperPrisons expungement tool asks a sequence of questions that determine whether individuals are eligible or ineligible to have their former criminal records expunged. This is done through a web based application, where the questions take a yes/no or “select all that apply” format. The user is presented with answers that they can select. Based on the answer they selected they are presented with a new question according to the tree diagram. This approach is chosen because it offers the greatest ease of use. Users will often not know what

specific charge they were given, or the technical law terms that are used to determine eligibility. However, they will have enough of an idea to accurately answer yes/no questions regarding their charges. When there is sufficient information on the user’s eligibility it will stop loading questions and let the user know if they are eligible or not. To minimize the number of redundant questions that need to be answered by the user, the questions follow a decision tree optimized for each state based on their laws. Therefore, through the pruning of the decision tree during the traversal through it, users skip questions that do not pertain to their situation. For example, if a person has committed first-degree murder in the state of New York, they do not have to provide additional details as that crime makes them ineligible to apply for expungement or sealing of anything in their record.

8 Implications and Impact

The punitive effects of a criminal record on a person’s ability to obtain and hold a job are both long lasting and large in scale. Not only does a criminal record hinder the well being of an ex-convict, it also hinders the well being of their dependents [25].

On a macroeconomic scale, the prohibitive effects of a criminal record lowers the overall employment rate by 0.8%, according to the Center for Economic and Policy Research [31]. This effects up to 1.7 million workers across the country. If this tool allows even a fraction of workers to regain their ability to work, this will have positive effects on local economies. Of course, just because a crime is expunged in the eyes of the law, it doesn’t mean that crime is free from the grasps of the press and the internet. When an article is published by the press regarding a crime, it is subject to first amendment rights, and a judge cannot easily force the publisher to remove the article [5]. That means that after an expungement is ordered, a crime might be removed from a state’s database, but it is rarely truly gone. However, for the purpose of helping a rehabilitated individual to regain their ability to obtain a job, a loan, or an apartment, a crime doesn’t necessarily have to be removed from all records for there to be significant positive change. Especially since the state databases are the most important sources for background checks.

9 Work in Progress

9.1 Addition of More States

In addition to Washington [17] and New York [15], as of the time of this writing, the Paper Prisons Project has prepared reports and summaries of the law (“concise statements”) for Connecticut [14], Iowa [9], Minnesota [11], Missouri [12], North Carolina [13], Oregon [16], Rhode Island [10], and South Carolina [8], making them good candidates for addition to the expungement tool. The logic flows for these states are currently under development and once completed will be translated into code for the addition to the expungement tool.

9.2 Automated Expungement Paperwork Preparation

An important feature under development is providing users the option to automatically fill expungement forms for their state or county courts. If the user is willing to temporarily provide more information, the tool can help complete the entire application for them without storing their personal data in the system. Even though, it will be ensured that such generated forms will be as accurate as possible, a disclaimer will warn users that they must review the provided document and should seek help from a legal advocate before submitting it to the court. This feature would save time for people who are planning to file an expungement application as well as the advocates helping clients prepare such applications.

9.3 Chatbot Functionality

A chat bot functionality is envisioned to accompany the expungement tool in order to provide a more accessible experience for users. If a person is unsure of their specific charge, the chat bot can ask further questions to help determine that for them. This functionality will also provide a more efficient and dynamic means of evaluating eligibility for users.

Acknowledgements. Many thanks are due to Santa Clara University Law School Professor Colleen Chien - who originated the concept of the Second Chance Gap and founded the Paper Prisons initiative. To the many law students working in the initiative including Evan Hastings, Charlie Duggan, and Katie Rabago whose work on creating concise statements of the law and logic flows provided the basis for the expungement tool. To undergraduate student Alexandra George for her tireless research and data acquisition work for the Paper Prisons project. And lastly to the Frugal Innovation Hub as well as the departments of Mathematics & Computer Science, Computer Science & Engineering, and Information Systems & Analytics for their continued support of the criminal history expungement tool's development at the Ethical, Pragmatic, and Intelligent Computing (EPIC) Laboratory by faculty and students from all three departments.

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